

POWER PURCHASE AGREEMENT

BETWEEN

AND

PACIFICORP

This working draft is provided pursuant to PacifiCorp's OR Standard QF Schedule. This working draft does not constitute a binding offer, does not form the basis for an agreement by estoppel or otherwise, and is conditioned upon satisfaction of all requirements of PacifiCorp's OR Standard QF Schedule, including each party's receipt of all required internal approvals and any other necessary regulatory approvals.

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EXHIBITS

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(continued)

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “Agreement”), is entered into between [COMPANY NAME], a/an [TYPE OF ORGANIZATIONAL ENTITY AND STATE OF ORGANIZATION] (the “Seller”), and PacifiCorp, an Oregon corporation (“Utility”). Seller and Utility are sometimes referred to in this Agreement collectively as the “Parties” and individually as a “Party.”

RECITALS¹

- A. Seller intends to construct, own, operate and maintain a []-powered generating facility for the generation of electric energy located in [] County, Oregon, with a nameplate capacity rating of []² MW, as more fully described in Exhibit B (the “Facility”);
- B. Seller will operate the Facility as a Qualifying Facility (“QF”);
- C. Seller desires to sell, and Utility agrees to purchase, the Net Output delivered by the Facility in accordance with the terms and conditions of this Agreement; and
- D. The rates, terms, and conditions in this Agreement are in accordance with the rates, terms, and conditions approved by the Commission for purchases from QFs.

AGREEMENT

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

¹ **Note to Form** – Recital A to be adjusted in case of PPA with operational QF: “Seller owns, operates and maintains a []-powered generating facility for the generation of electric energy located in [] County, Oregon, with a nameplate capacity rating of [] MW, as more fully described in Exhibit B (the “Facility”).” If Facility includes energy storage facilities, add description.

² **Note To Form** – Must be ten (10) MWAC or less.

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SECTION 1
DEFINITIONS, RULES OF INTERPRETATION

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

“Abandonment” means (a) the relinquishment of all possession and control of the Facility by Seller, except in the case of Seller’s sale of the Facility and an Assignment of this Agreement conforming with Section 20 or (b) Utility’s receipt of notice from Seller informing Utility of Seller’s intent not to proceed with the development of the Facility.

“AC” means alternating current.

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

“Agreement” is defined in the introductory paragraph above.

“As-built Supplement” is a supplement to Exhibit B and Exhibit C of this Agreement, as provided in Section 6.1, which provides the final “as-built” description of the Facility, including the Point of Delivery and, subject to the provisions of Section 6.1, identifies changes in equipment or Facility configuration, or other modifications to the information provided in Exhibit B and Exhibit C as of the Effective Date.

“Business Day” means any day on which banks in Portland, Oregon, are not authorized or required by Requirements of Law to be closed.

“Commercial Operation” means that the date after start-up testing is complete on which the total Nameplate Capacity Rating of the Facility is fully interconnected, fully integrated, and synchronized with the System, all of which are Seller’s responsibility to receive or obtain, and which occurs when Seller has achieved the Milestones set forth in Section 2.2 and all of the following events (a) have occurred, and (b) remain simultaneously true and accurate as of the date and moment on which Seller gives Utility notice that Commercial Operation has occurred:

- (i) Utility has received a letter addressed to Utility from a Licensed Professional Engineer licensed in the state of Oregon certifying: (1) the Nameplate Capacity Rating of the Facility at the anticipated time of Commercial Operation, and (2) that the Facility is able to generate electric energy in amounts expected by and consistent with the terms and conditions of this Agreement;
- (ii) Utility has received a letter addressed to Utility from a Licensed Professional Engineer certifying that, in conformance with the requirements of the Generation Interconnection Agreement: (1) all required Interconnection Facilities have been constructed, (2) all required interconnection tests have been completed, and (3) the Facility is physically interconnected with the System in conformance with the Generation Interconnection Agreement;
- (iii) Utility has received a certificate from an officer or authorized agent of Seller certifying that Seller has obtained or entered into all Required Facility Documents from Exhibit D;

(continued)

- (iv) Utility has received a copy of the executed Generation Interconnection Agreement and Transmission Agreements (as applicable);
- (v) In the case of an Off-System QF, Seller shall demonstrate that it has made arrangements sufficient to reserve Firm Delivery (as defined in Exhibit K) of Net Output up to the Maximum Delivery Rate to the Point of Delivery for the full term of the Agreement, which may be demonstrated by obtaining Firm Delivery or rights to obtain Firm Delivery (i.e., rollover rights) under the third-party Transmission Provider(s) tariff for the period covering the Term; and
- (vi) Utility has received the Default Security, as applicable.

Seller must provide written notice to Utility stating when Seller believes that the Facility has achieved Commercial Operation and its Nameplate Capacity Rating accompanied by the documentation described above. Utility must respond to Seller's notice within ten (10) Business Days of receipt of a notice satisfying the requirements of the preceding sentence. If Utility does not respond to Seller's complying notice within such time period, the Commercial Operation Date will be the date of Utility's receipt of such complying notice from Seller. If Utility informs Seller within such ten (10) Business Day period that Utility believes the Facility has not achieved Commercial Operation, identifying the specific areas of deficiency, Seller must address the concerns stated in Utility's deficiency notice to the reasonable satisfaction of Utility; the Commercial Operation Date will then be the date that the matters identified in Utility's deficiency notice have been addressed to Utility's reasonable satisfaction.³

"Commercial Operation Date" means the date that Commercial Operation is achieved for the Facility but in no event earlier than ninety (90) days before the Scheduled Commercial Operation Date unless Utility, after undertaking reasonable efforts to obtain transmission service, is able to accept delivery from Seller earlier; provided that in no event will the Commercial Operation Date occur earlier than one hundred eighty (180) days before the Scheduled Commercial Operation Date.⁴

"Commission" means the Public Utility Commission of Oregon.

"Conditional DNR Notice" is defined in Section 4.2.

"Contract Interest Rate" means the lesser of (a) the highest rate permitted under Requirements of Law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate." If a Citibank, N.A. prime rate is not available, the applicable prime rate will be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank

³ **Note to Form** – This definition and references to "Commercial Operation" to be deleted in case of PPA with operational QF and replaced with definition of and references to "Initial Delivery". "Initial Delivery" means the later of (i) the date on which Seller's obligations under Section 2.2 are satisfied; (ii) the date on which Utility provides written notification to Seller that the Facility has been designated a Network Resource as provided under Section 4.2; and (iii) the Scheduled Initial Delivery Date.

⁴ **Note to Form** – This definition and references to "Commercial Operation Date" to be deleted in case of PPA with operational QF and replaced with definition of and references to "Initial Delivery Date". "Initial Delivery Date" means the date on which Initial Delivery occurs.

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with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid.

“Contract Price” means the applicable price, expressed in \$/MWh, for Net Output and Environmental Attributes, which shall be Standard Fixed Pricing or Renewable Fixed Pricing, as applicable during the Fixed Price Period, as stated in Exhibit I, and otherwise shall be Firm Electric Market Pricing.⁵

“Contract Year” means a twelve (12) month period commencing at 00:00 hours [Pacific Prevailing Time/Mountain Prevailing Time] on January 1 and ending on 24:00 hours [PPT/MPT] on December 31; provided, however, that the first Contract Year shall commence on the Effective Date and end on December 31 of the same calendar year, and the last Contract Year shall end on the Termination Date. For the purposes of this Agreement, “Full Contract Year” means a complete twelve (12) month period during the Term commencing at 00:00 hours [Pacific Prevailing Time/Mountain Prevailing Time] on January 1 and ending on 24:00 hours [PPT/MPT] on December 31.

“Credit Requirements” means (1) a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of (a) ‘BBB+’ or greater from S&P, or (b) ‘Baa1’ or greater from Moody’s; provided that if such ratings are split, the lower of the two ratings must be at least ‘BBB+’ or ‘Baa1’ from S&P or Moody’s; or (2) if (1) (a) or (b) is not available, an equivalent rating as determined by Utility through a reasonable internal process review and utilizing a credit scoring model of two full years of audited financial statements (including balance sheet, income statement, statement of cash flows, and accompanying footnotes) which information is evaluated considering (i) the type of generation resource, the size of the resource the Scheduled Commercial Operation Date and the term of the Agreement and (ii) at minimum, profitability, cash flow, liquidity and financial leverage metrics.

“Cure Period Deadline” means, in the case of failure to achieve Commercial Operation by the Scheduled Commercial Operation Date, the date that occurs one (1) year following the Scheduled Commercial Operation Date.

“Default Security” is an amount equal to fifty dollars (\$50) per kW of the final Nameplate Capacity Rating.

“Delay Damages” for any given day in a given month are equal to (a) the Expected Monthly Net Output for such month, expressed in MWhs per month, divided by the number of days in such month, multiplied by (b) Utility’s Cost to Cover; provided that, Delay Damages are to be aggregated and invoiced as a monthly sum and total Delay Damages for a given month or partial month may not exceed the aggregate amount Utility would have incurred to purchase Seller’s Net Output and Environmental Attributes during that month or partial month.

“Effective Date” is defined in Section 2.1.

⁵ **Note to Form** – The Contract Price in this form of agreement assumes that Seller elects Standard Fixed Pricing or Renewable Fixed Pricing for the Fixed Price Period, in each case, as determined at the time of contract execution. This form of Agreement will be revised for solar and solar-plus-storage QFs with a Nameplate Capacity Rating of more than three (3) MW and less than ten (10) MW, which are not eligible for Standard Fixed Pricing or Renewable Fixed Pricing.

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

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances associated with the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, including green tags and renewable energy certificates. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides, nitrogen oxides, carbon monoxide, and other pollutants; and (b) any avoided emissions of carbon dioxide, methane, and other greenhouse gases that have been determined by any Governmental Authority to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Environmental Attributes do not include (i) Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by Utility as sources of liability, or (iii) adverse wildlife or environmental impacts.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state, or local laws or regulations, and present a material risk under federal, state, or local laws or regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

“Event of Default” is defined in Section 11.1.

“Excused Delay” means the failure of Seller to achieve Commercial Operation on or before the Scheduled Commercial Operation Date, but only to the extent such failure is caused by an event of Force Majeure or an Event of Default by Utility, including a default by Utility under the Generation Interconnection Agreement or related interconnection study agreement(s) for Seller’s Facility, including a default resulting from any breach by Utility of any obligation to meet a material deadline included in such agreement(s), or Utility’s violation of applicable tariff provisions governing the interconnection of Seller’s Facility; provided that the duration of any Excused Delay shall not extend to any period of delay that could have been prevented had Seller taken mitigating actions using commercially reasonable efforts.

“Expected Monthly Net Output” means the estimated monthly Net Output as determined in Exhibit A.

“Expected Net Output” means [] MWh of Net Output in the first Full Contract Year, reduced, as applicable, by an annual degradation factor of [] per Contract Year, measured at the Point of Interconnection. Seller estimates that the Net Output will be delivered during each Contract Year according to the Expected Monthly Net Output provided in Exhibit A, as reduced each Contract Year, as applicable, by the annual degradation factor.

“Facility” is defined in the Recitals and is more fully described in attached Exhibit B and includes all equipment, devices, associated appurtenances owned, controlled, operated, and managed by Seller in connection with, or to facilitate, the production, storage, generation, transmission, delivery, or furnishing of electric energy by Seller to Utility and required to interconnect with the System.

“FERC” means the Federal Energy Regulatory Commission.

“Firm Electric Market Pricing” means the hourly value calculated based on the average prices reported by the Intercontinental Exchange, Inc. (“ICE”) Day-Ahead Mid-C On-Peak Index and the ICE Day-Ahead

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Mid-C Off-Peak Index (each an “ICE Index”) for a given day, weighted by the count of hours for each ICE Index on such day, multiplied by the hourly CAISO day-ahead market locational marginal price for the MALIN_5_N101 location and divided by the average of the same CAISO index over all hours in such day. If applicable, the resulting value will be reduced by the integration costs specified in the then-current Utility OR Standard QF Schedule as applicable to the Facility. If any index is not available for a given period, Firm Electric Market Pricing will mean the average price derived from days in which all published data is available, for the same number of days immediately preceding and immediately succeeding the period in which an index was not available, regardless of which days of the week are used for this purpose. If Firm Electric Market Pricing or its replacement or any component of that index or its replacement ceases to be published or available, or useful for its intended purpose under this Agreement, during the Term, the Parties must agree upon a replacement index or component that, after any necessary adjustments, provides the most reasonable substitute quotation of the hourly price of electricity for the applicable periods.

“Fixed Price Period” means the portion of the Term commencing on the Fixed Price Period Start Date and ending on the Fixed Price Period End Date.⁶

“Fixed Price Period End Date” means (i) if Seller selects a Scheduled Commercial Operation Date that occurs no later than three (3) years from the Effective Date or a Scheduled Commercial Operation Date that occurs between three (3) and five (5) years from the Effective Date and aligns with Utility’s estimate in an interconnection study of the date of completion of the interconnection for the Facility (as of the Effective Date or otherwise as selected under Section 2.8), the last day of the fifteen (15)-year period following the Fixed Price Period Start Date; or (ii) if Seller selects a Scheduled Commercial Operation Date that occurs between three (3) and five (5) years from the Effective Date for any other reason, the last day of the eighteen (18)-year period following the Effective Date; provided that the Fixed Price Period End Date described in clause (ii) shall be extended on a day-for-day basis for each day that the Scheduled Commercial Operation Date is extended for Excused Delay under Section 2.7.

“Fixed Price Period Start Date” means the earlier to occur of the Commercial Operation Date or the Scheduled Commercial Operation Date.

“Force Majeure” is defined in Section 14.1.

“Forced Outage” means (i) an outage that requires immediate removal of a unit from service, another outage state or a reserve shutdown state; (ii) an outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours; or (iii) an outage that can be postponed beyond six (6) hours but requires that a unit be removed from the in-service state before the end of the next weekend. A Forced Outage specifically excludes any Maintenance Outage or Planned Outage.

“Generation Interconnection Agreement” means the generator interconnection agreement entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

“Governmental Authority” means any supranational, federal, state, or other political subdivision thereof, having jurisdiction over Seller, Utility, or this Agreement, including any municipality, township, or county, and any entity or body exercising executive, legislative, judicial, regulatory, or administrative functions of

⁶ **Note to Form** – The definition of Fixed Price Period assumes that Seller elects Standard Fixed Pricing or Renewable Fixed Pricing for the Fixed Price Period.

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or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“Hazardous Materials” means any waste or other substance that is listed, defined, designated, or classified as or determined to be hazardous under or pursuant to any environmental law or regulation.

“Indemnified Party” is defined in Section 6.2(b).

“Interconnection Facilities” means all the facilities installed, or to be installed under the Generation Interconnection Agreement, including electrical transmission lines, interconnection upgrades, network upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

“Interconnection Provider” means the interconnection provider specified in Exhibit C.

“KW” means kilowatt.

“Lender” means an entity lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax equity investor, back leverage financing, or credit derivative arrangement) to Seller or Seller’s Affiliates (a) for the construction, term or permanent financing or refinancing of the Facility, (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement, or improvement of the Facility), (c) for any development financing, bridge financing, credit support, and related credit enhancement or interest rate, currency, weather, or Environmental Attributes in connection with the development, construction, or operation of the Facility, or (d) for the purchase of the Facility and related rights from Seller.

