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# Exhibit B

**Five Pine Project Power Purchase Agreement**



**POWER PURCHASE AGREEMENT  
BETWEEN  
CEDAR CREEK WIND, LLC  
AND  
PACIFICORP**

**Relating to Five Pine Project, an approximate 53.4 MW Wind Turbine Generation Project  
a non-fueled, on-system, Intermittent Resource with Mechanical Availability Guarantee,  
Idaho Qualifying Facility**

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## **POWER PURCHASE AGREEMENT**

THIS POWER PURCHASE AGREEMENT, relating to FIVE PINE, an approximate 53.4 MW wind turbine generation project, entered into this \_\_\_th day of December 2011, is between Cedar Creek Wind, LLC, a Delaware limited liability company (the "Seller") and PacifiCorp, an Oregon corporation acting in its merchant function capacity ("PacifiCorp"). Seller and PacifiCorp are referred to collectively as the "Parties" and individually as a "Party".

### **RECITALS**

A. Seller intends to construct, own, operate and maintain a wind facility, including Seller's Interconnection Facilities, for the generation of electric power located in Idaho, with an expected Facility Capacity Rating of approximately 53.4 megawatts as further described in Exhibit A and Exhibit B ("Facility").

B. Seller has secured rights to deliver output from its Facility to PacifiCorp across the interconnection and other facilities as further described in Exhibit B and Addendum L.

C. Seller intends to operate the Facility as a Qualifying Facility, as such term is defined in Section 1.59 below, and to sell Net Output to PacifiCorp in Idaho.

D. Seller estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is 140,590,489 kilowatt hours (kWh) ("Average Annual Net Output") pursuant to the Initial Year Energy Delivery Schedule in Section 4.3.1, which amount of energy PacifiCorp will include in its resource planning.

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

F. PacifiCorp intends to designate Seller's Facility as a Network Resource for the purposes of serving Network Load.

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

H. Seller has authorized Transmission Provider to release generation data to PacifiCorp. If yes, the authorization is attached as Exhibit H.

NOW, THEREFORE, the Parties mutually agree as follows:

### **SECTION 1. DEFINITIONS**

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

1.1 "As-built Supplement" shall be a supplement to Exhibit A, provided by Seller following completion of construction of the Facility, accurately describing the completed Facility.

1.2 "Availability" means, for any Billing Period, the ratio, expressed as a percentage, of (x) the aggregate sum of the turbine-minutes in which each of the Wind



Turbines at the Facility was available to generate at the Maximum Facility Delivery Rate during the Billing Period over (y) the product of the number of Wind Turbines that comprise the Facility Capacity Rating as of Commercial Operation multiplied by the number of minutes in such Billing Period. A Wind Turbine shall be deemed not available to operate during minutes in which it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; or (c) otherwise not operational or capable of delivering at the Maximum Facility Delivery Rate to the Point of Delivery; unless if unavailable due solely to (i) a default by PacifiCorp; (ii) to the extent not caused by Seller's actions, a curtailment in accordance with Section 6.3 or (iii) insufficient wind (including the normal amount of time required by the generating equipment to resume operations following a period when wind speed is below the Cut-In Wind Speed).

13 "Billing Period" means the time period between PacifiCorp's reading of its power purchase meter at the Facility, which for this Agreement shall coincide with calendar months.

14 "CAMD" means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving Green Tags or any attribute thereof.

15 "Commercial Operation" means that not less than the 90% of the expected Facility Capacity Rating is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the System, all of which shall be Seller's responsibility to receive or obtain, and which occurs when all of the following events (i) have occurred, and (ii) remain simultaneously true and accurate as of the date and moment on which Seller gives PacifiCorp notice that Commercial Operation has occurred:

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

1.5.2 Start-Up Testing of the Facility has been completed in accordance with Exhibit E.

1.5.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, an attorney in good standing in Idaho, or a letter from Transmission Provider, stating that, in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the System in conformance with the Generation Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement, and the Facility is fully integrated and synchronized with the System.

1.5.4 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, or an attorney in good standing in Idaho, stating that Seller has obtained all Required Facility Documents and, if requested by PacifiCorp

in writing, Seller shall have provided copies of any or all such requested Required Facility Documents.

1.5.5 Seller has complied with the security requirements of Section 11.

1.5.6 Network Resource Designation and Transmission Service Request

(i) PacifiCorp has received confirmation from the Transmission Provider that the Facility has been designated as a Network Resource and (ii) PacifiCorp has received confirmation from the Transmission Provider that the transmission service request has been granted in sufficient capacity to meet or exceed the Maximum Facility Delivery Rate and the Seller has paid all costs associated with any requirements of the transmission service request.

1.6 "Commercial Operation Date" means the date, as designated by PacifiCorp pursuant to Section 2.4, the Facility first achieves Commercial Operation.

1.7 "Commission" means the Idaho Public Utilities Commission.

1.8 "Conforming Energy" means all Net Energy except Non-Conforming Energy.

1.9 "Conforming Energy Purchase Price" means the applicable price for Conforming Energy and capacity, specified in Section 5.1.

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

1.11 "Cut-in Wind Speed" means the wind speed at which a stationary wind turbine begins producing Net Energy, as specified by the turbine manufacturer and set forth in Exhibit A.

1.12 "Default Security" shall have the meaning set forth in Section 11.2 of this Agreement.

1.13 "Delay Liquidated Damages", "Delay Daily Minimum", "Delay Period", "Delay Price" and "Delay Volume" shall have the meanings set forth in Section 2.5 of this Agreement.

1.14 "Delay Security" shall have the meaning set forth in Section 11.1.1 of this Agreement.

1.15 "Effective Date" shall have the meaning set forth in Section 2.1 of this Agreement.

1.16 "Energy Delivery Schedule" shall have the meaning set forth in Section 4.3 of this Agreement.



1.17 **"Environmental Attributes"** means any and all claims, credits, emissions reductions, offsets, and allowances, howsoever entitled, associated with the generation of Output from the Facility or the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, that is capable of being measured, verified, or calculated. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and, (3) all WREGIS Certificates. Environmental Attributes do not include (i) Production Tax Credits or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, or (ii) adverse wildlife or environmental impacts.

1.18 **"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 and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

1.19 **"Expected Facility Capacity Rating"** shall be approximately 53.4 MW and the sum of the Facility Capacity Rating of this Agreement and the facility capacity rating under the power purchase agreement between the Parties relating to North Point shall in no event exceed 133.4 MW.

1.20 **"Expiration Date"** shall have the meaning set forth in Section 2.1 of this Agreement.

1.21 **"Facility"** is defined in Recital A of this Agreement.

1.22 **"Facility Capacity Rating"** means the sum of the Nameplate Capacity Ratings for all Wind Turbine generators comprising the Facility.

1.23 **"Force Majeure"** has the meaning set forth in Section 15.1.

1.24 **"Forced Outage"** means an outage that requires removal of one or more Wind Turbines from service, another outage state or a reserve shutdown state before the end of the next weekend. Maintenance Outages and Planned Outages are not Forced Outages.

1.25 **"Generation Interconnection Agreement"** means the generation interconnection agreement entered into separately between Seller and Transmission Provider, as applicable, specifying the Point of Delivery and providing for the construction and operation of the Interconnection Facilities.

1.26 **"Green Tags"** means (a) the Environmental Attributes associated with all Output, together with (b) the Green Tag Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified," or otherwise. One



Green Tag represents the Environmental Attributes made available by the generation of one MWh of energy from the Facility.

1.27 **"Green Tag Reporting Rights"** means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, and include reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

1.28 **"Governmental Authority"** means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, PacifiCorp or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

1.29 **"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.

1.30 **"Inadvertent Energy"** means energy delivered to the Point of Delivery at a rate exceeding the Maximum Facility Delivery Rate on an hour-averaged basis. Inadvertent Energy is not included in Net Energy.

1.31 **"Index Price"**, for each day, shall mean the weighted average of the average Peak and Off-Peak firm energy market prices, as published in the *Intercontinental Exchange (ICE) Day Ahead Power Price Report* for the Palo Verde Hub for such day. For Sunday and NERC holidays, the 24-Hour Index Price shall be used, unless ICE shall publish a Firm On-Peak and Firm Off-Peak Price for such days for Palo Verde, in which event such indices shall be utilized for such days. If the ICE index or any replacement of that index ceases to be published during the term of this Agreement, PacifiCorp shall select as a replacement a substantially equivalent index that, after any appropriate or necessary adjustments, provides the most reasonable substitute for the index in question. PacifiCorp's selection shall be subject to Seller's consent, which Seller shall not unreasonably withhold, condition or delay.

1.32 **"Initial Year Energy Delivery Schedule"** shall have the meaning set forth in Section 4.3.1.

1.33 **"Interconnection Facilities"** means all the facilities and ancillary equipment used to interconnect the Facility to the System, as defined in the Generation Interconnection Agreement.

1.34 **"Letter of Credit"** means an irrevocable standby letter of credit in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder. Such letter of credit shall be provided by an institution that is a United States office of a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, with a credit rating on its long-term senior unsecured debt of at least "A" from Standard & Poor's and "A2" from Moody's



Investor Services, and (unless otherwise agreed) having assets of at least \$10,000,000,000 (net of reserves).

1.35 **"Licensed Professional Engineer"** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Idaho, who has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called to provide a certification, evaluation and/or opinion, who has no economic relationship, association, or nexus with Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with the Seller.

1.36 **"Maintenance Outage"** means any outage of one or more Wind Turbines that is not a Forced Outage or a Planned Outage. A Maintenance Outage is an outage that can be deferred until after the end of the next weekend, but that requires that the Wind Turbine(s) be removed from service before the next Planned Outage. A Maintenance Outage may occur any time during the year and must have a flexible start date.

1.37 **"Material Adverse Change"** shall mean, with respect to the Seller, if the Seller has experienced a change in facts or circumstances related to development or operation of the Facility that materially and adversely impact Seller's ability to fulfill its obligations under this Agreement.

1.38 **"Maximum Facility Delivery Rate"** means the maximum instantaneous rate (kW) at which the Facility is capable of delivering Net Output at the Point of Delivery, as specified in Exhibit A, and in compliance with the Generation Interconnection Agreement.

1.39 **"Maximum GIA Delivery Rate"** means the maximum rate (kW) at which the Generator Interconnection Agreement allows the Facility to deliver energy to the Point of Delivery and is set forth in Exhibit A.

1.40 **"Nameplate Capacity Rating"** means the maximum instantaneous generating capacity of any qualifying small power or cogeneration generating unit supplying all or part of the energy sold by the Facility, expressed in MW or kW, when operated consistent with the manufacturer's recommended power factor and operating parameters, as set forth in a notice from Seller to PacifiCorp delivered before the Commercial Operation Date and, if applicable, updated in the As-built Supplement.

1.41 **"NERC"** means the North American Electric Reliability Corporation.

1.42 **"Net Energy"** means the energy component, in kWh, of Net Output. Net Energy does not include Inadvertent Energy.

1.43 **"Net Output"** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments, if any. For purposes



of calculating payment under this Agreement, Net Output of energy shall be calculated as set forth in Addendum L. Net Output does not include Inadvertent Energy.

1.44 **"Network Resource"** shall have the meaning set forth in the Tariff.

1.45 **"Network Service Provider"** means PacifiCorp Transmission, as a provider of network service to PacifiCorp under the Tariff.

1.46 **"Non-Conforming Energy"** means Net Output produced by the Facility prior to the Commercial Operation Date.

1.47 **"Non-Conforming Energy Purchase Price"** means the applicable price for Non-Conforming Energy and capacity, specified in Section 5.1.

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

1.49 **"On-Peak Hours"** means hours from 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time, Monday through Saturday, excluding Western Electricity Coordinating Council (WECC) and North American Electric Reliability Corporation (NERC) holidays.

1.50 **"Output Shortfall"** and **"Output Shortfall Damages"** shall have the meanings set forth in Section 4.5 of this Agreement.

1.51 **"PacifiCorp"** is defined in the first paragraph of this Agreement, and excludes PacifiCorp Transmission.

1.52 **"PacifiCorp Transmission"** means PacifiCorp, an Oregon corporation, acting in its interconnection and transmission function capacity.

1.53 **"Planned Outage"** means an outage of predetermined duration that is scheduled in Seller's Energy Delivery Schedule. Boiler overhauls, turbine overhauls or inspections are typical planned outages. Maintenance Outages and Forced Outages are not Planned Outages.

1.54 **"Point of Delivery"** means the point of interconnection between the Facility and the System, as specified in the Generation Interconnection Agreement and in Exhibit B.

1.55 **"Premises"** means the real property on which the Facility is or will be located, as more fully described on Exhibit A.

1.56 **"Prime Rate"** means 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 JPMorgan Chase & Co. If a JPMorgan Chase & Co. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.57 **"Production Tax Credits"** means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the term hereof or any successor or other provision providing for a federal tax credit determined by reference to renewable

electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Facility is eligible. Production Tax Credits do not include any tax credit determined by reference to investment.

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

1.59 **"QF"** means **"Qualifying Facility"**, as that term is defined in the version of FERC Regulations (codified at 18 CFR Part 292) in effect on the date of this Agreement.

1.60 **"Required Facility Documents"** means all deeds, titles, leases (including Wind Leases), licenses, permits, authorizations, and agreements demonstrating that Seller controls the necessary property rights and government authorizations to construct, operate, and maintain the Facility, including without limitation those set forth in Exhibit C.

1.61 **"Requirements of Law"** means any applicable and mandatory (but not merely advisory) federal, state and local law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

1.62 **"Scheduled Commercial Operation Date"** means the date by which Seller promises to achieve Commercial Operation, as specified in Section 2.2.8.

1.63 **"Scheduled Monthly Energy Delivery"** means the Net Energy scheduled to be delivered during a given calendar month, as specified by Seller in the Energy Delivery Schedule.

1.64 **"Shared Interconnection Facilities"** means that portion of the Interconnection Facilities used by the Facility and one or more other Qualifying Facilities as further described in Exhibit B.

1.65 **"Seller's Forecast-Cost Share"** and **"Seller's Capped Forecast-Cost Share"** shall have the meanings set forth in Sections 8.2 and 8.3 respectively.

1.66 **"Subsequent Energy Delivery Schedule"** shall have the meaning set forth in Section 4.3.3.

1.67 **"System"** means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generation Interconnection Agreement.



1.68 **"Tariff"** means the PacifiCorp Transmission FERC Electric Tariff Seventh Revised Volume No. 11 Pro Forma Open Access Transmission Tariff or the Transmission Provider's corresponding FERC tariff or both, as revised from time to time.

1.69 **"Transmission Provider"** means PacifiCorp Transmission or a successor, including any regional transmission organization ("RTO").

1.70 **"Wind Leases"** means the memoranda of wind lease and redacted wind leases recorded in the county in which the Facility is located in connection with the development of the Facility, as the same may be supplemented, amended, extended, restated, or replaced from time to time.

1.71 **"Wind Turbine"** means the type of wind turbine specified and more fully described in Exhibit A as such Exhibit A may be updated pursuant to Section 2.2.5.

1.72 **"WREGIS"** means the Western Renewable Energy Generation Information System.

1.73 **"WREGIS Certificate"** means "Certificate" as defined by WREGIS in the WREGIS Operating Rules.

1.74 **"WREGIS Operating Rules"** means the operating rules and requirements adopted by WREGIS.

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

2.1 This Agreement shall become effective after execution by both Parties and after approval by the Commission pursuant to a final and non-appealable order ("**Effective Date**"), that the prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the costs incurred by PacifiCorp for purchases of capacity and energy from Seller are legitimate expenses, all of which the Commission will allow PacifiCorp to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses. Unless earlier terminated as provided herein, this Agreement shall remain in effect until the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date ("**Expiration Date**").

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

2.2.1 By the date that is four (4) months prior to the Scheduled Commercial Operation Date, Seller shall obtain and provide to PacifiCorp copies of all governmental permits and authorizations listed in Exhibit C.

2.2.2 By the date that is 270 days prior to the Scheduled Commercial Operation Date, Seller shall provide one hundred percent (100%) of the Delay Security required under Section 11.1.1, as applicable.

2.2.3 The Parties acknowledge and agree that prior to the Effective Date, Seller: (i) has provided all information and paid all fees the Transmission Provider



requires to designate the Facility as a Network Resource in accordance with the Tariff (OATT); and (ii) has provided all information reasonably required by PacifiCorp to submit a transmission service request for the Facility to the Transmission Provider pursuant to the Tariff. Within 10 days of the Seller providing notice definitively establishing a single Capacity Rating for the Facility within the range contemplated in the Expected Facility Capacity Rating, PacifiCorp shall amend the current Network Resource designation request for the Facility as required to reflect the Facility as described in the Agreement.

2.2.4 At least ten (10) business days prior to delivery of any energy from the Facility to PacifiCorp, Seller shall provide PacifiCorp with an executed Generation Interconnection Agreement.

2.2.5 Within one hundred eighty (180) days prior to the Scheduled Commercial Operation Date, Seller shall provide PacifiCorp with amended Exhibits, which may include the designation of alternative Wind Turbines for the Facility, and such other updates to the information contained therein.

2.2.6 Prior to the Commercial Operation Date, Seller shall provide Default Security required under Section 11.2, if applicable.

2.2.7 Prior to the Commercial Operation Date, Seller shall provide PacifiCorp with an As-built Supplement reasonably acceptable to PacifiCorp.

2.2.8 Seller shall use commercially reasonable efforts to achieve Commercial Operation by 00:00 PPT December 31, 2012, but in no event shall Commercial Operation occur later than 00:00 PPT March 1, 2014. For the avoidance of doubt, Seller shall have no liability for Delay Liquidated Damages or be liable for other penalties if Commercial Operation takes place by March 1, 2014. Seller shall provide PacifiCorp with notice of the Scheduled Commercial Operation Date no less than ten (10) months prior to such date.

2.2.9 Seller shall provide written confirmation of the expected Facility Capacity Rating for the Facility on or before January 31, 2012. This notice shall definitively establish a single Capacity Rating for the Facility within the range contemplated in the Expected Facility Capacity Rating.

2.3 Beginning on January 6, 2012 and on the fifth (5<sup>th</sup>) business day of each month thereafter until the Commercial Operation Date, Seller shall provide PacifiCorp a one-page monthly update by e-mail on the progress of the milestones in Section 2.2.