“Letter of Credit” means an irrevocable standby letter of credit in a form reasonably acceptable to Utility, naming Utility as the party entitled to demand payment and present draw requests that:

- (1) is issued by a Qualified Institution;
- (2) by its terms, permits Utility to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller under this Agreement;
- (3) permits Utility to draw the entire amount available if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;
- (4) permits Utility to draw the entire amount available if such letter of credit is not increased or replaced as and when provided in Section 8;
- (5) is transferable by Utility to any party to which Utility may assign this Agreement; and
- (6) remains in effect for at least ninety (90) days after the end of the Term.

“Liabilities” is defined in Section 12.1.1.

“Licensed Professional Engineer” means a person proposed by Seller and acceptable to Utility in its reasonable judgment who (a) to the extent mandated by Requirements of Law is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the

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United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements of Law specific to such state, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation, or opinion, (c) is not an employee of Seller or an Affiliate, and (d) is not a representative of a consulting engineer, contractor, designer, or other individual involved in the development of the Facility, or a representative of a manufacturer or supplier of any equipment installed in the Facility.

“Maintenance Outage” means an outage that can be deferred beyond the next weekend but requires that the unit be removed from service before the next Planned Outage. A Maintenance Outage can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually shorter than a Planned Outage.

“Market Operator” means the California Independent System Operator (“CAISO”) or any other entity performing the market operator function for any organized day-ahead or intra-hour market.

“Maximum Delivery Rate” means the maximum hourly rate of delivery of Net Output in MWh from the Facility to the Point of Interconnection, calculated as the lower of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating, as stated in Exhibit A, or the maximum rate of delivery that is permissible under the Generation Interconnection Agreement.

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

“Mountain Prevailing Time” or “MPT” means Mountain Standard Time or Mountain Daylight Time, as applicable in Oregon on the day in question.

“MW” means megawatt.

“MWh” means megawatt-hour.

“Nameplate Capacity Rating” means the maximum installed instantaneous power production capacity of the completed Facility, expressed in MW (AC), measured at the Point of Interconnection, when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the generator, inverters, and energy storage devices where relevant. The Nameplate Capacity Rating of the Facility is MW.

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy and capacity produced by the Facility, less station service, losses, and other adjustments, flowing through the Point of Interconnection.

“Network Resource” is defined in the Tariff.

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“Non-Fixed Price Period” means the period of the Term commencing on the first (1st) day following the Fixed Price Period End Date and ending on the last day of the Term.⁷

“Off-Peak Hours” has the meaning as provided in Utility’s OR Standard QF Schedule, as attached in Exhibit I. For a solar-plus-storage QF, “Off-Peak Hours” means all hours that are not Premium Peak hours, as provided in Utility’s OR Standard QF Schedule, as attached as Exhibit I, and as may be updated with Commission approval from time-to-time.

“Off-System QF” means a QF that is not directly interconnected to Utility’s transmission or distribution system and schedules delivery of Net Output to a Point of Delivery on Utility’s transmission system.

“On-Peak Hours” has the meaning as provided in Utility’s OR Standard QF Schedule, as attached in Exhibit I. For a solar-plus-storage QF, “On-Peak Hours” means Premium Peak hours, as provided in Utility’s OR Standard QF Schedule, attached as Exhibit I, and as may be updated with Commission approval from time-to-time.

“On-System QF” means a QF that is directly interconnected to Utility’s transmission or distribution system.

“Output” means all energy produced by the Facility.

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

“Party” and “Parties” are defined in the Recitals.

“Performance Guarantee” has the meaning set forth in Section 6.12.

“Permits” means the permits, licenses, approvals, certificates, entitlements, and other authorizations issued by Governmental Authorities required for the construction, ownership, or operation of the Facility or occupancy of the Premises.

“Planned Outage” means an outage that is scheduled well in advance and is of a predominate duration, and specifically excludes any Maintenance Outage or Forced Outage.

“Point of Delivery” means (i) for Off-System QFs, the point on the System where Seller will deliver Net Output to the Utility as described in Exhibit C; and (ii) for On-System QFs, the Point of Delivery is the point of interconnection between the Facility and the System, as specified in the Generation Interconnection Agreement and as further described in Exhibit C.

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

⁷ **Note to Form** – The definition of Non-Fixed Price Period assumes that Seller elects Standard Fixed Pricing or Renewable Fixed Pricing for the Fixed Price Period.

(continued)

“Project Development Security” is an amount equal to one hundred-fifty dollars (\$150) per kW of the Nameplate Capacity Rating.⁸

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the independent electric power generation industry for facilities of similar size and characteristics 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.

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

“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.

“Qualified Institution” means a United States commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof having assets of at least \$10,000,000,000 (net of reserves) and a credit rating on its long-term senior unsecured debt of at least ‘A’ from S&P and ‘A2’ from Moody’s.

“Renewable Fixed Pricing” means the applicable renewable fixed avoided cost prices as published in Utility’s OR Standard QF Schedule.

“Renewable Resource Deficiency Period” means the period commencing on [____].

“Renewable Resource Sufficiency Period” means the period from the Effective Date until the Renewable Resource Deficiency Period.

“Replacement Power Costs” means for each day for which the Utility’s Cost to Cover is calculated, stated as an amount per MWh, the Firm Electric Market Pricing; plus, to the extent Utility reasonably incurs transmission charges to deliver replacement energy to the Point of Delivery, and, to the extent Seller is required to convey Environmental Attributes to Utility under this Agreement during the day for which the Utility’s Cost to Cover is calculated, and Utility reasonably incurs additional costs for replacement Environmental Attributes, such additional sums so incurred.

“Required Facility Documents” means the Permits and other authorizations, rights, and agreements necessary for construction, ownership, operation, and maintenance of the Facility, and to deliver the Net Output to Utility in accordance with this Agreement and Requirements of Law, listed in Exhibit D.

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

“RTO” means any entity (including an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

⁸ **Note to Form** – This definition to be deleted in case of PPA with operational QF.

(continued)

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

“OR Standard QF Schedule” means PacifiCorp’s Oregon Standard Avoided Cost Schedule as attached in Exhibit I, and as approved by the Commission on the Effective Date.

“Scheduled Commercial Operation Date” means [____], subject to extension for Excused Delay as provided in Section 2.7, in the event Seller exercises its option under Section 2.8 and as provided in Section 4.2. The Scheduled Commercial Operation Date must be a date that occurs ninety (90) days or more after the Effective Date but no later than the last day of the five-year period following the Effective Date (except to the extent extended for Excused Delay or under Section 4.2).⁹

“Seller” is defined in the Recitals.

“Seller Indemnitees” is defined in Section 12.1.2.

“Seller’s Cost to Cover” means the positive difference, if any, between (a) the Contract Price per MWh, and (b) the net proceeds per MWh actually realized by Seller from the sale to a third party of Net Output not purchased by Utility as required under this Agreement.

“Standard Fixed Pricing” means the standard fixed avoided cost prices as published in Utility’s OR Standard QF Schedule.

“System” means the electric transmission substation and transmission or distribution facilities owned, operated, or maintained by the Transmission Provider, the Interconnection Provider, and/or Utility Transmission, as the context requires, and includes the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as provided in the Generation Interconnection Agreement.

“Tariff” means Utility’s Open Access Transmission Tariff on file with FERC, as such tariff is revised from time to time.

“Tax Credits” means any state, local, or federal production and investment tax credits, tax deductions, or other tax benefits specific to the production of renewable energy or investments in renewable energy facilities.

“Term” is defined in Section 2.1.

“Termination Damages” is defined in Section 11.5.

“Transmission Agreements” means any transmission service agreement required to deliver the Net Output of the Facility to the Point of Delivery. Such transmission service agreements must have a start date that is on or before the Commercial Operation Date of the Facility and continue through, or have rollover rights for, the entire Term.

⁹ **Note to Form** – This definition and references to “Scheduled Commercial Operation Date” to be deleted in case of PPA with operational QF and replaced with definition of and references to “Scheduled Initial Delivery Date.” “Scheduled Initial Delivery Date” means [____].

(continued)

“Transmission Provider” means Utility Transmission or, as the context requires, a third-party transmission provider (i.e., in the case of an Off-System QF), including the business unit responsible for the safe and reliable operation of the Transmission Provider’s balancing authority area(s).

“Utility” is defined in the Recitals.

“Utility Indemnitees” is defined in Section 12.1.1.

“Utility Representatives” is defined in Section 6.11.

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

“Utility’s Cost to Cover” means for any day for which Utility’s Cost to Cover is calculated, the positive difference between the Replacement Power Costs less the Contract Price in effect, stated as an amount per MWh.

“WECC” means the Western Electricity Coordinating Council.

“WREGIS” means the Western Renewable Energy Generation Information System or successor organization in case WREGIS is ever replaced.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules dated [_____].

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS, dated [_____].

1.2 Rules of Interpretation.

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

1.2.2 Headings. The headings used for the sections and articles of this Agreement are for convenience and reference purposes only and in no way affect the meaning or interpretation of the provisions of this Agreement.

1.3 Parties’ Good Faith. The Parties shall act in accordance with the common law principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this

(continued)

Agreement, where this Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

SECTION 2
TERM; MILESTONES

2.1 Term. This Agreement is effective when executed and delivered by both Parties (the “Effective Date”) and, unless earlier terminated as provided in this Agreement, shall remain in effect until the last day of the twenty (20)-year period following the first to occur of the Commercial Operation Date or the Scheduled Commercial Operation Date, as may be extended for Excused Delay as provided in Section 2.7 (the “Term”).¹⁰

2.2 Milestones.¹¹ Time is of the essence in the performance of this Agreement, and Seller’s completion of the Facility and delivery of Net Output by the Scheduled Commercial Operation Date is critically important. Therefore, Seller must achieve the milestones provided in (a) through (d) below at the times so indicated.

- (a) If and to the extent required by this Agreement, on or before the one hundred and twentieth (120th) day following the Effective Date, Seller must post the Project Development Security.
- (b) On or before the Commercial Operation Date, Seller shall supply for inclusion in Exhibit E evidence of all leases and other real property rights required for operation of the Facility or the performance of any obligations of Seller in this Agreement.
- (c) Seller must provide Utility with documentation showing that Seller has obtained retail electric service for the Facility before the Commercial Operation Date.

¹⁰ **Note to Form** – This Section assumes Seller elects a twenty (20)-year term. If Seller chooses a shorter Term, this provision would require revision.

¹¹ **Note to Form** – This Section will be adjusted in case of PPA with operational QF, and the milestones in (a) through (d) are to be replaced with the following:

- (a) Before the Initial Delivery Date, as may be extended for Excused Delay as provided in Section 2.7, Seller shall provide Utility with (i) 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, (ii) the Required Facility Documents, and (iii) an executed copy of Exhibit G – Seller’s Authorization to Release Generation Data to Utility.
- (b) On or before the Initial Delivery Date in this Agreement, if and to the extent required by this Agreement, Seller shall provide Default Security if required under this Agreement.
- (c) In the case of an Off-System QF, on or before the Initial Delivery Date in this Agreement, Seller shall demonstrate that it has made arrangements sufficient to reserve Firm Delivery (as defined in Exhibit K) of Net Output up to the Maximum Delivery Rate to the Point of Delivery for the full term of the Agreement, which may be demonstrated by obtaining Firm Delivery or rights to obtain Firm Delivery (i.e. rollover rights) under the third-party Transmission Provider(s) tariff for the period covering the Term.
- (d) Seller must cause Initial Delivery to occur on or before the Scheduled Initial Delivery Date.

(continued)

- (d) Seller must cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date.

2.3 Obligation to Report on Progress.¹² No later than thirty (30) days after receipt of written request from Utility, Seller will provide Utility a Progress Report regarding the design and installation of the Facility, provided Utility can request such a report no more than once every six (6) months after the Effective Date and before the Commercial Operation Date.

2.4 Delay Damages.

- (a) If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, as may be adjusted for Excused Delay, as applicable, Seller must pay to Utility Delay Damages from and after the Scheduled Commercial Operation Date up to, but not including, the earlier to occur of the date that the Facility achieves Commercial Operation or the date of termination as provided in Sections 11.1.2(b) and 11.3, if applicable.¹³
- (b) If the Facility does not achieve Commercial Operation within one year following the Scheduled Commercial Operation Date, as may be adjusted for Excused Delay, as applicable, in addition to assessing Delay Damages, Utility may terminate this Agreement under, and subject to, Section 11.1.2(b).¹⁴

¹² **Note to Form** – To be deleted in case of PPA with operational QF.

¹³ **Note to Form** – For PPAs with operational QFs, Section 2.4(a) to be deleted and replaced with the following provision: "If Initial Delivery is not achieved on or before the Scheduled Initial Delivery Date, Seller must (i) pay to Utility Delay Damages from and after the Scheduled Initial Delivery Date up to, but not including, the earlier to occur of the date that the Facility achieves Initial Delivery or the date of termination as provided in Section 11.1.2(b) and 11.3, if applicable."

¹⁴ **Note to Form** – For PPAs with operational QFs, Section 2.4(b) to be deleted and replaced with the following provision: "If Initial Delivery does not occur within the cure period prescribed in Section 11.1.2(b), in addition to assessing Delay Damages, Utility may terminate this Agreement as provided therein."

(continued)

2.5 Damages Calculation. Each Party agrees that the damages Utility would incur due to Seller's delay in achieving Commercial Operation are difficult or impossible to predict with certainty, and that it is impractical and difficult to assess actual damages in the circumstances stated. Delay Damages, however, fairly represent the Parties' expectations for actual damages. Except with respect to Utility's termination rights and as otherwise provided in Section 11.5, Delay Damages are Utility's exclusive remedy for Seller's delay in achieving Commercial Operation.

2.6 Damages Invoicing. By the tenth (10th) day following the end of the calendar month in which Delay Damages begin to accrue and continuing on the tenth (10th) day of each subsequent calendar month while such Delay Damages continue to accrue, Utility will deliver to Seller an invoice and a written explanation providing reasonable detail of the proposed calculation for the amount of Delay Damages due Utility. No later than thirty (30) days after receiving such an invoice and subject to Sections 10.3 and except to the extent the amount invoiced is subject to a good faith dispute under Section 10.4, Seller must pay to Utility, by wire transfer of immediately available funds to an account specified in writing by Utility, the amount stated in such invoice.

2.7 Excused Delay. If Seller fails to achieve Commercial Operation on or before the Scheduled Commercial Operation Date due to an Excused Delay, the Scheduled Commercial Operation Date shall be deemed extended on a day-for-day basis to match the duration of such Excused Delay. Upon the request of Seller, and provided that the existence or duration of any Excused Delay is not the subject of a good faith dispute between the Parties and no Seller Event of Default has occurred and is continuing, Utility agrees to provide reasonable assurances to Seller's Lenders and other financial institutions that the Scheduled Commercial Operation Date has been extended under this Section 2.7.

2.8 Option to Extend Scheduled Commercial Operation Date or Terminate. If Seller receives any interconnection study results from Utility within the six-month period following the Effective Date (or restudy results) that indicate a material increase in the estimated completion date for the required Interconnection Facilities or the cost of interconnection, Seller may elect by providing written notice to Utility anytime within such six (6)-month period following the Effective Date:

- (a) To extend the Scheduled Commercial Operation Date if the estimated completion date for the construction of Interconnection Facilities described in such study occurs after the then-current Scheduled Commercial Operation Date; provided that the extended Scheduled Commercial Operation may not occur after the last day of the five-year period following the Effective Date; or
- (b) To terminate this Agreement if Seller determines in its judgment that the estimated costs to interconnect the Facility to the Interconnection Provider's System renders the project uneconomic; provided that Seller shall be liable to Utility for damages incurred by Utility up until the date of termination, which damages may be taken from the Project Development Security posted by Seller.

SECTION 3 **REPRESENTATIONS AND WARRANTIES**

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

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

(continued)

3.1.2 Authority. It has the requisite power and authority to enter this Agreement and to perform according to the Agreement's terms.