2.4 Establishing Commercial Operation. Seller shall provide written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation. PacifiCorp shall have ten (10) business days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PacifiCorp reasonably believes has not been satisfied. If, within such ten (10) business day period, PacifiCorp either does not respond or else confirms that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PacifiCorp notifies Seller within such ten (10) business day period



that PacifiCorp reasonably believes the Facility has not achieved Commercial Operation, Seller may, if it has a good faith belief that Commercial Operation has been achieved, submit a Technical Dispute Notice, or else Seller shall address the concerns stated in PacifiCorp's notice to the mutual satisfaction of both Parties. If Seller submits a Technical Dispute Notice and the Technical Expert determines that Commercial Operation has been achieved, then the Commercial Operation Date shall be the date, as determined by the Technical Expert, that the Facility first met all the requirements of Commercial Operation; otherwise the date upon which Seller has addressed the concerns stated in PacifiCorp's notice to PacifiCorp's reasonable satisfaction, as specified in a notice from PacifiCorp to Seller, shall be the Commercial Operation Date. If Commercial Operation is achieved at less than one hundred percent (100%) of the expected Facility Capacity Rating and Seller informs PacifiCorp that Seller intends to bring the Facility to one hundred percent (100%) of the expected Facility Capacity Rating, Seller shall provide PacifiCorp with a list of all items to be completed in order to achieve the expected Facility Capacity Rating.

2.4.1 Technical Expert. If, and only if, a dispute regards (i) whether or not Commercial Operation has been achieved, and/or (ii) the date when Commercial Operation was achieved, the Parties may have such dispute, and only such dispute, resolved pursuant to this Section 2.4.1. Any such dispute will be determined by an independent technical expert, who shall be a mutually acceptable third party with training and experience in the disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion (the "Technical Expert"), which determination shall be (X) made (subject to the terms in this Section 2.4) in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on October 1, 2009 (the "Technical Dispute Procedures"), notwithstanding any dollar amounts or dollar limitations contained therein, and (Y) binding upon the Parties.

(a) Either Party may commence the dispute process as to the matters set forth in paragraph 2.4.1, above, with the American Arbitration Association ("AAA") by notifying AAA and the other Party in writing ("Technical Dispute Notice") of such Party's desire that the dispute be resolved through a determination by a Technical Expert.

(b) The determination shall be conducted by a sole Technical Expert. The Parties may select any mutually acceptable Technical Expert. If the Parties cannot agree on a Technical Expert within five (5) days after the date of the Technical Dispute Notice, then the AAA's Arbitration Administrator shall send a list and resumes of three (3) available technical experts meeting the qualifications set forth in Section 2.4.1 to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the Technical Expert. If more than one name remains, either because one or both Parties have failed to respond to the AAA's Arbitration Administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's Arbitration Administrator will choose the Technical Expert from the remaining names. If the designated Technical Expert shall die, become incapable or, unwilling to, or unable to serve or proceed with the determination, a substitute Technical Expert shall be appointed in accordance with the selection procedure described above, and such substitute Technical Expert shall have all such powers as if he or she has been originally appointed herein.



(c) Within thirty (30) days of the appointment of the Technical Expert pursuant to the foregoing sub-section, each Party shall submit to the Technical Expert (and copy the other Party) a written report containing its position with respect to the dispute, and arguments therefor together with supporting documentation and calculations. Discovery shall be limited to Facility documentation relating to the disputed matter. Within sixty (60) days from receipt of such submissions, the Technical Expert shall select one or the other Party's position with respect to the disputed, arbitratable issues set forth in Section 2.4.1 above, whereupon such selection shall be a binding determination upon the Parties for all purposes hereof. The costs of the Technical Expert, including his or her fees and expenses, shall be borne by the Party whose position was not selected by the Technical Expert; each Party shall otherwise bear its own expenses. If the Technical Expert fails to render a decision within ninety (90) days from receipt of each Party's submissions, either Party may, prior to the Technical Expert's final decision, initiate litigation, in which case the Technical Expert's final decision shall not be binding on the Parties unless otherwise agreed.

2.4.2 All verbal and written communications between the Parties and issued or prepared in connection with this Section 2.4.1 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

2.4.3 All deadlines specified in this Section 2.4 may be extended by mutual agreement of the Parties.

2.5 Delay Damages. Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be liable to pay PacifiCorp delay damages for the number of days ("Delay Period") that the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, until the earlier occurrence of the Commercial Operation Date or the termination of this Agreement ("Delay Liquidated Damages"), *provided that* Seller shall not accrue any Delay Liquidated Damages after: (i) Seller has timely achieved the milestone in Section 2.2.3; and (ii) Seller has satisfied all requirements of Commercial Operation except for one or more requirements in Section 1.5.6. Billings and payments for Delay Liquidated Damages shall be made in accordance with Section 11.1.

2.5.1 Delay Liquidated Damages. Delay Liquidated Damages equals the sum of: for each day in the Delay Period, the greater of (1) the Delay Daily Minimum or (2) the Delay Price times the Delay Volume,

Where:

"Delay Daily Minimum" equals (a) for the first forty-five (45) calendar days following the Scheduled Commercial Operation Date: one-ninetieth (1/90th) of forty-five dollars (\$45) multiplied by the Maximum Facility Delivery Rate with the Maximum Facility Delivery Rate being measured in kW; (b) after the forty-fifth (45<sup>th</sup>) calendar day following the Scheduled Commercial Operation Date: the Delay Price times the Delay Volume.



"Delay Price" equals the positive difference, if any, of the Index Price minus the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices; and

"Delay Volume" equals the applicable Scheduled Monthly Energy Delivery divided by the number of days in that month.

2.5.2 Appropriateness of Damages. The Parties agree that the damages PacifiCorp would incur due to delay in the Facility achieving Commercial Operation on or before the Scheduled Commercial Operation Date would be difficult or impossible to predict with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

3.2.1 Seller is a limited liability company duly organized and validly existing under the laws of Delaware.

3.2.2 Seller has the requisite power and authority to enter into this Agreement and has, or will have at the date of Commercial Operation of the Facility, all requisite power and authority to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.



3.2.3 Seller's shareholders, directors, and officers have taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

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

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

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF. Within thirty (30) days after the Effective Date, Seller shall provide the appropriate QF certification, which may include a Federal Energy Regulatory Commission self-certification to PacifiCorp. At any time thereafter that PacifiCorp has reason to believe during the term of this Agreement that Seller's status as a QF is in question, PacifiCorp may require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing in the state of Idaho and who has no economic relationship, association or nexus with the Seller or the Facility (other than in a capacity as counsel providing such requested legal opinion), stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained the Facility as a QF.

3.2.7 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.

3.2.8 Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.

3.2.9 Seller is not in default under any of its other material agreements that would result in Seller's failure to perform its material obligations hereunder.

3.2.10 Seller owns all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances created by or through Seller related to third-party financing of the Facility, and Seller (or its successor in interest) will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.



3.2.11 In entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of PacifiCorp in connection with the transactions contemplated by this Agreement.

3.2.12 All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

3.2.13 All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibit C. Upon request by PacifiCorp, Seller shall provide copies of the Wind Leases to PacifiCorp.

3.2.14 All information about the Facility set forth in Exhibit A, Exhibit B, and Exhibit C has been verified by Seller and is accurate to the best of its knowledge.

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

#### SECTION 4. DELIVERY OF POWER; AVAILABILITY GUARANTY

4.1 Delivery and Acceptance of Net Output. Except for any curtailment specified in Section 6.3, unless otherwise provided herein, PacifiCorp will purchase and Seller will sell all Net Output from the Facility.

4.2 No Sales to Third Parties. During the term of this Agreement, Seller shall not sell any Net Output from the Facility to any entity other than PacifiCorp.

4.3 Energy Delivery Schedule. Seller shall prepare and provide to PacifiCorp, on an ongoing basis, a written schedule of Net Energy expected to be delivered by the Facility ("Energy Delivery Schedule"), in accordance with the following:

4.3.1 During the first twelve full calendar months following the Commercial Operation Date, Seller predicts that the Facility will produce and deliver the following monthly amounts ("Initial Year Energy Delivery Schedule"):

<u>Month</u>	<u>Energy Delivery (kWh)</u>	<u>Average kW</u>
January	11,886,749	15,977
February	11,753,176	17,490
March	13,150,477	17,675
April	12,126,321	16,842
May	11,323,363	15,220

June	10,889,607	15,124
July	9,552,851	12,840
August	10,229,731	13,750
September	10,384,257	14,423
October	11,822,346	15,890
November	13,467,749	18,705
December	14,003,863	18,822
TOTAL:	140,590,489	16,063

4.3.2 Seller may revise the Initial Year Energy Delivery Schedule any time prior to the Commercial Operation Date.

4.3.3 Beginning at the end of the ninth full calendar month of operation, and at the end of every third month thereafter, Seller shall supplement the Energy Delivery Schedule with three additional months of forward estimates (which shall be appended to this Agreement using the format specified in Exhibit D) ("Subsequent Energy Delivery Schedule"), such that the Energy Delivery Schedule will provide at least three months of scheduled energy estimates at all times. Seller shall provide Subsequent Energy Delivery Schedules no later than 5:00 pm PPT of the 5th day after the due date. If Seller does not provide a Subsequent Energy Delivery Schedule by the above deadline, scheduled energy for the omitted period shall equal the amounts scheduled by Seller for the same three-month period during the previous year.

4.3.4 Upon and after the Commercial Operation Date, Seller may no longer revise the Energy Delivery Schedule for the first six full calendar months of Commercial Operation. After 5:00 p.m. PPT of the fifth business day following the end of the third full calendar month of Commercial Operation and the end of each third calendar month thereafter, Seller may no longer revise the Energy Delivery Schedule for the six calendar months immediately following such third month. Subject to the foregoing restrictions in this Section 4.3.4, Seller may revise the Energy Delivery Schedule for any unrestricted month by providing written notice to PacifiCorp. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

4.4 Minimum Availability Obligation. Seller shall cause the Facility to achieve an Availability of at least 85% during each month ("Guaranteed Availability").

4.5 Liquidated Damages for Output Shortfall. If the Availability in any given month falls below the Guaranteed Availability, the resulting shortfall shall be expressed in kWh as the "Output Shortfall." The Output Shortfall shall be calculated in accordance with the following formula:

$$\text{Output Shortfall} = (\text{Guaranteed Availability} - \text{Availability}) * \text{Scheduled Monthly Energy Delivery}$$

Seller shall pay PacifiCorp for any Output Shortfall at the lower of (1) the positive difference, if any, of the Index Price minus the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices; or (2) the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices ("Output Shortfall Damages").



**Output Shortfall Damages = Output Shortfall \* Output Shortfall Price**

Where:

**Output Shortfall Price =** (Index Price - Weighted Average CEPP), except that if Output Shortfall Price < 0, then Output Shortfall Price = 0, and except that if Output Shortfall Price > Weighted Average CEPP, then Output Shortfall Price = Weighted Average CEPP

**Weighted Average CEPP =** the Weighted Average On-Peak and Off-Peak Conforming Energy Purchase Prices for the month of Output Shortfall

If an Output Shortfall occurs in any given month, Seller may owe PacifiCorp liquidated damages. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to the Facility's failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty, and (b) the liquidated damages contemplated in this Section 4.5 are a fair and reasonable calculation of such damages.

**4.6 Audit Rights.** In addition to data provided under Sections 9.3 and 9.4, PacifiCorp shall have the right, but not the obligation, to audit the Facility's compliance with its Guaranteed Availability using any reasonable methods. Seller agrees to retain all performance related data for the Facility for a minimum of three years, and to cooperate with PacifiCorp in the event PacifiCorp decides to audit such data.

**4.7 Transfer of Title to Green Tags; Documentation of Green Tags Transfers.** For a period of ten (10) years from the Commercial Operation Date, Seller shall have title to the Green Tags immediately upon the generation of the Output at the Facility that gives rise to such Green Tags. On the tenth (10<sup>th</sup>) anniversary of the Commercial Operation Date through and including the Expiration Date, PacifiCorp shall have title to the Green Tags immediately upon the generation of the Output at the Facility that gives rise to such Green Tags. Each Party shall execute all additional documents and instruments reasonably requested by the other Party in order to further document the ownership of the Green Tags during the respective Party's ownership. Without limiting the generality of the foregoing, Seller shall, on or before the 10th day of each month during which PacifiCorp has ownership rights to the Green Tags, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale (in the form attached as Exhibit 4.7(A)) for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any verification that is in conformance with the then-current Center for Resource Solution's Green-e program, or any successor program. The Party having ownership of the Green Tags at the time (the "Green Tag Owner"), at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. The Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. The Green Tag Owner shall be responsible for any costs charged by the qualified reporting entity for the Facility to participate in and comply with, during the Term, all aspects of WREGIS. The Green Tag Owner shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules, including but not limited to those rules



related to effectuating the transfer of WREGIS Certificates and transferring such WREGIS Certificates in accordance with WREGIS reporting protocols and WREGIS Operating Rules and as required under this Agreement. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form similar to that in Exhibit 4.7(B) or elect to act as its own WREGIS-defined Qualified Reporting Entity. Seller shall upon written request from PacifiCorp provide copies of all documentation submitted to WREGIS in connection with the Facility. Further, upon notification by WREGIS or CAMD that any transfers of Green Tags contemplated by this Agreement have not been recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall at its expense cause the Facility to maintain its registration in good standing with the Center for Resource Solution's Green-e program, or any successor program, throughout the Term; provided, however that each Party shall (a) not take any action (other than the provision of truthful information) to impair the Facility's good standing with such program and (b) shall provide such information as is reasonably requested to maintain such registration. The Parties shall reasonably cooperate in any registration of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which the Parties may wish to register or maintained registered the Facility by providing copies of all such information as reasonably required for such registration. Neither Party represents or warrants that the Green Tags can be used for any purpose. The Parties acknowledge that the Green Tags may be subject to action by Governmental Authority and neither Party is liable to the other Party for action taken by a Governmental Authority in connection with the Green Tags that is not a result of a breach of this Agreement.

## SECTION 5. PURCHASE PRICES

5.1 Energy Purchase Price. Except as provided in Section 5.3, PacifiCorp will pay Seller Conforming Energy Purchase Prices or Non-Conforming Energy Purchase Prices, as applicable, for Net Output adjusted for the month and On-Peak Hours or Off-Peak Hours and the wind integration cost using the following formulae:

$$\text{Conforming Energy Purchase Price} = (\text{AR}_{ce} * \text{MPM}) - \text{WIC}$$

$$\text{Non-Conforming Energy Purchase Price} = (\text{AR}_{nce} * \text{MPM}) - \text{WIC}$$

Where:

$\text{AR}_{ce}$  = Conforming Energy annual rate from Table 1, below, for the year of the Net Output.

$\text{AR}_{nce}$  = the lower of:  
85% of the Conforming Energy annual rate from Table 1 below, for the year of Net Output

or

85% of average of the daily Index Price for each day of the month, or portion of month, of Net Output.

$\text{MPM}$  = monthly On-Peak or Off-Peak multiplier from Table 2 below, that corresponds to the month of the Net Output and whether

the Net Output occurred during On-Peak Hours or Off-Peak Hours.

WIC = \$6.50/MWh, the wind integration cost prescribed in Commission Order No. 31021.

Example calculations are provided in Exhibit G.

**Table 1: Conforming Energy Annual Rates**

Year	Conforming Energy Annual Rate (AR <sup>1</sup> ) S/MWh
2012	63.97
2013	67.51
2014	71.32
2015	75.40
2016	77.76
2017	80.07
2018	82.58
2019	85.05
2020	87.61
2021	90.63
2022	93.78
2023	97.05
2024	100.44
2025	103.98
2026	106.98
2027	110.07
2028	113.26
2029	116.56
2030	119.95
2031	124.51
2032	128.50
2033	132.64
2034	136.92

**Table 2: Monthly On-Peak/Off-Peak Multipliers**

Month	On-Peak Hours	Off-Peak Hours
January	103%	94%
February	105%	97%
March	95%	80%
April	95%	76%
May	92%	63%
June	94%	65%
July	121%	92%
August	121%	106%



September	109%	99%
October	115%	105%
November	110%	96%
December	129%	120%

## 5.2 Payment.

For each Billing Period in each Contract Year, PacifiCorp shall pay Seller as follows:

For delivery of Conforming Energy:

$$\text{Payment} = (\text{CEnergy}_{\text{On-Peak}} * \text{CEPPrice}_{\text{On-Peak}} / 1000) + (\text{CEnergy}_{\text{Off-Peak}} * \text{CEPPrice}_{\text{Off-Peak}} / 1000)$$

For delivery of Non-Conforming Energy:

$$\text{Payment} = (\text{NCEnergy}_{\text{On-Peak}} * \text{NCEPPrice}_{\text{On-Peak}} / 1000) + (\text{NCEnergy}_{\text{Off-Peak}} * \text{NCEPPrice}_{\text{Off-Peak}} / 1000)$$

Where:

CEnergy	=	Conforming Energy in kWh
CEPPrice	=	Conforming Energy Purchase Price in \$/MWh
NCEnergy	=	Non-Conforming Energy Purchase Price in kWh
NCEPPrice	=	Non-Conforming Energy Purchase Price in \$/MWh
On-Peak	=	the corresponding value for On-Peak Hours
Off-Peak	=	the corresponding value for Off-Peak Hours

5.3 Inadvertent Energy. So long as acceptance of Inadvertent Energy does not cause PacifiCorp to violate the terms of its Network Transmission Service and is consistent with Prudent Electrical Practices, PacifiCorp will accept Inadvertent Energy, but will not purchase or pay for Inadvertent Energy.

5.4 Additional Compensation. Seller shall not be entitled to any compensation over and above the Conforming Energy Purchase Prices or Non-Conforming Energy Purchase Prices, as the case may be, for the Green Tags associated therewith.

## SECTION 6. OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of any construction affecting the Facility, Seller shall provide PacifiCorp an As-built Supplement bearing the stamp of a Licensed Professional Engineer that accurately depicts the Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Operation. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have



no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.3 Curtailment. PacifiCorp shall not be obligated to purchase, receive, pay for, or pay any damages associated with, Net Output (or associated Production Tax Credits or Environmental Attributes) if such Net Output (or associated Production Tax Credits or Environmental Attributes) is not delivered to the System or Point of Delivery due to any of the following: (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement, (b) the Transmission Provider or Network Service Provider directs a general curtailment, reduction, or redispatch of generation in the area (which would include the Net Output) for any reason, even if such curtailment or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in order to meet its obligations to the Transmission Provider or Network Service Provider to operate within system limitations, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output. Seller shall reasonably determine the MWh amount of Net Output curtailed pursuant to this Section 6.3 after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of such curtailed energy based on (x) the time and duration of the curtailment period and (y) wind conditions recorded at the Facility during the period of curtailment and the power curve specified for the Wind Turbines as shown in Exhibit A. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a curtailment described in this Section 6.3.