3.1.3 Corporate Actions. It 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.

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

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

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

3.2.1 Authority. Seller (a) has (or will have prior to the Commercial Operation Date) all required regulatory authority to make wholesale sales from the Facility; (b) has the power and authority to own and operate the Facility and be present upon the Premises for the Term; and (c) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property, or the conduct of its business requires such qualification.

3.2.2 No Contravention. The execution, delivery, performance, and observance by Seller of its obligations in this Agreement do not and will not:

- (a) contravene, conflict with, or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any owner of Seller;
- (b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than consents and approvals which are (i) provided in Exhibit D or (ii) required in connection with the construction or operation of the Facility and expected to be obtained in due course; or
- (c) result in a breach of or constitute a default under any provision of (i) any security issued by Seller or any owner of Seller, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations in this Agreement, or (ii) any material agreement, instrument or undertaking to which either Seller or any owner or other Affiliate of Seller is a party or by which the property of either Seller or any owner or other Affiliate of Seller is bound, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations in this Agreement.

3.2.3 Delivery of Energy; Accurate Nameplate Capacity Rating. As of the Commercial Operation Date, Seller will hold all rights sufficient to enable Seller to deliver Net Output at the Nameplate Capacity Rating from the Facility to the Point of Delivery pursuant to this Agreement throughout the Term.

(continued)

3.2.4 Meaningful Steps Towards Control of Premises. As of the Effective Date, Seller has taken meaningful steps to secure legal rights necessary for the Seller to enter upon and occupy the Premises for the purpose of constructing, operating, and maintaining the Facility for the Term, including, by way of example and not limitation, (a) an ownership of, a leasehold interest in, or a right to develop a site of sufficient size to construct and operate the Facility, (b) an option to purchase or acquire a leasehold interest in a site of sufficient size to construct and operate the Facility, or (c) another document that clearly demonstrates the commitment by the grantor to convey sufficient rights to Seller to occupy a site of sufficient size to construct and operate the Facility, such as an executed agreement to negotiate an option to lease or purchase the site. On and after the Commercial Operation Date, Seller must maintain all leases or other land grants necessary for the construction, operation, and maintenance of the Facility. Upon request by Utility, Seller must provide copies of the memoranda of lease recorded in connection with the development of the Facility.

3.2.5 Eligible Contract Participant. Seller, and any guarantor of its obligations under this Agreement, is an “eligible contract participant” as that term is defined in the United States Commodity Exchange Act.

3.2.6 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. In entering into this Agreement and agreeing to undertake the obligations within, Seller has investigated and determined that it is capable of performing and has not relied upon the advice, experience or expertise of Utility in connection with the transactions contemplated by this Agreement.

3.2.7 Verification. All information relating to the Facility, its operation and output provided to Utility and contained in this Agreement has been verified by Seller and is true and accurate.

3.2.8 Credit Representations and Warranties.

- (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 owns and will continue to own through 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 and except to the extent that Seller sells the Facility pursuant to an Assignment of this Agreement allowed under Section 20.

(continued)

3.2.9 Seller's QF Status. As of the Commercial Operation Date, the Facility holds QF status, which it will continue to hold throughout the Term.

3.2.10 Seller's Eligibility for a Standard Power Purchase Agreement and Standard Pricing. As of the Effective Date and the Commercial Operation Date, Seller has not made any changes in its ownership, control or management that would cause the Facility to fail to satisfy the eligibility requirements for entering into the standard power purchase agreement or receipt of standard pricing under Utility's OR Standard QF Schedule, as applicable.

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

SECTION 4

DELIVERIES OF NET OUTPUT

4.1 Purchase and Sale. Subject to the provisions of this Agreement, Seller must sell and make available to Utility, and Utility must purchase and receive the entire Net Output from the Facility at the Point of Delivery; provided that, if Seller delivers any amount of Net Output in excess of the Maximum Delivery Rate, Utility will accept such excess energy but will not be obligated to pay for such energy except as may be provided in this Agreement including as set forth in Exhibit K if applicable.

4.2 Designation as Network Resource.

- (a) Within fifteen (15) Business Days following the Effective Date, or, in the event the Facility is an On-system QF and there is no interconnection study for the Facility as of the Effective Date, within fifteen (15) days of the date Seller delivers Utility a copy of the interconnection study, Utility will submit an application to Utility Transmission requesting designation of the Facility as a Network Resource, effective as of ninety (90) days before the Scheduled Commercial Operation Date or as soon as practicable after the Effective Date of the Agreement if the Scheduled Commercial Operation Date occurs less than ninety (90) days following the Effective Date, thereby, in either case, authorizing transmission service under Utility's Network Integration Transmission Service Agreement with Utility Transmission. Utility Transmission may respond that the designation is granted without a study or may require a study to be performed.
- (b) If the Facility is an Off-System QF and Utility Transmission requires a study to be performed, Utility will notify Seller of the results of the study within five (5) Business Days after Utility's receipt of the results from Utility Transmission. If Utility is notified in writing by Utility Transmission that designation of the Off-System QF as a Network Resource requires the construction of network upgrades or otherwise requires potential redispatch of other Network Resources of Utility (the "Conditional DNR Notice"), within fifteen (15) Business Days after receiving the Conditional DNR Notice, Utility will notify Seller in writing whether Utility has determined that associated costs should be allocated to Seller and, if so, the amount of the costs ("Cost Allocation Notice"). Seller must notify Utility within fifteen (15) Business Days of receiving the Cost Allocation Notice if it objects to the allocation of the costs in the Cost Allocation Notice ("Cost Allocation Objection Notice").
- (c) If Utility timely receives a Cost Allocation Objection Notice under Section 4.2(b), Utility shall

(continued)

initiate a proceeding with the Commission within fifteen (15) Business Days of its receipt of the Cost Allocation Objection Notice by filing its proposed cost allocation determination. The Parties reserve the right to present their respective positions to the Commission as to whether and how the Contract Price or other non-rate terms and conditions of this Agreement should be adjusted in light of the Conditional DNR Notice.

- (d) Any time between Seller's receipt of the Cost Allocation Notice and the last day of the fifteen (15)-day period after the Commission issues an order allocating costs of transmission service network upgrades in whole or in part to Seller, by written notice to Utility, Seller may terminate this Agreement or, subject to the requirements of OAR 860-029-0044 and Utility's OR Standard QF Schedule, designate an alternate Point of Delivery that is acceptable to Utility upon written notice to Utility. Termination by Seller under this Section 4.2(d) will not be an Event of Default and no damages or other liabilities under this Agreement will be owed by one Party to the other Party; provided, however, that Seller's right to terminate the Agreement under this Section 4.2(d) will cease following any amendment of this Agreement associated with addressing matters covered under this Section 4.2. In the event the Parties agree to amend the Agreement to address an agreed-upon cost allocation or there is an order by the Commission allocating costs of transmission service network upgrades, if this Agreement is not terminated, the Scheduled Commercial Operation Date, Fixed Price Term, and Term will be extended on a day-for-day basis for each day that occurs from the date of the Cost Allocation Notice and the earlier of the date of any such amendment or date of issuance of an order by the Commission.

4.3 No Sales to Third Parties. During the Term, Seller will not sell any Net Output, energy, capacity or Environmental Attributes from the Facility to any party other than Utility; provided, however, that this restriction does not apply during periods when Utility is in default under this Agreement because it has failed to accept or purchase Net Output as required under this Agreement or, with respect to Environmental Attributes, to the extent title to such Environmental Attributes does not pass to Utility under this Agreement.

4.4 Title and Risk of Loss of Net Output. Seller must deliver Net Output to the Point of Delivery free and clear of all liens, claims, and encumbrances. Title to and risk of loss of all Net Output transfers from Seller to Utility upon its delivery to Utility at the Point of Delivery. Seller is in exclusive control of, and responsible for, any damage or injury caused by, all Output up to and at the Point of Delivery. Utility is in exclusive control of, and responsible for, any damages or injury caused by, Net Output after the Point of Delivery.

4.5 Curtailment. During any system emergency, Utility may curtail Seller's deliveries and discontinue purchases from Seller if such purchases would contribute to such emergency. For purposes of this Section, a system emergency is a condition which is likely to result in imminent and significant disruption of service to customers or is imminently likely to endanger life or property. This includes but is not limited to non-discriminatory curtailment in response to direction from a Market Operator or Transmission Provider made pursuant to federal laws or regulations, tariffs, and NERC standards and directives in a system emergency.

4.6 Ownership of Environmental Attributes; RPS Certification.

- (a) If the Contract Price is based on Standard Fixed Pricing, the Seller shall own any Environmental Attributes associated with the Output of the Facility;

(continued)

- (b) If the Contract Price is based on Renewable Fixed Pricing or Interim Solar and Storage Pricing, (i) Seller shall own all Environmental Attributes associated with the Output of the Facility during the Renewable Resource Sufficiency Period; and (ii) Utility shall own all Environmental Attributes associated with the Output of the Facility during the Renewable Resource Deficiency Period and, in such case, title of the Environmental Attributes, including renewable energy credits, associated with the Output of the Facility, shall transfer from Seller to Utility immediately upon the generation of the Output of the Facility at no further cost to Utility. Provided, however, the Environmental Attributes transferred to Utility during the Renewable Deficiency Period are limited to those Environmental Attributes directly created by generation of the electric energy produced by the Facility and required to provide Utility with “qualifying electricity” as that term is defined in ORS 469A.010, and Seller will retain ownership of Environmental Attributes (if any) related to upstream production of fuel, such as greenhouse gas offsets from methane capture not associated with generation of electricity, or the sequential production of steam or thermal energy associated with the Facility, such as thermal renewable energy certificates, as defined in ORS 469A.132.
- (c) Seller represents, warrants, and covenants that, as of the Commercial Operation Date and continuously thereafter during the Term, Seller has obtained and will continue to maintain RPS certification from the Oregon Department of Energy with respect to the Output of the Facility.

SECTION 5
CONTRACT PRICE; COSTS

5.1 Contract Price. Utility will pay Seller the Contract Price for all deliveries of Net Output, up to the Maximum Delivery Rate provided that, if Seller delivers any amount of Net Output in excess of the Maximum Delivery Rate, Utility will accept such excess energy but will not be obligated to pay for such energy except as may be provided in this Agreement including as set forth in Exhibit K if applicable.

5.1.1 Deliveries Prior to the Commercial Operation Date. Beginning no earlier than ninety (90) days before the Scheduled Commercial Operation Date, Utility will pay Seller for Net Output delivered at the Point of Delivery before the Commercial Operation Date, an amount per MWh equal to the lower of (i) eighty five percent (85%) of the Firm Electric Market Pricing for the applicable hour on the applicable day in the applicable month; and (ii) eighty five percent (85%) of the Contract Price; provided, however, that Seller’s right to receive payment for energy deliveries under this Section 5.1.1 is subject to Utility’s right of offset under Section 10.2 for, among other things, payment by Seller of any Delay Damages owed to Utility by Seller. Notwithstanding the foregoing, if Utility, in exercising commercially reasonable efforts, is able to accept deliveries of Net Output earlier than ninety (90) days before the Scheduled Commercial Operation Date, Utility will pay Seller for Net Output delivered at the Point of Delivery under this Section 5.1.1; provided that under no circumstances shall Utility be obligated to accept deliveries of Net Output earlier than 180 days before the Scheduled Commercial Operation Date.

5.1.2 Commercial Operation. For the period beginning on the Commercial Operation Date and thereafter during the Term, Utility will pay to Seller the Contract Price per MWh of Net Output delivered to the Point of Delivery. The Contract Price will not be adjusted if Utility’s OR Standard QF Schedule is modified during the Term of this Agreement. If Utility requests a modification to OR Standard QF Schedule, including a modification to pricing, neither Seller nor Utility will request that any change in OR Standard QF Schedule be applicable to this Agreement.

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

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Delivery, including (a) transmission costs, transmission line losses and any costs or charges (including imbalance charges and penalties) imposed in connection with scheduling and delivery of Net Output up to and at the Point of Delivery and (b) transmission costs, transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider or Transmission Provider in connection with scheduling and delivery of Net Output up to and at the Point of Delivery, but excluding such costs or charges that are caused by Utility's acts or omissions in breach of this Agreement. Except as determined otherwise under Section 4.2, Utility shall be responsible for all costs or charges, including transmission costs, transmission line losses and any costs or charges imposed in connection with the receipt of Net Output at the Point of Delivery and the scheduling and delivery of Net Output from the Point of Delivery, other than such costs or charges that are caused by Seller's acts or omissions in breach of this Agreement.

5.3 Station Service. Seller is responsible for arranging and obtaining, at its sole risk and expense, station service required for the Facility.

5.4 Taxes. Seller must pay, or reimburse Utility for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Net Output up to and including the Point of Delivery and for all Environmental Attributes (if any) up to and including the Point of Interconnection, regardless of whether such taxes are imposed on Utility or Seller under Requirements of Law. Utility must pay, or reimburse Seller for, all such taxes imposed or levied by any Governmental Authority on the Net Output beyond the Point of Delivery and for all Environmental Attributes transferred (if any) beyond the Point of Interconnection, regardless of whether such taxes are imposed on Utility or Seller under Requirements of Law. The Contract Price will not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back. In the event any taxes are imposed on a Party for which the other Party is responsible in this Agreement, the Party on which the taxes are imposed must promptly provide the other Party notice and such other information as such Party reasonably requests with respect to any such taxes.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision of this Agreement and subject to Section 5.4, Seller is solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions of this Agreement, and (b) all taxes and charges (however characterized) now existing or later imposed on or with respect to the Facility and its operation.

5.6 Rates Not Subject to Review. The rates for service specified in this Agreement will remain in effect until expiration of the Term, and are not subject to change for any reason, including regulatory review, absent agreement of the Parties or as determined under Section 4.2. Neither Party will petition FERC to amend such prices or terms or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party.

SECTION 6

OPERATION AND CONTROL

6.1 As-Built Supplement; Modifications to Facility. No later than ninety (90) days following the Commercial Operation Date, Seller must provide Utility the As-Built Supplement which will be incorporated into Exhibits B and C of this Agreement and if applicable, an updated statement of Expected Net Output that will be incorporated in Exhibit A of this Agreement. Except with Utility's prior written consent or as permitted under and subject to the requirements of Section 6.7, the Facility, as reflected in

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the As-Built Supplement to be provided under this Section or subsequently during the Term, may not (a) have a Nameplate Capacity Rating that exceeds that stated in Exhibit B, or (b) results in the Expected Net Output, as shown in Exhibit A, as of the Effective Date, increasing by more than ten percent (10%), except to the extent Seller complies with the requirements of Section 6.7.3.

6.2 Fines and Penalties.

- (a) Without limiting a Party's rights under Section 6.2(b), each Party must pay all fines and penalties incurred by such Party on account of noncompliance by such Party with Requirements of Law as such fines and penalties relate to the subject matter of this Agreement, except where such fines and penalties are being contested in good faith through appropriate proceedings.
- (b) If fines, penalties, or legal costs are assessed against or incurred by either Party (the "Indemnified Party") on account of any action by any Governmental Authority due to noncompliance by the other Party (the "Indemnifying Party") with any Requirements of Law or the provisions of this Agreement, or if the performance of the Indemnifying Party is delayed or stopped by order of any Governmental Authority due to the Indemnifying Party's noncompliance with any Requirements of Law, the Indemnifying Party must indemnify and hold harmless the Indemnified Party against any and all Liabilities suffered or incurred by the Indemnified Party as a result thereof. Without limiting the generality of the foregoing, the Indemnifying Party must reimburse the Indemnified Party for all fees, damages, or penalties imposed on the Indemnified Party by any Governmental Authority, other person or to other utilities for violations to the extent caused by a default by the Indemnifying Party or a failure of performance by the Indemnifying Party under this Agreement.

6.3 Interconnection. Except as otherwise provided in the Generation Interconnection Agreement and subject to applicable Commission rules and orders, Seller is responsible for the costs and expenses associated with obtaining from the Interconnection Provider network resource interconnection service for the Facility at its Nameplate Capacity Rating.

6.4 Coordination with System.¹⁵ Seller's delivery of electricity to Utility under this Agreement must be at a voltage, phase, power factor, and frequency as reasonably specified by Utility. Seller will furnish, install, operate, and maintain in good order and repair, and without cost to Utility, such switching equipment, relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus determined by Utility to be reasonably necessary for the safe and reliable operation of the Facility in parallel with the System, or Seller may contract with Utility to do so at the Seller's expense. Utility must at all times have access to all switching equipment capable of isolating the Facility from the System.

6.5 Outages.

6.5.1 Planned Outages. Seller must provide Utility with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first (1st) day of that Contract Year, specifying the applicable number of Off-Peak Hours and On-Peak Hours. Seller may update such Planned Outage schedule as necessary to comply with Prudent Electrical Practices. Although the Planned Outage schedule should include predetermined outage duration, the outage may

¹⁵ **Note to Form** – This provision to be deleted in case of PPA with Off-System QF.

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be extended when the original scope of work requires more time than originally scheduled, subject to notice of at least five (5) days to Utility when feasible. Except as may be required in the Generation Interconnection Agreement, Seller may not schedule a Planned Outage during any portion of the months of July and August (the “High Demand Months”), except to the extent reasonably required to enable a vendor to satisfy a guarantee requirement. With twelve (12) months prior notice before the start of any Contract Year, Utility may change these High Demand Months, provided that there may only be two High Demand Months. Nothing in this Section 6.5.1 will preclude Seller from scheduling Planned Outages during times in a High Demand Month when motive force is unavailable to generate and deliver Output, such as nighttime in the case of a solar facility.

6.5.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller must notify Utility of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins. Although the notice of a Maintenance Outage must include an expected completion date and time of the outage, the outage may be extended when the original scope of work requires more time than originally scheduled, subject to notice of at least five (5) days to Utility when feasible. Seller must take all reasonable measures consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the High Demand Months identified in Section 6.5.1, as may be updated in accordance with Section 6.5.1. Notice of a proposed Maintenance Outage by Seller must include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Utility will promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller must use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Once the Maintenance Outage has commenced, Seller must keep Utility apprised of any changes in the generation capacity available from the Facility during the Maintenance Outage and any changes in the expected Maintenance Outage completion date and time. As soon as practicable, any notifications given orally or by email must be confirmed in writing. Seller must take all reasonable measures consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.5.3 Forced Outages. Seller must promptly provide to Utility an oral report, via telephone to a number specified by Utility (or other method approved by Utility), of any Forced Outage resulting in more than ten percent (10%) of the Nameplate Capacity Rating of the Facility being unavailable. This report from Seller must include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller must promptly update the report as necessary to advise Utility of changed circumstances. As soon as practicable, the oral report must be confirmed in writing to Utility. Seller must take all reasonable measures consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.5.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Utility, via telephone to a number specified by Utility (or other method approved by Utility), of any limitations, restrictions, deratings, or outages reasonably predicted by Seller to affect more than five percent (5%) of the Nameplate Capacity Rating of the Facility for the following day and will promptly update such notice to the extent of any material changes in this information.

6.5.5 Effect of Outages on Estimated Output. Seller represents and warrants that the Expected Monthly Net Output provided in Exhibit A takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility.

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6.6 Scheduling. With respect to any and all scheduling requirements, (a) Seller must cooperate with Utility with respect to scheduling Net Output, and (b) each Party will designate authorized representatives to communicate regarding scheduling and related matters arising under this Agreement. Each Party must comply with the applicable variable resource standards and criteria of any applicable Electric System Authority, as applicable.

6.7 Increase in Nameplate Capacity Rating; Expansion or New Project; Allowable Facility Upgrades.

6.7.1 No Increase to Nameplate Capacity Rating. During the term of this Agreement, Seller may not (i) increase the Nameplate Capacity Rating of the Facility; or (ii) except to the extent Seller complies with the requirements of Section 6.7.3, increase the Expected Net Output of the Facility, as that term is defined as of the Effective Date, by more than ten percent (10%); in either case, through any means, including replacement or modification of Facility equipment or related infrastructure.

6.7.2 Expansion or New Project. If Seller elects to build an expansion or additional project such that the Facility and the expansion or additional project would be deemed a single QF or the same site under Commission or FERC regulations, Seller may not require Utility to purchase (and Utility will have no obligation to purchase pursuant to this Agreement) the output of any such expansion or additional facility under the terms, conditions, and prices in this Agreement, but Seller may exercise any rights to enter into a new agreement for the sale of such incremental energy from such expansion or additional facility that is a QF under then-applicable laws and regulations. Seller agrees that it will not seek to avoid the obligations in this Section 6.7 through use or establishment of a special purpose entity or other Affiliate. Any such expansion or additional facility may not materially and adversely impact the ability of either Party to fulfill its obligations under this Agreement.

6.7.3 Allowable Upgrades. In the event that Seller seeks to upgrade the Facility in a manner that does not increase the Nameplate Capacity Rating of the Facility, but which is reasonably likely to cause an increase in the Expected Net Output (as such term is defined as of the Effective Date) by more than ten percent (10%), such upgrades may only be made subject to the following requirements:

(a) The proposed upgrades must not cause Seller to fail to meet the current eligibility requirements for either the standard power purchase agreement or standard prices, to breach its Generation Interconnection Agreement, or necessitate Network Upgrades in order to maintain designated network status.

(b) At least six (6) months in advance of the scheduled installation date for the proposed upgrades, Seller must send written notice to Utility containing a detailed description of the proposed upgrades and their impact on Expected Net Output and a revised 12 x 24 delivery schedule and requesting indicative pricing for the incremental additional Net Output expected to be generated as a result of the upgrades.

(c) Within thirty (30) days after receiving such a request, Utility must respond with indicative pricing for the expected incremental additional Net Output to be generated as a result of the upgrades in excess of ten percent (10%) of the Expected Net Output (as such term is defined as of the Effective Date).

(d) Within thirty (30) days after receiving indicative pricing, Seller may request a draft amendment to this Agreement to reflect revised pricing for the remainder of the term, effective upon completion of the upgrades. If it is not reasonably feasible to separately meter the

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incremental additional Net Output resulting from the proposed upgrades, Utility may create a blended rate based on the proportion the expected incremental additional Net Output bears to the expected total Net Output following the installation of the upgrades.

Within ninety (90) days after the date on which upgrades are installed under subsections (a), (b), or (c) of this Section 6.7.3, Seller is obligated to provide Utility with an As-Built Supplement describing in detail Facility, as modified by the allowable upgrades, which As-Built Supplement will be incorporated into Exhibits B and C of this Agreement and to submit an updated estimate of net output to be incorporated into Exhibit A of this Agreement.

If Seller wishes to install upgrades that would cause the Facility to increase its Nameplate Capacity Rating, Seller may elect to terminate the Agreement and may choose to enter a new standard or new non-standard power purchase agreement, based on applicable eligibility requirements, at the then-current avoided cost pricing; provided that such termination of this Agreement will be treated as a termination for a Seller Event of Default for which Seller will owe Utility Termination Damages. In such case, notwithstanding any other provision in this Agreement to the contrary, with respect to any portion of the period in which Seller owes Utility Termination Damages in which Seller is contractually obligated to deliver output under the new agreement, the Cost to Cover will be calculated based on the pricing set forth in the new agreement. If Seller elects under this Section to terminate the Agreement under this Section and enter into a new non-standard power purchase agreement, Seller will not be liable for damages for any default caused by Seller's failure to maintain eligibility for a standard power purchase agreement and will only be liable for Termination Damages under Section 11.5.

6.8 Transmission Provider Consent. Within ten (10) days of the Effective Date, Seller must execute and submit to Utility, a consent in the form provided in Exhibit G or as otherwise required by Transmission Provider, that allows Utility to read the meter and receive any and all data from the Transmission Provider relating to transmission of Output or other matters relating to the Facility without the need for further consent from Seller.

6.9 Reports and Records.

6.9.1 Information to Governmental Authorities; Data Requests. Seller must, promptly upon written request from Utility, provide Utility with data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required for reports to any Governmental Authority or Electric System Authority or information requests from any Governmental Authority, state or federal agency intervener or any other party achieving intervenor status in any Utility rate proceeding or other proceeding before any Governmental Authority, along with a statement from an officer of Seller certifying that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller must use best efforts to provide this information to Utility sufficiently in advance to enable Utility to review such information and meet any submission deadlines. Utility will reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year, if any, incurred in connection with Utility's requests for information under this Section 6.9.1.

6.9.2 Confidential Treatment. The reports and other information provided to Utility under this Section 6.9 will be treated as confidential for a period of two (2) years if such treatment is requested in writing by Seller at the time the information is provided to Utility, subject to Utility's rights to disclose such information pursuant to Section 6.9.1, and pursuant to any applicable Requirements of Law. Seller will have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information.

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6.10 Financial and Accounting Information. If Utility or one of its Affiliates determines that, under (a) the Accounting Standards Codification (“ASC”) 810, Consolidation of Variable Interest Entities, and (b) Requirements of Law that it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller agrees to provide, upon Utility’s written request, sufficient financial and ownership information so that Utility or its Affiliate may confirm whether a variable interest does exist under ASC 810 and Requirements of Law. If Utility or its Affiliate determines that, under ASC 810, it holds a variable interest in Seller, Seller agrees to provide, upon Utility’s written request, sufficient financial and other information to Utility or its Affiliate so that Utility may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 and Requirements of Law. Utility will reimburse Seller for Seller’s reasonable costs and expenses, if any, incurred in connection with Utility’s requests for information under this Section 6.10. Seller will have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information.

6.11 Access Rights. Upon reasonable prior notice and subject to compliance with all written health, safety and security requirements of Seller provided to Utility, and Requirements of Law relating to workplace health and safety, and not interfering with Seller’s maintenance or operation of the Facility, Seller must provide Utility and its employees, agents, inspectors and representatives (“Utility Representatives”) with reasonable access to the Facility: (a) for the purpose of witnessing the inspection and testing of metering equipment and remote sensing devices; (b) as necessary to witness any acceptance tests; (c) as necessary to witness any testing associated with the Facility, including testing with respect to the Performance Guarantee; and (d) for other reasonable purposes at the reasonable request of Utility. Utility will release Seller and its employees, agents and representatives from and indemnify Seller and its employees, agents and representatives against any and all Liabilities resulting from actions or omissions by any of the Utility Representatives in connection with their access to the Facility (whether pursuant to this Section 6.11 or otherwise), except to the extent such Liabilities are caused by the intentional or negligent act or omission of Seller or its Affiliates or their respective employees, agents and representatives.

6.12 Performance Guarantee. Seller is subject to the terms and conditions set forth in the Performance Guarantee attached as Exhibit F (“Performance Guarantee”).¹⁶

SECTION 7 QUALIFYING FACILITY STATUS; ELIGIBILITY FOR STANDARD PRICING

7.1 Seller’s QF Status. Seller must maintain throughout the Term the Facility’s status as a QF. Seller must provide Utility with copies of any QF certification or recertification documentation within ten (10) days of its filing with any Governmental Authority. At any time during the Term, Utility may require Seller to provide Utility with evidence satisfactory to Utility in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

7.2 Seller’s Eligibility for a Standard Power Purchase Agreement and Standard Pricing. Seller will not make any changes in its ownership, control or management that would cause the Facility to fail to satisfy the eligibility requirements for entering into the standard power purchase agreement or receipt of standard pricing under Utility’s OR Standard QF Schedule. At Utility’s request, but no more than once

¹⁶ **Note to Form** – Wind, solar, battery storage, solar-plus- storage, and hydroelectric QFs are subject to a Mechanical Availability Guarantee. Geothermal and biomass QFs are subject to a Minimum Delivery Guarantee.

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every twenty-four (24) months, Seller will provide documentation and information reasonably requested by Utility to establish Seller's continued compliance with eligibility requirements for the standard power purchase agreement and standard pricing, as applicable, under Utility's OR Standard QF Schedule. Utility will take reasonable steps to maintain the confidentiality of any such documentation and information Seller identifies as confidential, provided that Utility may provide all such information to the Commission in a proceeding before the Commission.

SECTION 8

SECURITY AND CREDIT SUPPORT

8.1 Provision of Security. Seller must provide security as provided below if it does not meet the Credit Requirements at any time during the Term of this Agreement. If Seller has established it satisfies the Credit Requirements, Seller must thereafter provide Utility financial information reasonably requested by Utility, that is reasonably necessary for Utility to verify the Seller continues to satisfy the Credit Requirements. The Utility shall make such request for financial information by writing and may make such requests no more frequently than once per Contract Year or upon occurrence of circumstances that provide the Utility with good cause to believe that Seller no longer meets the Credit Requirements, Seller shall have thirty (30) days after the Utility's written request to provide the financial information.

8.2 Project Development Security.¹⁷ If Seller does not meet the Credit Requirements as of the Effective Date, Seller must post and maintain Project Development Security in favor of Utility within one hundred and twenty (120) days from the Effective Date. If at any time after the Effective Date but before the Facility achieves Commercial Operation Seller (or its guarantor, if applicable) no longer meets the Credit Requirements, Seller must post and maintain Project Development Security in favor of Utility within the latter of thirty (30) days or one hundred and twenty (120) days from the Effective Date. In either case, the Project Development Security must be in the form of either (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Utility in its reasonable discretion, (b) a Letter of Credit in favor of Utility, in a form acceptable to Utility in its reasonable discretion, or (c) cash escrow with a Qualified Institution. In the event the Project Development Security is provided by a guarantor, Seller or the entity providing the guaranty must provide within fifteen (15) Business Days from receipt of a written request from Utility all reasonable financial records necessary for Utility to confirm the guarantor satisfies the Credit Requirements. If the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, and Seller has failed to pay any Delay Damages when due under this Agreement and Seller has elected cash escrow or Letter of Credit as the form of Project Development Security, Utility is entitled to draw upon or otherwise exercise rights under the Project Development Security to recover an amount equal to the Delay Damages until the Project Development Security is exhausted, and Utility is also entitled to draw upon or otherwise exercise rights under the Project Development Security to recover any other damages it is entitled to under this Agreement. Seller is no longer required to maintain the Project Development Security after the Commercial Operation Date, if no damages are owed to Utility under this Agreement and, if applicable, Default Security has been provided as required under this Agreement. Seller may elect to apply the Project Development Security toward the Default Security required by Section 8.3. If Seller has elected cash escrow or Letter of Credit as the form of Project Development Security, Utility shall return to Seller the Project Development Security or that portion Project Development Security that Seller elects not to apply toward Default Security within twenty (20) Business Days of a receipt of a written request by Seller made on or after the Commercial Operation Date.

¹⁷ **Note to Form** – This provision to be deleted in PPA with operational QF.