6.4 PacifiCorp as Merchant. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission or any successor Transmission Provider.

6.5 Outages.

6.5.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule Planned Outage during any portion of the months of November, December, January, February, June, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above or to the extent such Planned Outage is required in accordance with Prudent Electrical Practices. Seller shall, in Exhibit D, provide PacifiCorp



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 day of that Contract Year, and shall promptly update such schedule, or otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule more than one hundred fifty (150) hours of Planned Outages for each calendar year. Seller shall notify PacifiCorp of any deviation to the annual Planned Outage schedule, above, on the Monday preceding the scheduling week in which the sooner of the following will occur: (a) the outage as predicted in the Planned Outage schedule; or (b) the outage per Seller's revised plans. Such notice shall consist of a Monday-Sunday, hourly spreadsheet showing the revised total Facility curtailment (MW) for that scheduling week. Seller shall not schedule any maintenance of Shared Interconnection Facilities during November, December, January, February, June, July, or August, without the prior written approval of PacifiCorp, which approval may be reasonably withheld by PacifiCorp.

**6.5.2 Maintenance Outages.** If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then existing wind conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp. Seller shall take all reasonable measures and use commercially reasonable efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: June 15 through June 30, July, August, and September 1 through September 15. Seller shall include in such notice of a proposed Maintenance Outage 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. Seller may provide notices under this Section 6.5.2 orally. Seller shall confirm any such oral notification in writing as soon as practicable. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with PacifiCorp's request to modify the schedule for a Maintenance Outage if such modification has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity of the Facility during such Maintenance Outage and any changes in the Maintenance Outage completion date and time. Seller shall take all reasonable measures and exercise its commercially reasonable efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

**6.5.3 Forced Outages.** Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp, of any Forced Outage of the Facility. Such report shall include the amount of generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date and time of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. If the Forced Outage resulted in more than 15% of the Facility Capacity Rating of the Facility being unavailable, Seller shall confirm the oral report in writing as soon as practicable. Seller shall take all reasonable measures and exercise its commercially reasonable efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.



**6.5.4 Notice of Deratings and Outages.** Without limiting other notice requirements, Seller shall notify PacifiCorp, via telephone or via electronic mail, to a number or email address specified by PacifiCorp, of any limitation, restriction, derating or outage known to Seller that affects the generation capacity of the Facility in an amount greater than five percent (5%) of the Facility Capacity Rating for the following day. Seller shall promptly update such notice to reflect any material changes to the information in such notice.

**6.5.5 Effect of Outages on Estimated Output.** Seller shall factor Planned Outages and Maintenance Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility into the Scheduled Monthly Energy Delivery amounts in the Energy Delivery Schedule set forth in **Exhibit D**.

**6.6 Scheduling.**

**6.6.1 Cooperation and Standards.** With respect to any and all scheduling requirements in this Agreement, (a) Seller shall cooperate with PacifiCorp with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder.

**6.6.2 Schedule Coordination.** If, as a result of this Agreement, PacifiCorp is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement due to Seller's lack of standing as a "scheduling coordinator" or other RTO recognized designation, qualification or otherwise, then (a) Seller shall acquire such RTO recognized standing (or shall contract with a third party who has such RTO recognized standing) such that PacifiCorp is no longer responsible for Seller's performance under the Generation Interconnection Agreement, and (b) Seller shall defend, indemnify and hold PacifiCorp harmless against any liability arising due to Seller's performance or failure to perform under the Generation Interconnection Agreement or RTO requirement.

**6.7 Delivery Exceeding the Maximum GIA Delivery Rate.** Seller shall not deliver energy from the Facility to the Point of Delivery at a rate that exceeds the Maximum GIA Delivery Rate. Seller's failure to limit such deliveries to the Maximum GIA Delivery Rate shall be a breach of a material obligation subject to Section 12.1.8.

**6.8 Access Rights.** Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide PacifiCorp and its authorized agents, employees and inspectors ("PacifiCorp Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) for purposes of implementing Section 4.6, and (d) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp shall release Seller against and from any and all any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal resulting from actions or omissions by any of the PacifiCorp Representatives in connection with their access to the Facility, except to the extent that such damages are caused or by the intentional or grossly negligent act or omission of Seller.



## **SECTION 7. MOTIVE FORCE**

Prior to the execution of this Agreement, Seller provided to PacifiCorp Wind Leases and a motive force plan including an hourly wind profile acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit F-1**. Within three (3) months after the Effective Date, Seller will provide a wind report from any of WindLogics, GL Garrad Hassan, AWS Truepower, LLC, or DNV Global Energy Concepts, Inc. certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Average Annual Net Output. Seller will provide an updated estimate of Average Annual Net Output at the time it provides an amended **Exhibit A** pursuant to Section 2.2.5 if Seller has selected different Wind Turbines.

## **SECTION 8. GENERATION FORECASTING COSTS**

8.1 **Forecast Service Election.** PacifiCorp may, in its discretion, add forecasting services for Seller's Facility to PacifiCorp's existing contract with a qualified wind-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement.

8.2 **Seller's Forecast-Cost Share.** Pursuant to Commission Order No. 30497, Seller shall be responsible for 50% of PacifiCorp's cost of adding such forecasting services ("Seller's Forecast-Cost Share") up to Seller's Capped Forecast-Cost Share.

8.3 **Cap on Seller's Forecast-Cost Share.** Seller's Forecast-Cost Share for a given Contract Year is capped at 0.1% of total payments made by PacifiCorp to Seller for Net Output during the previous Contract Year ("Seller's Capped Forecast-Cost Share"). If the last Contract Year of this Agreement is shorter than a full calendar year, the cap will be prorated for that shortened year. For the year(s) prior to the second Contract Year of this agreement that equals a full calendar year, Seller's Forecast-Cost Share is capped at 0.1% of estimated payments for Net Output based on the Energy Delivery Schedule.

8.4 **Payment.** Seller shall pay to PacifiCorp Seller's Forecast-Cost Share uncapped by Section 8.3 for each Contract Year in equal payments for each month of such year except the last month of such year. (For example, in a Contract Year equaling a full calendar year, Seller would pay 1/11th of Seller's Forecast-Cost Share during each of the first 11 months.) In the last month of each Contract Year, PacifiCorp shall refund to Seller the amount paid by Seller under this Section in excess, if any, of Seller's Capped Forecast-Cost Share. For a Contract Year encompassed by just one calendar month, Seller's payment to PacifiCorp and PacifiCorp's refund to Seller shall be calculated and paid simultaneously. To the extent practicable, payments and refunds under this Section shall be included in monthly payments and invoices under Section 10.

## **SECTION 9. METERING: REPORTS AND RECORDS**

9.1 **Metering Adjustment.** Metering will be performed at the location specified in **Exhibit B** and in the manner specified in the Generator Interconnection Agreement. All quantities of energy purchased hereunder shall be adjusted in accordance with Addendum L, so that



the purchased amount reflects the net amount of power flowing into the System at the Point of Delivery.<sup>1</sup>

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

9.3 Telemetry. In accordance with the Generation Interconnection Agreement, Seller shall provide telemetry equipment and facilities capable of transmitting to Transmission Provider (who will share it with PacifiCorp as authorized by Exhibit H, "Seller Authorization to Release Generation Data to PacifiCorp") the following information concerning the Facility on a real-time basis, and will operate such equipment when requested by PacifiCorp to indicate:

- (a) instantaneous M W output at the Point of Delivery;
- (b) Net Output;
- (c) the Facility's total instantaneous generation capacity; and
- (d) wind velocity at turbine hub height.

Seller shall also transmit to PacifiCorp any other data from the Facility that Seller receives on a real-time basis, including meteorological data, wind speed data, wind direction data and gross output data. Seller shall provide such real-time data to PacifiCorp in the same detail that Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp shall also receive the data in four second intervals). PacifiCorp shall have the right from time to time to require Seller to provide additional telemetry equipment and facilities to the extent necessary and reasonable.

#### 9.4 Monthly Reports and Logs and Other Information.

9.4.1 Reports. Within thirty (30) calendar days after the end of each Billing Period, Seller shall provide to PacifiCorp a report in electronic format, which report shall include (a) summaries of the Facility's wind and output data for the Billing Period in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to

<sup>1</sup> If station service is supplied via separate facilities, PacifiCorp will deduct station service from the metered facility output to calculate Net Output.



the construction or operation of the Facility for the Billing Period; (c) details of Availability of the Facility for the Billing Period sufficient to calculate Availability and including hourly average wind velocity measured at turbine hub height and ambient air temperature; and (d) any supporting information that PacifiCorp may from time to time reasonably request (including historical wind data for the Facility).

9.4.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the term of this Agreement commencing on the Commercial Operation Date. Seller shall provide PacifiCorp with a copy of the electronic fault log within thirty (30) calendar days after the end of the Billing Period to which the fault log applies.

9.4.3 Upon the request of PacifiCorp, Seller shall provide PacifiCorp the manufacturers' guidelines and recommendations for maintenance of the Facility equipment.