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8.3 Default Security. If Seller does not meet the Credit Requirements as of the Commercial Operation Date, on the date specified in Section 2.2, or it is determined at any time after the Facility achieves Commercial Operation that Seller (or its guarantor, if applicable) no longer meets the Credit Requirements, within ten (10) days of notification from Utility, Seller must post and maintain Default Security in favor of Utility in the form of either (a) a guaranty from an entity that satisfies the Credit Requirements, in a form acceptable to Utility in its reasonable discretion, (b) a Letter of Credit in favor of Utility, in a form acceptable to Utility in its reasonable discretion, (c) cash escrow with a Qualified Institution, or (d) a grant of step-in rights or a senior lien in a form acceptable to Utility in its reasonable-exercised discretion, subject to the terms of this Section 8.3. If Seller elects a guaranty, cash escrow, or Letter of Credit as the form of Default Security, Utility is entitled to draw upon the Default Security for any damages to which it is entitled under this Agreement. If no damages or obligations remain due by Seller to Utility upon termination of the Agreement, Utility must return any remaining Default Security to Seller within twenty (20) Business Days following the termination of the Agreement.

8.3.1 Step-In Rights. If the Seller elects to grant Utility step-in rights to satisfy the requirements associated with Default Security, the provisions of Section 8.3.1 will govern such step-in rights.

8.3.1.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11.1, Utility 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 a right to possess, assume control of, and operate the Facility that is equal to or superior to Utility's right under this Section 8.3.1.

8.3.1.2 Utility shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of Utility's rights under this Section 8.3.1. 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, Utility, 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 Utility as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as Utility may reasonably deem necessary or appropriate to exercise Utility's step-in rights under this Section 8.3.1.

8.3.1.3 During any period that Utility 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.

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

(a) In the event Utility is in possession and control of the Facility for an interim period, Seller shall resume operation and Utility shall relinquish its right to operate when Seller demonstrates to Utility's reasonable satisfaction that

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it will remove those grounds that originally gave rise to Utility'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 Utility to exercise its rights under this Section 8.3.1.

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

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

8.3.2 Senior Lien. If the Seller elects to grant the Utility a senior lien to satisfy the requirements associated with Default Security, the senior lien shall conform to the requirements of this Section 8.3.2. Seller shall grant Utility 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 Utility in the reasonable exercise of its discretion). Pending delivery of the senior lien to Utility, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to Utility'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.

8.4 Interest on Security. Except for cash escrow, Seller shall not earn or be entitled to any interest on any Security provided pursuant to this Section 8. Cash escrow will earn interest at the rate the applicable Qualified Institution applies to equivalent money market deposits. Any interest accrued on the cash held in escrow shall not become part of the Security and shall be paid to Seller cash escrow when the escrow is returned to Seller under this Agreement unless other arrangements are made by the parties.

8.5 Grant of Security Interest in Security. If Seller has elected cash escrow or Letter of Credit as the form of Project Development Security or Default Security to secure its obligations under this Agreement, Seller hereby grants to Utility, as the secured party, a present and continuing security interest in, lien on (and right of setoff against), and assignment of, all Project Development Security or Default Security, as the case may be, posted with Utility in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Utility. Seller agrees to take such action as Utility reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such performance assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of

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Default by Seller, Utility may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all the Security, including any such rights and remedies under Requirements of Law then in effect; (b) exercise its right of setoff against any and all property of Seller, as the Defaulting Party, in the possession of Utility or Utility's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Security then held by or for the benefit of Utility free from any claim or right of any nature whatsoever by Seller, including any equity or right of purchase or redemption by Seller. Utility shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to Utility after such application), subject to Utility's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.6 Security is Not a Limit on Seller's Liability. The security contemplated under this Section 8 constitutes security for, but is not a limitation of, Seller's obligations and liabilities under this Agreement and is not Utility's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent Utility draws on any Project Development Security or Default Security, Seller must, within fifteen (15) days following such draw, replenish or reinstate the Project Development Security or Default Security, as applicable, to the full amount then required under this Section 8. If any security provided by Seller pursuant to this Section 8 will terminate or expire by its terms within thirty (30) days, and Seller has not delivered to Utility replacement security in such amount and form as is required pursuant to this Section 8, then Utility shall be entitled to draw the full amount of the security and to hold such amount as security until such time as Seller delivers to Utility replacement security in such amount and form as is required pursuant to this Section 8.

SECTION 9

METERING

9.1 Installation of Metering Equipment. At Seller's cost and expense, Seller shall design, furnish, install, own, inspect, test, maintain, and replace all metering equipment as required by the Generation Interconnection Agreement and this Section 9. Seller must use revenue grade metering equipment consistent with American National Standards Institute ("ANSI") standards. In the event Market Operator adopts new meter requirements that are applicable to the Facility, Seller will, at its cost and expense, reasonably cooperate to upgrade any applicable metering equipment. Seller shall reasonably cooperate with Utility in developing any metering protocols necessary for Utility to comply with the requirements of the Market Operator or Utility Transmission.

9.2 Metering. Metering must be performed at the locations specified in Exhibit C and at the locations and in the manner specified in the Generation Interconnection Agreement, and as otherwise may be necessary to perform Seller's obligations under this Agreement. Meters must be capable of recording quantities of Output and Net Output, as the case may be.

9.3 Inspection, Testing, Repair and Replacement of Meters. Utility shall have the right to periodically inspect, test, repair and replace the metering equipment provided for in this Section 9, without Utility assuming any obligations of Seller under this Section 9. If any of the inspections or tests disclose an error exceeding one half of one percent (0.5%), either fast or slow, then the necessary corrections 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, then the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any

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correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and Utility arising out of such inaccuracy of the metering equipment.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall be responsible for all costs and expenses relating to all metering equipment installed to accommodate Seller's Facility. The actual expense of any Utility-requested additional inspection or testing shall be borne by Utility, unless upon additional inspection or testing the metering equipment is found to register inaccurately by more than the allowable limits established in Section 9.3, in which event the expense of the requested additional inspection or testing shall be borne by Seller.

9.5 SQMD Plan. Prior to commencing Commercial Operation, Seller shall support and reasonably cooperate with Utility in Utility's development and submittal to the Market Operator of its Settlement Quality Meter Data ("SQMD") compliance plan for the Facility. The SQMD compliance plan will detail the metering equipment and any calculation or data validation performed as a part of the data submission process to the Market Operator, consistent with the Market Operator's requirements in the then-current version of the "Business Practice Manual for Metering."

9.6 WREGIS Metering. If Utility owns Environmental Attributes pursuant to Section 4.6, Seller must cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter dedicated to the Facility and only the Facility.

SECTION 10

BILLINGS, COMPUTATIONS AND PAYMENTS

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

10.2 Offsets. Either Party may offset any payment due under this Agreement against amounts owed by the other Party pursuant under this Agreement. Either Party's exercise of recoupment and set off rights will not limit the other remedies available to such Party under this Agreement.

10.3 Interest on Late Payments. Any amounts not paid when due under this Agreement will bear interest at the Contract Interest Rate from the date due until paid.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due under an invoice provided under this Agreement, such Party must notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, must pay that portion of the invoice that is undisputed on or before the due date. Any such notice of dispute must be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due to the other Party, or if the Parties resolve the payment dispute, the amount due must be paid within five (5) Business Days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

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10.5 Audit Rights. Each Party, through its authorized representatives, has the right, at its expense upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made under this Agreement or to verify the other Party's performance of its obligations under this Agreement. Upon request, each Party must provide to the other Party statements evidencing the quantities of Net Output delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement will be issued and, subject to Section 10.4, any amount due from one Party to the other Party as a result of the corrected statement will be promptly paid including the payment of interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment.

SECTION 11

DEFAULTS AND REMEDIES

11.1 Defaults. An event of default ("Event of Default") shall occur with respect to a Party (the "Defaulting Party") upon the occurrence of each of the following events and the expiration of any applicable cure period provided for below:

11.1.1 Defaults by Either Party.

- (a) A Party fails to make a payment when due under this Agreement if the failure (i) is not subject to a good faith dispute of the amount due under Section 10.4, and (ii) is not cured within thirty (30) days after the non-defaulting Party gives the Defaulting Party a written notice of the default, provided, however, that the Defaulting Party shall be provided an additional ninety (90) days to cure if such breach cannot reasonably be cured within a thirty (30)-day period, is reasonably capable of being cured within the additional ninety (90)-day period, and the Defaulting Party commences the cure within the initial thirty (30)-day period.
- (b) The Defaulting Party: (i) (a) makes a general 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 thirty (30) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due; and (ii) the Defaulting Party fails to cure such breach within thirty (30) days of written notice from the non-defaulting Party, provided, however, that the Defaulting Party shall be provided an additional ninety (90) days to cure if such breach cannot reasonably be cured within a thirty (30)-day period, is reasonably capable of being cured within the additional ninety (90)-day period, and the Defaulting Party commences the cure within the initial thirty (30)-day period.
- (c) The Defaulting Party breaches one of its representations or warranties or fails to perform any material obligation in this Agreement for which an exclusive remedy is not provided and which is not otherwise an Event of Default under this Agreement and such breach or failure is not cured within thirty (30) days after the non-defaulting Party gives the Defaulting Party written notice of such breach; provided, however, that the Defaulting Party shall be provided an additional ninety (90) days to cure if such breach cannot reasonably be cured within a thirty (30)-day period, is reasonably capable of being cured within the additional ninety (90)-day period, and the Defaulting Party commences the cure within the initial thirty (30)-day period..

11.1.2 Defaults by Seller.

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- (a) Seller fails to post, increase, or maintain the Project Development Security or Default Security as required under this Agreement and such failure is not cured within thirty (30) days after Seller's receipt of written notice from Utility, provided, however, that Seller shall be provided an additional ninety (90) days to cure if such breach cannot reasonably be cured within a thirty (30)-day period, is reasonably capable of being cured within the additional ninety (90)-day period, and Seller commences the cure within the initial thirty (30)-day period.
- (b) Seller fails to cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date and Seller fails to achieve Commercial Operation by the Cure Period Deadline.¹⁸
- (c) Seller sells Output from the Facility to a party other than Utility in breach of Section 4.3, if Seller does not permanently cease such sale and compensate Utility for the damages arising from the breach within thirty (30) days after Utility gives Seller a notice of default, provided, however, that Seller shall be provided an additional ninety (90) days to cure if such breach cannot reasonably be cured within a thirty (30)-day period, is reasonably capable of being cured within the additional ninety (90)-day period, and Seller commences the cure within the initial thirty (30)-day period
- (d) Seller's Abandonment of construction or operation of the Facility, such Abandonment continues for thirty (30) days after Seller's receipt of written notice from Utility, provided, however, that Seller shall be provided an additional ninety (90) days to cure if such breach cannot reasonably be cured within a thirty (30)-day period, is reasonably capable of being cured within the additional ninety (90)-day period, and Seller commences the cure within the initial thirty (30)-day period.
- (e) Seller fails to satisfy the requirements of the Performance Guarantee for the number of consecutive Contract Years specified in Exhibit F.
- (f) Seller fails to satisfy the requirement to maintain QF status under Section 7.1, or the requirement to maintain eligibility for a standard power purchase agreement or standard pricing under Section 7.2, and such failure is not cured within thirty (30) days from the date of Seller's receipt of written notice of such failure from Utility, provided, however, that Seller shall be provided an additional ninety (90) days to cure if such breach cannot reasonably be cured within a thirty (30)-day period, is reasonably capable of being cured within the additional ninety (90)-day period, and Seller commences the cure within the initial thirty (30)-day period
- (g) With respect to an Off-System QF, a Seller Event of Default occurs under Exhibit K with respect to Seller's failure to reserve Firm Delivery commencing on the Commercial Operation Date, and such failure is not cured within thirty (30) days of the Seller's receipt of written notice by Utility, provided, however, that Seller shall be provided an additional ninety (90) days to cure if such breach cannot reasonably be cured within a thirty (30)-day period, is reasonably capable of being

¹⁸ **Note to Form** – This provision to be replaced for PPAs with operational QFs with the following language: "Seller fails to achieve Initial Delivery on or before the Scheduled Initial Delivery Date and such failure is not cured by the Cure Period Deadline after Utility gives Seller written notice of such failure."

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cured within the additional ninety (90)-day period, and Seller commences the cure within the initial thirty (30)-day period.

11.1.3 Utility Failure to Receive or Purchase. Utility fails to receive or purchase all or part of the Net Output required to be purchased under this Agreement and such failure is not excused under this Agreement, including without limitation the provisions of Section 4.5 or Seller's failure to perform, and if Utility does not cure such failure to receive or purchase all or part of the Net Output within thirty (30) days from the date of Utility's receipt of notice of such failure from Seller.

11.2 Remedies for Events of Default.

11.2.1 Remedy for Seller's Failure to Deliver. Upon the occurrence and during the continuation of a breach by Seller of Sections 4.1 and 4.3, Seller must pay Utility within thirty (30) days after receipt of invoice, subject to Sections 10.3 and unless subject to a good faith dispute under Section 10.4, an amount equal to the Utility's Cost to Cover multiplied by the Net Output delivered to a party other than Utility. Notwithstanding the foregoing, total damages under this Section may not exceed the aggregate amount Utility would have incurred to purchase Seller's Net Output and Environmental Attributes if purchasing Environmental Attributes from Seller, had Seller delivered all Net Output to Utility. The invoice for such amount must include a written statement explaining in reasonable detail the calculation of such amount.

11.2.2 Remedy for Utility's Failure to Purchase. Upon the occurrence and during the continuation of a breach by Utility of Section 4.1, Utility must pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within thirty (30) days after receipt of invoice, subject to Sections 10.3 and unless subject to a good faith dispute under Section 10.4, an amount equal to Seller's Cost to Cover multiplied by the amount of Net Output not purchased. The invoice for such amount must include a written statement explaining in reasonable detail the calculation of such amount.

11.2.3 Remedy for Seller's Failure to Satisfy Performance Guarantee. Upon the occurrence and during the continuation of a breach by Seller of Section 6.12, Seller must pay Utility an amount in damages equal to the sum as calculated pursuant to Exhibit F and in a manner as prescribed by Exhibit F.

11.2.4 Remedies Generally. Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement. Further, in the case of a default by Seller, Utility may offset its damages against any payment due Seller. The rights contemplated by this Section 11 are cumulative such that the exercise of one or more rights does not constitute a waiver of any other rights.

11.3 Termination and Remedies. From and during the continuance of an Event of Default, the non-defaulting Party may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than thirty (30) days before such termination date. The notice required under this Section 11.3 may be provided in the notice of default (and does not have to be a separate notice) before the applicable cure period(s) have lapsed and an Event of Default has occurred provided that the non-defaulting Party complies with the terms of this Section 11.3 and that the stated termination date is no earlier than the first (1st) day following expiration of the fifteen (15) day period or the first (1st) day following the expiration of the applicable cure period(s), whichever occurs last ("Earliest Termination Date"). Where Seller is the non-defaulting Party, Seller must provide copies of

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such termination notice to the notice addresses of the then-current President and General Counsel of Utility by registered overnight delivery service or by certified or registered mail, return receipt requested. A termination notice must state prominently in type font no smaller than 14-point capital letters that “THIS IS A TERMINATION NOTICE UNDER A PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED,” must state any amount alleged to be owed, and must include wiring instructions for payment. Notwithstanding any other provision of this Agreement to the contrary, the non-defaulting Party will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured by the Earliest Termination Date. In the event of a termination of this Agreement:

- (a) Each Party must pay to the other all amounts due the other under this Agreement for all periods prior to termination, subject to offset by the non-defaulting Party against damages incurred by such Party.
- (b) The amounts due under this Section 11.3 must be paid within thirty (30) days after the billing date for such charges and will bear interest at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for, any payments otherwise due under this Agreement.
- (c) Without limiting the generality of the foregoing, the provisions of Sections 1, 4.1, 4.4, 4.6, 5.4, 5.5, 5.6, 6.2, 6.3, 6.9.1, 6.9.2, 6.10, 10.2, 10.3, 10.4, 10.5, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 survive the termination of this Agreement.

11.4 Duty to Buy After Termination. If this Agreement is terminated because of an Event of Default by Seller, and Seller wishes to again sell Net Output to Utility following such termination, Utility may require that Seller do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the last day of the Term of this Agreement had it not been earlier terminated. In such case, Utility may require Seller to post Default Security even if it meets the Credit Requirements. Seller agrees that it will not take any action or permit any action to occur the result of which avoids or seeks to avoid the restrictions in this Section 11.4, e.g., through use or establishment of a special purpose entity or other Affiliate.

11.5 Termination Damages. If this Agreement is terminated by Utility as a result of an Event of Default by Seller, termination damages owed by Seller to Utility will be the positive difference, if any, between (a) Utility’s estimated costs to secure replacement power and Environmental Attributes, if applicable, for a period of twenty-four (24) months following the date of termination, including any associated transmission necessary to deliver such replacement power; and (b) the Contract Price for such twenty-four- (24) month period (“Termination Damages”). Utility must calculate the Termination Damages on a monthly basis in a commercially reasonable manner and will be deemed to have done so if it calculates such damages for each day of the twenty-four- (24) month period by multiplying (a) the forecasted Net Output for such day as provided in the 12x24 forecast provided by Seller, if available, or if such forecast is not available, the Expected Monthly Net Output for the applicable month, expressed in MWhs per month, divided by the number of days of the applicable month, by (b) the Utility’s Cost to Cover for such day. Utility will provide to Seller a written statement explaining in reasonable detail the calculation of Termination Damages.

Notwithstanding the foregoing, Termination Damages for the twenty-four- (24) month term may not exceed the aggregate amount Utility would have incurred to purchase Seller’s Net Output and Environmental Attributes had the Agreement not been terminated. Termination Damages are due by Seller within thirty (30) days after receipt of the written statement of Termination Damages from Utility. Each Party agrees and acknowledges that the damages that Utility would incur due to Seller’s Event of

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Default would be difficult or impossible to predict with certainty, it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Termination Damages as agreed to in this Section 11.5 are a fair and reasonable calculation of such damages.

11.6 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of its obligations under this Agreement to the extent mitigation is relevant to the calculation of damages. In furtherance of the immediately preceding sentence, (a) with respect to Seller and to the extent permitted by Requirements of Law and the Generation Interconnection Agreement, Seller must use commercially reasonable efforts to maximize the price received by Seller from third parties for Net Output and Environmental Attributes not purchased and accepted by Utility. The duty to mitigate described in this subsection shall not impact or affect the method of determining liquidated damages, including Termination Damages under Section 11.5 and Delay Damages under Section 2.4.

11.7 Security. If this Agreement is terminated because of an Event of Default by Seller, then Utility may, in addition to pursuing any and all other remedies available at law or in equity (except where otherwise limited herein), proceed against any Security held by Utility in whatever form to reduce the amounts that Seller owes Utility arising from such Event of Default.

11.8 Cumulative Remedies. Except in circumstances in which a remedy provided for in this Agreement is described as a sole or exclusive remedy, the rights and remedies provided to the Parties in this Agreement are cumulative and not exclusive of any rights or remedies of the Parties, and the exercise of one or more rights or remedies does not constitute a waiver of any other rights or remedies.

SECTION 12

INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Seller shall indemnify, defend and hold harmless Utility and its Affiliates and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Utility Indemnitees") from and against any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") resulting from, arising out of, or in any way connected with, the breach, performance or non-performance by Seller of its obligations or covenants under this Agreement, or relating to the Facility or the Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any third party Person, except to the extent such Liabilities are caused by the negligence or willful misconduct of any Utility Indemnitee. Seller is solely responsible for and will indemnify, defend and hold harmless the Utility Indemnitees from and against any and all Liabilities resulting from, arising out of, or in any way connected with the breach by Seller of the Generation Interconnection Agreement.

12.1.2 Indemnity by Utility. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Utility shall indemnify, defend and hold harmless Seller and its Affiliates and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Seller Indemnitees") from and against any and all Liabilities resulting from, arising out of, or in any way connected with, the breach, performance or non-performance by Utility of its obligations or covenants

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under this Agreement for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any third party Person, except to the extent such Liabilities are caused by the negligence or willful misconduct of any Seller Indemnitee.

12.1.3 Additional Cross Indemnity. Without limiting Section 12.1.1 and Section 12.1.2,

- (a) Seller shall indemnify, defend and hold harmless the Utility Indemnitees from and against all Liabilities resulting from, arising out of, or in any way connected with: (i) the Net Output prior to its delivery by Seller at the Point of Delivery; or (ii) any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions of this Agreement; except in each case to the extent such Liabilities are caused by the gross negligence, willful misconduct or a breach of this Agreement by any Utility Indemnitee; and
- (b) Utility shall indemnify, defend and hold harmless the Seller Indemnitees from and against all Liabilities resulting from, arising out of, or in any way connected with: (i) the Net Output at and after its delivery to Utility at the Point of Delivery in accordance with this Agreement; and (ii) any action by any Governmental Authority due to noncompliance by Utility with any Requirements of Law or the provisions of this Agreement, except in each case to the extent such Liabilities are caused by the gross negligence, willful misconduct, or a breach of this Agreement by any Seller Indemnitees.

12.1.4 Indemnification Procedures. Any indemnified party seeking indemnification under this Agreement for any Liabilities shall give the Indemnifying Party notice of such Liabilities promptly but in any event on or before thirty (30) days after the Indemnified Party's actual knowledge of the claim or action giving rise to the Liabilities. Such notice shall describe the Liability in reasonable detail and shall indicate the amount (estimated if necessary) of the Liability that has been, or may be sustained by, the Indemnified Party. To the extent that the indemnifying party will have been actually and materially prejudiced as a result of the failure to provide such notice within such thirty (30) day period, the indemnified party shall bear all responsibility for any additional costs or expenses incurred by the indemnifying party as a result of such failure to provide timely notice. The indemnifying party shall assume the defense of the claim or action giving rise to the Liabilities with counsel designated by the indemnifying party; provided, however, that if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the indemnifying party, the indemnified party shall have the right to select and be represented by separate counsel, at the expense of the indemnifying party. Notwithstanding anything to the contrary contained herein, an indemnified party shall in all cases be entitled to control its own defense, at the expense of the indemnifying party, in any claim or action if it: (a) may result in injunctions or other equitable remedies with respect to the indemnified party; (b) may result in material liabilities which may not be fully indemnified hereunder; or (c) may have a material and adverse effect on the indemnified party (including a material and adverse effect on the tax liabilities, earnings, ongoing business relationships or regulation of the indemnified party) even if the indemnifying party pays all indemnification amounts in full. If the indemnifying party fails to assume the defense of a claim or action, the indemnification of which is required under this Agreement, the indemnified party may, at the expense of the indemnifying party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim or action may be made only with the indemnifying party's consent, which consent will not be unreasonably withheld, conditioned or delayed, or, absent such consent, written opinion of the indemnified party's counsel that such claim is meritorious or warrants settlement.

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

12.1.6 Consequential Damages. **EXCEPT AS PROVIDED IN SECTION 12.1.1, SECTION 12.1.2 AND SECTION 12.1.3, NEITHER PARTY WILL 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. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, INCLUDING DELAY DAMAGES, TERMINATION DAMAGES AND PERFORMANCE GUARANTEE DAMAGES, UTILITY'S COST TO COVER DAMAGES AND SELLER'S COST TO COVER DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT DO NOT REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES AS CONTEMPLATED IN THIS PARAGRAPH.**

12.2 Survival. The provisions of this Section 12 shall survive the termination or expiration of this Agreement.

SECTION 13 INSURANCE

Without limiting any Liabilities or any other obligations of Seller, unless the Facility has a Nameplate Capacity Rating of less than or equal to 200 kW, Seller must secure and continuously carry the insurance coverage specified on Exhibit H commencing with the start of construction activities at the Premises and continuing thereafter during the Term or such longer period as is specified in Exhibit H.

SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. "Force Majeure" or an "event of Force Majeure" means an event or circumstance that prevents a Party (the "Affected Party") from performing, in whole or in part, an obligation under this Agreement and that: (a) is not reasonably anticipated by the Affected Party as of the Execution Date; (b) is not within the reasonable control of the Affected Party or its Affiliates; (c) is not the result of the negligence or fault or the failure to act by the Affected Party or its Affiliates; and (d) could not be overcome or its effects mitigated by the use of due diligence by the Affected Party or its Affiliates. Force Majeure includes the following types of events and circumstances (but only to the extent that such events or circumstances satisfy the requirements in the preceding sentence): tornado, hurricane, tsunami, flood, earthquake and other acts of God; fire; explosion; invasion, acts of terrorism, war (declared or undeclared) or other armed conflict; riot, revolution, insurrection or similar civil disturbance; global pandemic (except as excluded below); sabotage; strikes, walkouts, lock-outs, work stoppages, or other labor disputes; and action or restraint by Governmental Authority; provided that the Affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such action or restraint.

14.2 Suspension of Performance. Neither Party will be liable for any delay in or failure to perform its obligations under this Agreement nor will any such delay or failure become an Event of Default, for a period of up to 365 days after the occurrence of an event of Force Majeure (as such period may be

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extended, as provided below, the “Suspension Period”), to the extent such delay or failure is substantially caused by, and continues as a result of, Force Majeure, provided that the Affected Party: (a) provides prompt (and, in any event, not more than five (5) days’ notice of such event of Force Majeure to the other Party, describing the particulars of the event of Force Majeure and giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement; (b) exercises all reasonable efforts to continue to perform its obligations under this Agreement; (c) expeditiously takes action to correct or cure the event of Force Majeure so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event of Force Majeure; (d) exercises all reasonable efforts to mitigate or limit damages to the other Party resulting from the event of Force Majeure; and (e) provides prompt notice to the other Party of the cessation of the event of Force Majeure. The Affected Party may seek consent from the other Party for further serial, ninety (90)-day extensions to the Suspension Period to the extent the event of Force Majeure continues to prevent the Affected Party’s performance under this Agreement after the initial 365-day period following the occurrence of an event of Force Majeure by providing written notice to the other Party at least ten (10) days prior to the end of the initial Suspension Period (and any applicable subsequent Suspension Period extended pursuant to this Section 14.2), providing reasonably sufficient details of the circumstances preventing performance and evidence of the Affected Party’s compliance with the requirements of clauses (b) through (d) of this paragraph. Consent to such requests for extension will not be unreasonably withheld.

14.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the event of Force Majeure causing the suspension of performance or that arise after the cessation of such event of Force Majeure is excused by such event of Force Majeure.

14.4 Strikes. Notwithstanding any other provision of this Agreement, neither Party will 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.

SECTION 15 SEVERAL OBLIGATIONS

Nothing in this Agreement will be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or Liability on or between the Parties.

SECTION 16 CHOICE OF LAW

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

SECTION 17 PARTIAL INVALIDITY AND PURPA REPEAL

If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable terms, provisions or conditions with valid and enforceable terms, provisions or conditions which achieve the purpose

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intended by the Parties to the greatest extent permitted by law and preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

In the event PURPA, related state law, and/or state or federal regulations and rules giving rise to this Agreement are repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

SECTION 18
NON-WAIVER

No waiver of any provision of this Agreement will be effective unless the waiver is provided in writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions of this Agreement will not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

SECTION 19
GOVERNMENTAL JURISDICTION

This Agreement is subject to the jurisdiction of those Governmental Authorities and courts having jurisdiction over either Party or this Agreement.

SECTION 20
SUCCESSORS AND ASSIGNS

20.1 Restriction on Assignments. Except as provided in this Section 20, neither Party may transfer, sell, pledge, encumber or assign (collectively, "Assign") this Agreement nor any of its rights or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed.

20.2 Permitted Assignments.

20.2.1 Assignments to Affiliates. Notwithstanding Section 20.1, either Party may, without the need for consent from the other Party (but with prior notice to the other Party, including the name of the Affiliate), Assign this Agreement to an Affiliate; provided, however, that it shall be a condition precedent to such Assignment that such Affiliate enters into an assignment and assumption agreement pursuant to which such Affiliate assumes all of the assigning Party's obligations under this Agreement and otherwise agrees to be bound by the terms of this Agreement; provided, further that: (a) in the case of Assignment by Utility, such Affiliate must have the same or better credit rating from S&P and Moody's as Utility as of the effective date of such assignment (or if such Affiliate is not rated by S&P and Moody's, the same or better creditworthiness as Utility, as reasonably determined by Seller and (b) in the case of Assignment by Seller: (i) such Affiliate must (A) possess the same or similar experience as Seller (as reasonably determined by Utility) and (B) possess the same or better credit rating from S&P and Moody's as Seller as of the Execution Date (or if Seller or such Affiliate is not rated by S&P and Moody's, the same or better creditworthiness as Seller, as reasonably determined by Utility, or otherwise agrees, in lieu of demonstrating creditworthiness, to be bound by the Security requirements of Section 8); and (ii) any Security required pursuant to Section 8 must be provided, replaced or remain in full force and effect.

20.2.2 Assignments by Utility. In addition, Utility may without the need for consent from Seller (but with

(continued)

prior notice to Seller, including the name of the assignee) Assign this Agreement in whole or in part to any person or entity that acquires all or substantially all of the business or assets of Utility to which this Agreement pertains, whether by merger, reorganization, acquisition, sale, or otherwise, or a portion of the business or assets of Utility to which this Agreement pertains due to changes in service territory; provided, however, that it shall be a condition precedent to such Assignment that such assignee: (a) enters into an assignment and assumption agreement pursuant to which such assignee assumes all of Utility's obligations under this Agreement and otherwise agrees to be bound by the terms of this Agreement; (b) has the same or better credit rating from S&P and Moody's as Utility as of the Execution Date (or if such assignee is not rated by S&P and Moody's, the same or better creditworthiness as Utility, as reasonably determined by Seller); (c) if required by applicable Requirements of Law, has received approval from any applicable public utility commission or equivalent or any other applicable Governmental Authority.

20.2.3 Seller's Assignment for Purposes of Financing. Without Utility's consent, Seller may, upon notice to Utility, collaterally assign, transfer, pledge or encumber this Agreement or any of its rights or obligations hereunder to any Lender as collateral for financing with respect to the development, construction and/or operation of the Facility without the assignee being required to execute an agreement in the form of this Agreement in order to make such collateral assignment, transfer, pledge or encumbrance legally effective; provided that no such assignment will relieve Seller of its liability to Utility hereunder. Upon receiving a request by Seller, Utility will execute a collateral assignment and consent agreement in a form acceptable to Utility in its reasonable-exercised discretion. If Lender or Seller requests that Utility make changes to Utility's collateral assignment and consent agreement form or review any other proposed agreement or documents related to financing of the construction or operation of the Facility, Utility will take commercially reasonable efforts to review and, subject to its reasonably exercised discretion, may accept or decline such proposed changes. Seller shall be responsible for all reasonable cost and expense associated with Utility's review and activities reasonably required under this Section 20.2.3, including but not limited to the use of outside counsel; provided that no costs shall be charged in the event the executed documents are unchanged from the original form proposed by Utility. No later than twenty (20) calendar days after receiving an invoice for such cost and expense, Seller shall pay to Utility the amount set forth as due in such invoice.

20.2.4 Release from Liability. If the foregoing requirements for Assignment in Sections 20.2.1 or 20.2.2 have been satisfied, then effective as of the date of such Assignment Utility and Seller, as applicable, will be released from all liability under this Agreement. Any Party seeking to Assign this Agreement shall be solely responsible for paying all costs and expenses of Assignment, including any costs and expenses incurred by the other Party in connection with the review and/or execution and delivery of the assignment and assumption agreement and any other documents required in connection with the Assignment.