9.4.4 By each January 10 following the Commercial Operation Date, Seller shall provide to PacifiCorp written certification that Seller has completed all the manufacturers' guidelines and recommendations for maintenance of the Facility equipment applicable to the previous calendar year.

9.4.5 At any time from the Effective Date, one (1) year's advance notice of the termination or expiration of any agreement, including Wind Leases, pursuant to which the Facility or any equipment relating thereto is upon the Facility site; provided that the foregoing does not authorize any early termination of any land lease.

9.4.6 As soon as it is known to Seller, Seller shall disclose to PacifiCorp, the extent of any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises.

9.5 Maintenance of Metering Equipment. To the extent not otherwise provided in the Generator Interconnection Agreement, PacifiCorp shall inspect, test, repair and replace the metering equipment periodically, or at the request of Seller if Seller has reason to believe metering may be off and requests an inspection in writing. To the extent not otherwise provided in the Generator Interconnection Agreement, all PacifiCorp's costs relating to designing, installing, maintaining, and repairing metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

9.6 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility.



## SECTION 10. BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Payment for Net Output. On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement or the Generation Interconnection Agreement. Any such offsets shall be separately itemized on the statement accompanying each payment to Seller.

10.2 Annual Invoicing for Output Shortfall. Thirty calendar days after the end of each Contract Year, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of Output Shortfall, if any, for all Billing Periods in the prior Contract Year and Output Shortfall Damages, if any. In preparing such invoices, PacifiCorp shall utilize the meter data provided to PacifiCorp for the Contract Year in question, but may also rely on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation if the meter data for such Contract Year is then incomplete or otherwise not available. To the extent required, PacifiCorp shall prepare any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Year. Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, and shall within thirty (30) days after receiving the invoice raise any objections regarding any disputed portion of the invoice. Objections not made by Seller within the thirty-day period shall be deemed waived.

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

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall 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 shall be paid within five (5) days after such determination or resolution, along with interest in accordance with Section 10.3.

## SECTION 11. SECURITY

### 11.1 Delay Security:

11.1.1 Duty to Post Security. By the date provided in Section 2.2.2, Seller shall post a Letter of Credit, cash or a parental guaranty, each in a form acceptable to PacifiCorp, in the amount calculated pursuant to Section 11.1.2 ("Delay Security"). To the extent PacifiCorp makes a drawing under the Delay Security, Seller shall, within fifteen (15) calendar days, restore the Delay Security as if no such deduction had occurred.



**11.1.2 Calculation of Delay Security.** The dollar value of Delay Security shall equal the greater of: (1) forty-five dollars (\$45) multiplied by the Maximum Facility Delivery Rate with the Maximum Facility Delivery Rate being measured in kW (based on the final Facility Capacity Rating determined by January 31, 2012); or (2) the sum of the products, for each of the first three calendar months after the Scheduled Commercial Operation Date, of:

the energy in the Initial Year Energy Delivery Schedule for the month (kWh) multiplied by the monthly weighted average On-Peak and Off-Peak Conforming Energy Purchase Price for the months (\$/MWh) divided by 1000.

Such amount shall be fixed upon execution of this Agreement.

**11.1.3 Right to Draw on Security.** PacifiCorp shall have the right to draw on the Delay Security to collect Delay Liquidated Damages. Commencing on or about first of each month, PacifiCorp will invoice Seller for Delay Liquidated Damages incurred, if any, during the preceding month. If insufficient Delay Security is available, Seller shall pay PacifiCorp for invoiced Delay Liquidated Damages no later than five business days after receiving such invoice. The Parties will make billings and payments for Delay Liquidated Damages in accordance with Section 10.

**11.1.4 Partial Release of Delay Security.** Provided that Seller has maintained Delay Security in accordance with Section 11.1.1, PacifiCorp shall release one-third of the original amount of Delay Security stated in Section 11.1.1 each time Seller accomplishes a milestone (a) or (b), below:

(a) Seller has (i) executed the Generation Interconnection Agreement with Transmission Provider; and (ii) paid in full any interconnection and/or system upgrade costs Seller is obligated to pay in advance of interconnection construction.

(b) Seller has poured the concrete foundation at each of its planned individual Wind Turbine locations.

PacifiCorp shall make the partial refund of Delay Security required above within ten business days of the date Seller provides PacifiCorp written notice (along with satisfactory documentation thereof) that it has accomplished milestone (a) or (b) above.

**11.1.5 Full Release of Delay Security.** Unless PacifiCorp disputes whether Seller has paid all Delay Liquidated Damages, PacifiCorp shall release all remaining Delay Security upon the earlier of the 30th calendar day following commencement of Commercial Operation or the 60th calendar day following PacifiCorp's termination of this Agreement.

**11.1.6 Default.** Seller's failure to post and maintain Delay Security in accordance with Section 11.1 will constitute an event of default, unless cured in accordance with Section 12.1.1 of this Agreement.

**11.2 Default Security (Levelized Pricing Only). (Reserved)**



## SECTION 12. DEFAULTS AND REMEDIES

12.1 The following events shall constitute defaults under this Agreement:

12.1.1 Non-Payment. A Party's failure to make a payment when due under this Agreement or post and maintain security in conformance with the requirements of Section 11 or maintain insurance in conformance with the requirements of Section 14 of this Agreement, if the failure is not cured within ten (10) business days after the non-defaulting Party gives the defaulting Party a notice of the default.

12.1.2 Breach of Representation. Breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within thirty (30) days following written notice.

12.1.3 Default on Other Agreements. Seller's failure to cure any default under the Generation Interconnection Agreement or any other agreement between the parties related to this Agreement, the Generation Interconnection Agreement, or the Facility within the time allowed for a cure under such agreement or instrument.

12.1.4 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

12.1.5 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, within thirty (30) days from the date of such request.

12.1.6 Sale to Third-Party. Seller's sale of Net Output to an entity other than PacifiCorp, as prohibited by Section 4.2.

12.1.7 Non-Delivery. Unless excused by an event of Force Majeure (including PacifiCorp's breach of its obligations under this Agreement), Seller's failure to deliver any Net Energy for three consecutive calendar months.

12.1.8 A Party otherwise fails to perform any material obligation (including but not limited to failure by Seller to meet any deadline set forth in Section 2.2.1 through 2.2.9) imposed upon that Party by this Agreement if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default.

12.1.9 Seller fails to achieve the Commercial Operation Date by the 91<sup>st</sup> day following the Scheduled Commercial Operation Date, *provided, however*, that, upon written notice from the defaulting Party delivered prior to the ninety-first (91<sup>st</sup>) day of delay, this ninety (90) day period shall be extended by an additional one hundred and fifty (150) days if (a) Seller has poured the concrete foundation at each of its planned individual wind turbine locations; and (b) Seller replenishes Delay Default Security in accordance with Section 11.1.1. Seller shall continue to accrue Delay Liquidated Damages in accordance



with Section 2.5 (Delay Price times the Delay Value) until the Project achieves Commercial Operation or this Agreement is terminated.

12.2 In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default. If the default has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 12 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

12.3 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output from the Facility using the same motive force to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller do so subject to the terms of this Agreement, including but not limited to the purchase prices as set forth in (Section 5), until the Expiration Date (as set forth in Section 2.1). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

12.4 If this Agreement is terminated as a result of Seller's default, in addition to and not in limitation of any other right or remedy under this Agreement or applicable law (including any right to set-off, counterclaim, or otherwise withhold payment), Seller shall pay PacifiCorp Output Shortfall Damages for a period of eighteen (18) months from the date of termination plus the estimated administrative cost to acquire the replacement power. The Parties agree that the damages PacifiCorp would incur due to termination resulting from Seller's default would be difficult or impossible to predict with certainty, and that the damages in this Section 12.4 are an appropriate approximation of such damages.

12.5 Recoupment of Damages.

(a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.

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

12.6 Upon an event of default or termination event resulting from default under this Agreement, in addition to and not in limitation of any other right or remedy under this Agreement or applicable law (including any right to set-off, counterclaim, or otherwise withhold payment), the non-defaulting Party may at its option set-off, against any amounts owed to the defaulting Party, any amounts owed by the defaulting Party under any contract(s) or agreement(s) between the Parties. The obligations of the Parties shall be deemed satisfied and discharged to the extent of any such set-off. The non-defaulting Party shall give the defaulting Party written notice of any set-off, but failure to give such notice shall not affect the validity of the set-off.



12.7 Amounts owed by Seller pursuant to this Section 12 shall be due within five (5) business days after any invoice from PacifiCorp for the same.

### **SECTION 13. INDEMNIFICATION: LIABILITY**

#### **13.1 Indemnities.**

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

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

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

13.3 No Warranty. Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by PacifiCorp and PacifiCorp makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

13.4 CONSEQUENTIAL DAMAGES. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES,



WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

#### SECTION 14. INSURANCE

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

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

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

14.2.2 All Risk Property insurance providing coverage in an amount at least equal to 80% of the replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Property policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

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

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

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



## **SECTION 15. FORCE MAJEURE**

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

15.1.1 the non-performing Party, shall, as soon as practicable but no later than within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence, including the start date of the Force Majeure, the cause of Force Majeure, whether the Facility remains partially operational and the expected end date of the Force Majeure;

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

15.1.3 the non-performing Party uses its best efforts to remedy its inability to perform; and

15.1.4 the non-performing Party shall provide prompt written notice to the other Party at the end of the Force Majeure event detailing the end date, cause thereof, damage caused there by and any repairs that were required as a result of the Force Majeure event, and the end date of the Force Majeure.