SECTION 21
ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement is effective unless it is in writing and executed by both Parties.

(continued)

SECTION 22
NOTICES

All notices, requests, demands, submittals, waivers and other communications required or permitted to be given under this Agreement (each, a “Notice”) shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the addressees and addresses set out in Exhibit J, as the same may be modified from time to time by Notice from the respective Party to the other Party. All Notices required by this Agreement shall be sent by regular first-class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery, or electronic mail. Such Notices will be deemed effective and given upon receipt by the addressee, except that Notices transmitted by electronic mail shall be deemed effective and given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 16:00 [PPT/MPT], and if transmitted after that time, on the following Business Day, provided that Notices transmitted by electronic mail must be followed up by Notice by other means as provided for in this Section to be effective. If any Notice sent by regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, or overnight courier delivery is tendered to an addressee set out in Exhibit J, as the same may be modified from time to time by Notice from the respective Party to the other Party, and the delivery thereof is refused by such addressee, then such Notice shall be deemed given and effective upon such tender. In addition, Notice of termination of this Agreement under Section 11.3 must contain the information required by Section 11.3 and, where Utility is the Defaulting Party, must be sent to the attention of the then-current President and General Counsel of Utility as required by (and subject to the terms of) Section 11.3, and where Seller is the Defaulting Party, must be sent to the attention of the then-current President and General Counsel of Seller subject to the terms of Section 11.3.

SECTION 23
PUBLICITY

Before either Party issues any news release or publicly distributed promotional material regarding this Agreement, such Party must first provide a copy thereof to other Party for its review and approval. Any use of any tradename of the other Party or any of its affiliates requires the other Party’s prior written consent.

SECTION 24
DISPUTES

If the Parties are not able to resolve any dispute, then the Parties may mutually agree to pursue an alternative dispute resolution process under Oregon Administrative Rules Chapter 860, Division 2.

(continued)

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

SELLER:

UTILITY:

[_____]

[_____]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAMPLE

(continued)

EXHIBIT A
EXPECTED MONTHLY NET OUTPUT¹⁹

Month	On-Peak Net Output (MWh)	Off-Peak Net Output (MWh)	Total Net Output (MWh)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
<i>First Contract Year Total</i>			

The values above may be changed by Seller, as permitted under Section 6.1 and Section 6.7 of the Agreement. If the values are changed pursuant to Section 6.1 and 6.7 of the Agreement, Seller is obligated to notify Utility of the change in Expected Monthly Net Output in writing and Exhibit A will be modified to include the changed values.

[The values above will be reduced []% each Contract Year following the Commercial Operation Date] **OR**

[The energy values above will be reduced each Contract Year following the Commercial Operation Date in accordance with the following Expected Annual Degradation Schedule]

MAXIMUM DELIVERY RATE (MWh or kWh)

[_____]

¹⁹ **Note to Form** – Prior to executing the Agreement, Seller will be required to provide Utility information sufficient to allow Utility to reasonably verify the output estimates stated in Exhibit A.

(continued)

EXHIBIT B
DESCRIPTION OF SELLER'S FACILITY

[Provide a detailed description of the Facility, including the following, as applicable:]

Seller's Generating Facility:

Type (synchronous or inductive):

Facility Nameplate Capacity Rating (as stated in Seller's FERC Form 556):

Number of generating facility units:

Model:

Number of Phases:

Power factor requirements:

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

Rated AC Output (kW):

Rated DC Output (kW):

Rated AC Output (kVA):

Rated DC Output (kVA):

Rated Voltage (line to line):

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

Maximum kW Output: _____ kW as measured at the Point of Delivery (Facility)

Maximum kVA Output: _____ kVA (generating facility)

Minimum kW Output: _____ kW (generating facility)

Number of Phases:

Power factor requirements: _____ Leading and Lagging

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

Controlled Ramp Rate: _____

Seller's Energy Storage Facility (if applicable):

Energy Storage facility technology (and chemistry if chemical battery):

Energy Storage facility design (e.g. DC-coupled or AC-coupled):

Energy Storage facility brand and model:

Number of energy storage facility units:

Energy Storage facility power capacity rating:

Energy Storage facility energy capacity (e.g. number of hours charge):

Maximum kVA Output: _____ kVA (energy storage facility)

Minimum kVA Output: _____ kVA (energy storage facility)

Round trip efficiency, measured at the Point of Delivery:

The following is a layout of the Facility, including site boundaries of the Premises:

Station service requirements, and other loads served by the Facility, if any:

Location of the Facility: *[Please include city and county, and legal description of parcel]*

(continued)

EXHIBIT C
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.]*

SAMPLE

(continued)

EXHIBIT D
REQUIRED FACILITY DOCUMENTS

1. *QF Certification*
2. *Interconnection Agreement or, if applicable, the following studies and study agreements completed as of the Effective Date:*

[INSERT DESCRIPTION]
3. *Real property documents listed in Exhibit E to the Agreement with respect to the Premises.*
4. *Licenses, Permits and Authorizations, including:*

[INSERT DESCRIPTION]
5. *Other Required Facility Documents:*

[INSERT DESCRIPTION]

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

(continued)

EXHIBIT E

LEASES AND REAL ESTATE DOCUMENTS

SAMPLE

(continued)

EXHIBIT F

MECHANICAL AVAILABILITY GUARANTEE – WIND, SOLAR, SOLAR-PLUS-STORAGE AND HYDRO RESOURCES

1. Availability Guarantee. Seller guarantees that the Facility will achieve an Actual Availability Percentage (as defined below) of at least ninety percent (90%) during each covered Contract Year (“Availability Guarantee”) as provided in this Exhibit F. The Actual Availability Percentage will be calculated annually, commencing with the first (1st) day of the second Full Contract Year after Initial Delivery Date for existing QFs and with the first (1st) day of the fourth Full Contract Year after Commercial Operation for new QFs and ending with the last Full Contract Year in the Term. For example, for an existing QF that achieves an Initial Delivery Date of July 1, 2026, the Actual Availability Percentage will be calculated on or after January 1, 2028, based on Facility data from the previous Contract Year. For a new QF that achieves Commercial Operation on July 1, 2026, the Actual Availability Percentage will be calculated on or after January 1, 2030, based on Facility data from the previous Contract Year.

“Actual Availability Percentage” for a particular Contract Year is calculated as follows:

Actual Availability Percentage = 100 x (Operational Hours in the Contract Year) / (Number of Hours in the Contract Year x Number of Generating Units in the Facility)

“Operational Hours” means the total across all of the Facility’s Generating Units of (i) the number of hours each of the Generating Units was capable of producing power regardless of actual weather, season and time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Delivery Point; (ii) the number of hours during which each Generating Unit was not available to generate due to a Force Majeure event, a default by Utility under this Agreement, or a default by Utility under the Generation Interconnection Agreement; and (iii) the number of hours during which each Generating Unit was not available to generate due to a Planned Outage, but only to the extent such hours do not exceed 200 hours per Generating Unit per Contract Year. However, if any of the events described in items (i) through (iii) occur simultaneously, then the relevant period of time will only be counted once in order to prevent double counting. Operational Hours do not include hours when (i) the Facility or any portion thereof was unavailable solely due to Seller’s non-conformance with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

“Generating Unit” means a complete electrical generation or storage system within the Facility that is able to generate or store and deliver energy to the Point of Interconnection independent of other Generating Units within the Facility. For example, for a solar facility, a Generating Unit is an inverter and the panels associated with such inverter. The number of Generating Unit’s for the Facility shall be identified in Exhibit B, and shall be determined by summing the number of generating facility units in Seller’s generating facility and the number of storage facility units in Seller’s storage facility, if applicable.

If the Actual Availability Percentage in any Contract Year commencing with the first Full Contract Year that is subject to this Availability Guarantee falls below ninety percent (90%), the resulting shortfall will be expressed in MWh as the “On-Peak Availability Shortfall” or the “Off-Peak Availability Shortfall,” as applicable, or together, the “Availability Shortfalls.” In order to determine the damages associated with any such failure to meet the Availability Guarantee, which is determined on an annual basis, the resulting Availability Shortfalls are allocated pro rata to each calendar month in the Contract Year and will equal the mathematical difference between the Availability Guarantee and the Actual Availability Percentage,

(continued)

multiplied by the monthly Expected Net Output for the applicable calendar month in the Contract Year, expressed in the formula below:

On-Peak Availability Shortfall (MWh) = (90 (%) minus Actual Availability Percentage (%)) multiplied by the applicable monthly Expected Net Output (MWh) for On-Peak Hours as specified in Exhibit A

Off-Peak Availability Shortfall (MWh) = (90 (%) minus Actual Availability Percentage (%)) multiplied by the applicable monthly Expected Net Output (MWh) for Off-Peak Hours as specified in Exhibit A

2. Damages Calculation for Availability Shortfall. If an Availability Shortfall occurs in any calendar month in any Contract Year in which the Availability Guarantee is not met, Seller will pay Utility damages (“Availability Shortfall Damages”), if any, for such calendar month based on the following equation:

On-Peak Availability Shortfall x the positive difference between the applicable calendar month’s On-Peak Average Firm Electric Market Price and the applicable calendar month’s On-Peak Contract Price;

Plus

Off-Peak Availability Shortfall x the positive difference between the applicable calendar month’s Off-Peak Average Firm Electric Market Price and the applicable calendar month’s Off-Peak Contract Price;

Where

“On-Peak Average Firm Electric Market Price” means the average Firm Electric Market Pricing for all On-Peak Hours of the applicable calendar month in the Contract Year, and

“Off-Peak Average Firm Electric Market Price” means the average Firm Electric Market Pricing for all Off-Peak Hours of the applicable calendar month in the Contract Year;

Plus

In the event the replacement energy procured by Utility as a result of Seller’s failure to deliver the Availability Shortfall results in incremental ancillary services and transmission costs, an amount equal to such costs incurred by Utility, provided however that Utility shall provide commercially reasonable evidence that it incurred such costs as a result of Seller’s failure to deliver in accordance with the Availability Guarantee.

Plus

The Replacement Bundled REC Price x REC Shortfall, if applicable

Where

“REC Shortfall” means the number of renewable energy certificates (“RECs”) Seller would have delivered to Utility had Seller met the Availability Guarantee.

“Replacement Bundled REC” means a REC bundled and simultaneously delivered with the
(continued)

associated qualifying energy generated by an Oregon Renewable Portfolio Standard eligible renewable energy resource and delivered bundled to Utility.

“Replacement Bundled REC Price” means the price determined by Utility by taking the lower of two dealer quotes representing a live offer to sell Replacement Bundled RECs in a quantity sufficient to cover the REC Shortfall.

Notwithstanding the foregoing, the total Availability Shortfall Damages in a given Contract Year may not exceed the aggregate amount Utility would have incurred to purchase Seller’s Net Output and RECs during the Contract Year if Seller had met the Availability Guarantee, which amount shall be the sum of (i) the product of the monthly On-Peak Availability Shortfall and the applicable monthly On-Peak Contract Price during each calendar month of the Contract Year and (ii) the product of the monthly Off-Peak Availability Shortfall and the applicable monthly Off-Peak Contract Price during each calendar month of the Contract Year.

Each Party agrees and acknowledges that (i) the damages that Utility would incur due to the Facility’s failure to achieve the Availability Guarantee would be difficult or impossible to predict with certainty and (ii) the damages calculation methodology contemplated by this provision are a fair and reasonable calculation of such damages.

3. Invoicing for Availability Shortfall. Following the end of each Contract Year, Utility will deliver to Seller an invoice showing in reasonable detail the Utility’s computation of Availability Shortfall, if any, for the prior Contract Year and any amount due to Utility for damages calculated pursuant to this Exhibit F. In preparing such invoices, Utility will utilize the fault log provided to Utility for the applicable Contract Year, provided that if the fault log for any portion of such Contract Year is then incomplete or otherwise not available, Utility may rely other information as may be available to Utility at the time of invoice preparation. Utility shall have the right to offset any payment due under this Exhibit F in accordance with Section 10.2 of the Agreement. Seller must pay to Utility on or before the thirtieth (30th) day following the receipt of such invoice, except with respect to any invoiced amounts that are subject to a good faith dispute under Section 10.4 of this Agreement. Any amounts due under this Exhibit F are subject to Section 10.3, and all disputes regarding such invoices are subject to Section 10.4.

4. Event of Default. The occurrence of an Availability Shortfall for two (2) consecutive Contract Years shall be a Seller Event of Default, and Utility shall be entitled to the rights and remedies set forth in Section 11 of the Agreement.

(continued)

**MINIMUM DELIVERY GUARANTEE – GEOTHERMAL, BIOMASS AND OTHER BASELOAD
RENEWABLE RESOURCES**

1. Output Guarantee. Seller is obligated to deliver a quantity of Net Output during each covered Contract Year which is equal to the Output Guarantee. Seller's compliance with the Output Guarantee will be calculated annually, commencing with the first (1st) day of the second Contract Year after the Commercial Operation Date or Initial Delivery Date, as applicable, based on Facility data from the previous Contract Year and ending with the last Full Contract Year in the Term.

"Output Guarantee" for any Contract Year means ninety percent (90%) of the Expected Net Output of the Facility for such Contract Year, which shall be adjusted for Seller Uncontrollable Minutes.

"Seller Uncontrollable Minutes" means, for the Facility in any Contract Year, the total number of minutes during such Contract Year during which the Facility was unable to deliver Net Output to Utility (or during which Utility failed to accept such delivery) due to one or more of the following events, each as recorded by Seller's Supervisory Control and Data Acquisition ("SCADA") System (where available) and indicated by Seller's fault log (electronic where available): (a) a Force Majeure event; (b) to the extent not caused by Seller's actions or omissions, any interconnection or transmission curtailment initiated by Utility, Interconnection Provider, or the Transmission Provider; and (c) a default by Utility under this Agreement or the Generator Interconnection Agreement; provided, however, that if any of the events described above in items (a) through (c) occur simultaneously, then the relevant period of time will only be counted once in order to prevent double counting. Seller Uncontrollable Minutes do not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller's non-conformance with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

"Actual Output Percentage" for a particular Contract Year is calculated as follows:

Actual Output Percentage = 100 x (actual Net Output received at the Point of Delivery + Net Output Seller was unable to deliver due to Seller Uncontrollable Minutes in such Contract Year) / Expected Net Output

If the Actual Output Percentage in any Full Contract Year that is subject to this Guarantee falls below ninety percent (90%), the resulting shortfall will be expressed in MWh as the "On-Peak Output Shortfall" or the "Off-Peak Output Shortfall," as applicable, or together, the "Output Shortfalls." In order to determine the damages associated with any such failure to meet the Output Guarantee, which is determined on an annual basis, the resulting Output Shortfalls are allocated pro rata to each calendar month in the Contract Year and will equal the mathematical difference between the Output Guarantee and the Actual Output Percentage, multiplied by the monthly Expected Net Output for the applicable calendar month in the Contract Year, expressed in the formula below:

On-Peak Output Shortfall (MWh) = (90 (%) minus Actual Output Percentage (%)) multiplied by the applicable monthly Expected Net Output (MWh) for On-Peak Hours as specified in Exhibit A

Off-Peak Output Shortfall (MWh) = (90 (%) minus Actual Output Percentage (%)) multiplied by the applicable monthly Expected Net Output (MWh) for Off-Peak Hours as specified in Exhibit A

(continued)

2. Damages Calculation for Output Shortfall. If an Output Shortfall occurs in any calendar month in any Contract Year in which the Output Guarantee is not met, Seller will pay Utility damages (“Output Shortfall Damages”), if any, for such calendar month based on the following equation:

On-Peak Output Shortfall x the positive difference between the applicable calendar month’s On-Peak Average Firm Electric Market Price and the applicable calendar month’s On-Peak Contract Price;

Plus

Off-Peak Output Shortfall x the positive difference between the applicable calendar month’s Off-Peak Average Firm Electric Market Price and the applicable calendar month’s Off-Peak Contract Price;

Where

“On-Peak Average Firm Electric Market Price” means the average Firm Electric Market Pricing for all On-Peak Hours of the applicable calendar month in the Contract Year, and

“Off-Peak Average Firm Electric Market Price” means the average Firm Electric Market Pricing for all Off-Peak Hours of the applicable calendar month in the Contract Year;

Plus

In the event the replacement energy procured by Utility as a result of Seller’s failure to deliver the Output Shortfall results in incremental ancillary services and transmission costs, an amount equal to such costs incurred by Utility, provided however that Utility shall provide commercially reasonable evidence that it incurred such costs as a result of Seller’s failure to deliver in accordance with the Output Guarantee.

Plus

The Replacement Bundled REC Price x REC Shortfall, if applicable

Where

“REC Shortfall” means the number of renewable energy certificates (“RECs”) Seller would have delivered to Utility had Seller met the Output Guarantee.

“Replacement Bundled REC” means a REC bundled and simultaneously delivered with the associated qualifying energy generated by an Oregon Renewable Portfolio Standard eligible renewable energy resource and delivered bundled to Utility.

“Replacement Bundled REC Price” means the price determined by Utility by taking the lower of two dealer quotes representing a live offer to sell Replacement Bundled RECs in a quantity sufficient to cover the REC Shortfall.

Notwithstanding the foregoing, the total Output Shortfall Damages in a given Contract Year may not exceed the aggregate amount Utility would have incurred to purchase Seller’s Net Output and RECs during the

(continued)

Contract Year if Seller had met the Output Guarantee, which amount shall be the sum of (i) the product of the monthly On-Peak Output Shortfall and the applicable monthly On-Peak Contract Price for each calendar month of the Contract Year and (ii) the product of the monthly Off-Peak Output Shortfall and the applicable Off-Peak Contract Price for each calendar month of the Contract Year.

Each Party agrees and acknowledges that (i) the damages that Utility would incur due to the Facility's failure to achieve the Output Guaranty would be difficult or impossible to predict with certainty and (ii) the damages calculation methodology contemplated by this provision are a fair and reasonable calculation of such damages.

3. Invoicing for Output Shortfall. Following the end of each Contract Year, Utility will deliver to Seller an invoice showing in reasonable detail the Utility's computation of Output Shortfall, if any, for the prior Contract Year and any amount due to Utility for damages calculated pursuant to this Exhibit F. In preparing such invoices, Utility will utilize the meter data provided to Utility for the applicable Contract Year, provided that if the meter data for any portion of such Contract Year is then incomplete or otherwise not available, Utility may also rely on historical averages and other information as may be available to Utility at the time of invoice preparation. Utility shall have the right to offset any payment due under this Exhibit F in accordance with Section 10.2., Seller must pay to Utility on or before the thirtieth (30th) day following the receipt of such invoice except with respect to any invoiced amounts that are subject to a good faith dispute under Section 10.4. Any amounts due under this Exhibit F are subject to Section 10.3, and all disputes regarding such invoices are subject to Section 10.4.

4. Event of Default. The occurrence of an Output Shortfall for three (3) consecutive Contract Years shall be a Seller Event of Default, and Utility shall be entitled to the rights and remedies set forth in Section 11 of the Agreement.

(continued)

EXHIBIT G
SELLER AUTHORIZATION TO RELEASE
GENERATION DATA TO UTILITY

[DATE]

Director, Transmission Services
Utility
[Utility Address]

RE: Queue Number (if available): _____

To Whom it May Concern:

_____ (“Seller”) hereby voluntarily authorizes Utility's Transmission business unit to share Seller's interconnection information with marketing function employees of Utility. Seller acknowledges that Utility did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

(continued)

EXHIBIT H
REQUIRED INSURANCE

1.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller must secure and continuously carry with an insurance company or companies rated not lower than “A-/VII” by the A.M. Best Company the insurance coverage specified below:

1.1.1 Commercial General Liability with a limit of not less than \$1,000,000 each occurrence/combined single limit.

1.1.2 Umbrella/excess Liability with a limit of not less than \$5,000,000.

1.2 Additional Provisions or Endorsements.

1.2.1 Except for workers’ compensation, employer’s liability, and property insurance, the policies required must include provisions or endorsements as follows:

(a) naming Utility, parent, divisions, officers, directors and employees as additional insureds;

(b) include provisions that such insurance is primary insurance with respect to the interests of Utility and that any other insurance maintained by Utility is excess and not contributory insurance with the insurance required under this schedule; and

(c) cross liability coverage or severability of interest.

1.2.2 Unless prohibited by applicable law, all required insurance policies must contain provisions that the insurer will have no right of recovery or subrogation against Utility.

1.3 Certificates of Insurance. Seller must provide Utility with certificates of insurance within ten (10) days after the date by which such policies are required to be obtained, in ACORD or similar industry form. The certificates must indicate that the insurer will provide thirty (30) days prior written notice of cancellation. If any coverage is written on a “claims-made” basis, the certification accompanying the policy must conspicuously state that the policy is “claims made.”

1.4 Term of Commercial General Liability Coverage. Commercial general liability coverage must 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.

(continued)

EXHIBIT I
PACIFICORP'S OR STANDARD QF SCHEDULE AND PRICING SUMMARY TABLE

SAMPLE

(continued)

EXHIBIT J
PARTY NOTICE INFORMATION

Notices	Utility	Seller
All Notices:		
All Invoices:		
Scheduling:		
Payments:		
Wire Transfer:		
Credit and Collections:		
Notices of an Event of Default or Potential Event of Default:		

(continued)

EXHIBIT K

OFF-SYSTEM ADDENDUM

WHEREAS, Seller's Facility will not interconnect directly to Utility's System;

WHEREAS, Seller and Utility have not executed, and will not execute, a Generation Interconnection Agreement in conjunction with the Power Purchase Agreement;

WHEREAS, Seller has elected to exercise its right under PURPA to deliver Net Output from its Facility to Utility via one (or more) third-party Transmission Providers;

WHEREAS, Utility desires that Seller schedule delivery of Net Output on a firm, hourly basis; and

WHEREAS, Utility does not intend to buy, and Seller does not intend to deliver, more or less than the Net Output of the Facility (except as expressly provided, below);

THEREFORE, Seller and Utility do hereby agree to the following, which shall become part of their Power Purchase Agreement:

DEFINITIONS

Capitalized terms in this Exhibit K are defined in the Agreement or this Exhibit K:

"Day" means 0:00 hours to 24:00 hours, prevailing local time at the Point of Delivery, or any other mutually agreeable 24-hour period.

"Delivery Deficit" means any increment of the Facility's hourly Net Output, expressed in MWh, that is generated in excess of the scheduled hourly energy or capacity delivered to the Point of Delivery during that same hour.

"Firm Delivery" means uninterruptible transmission service (i.e., NERC priority level 7) that is reserved and/or scheduled between the Point of Interconnection and the Point of Delivery pursuant to Seller's Transmission Agreement(s).

"Off-Peak Surplus Delivery" means any positive difference, expressed in MWh, in a given calendar month between the total energy delivered in Off-Peak Hours by the Facility to Utility and the Facility's total Net Output in Off-Peak Hours for the calendar month, i.e., the positive difference between the aggregate Supplemented Delivery for the calendar month and the aggregate Delivery Deficit for the same calendar month, in each case, during Off-Peak Hours.

"On-Peak Surplus Delivery" means any positive difference, expressed in MWh, in a given calendar month between the total energy delivered in On-Peak Hours by the Facility to Utility and the Facility's total Net Output in On-Peak hours for the calendar month, i.e., the positive difference between the aggregate Supplemented Delivery for the calendar month and the aggregate Delivery Deficit for the same calendar month, in each case, during Off-Peak Hours.

(continued)

“Supplemented Delivery” means any increment of scheduled hourly energy or capacity, expressed in MWh, delivered to the Point of Delivery in excess of the Facility’s Net Output during that same hour.

“Surplus Delivery” means collectively, Off-Peak Surplus Delivery and On-Peak Surplus Delivery.

SUPPLEMENTAL PROVISIONS

1. Seller’s Responsibility to Arrange for Delivery of Net Output to Point of Delivery. Seller shall comply with the terms and conditions of the Transmission Agreement(s) between the Seller and the third-party Transmission Provider(s) and shall at all times on and after the Commercial Operation Date [or Initial Delivery Date, in the case of an existing QF] during the term of the Agreement hold rights sufficient to reserve Firm Delivery of Net Output up to the Maximum Delivery Rate to the Point of Delivery for the Term of the Agreement (i.e., such as through rollover rights). In the event Seller breaches the foregoing obligation and fails to cure such breach within thirty (30) days written notice from Utility, a Seller Event of Default shall have occurred, provided, however, that Seller shall be provided an additional ninety (90) days to cure if such breach cannot reasonably be cured within a thirty (30)-day period, is reasonably capable of being cured within the additional ninety (90)-day period, and Seller commences the cure within the initial thirty (30)-day period. In addition, with respect to any deliveries of Net Output for which Firm Delivery is not secured, Seller will be paid in the manner described in Section 5.1.1. of the Agreement in lieu of the Contract Price.

2. Seller’s Responsibility to Schedule Delivery. Seller shall schedule energy with NERC E-tags, pursuant to the most current NERC and WECC scheduling rules and practices, for all deliveries of energy hereunder to the Point of Delivery, by 6:00:00 [PPT/MPT] of the customary WECC pre-scheduling day for each day during the Term when Seller is delivering Net Output. Seller shall schedule the Facility as the identified e-Tag source. Seller may not net or otherwise combine schedules from resources other than the Facility. Seller shall not schedule any energy to be delivered to Utility pursuant to this Agreement using a Dynamic or Pseudo-Tie e-Tag as such terms are defined and used by NERC. Seller and Utility shall maintain records of hourly energy schedules for accounting and operating purposes. The final e-Tag shall be the controlling evidence of the Parties’ schedule. Seller shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour, or to the extent the Facility does not produce Net Output in whole MW increments, Seller shall make commercially reasonable efforts to schedule amounts intended to reasonably minimize Supplemental Delivery and Surplus Delivery in each month.

3. Seller’s Responsibility to Maintain Interconnection Facilities. Utility shall have no obligation to install or maintain any interconnection facilities on Seller’s side of the Point of Interconnection. Utility shall not pay any costs arising from Seller interconnecting its Facility with the Interconnection Provider.

4. Seller’s Responsibility to Pay Transmission Costs. Seller shall make all arrangements for, and pay all costs associated with, delivering Net Output to the Point of Delivery, including without limitation costs to schedule energy into Utility’s System.

5. Energy Reserve Requirements. Seller is responsible for obtaining all generation

(continued)

reserves as required by the third-party Transmission Provider(s) and WECC and/or as required by any other governing agency or industry standard to deliver the Net Output to the Point of Delivery, at no cost to Utility.

6. Seller’s Responsibility to Report Net Output and Supplemented Delivery. On or before the tenth (10th) day following the end of each calendar month, Seller shall send a report containing the information in **Example 1** below from the previous calendar month, in columnar format substantially similar to **Example 1** below. If requested, Seller shall provide an electronic copy of the data used to calculate Net Output, in a standard format specified by Utility. For each day Seller is late delivering the certified report, Utility shall be entitled to postpone its payment deadline in Section 10 of this Agreement by one (1) Business Day. Seller hereby grants Utility the right to audit its certified reports of hourly Net Output and agrees to allow Utility to have access to imbalance information kept by the Transmission Provider(s). In the event of discovery of a billing error resulting in underpayment or overpayment, the Parties agree to limit recovery to a period of three (3) years from the date of discovery.

7. Seller’s Supplemental Representations, Warranties and Covenants. In addition to the Seller’s representations and warranties contained in Section 3 of this Agreement, Seller represents, warrants, and covenants with respect to each delivery of energy to the Point of Delivery that:

- (a) Seller’s Surplus Delivery, if any, results from Seller’s purchase of some form of energy imbalance ancillary service;
- (b) The third-party Transmission Provider(s) requires Seller to procure energy imbalance ancillary service, as a condition of providing transmission service;
- (c) The third-party Transmission Provider(s) requires Seller to schedule deliveries of Net Output in increments of no less than one (1) MW;
- (d) Seller is not attempting to sell Utility energy or capacity in excess of the Facility’s Net Output; and
- (e) The energy imbalance ancillary service is designed to correct a mismatch between energy scheduled by the Seller and the actual real-time production by the Facility.

8. Acceptance of Supplemented Delivery. In reliance upon Seller’s warranties in Section 7, above, Utility agrees to accept deliveries of imbalance ancillary service energy from Seller in the form of Supplemented Delivery, and Utility will pay Seller the Contract Price for such Supplemental Delivery; provided, however, that Utility is not obligated to pay for Surplus Delivery.

Example 1:

Day	Hour Ending (HE)	Net Output at POI	Maximum Delivery Rate	Net Output in Excess of Maximum Delivery	Scheduled/ Delivered Energy (per e-Tag)	On-Peak Supplemented Delivery/ Delivery Deficit	Off-Peak Supplemented Delivery/ Delivery Deficit
1	1	-	1.50	-	-		-

(continued)

FORM OF STANDARD QF PPA (10MW OR LESS)
Small Power Production Facility – FIRM

1	2	(0.01)	1.50	-	-		-
1	3	(0.01)	1.50	-	-		-
1	4	(0.01)	1.50	-	-		-
1	5	(0.01)	1.50	-	-		-
1	6	0.64	1.50	-	1.00		0.36
1	7	0.83	1.50	-	1.00	0.17	
1	8	0.89	1.50	-	1.00	0.11	
1	9	0.99	1.50	-	1.00	0.01	
1	10	1.19	1.50	-	1.00	(0.19)	
1	11	1.29	1.50	-	1.00	(0.29)	
1	12	1.34	1.50	-	1.00	(0.34)	
1	13	1.44	1.50	-	1.00	(0.44)	
1	14	1.49	1.50	-	1.00	(0.49)	
1	15	1.48	1.50	-	1.00	(0.48)	
1	16	1.54	1.50	0.04	2.00	0.50	
1	17	1.59	1.50	0.09	2.00	0.50	
1	18	1.59	1.50	0.09	2.00	0.50	
1	19	0.99	1.50	-	1.00	0.01	
1	20	0.75	1.50	-	1.00	0.25	
1	21	0.58	1.50	-	1.00	0.42	
1	22	(0.01)	1.50	-	-	-	
1	23	(0.01)	1.50	-	-		-
1	24	(0.01)	1.50	-	-		-
...	...						
Total		18.55	36.00	0.22	19.00	0.24 (On-Peak Surplus Delivery*)	0.36 (Off-Peak Surplus Delivery*)

On-Peak Scheduled/Delivered Energy (MWhs): 18.00

Off-Peak Scheduled/Delivered Energy (MWhs): 1.00

Total MWhs Utility will pay for:

On-Peak MWhs: 18.00 – 0.24 = 17.76 MWhs

Off-Peak MWhs: 1.00 – 0.36 = 0.64 MWhs

Total MWhs: 18.40 MWhs

*Utility will accept but will not be obligated to pay for Surplus Delivery, per the terms of this [Exhibit K](#) and OAR 860-029-0121.

(continued)