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

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

## **SECTION 16. SEVERAL OBLIGATIONS**

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



#### **SECTION 17. CHOICE OF LAW**

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

#### **SECTION 18. PARTIAL INVALIDITY**

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

#### **SECTION 19. WAIVER**

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

#### **SECTION 20. GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

PacifiCorp's compliance with the terms of this Agreement is conditioned on Seller's submission to PacifiCorp prior to the Commercial Operation Date of copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility. Failure to maintain such lawful status after the Commercial Operation Date shall be an event of default, subject to Section 12.

#### **SECTION 21. SUCCESSORS AND ASSIGNS**

21.1 This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no assignment hereof by either Party shall become effective without the written consent of both Parties being first obtained. Such consent shall not be unreasonably withheld; provided that the Parties agree that commercially reasonable written amendments to the Exhibits to this Agreement and such other written updates to the information contained therein related to the Facility may be made in the event of any assignment of this Agreement pursuant to the terms of this Section 21.1. Notwithstanding the first sentence of this Section, (a) any entity with which PacifiCorp may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of PacifiCorp's rights, obligations, and interests under this Agreement and (b) Seller shall have the right to assign this Agreement, subject to PacifiCorp's written consent, which consent shall not be unreasonably withheld or delayed, for collateral security purposes to one or more financing entities (or a collateral agent acting on their behalf) providing financing to Seller for the Facility, in which event PacifiCorp agrees to provide a written consent in favor of Seller's



financing entities in form and substance similar to consents executed by PacifiCorp in connection with non-recourse project financings. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. PacifiCorp shall have the right to be notified by the financing entity that it is exercising such rights or remedies and all such other rights as provided in the written consent.

21.2 Notwithstanding Section 21.1, Seller shall have the right to hold in abeyance, subject to termination as provided in this Section, this Agreement and may authorize Ridgeline Energy, LLC or its designated affiliate (such assignee referred to here in this Agreement as "Ridgeline") to execute the agreement in Addendum M (the "Amended and Restated Power Purchase Agreement") at any time prior to January 31, 2012 by the delivery of a written notice to PacifiCorp designating such abeyance of this Agreement and execution of the Amended and Restated Power Purchase Agreement (the "Assignment Notice"). Within five (5) days of receipt of the Assignment Notice, PacifiCorp shall execute and deliver to Ridgeline the Amended and Restated Power Purchase Agreement with the insertion of the name of the seller and the effective date of such Amended and Restated Power Purchase Agreement, which shall be the later of (a) the date the notice was provided to PacifiCorp or (b) the Effective Date. Upon execution of the Amended and Restated Power Purchase Agreement by Ridgeline as provided in this Section, this Agreement shall be held in abeyance (during which time CCW shall have no rights hereunder). If Ridgeline terminates the Amended and Restated Power Purchase Agreement on or before January 5, 2013, then this Agreement shall be reinstated and of full force and effect. If Ridgeline fails to terminate the Amended and Restated Power Purchase Agreement on or before January 5, 2013, this Agreement shall be automatically terminated.

## SECTION 22. ENTIRE AGREEMENT

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

22.2 By executing this Agreement, each Party releases the other from any claims, known or unknown, that may have arisen prior to the execution date of this Agreement with respect to the Facility and any predecessor facility proposed to have been constructed on the site of the Facility.

## SECTION 23. NOTICES

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

Notices	PacifiCorp	Seller
All Notices	PacifiCorp 825 NE Multnomah Street Portland,	Cedar Creek Wind, LLC

<b>OR 97232</b> <b>Attn: Contract Administration,</b> <b>Suite 600</b> <b>Phone:(503)813-5380</b> <b>Facsimile: (503) 813-6291</b> <b>E-mail:</b>  <b>Duns: 00-790-9013</b> <b>Federal Tax ID Number: 93-0246090</b>	<b>Attn: Richard W. Burkhardt</b> <b>Phone: (206) 780-3551</b> <b>Facsimile: (206) 780-3571</b> <b>E-mail:</b> <b>rburkhardt@summitpower.com</b>  <b>Duns: 83-297-9483</b> <b>Federal Tax ID Number: 80 0326531</b>
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<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Invoices:</b>	<b>Attn: Back Office, Suite 700</b> <b>Phone:(503)813-5578</b> <b>Facsimile: (503) 813 -5580</b>	<b>Attn: Vici Hall, General Accounting Manager</b> <b>Email:</b> <u><a href="mailto:accounting@summitpower.com">accounting@summitpower.com</a></u> ; <u><a href="mailto:vhall@summitpower.com">vhall@summitpower.com</a></u> <b>Phone:(206) 780-3551</b>
<b>Scheduling:</b>	<b>Attn: Resource Planning, Suite 600</b> <b>Phone: (503) 813 - 6090 Facsimile:</b> <b>(503) 813-6265</b>	<b>Attn: Thomas Cameron</b> <b>(702) 360-0186</b> <u><a href="mailto:tcameron@summitpower.com">tcameron@summitpower.com</a></u>
<b>Payments:</b>	<b>Attn: Back Office, Suite 700</b> <b>Phone:(503)813-5578</b> <b>Facsimile: (503) 813-5580</b>	<b>Attn: Vici Hall, General Accounting Manager</b> <b>Email:</b> <u><a href="mailto:accounting@summitpower.com">accounting@summitpower.com</a></u> ; <u><a href="mailto:vhall@summitpower.com">vhall@summitpower.com</a></u> <b>Phone:(206) 780-3551</b>
<b>Wire Transfer:</b>	<b>Bank One N.A.</b> <b>To be provided in separate letter from PacifiCorp to Seller</b>	<b>Bank Wells Fargo</b> <b>To be provided in separate letter from Seller to PacifiCorp</b>
<b>Credit and Collections:</b>	<b>Attn: Credit Manager, Suite 700</b> <b>Phone:(503)813-5684 Facsimile:</b> <b>(503) 813-5609</b>	<b>Attn: Richard W. Burkhardt, Chief Financial Officer</b> <b>Email: <u><a href="mailto:rburkhardt@summitpower.com">rburkhardt@summitpower.com</a></u></b> <b>Phone:(206) 780-3551</b>
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	<b>Attn: PacifiCorp General Counsel</b> <b>Phone:(503)813-5029 Facsimile:</b> <b>(503) 813-6761</b>	<b>Attn: Vici Hall, General Accounting Manager</b> <b>Email:</b> <u><a href="mailto:accounting@summitpower.com">accounting@summitpower.com</a></u> ; <u><a href="mailto:vhall@summitpower.com">vhall@summitpower.com</a></u> <b>Phone:(206) 780-3551</b>

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

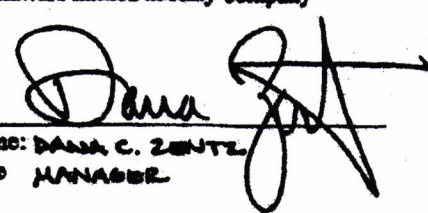


In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written:

**PACIFICORP,**  
an Oregon corporation

By:   
Name: Bruce Griswold DC  
Title: Director, Short-term  
Origination

**CEDAR CREEK WIND, LLC**  
a Delaware limited liability company

By:   
Name: DANA C. ZENTE  
Title: MANAGER

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**

Seller's Facility consists of 24 wind turbine generator(s) manufactured by Siemens. More specifically, each generator at the Facility is described as:

**Type (synchronous or inductive):** Asynchronous with Inverter

**Model:** Siemens SWT-2.3-101

**Number of Phases:** Three

**Rated Output (kW):** 2,300 **Rated Output (kVA):** 2,555

**Rated Voltage (line to line):** 750V

**Rated Current (A):** Stator: Converter Supply Current: 1953A; Rotor: 2070 A

**Maximum kW Output:** 2300 kW **Maximum kVA Output:** 2555kVA

**Minimum kW Output:** 40 kW

**Manufacturer's Published Cut-in Wind Speed:** 4 meters/second

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**Facility Capacity Rating:** 55,200 kW at or above rated wind speed and below cut-out speed

**Maximum Facility Delivery Rate:** 54,648 kW at PacifiCorp Goshen Substation at 345 kV

**Maximum GIA Delivery Rate** 133,400 - instantaneous kW [combined with the other Cedar Creek Project described in Addendum L]

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Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating: Maximum generator output is 2300 kW (same as Nameplate Capacity Rating)

**Station service requirements, and other loads served by the Facility, if any, are described as follows:** Station service requirements consist of Cedar Creek Wind Operations and Maintenance building loads, turbine standby loads, and turbine cutout loads. Average turbine standby load for Five Pine is approximately 125 kW. Cutout loads would be infrequent and not concurrent with standby loads.

**Location of the Facility:** The Facility is located in Bingham County, Idaho. The location is more particularly described as follows: 43° 19.420' Latitude, 112° 2.552' Longitude WGS84. Locations of each turbine tower relative to other qualifying facilities owned by Cedar Creek Wind showing Cedar Creek Wind's compliance with the spacing requirements in 18 C.F.R. § 292.204 are attached hereto.

**Power factor requirements:**

**Rated Power Factor (PF) or reactive load (kVAR):** 0.9 Leading to 0.9 Lagging

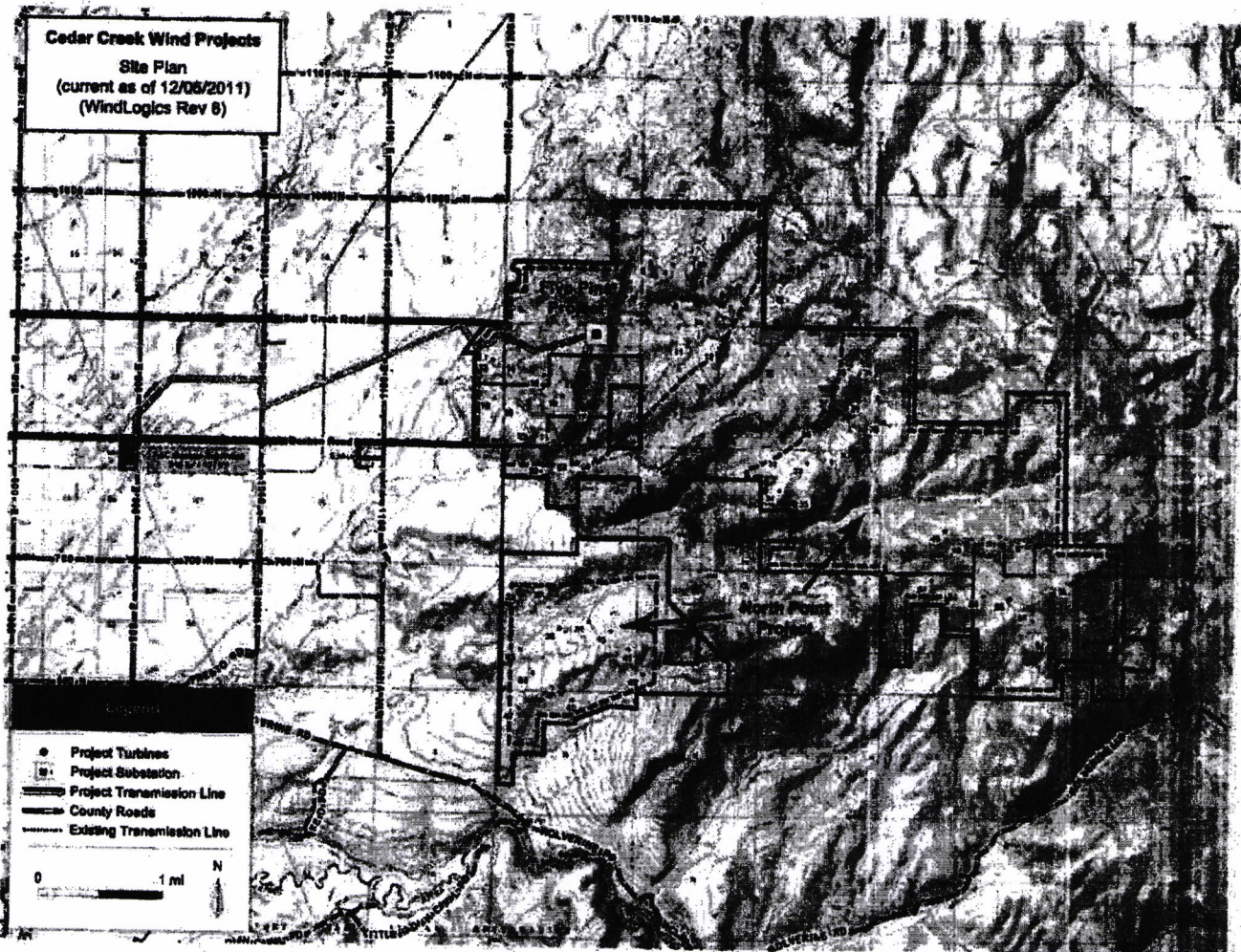
Seller has provided a copy of manufacturer's Power Curve (Rev. 4, June 2010) for the Siemens SWT-2.3-101. PacifiCorp maintains the power curve in its files pursuant to a Non-Disclosure Agreement between PacifiCorp and Seller.



**EXHIBIT A – Attachments**

- 1. Cedar Creek Wind Farm Site Map**
- 2. Distance Between Wind Turbines of Adjacent Qualifying Facilities**

**Cedar Creek Wind Farm Site Map**





The table below lists the distance between turbines in separate Qualifying Facilities.

FIVE PINE NORTH POINT		
Five Pine TURBINE #	North Point TURBINE #	DISTANCE (FT)
T36	T22	5558.5
T36	T23	6057.0
T36	T24	6504.5
T37	T22	5378.4
T37	T23	5629.7
T37	T24	5898.8
T12	T25	5799.5
T12	T27	5397.2
T12	T30	5401.6
T12	T32	5358.6
T32	T24	7534.9
Distances measured from closest turbines in North Point project area to closest turbines in Five Pine project area.		

**EXHIBIT B**

**POINT OF DELIVERY / PARTIES' INTERCONNECTION FACILITIES**

Seller has provided the following single line drawing of the Facility interconnection facilities including metering points used to calculate Net Output and any transmission facilities on Seller's side of the Point of Delivery.

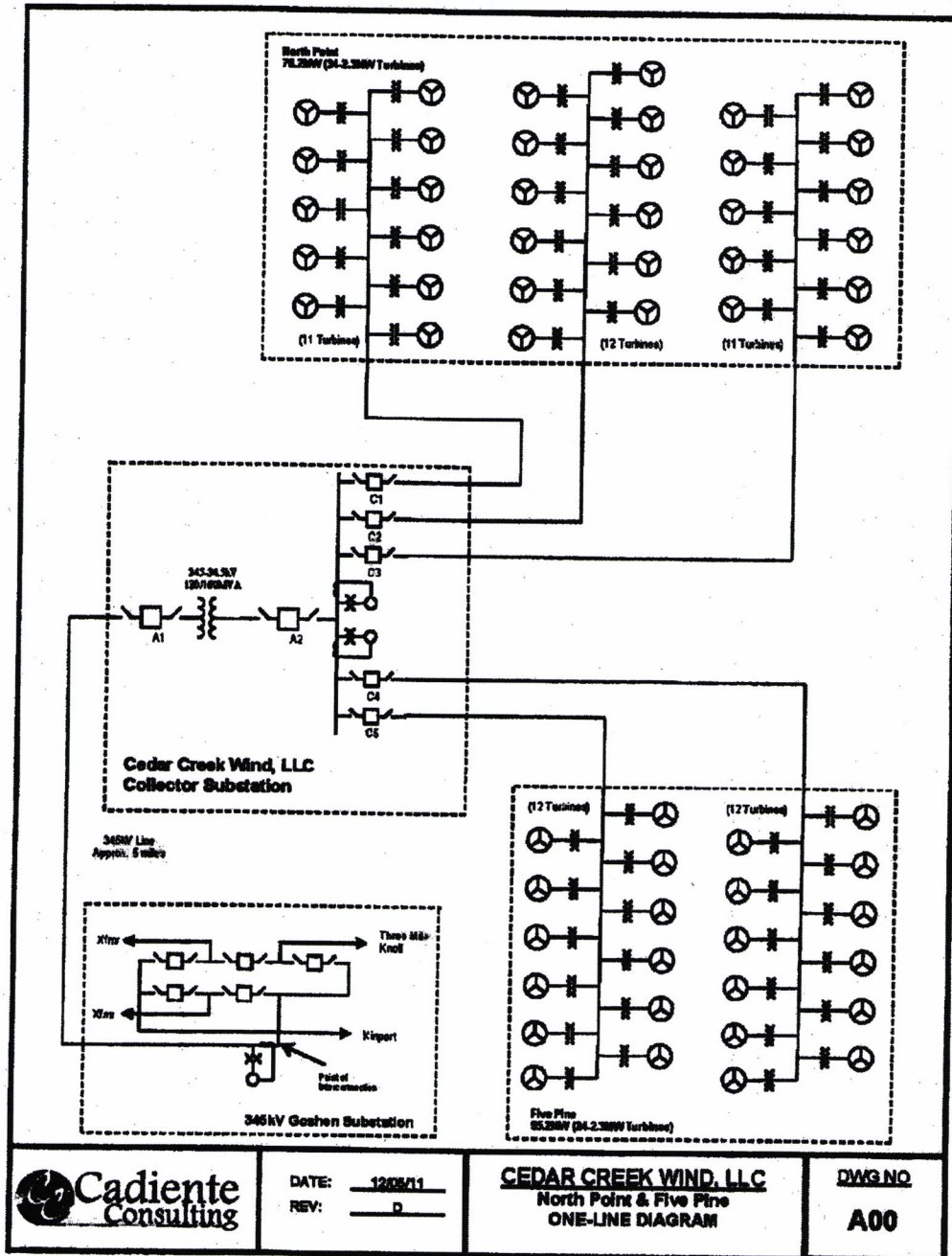
The Metering Point and the Point of Delivery is the PacifiCorp 345kV bus at the Goshen substation.

The Project will be shared by a 34.5kV-345kV collector substation. Each project will have one or more 34.5kV breakers that will connect to a common 34.5kV bus. The bus will connect to a central 34.5kV main breaker, 34.5-345kV Power Transformer, 345kV breaker, line disconnect switch and a 5.1 mile 345kV transmission line to the Goshen Substation.



**EXHIBIT B – Attachments**

**1. Substation Metering One-Line Diagram**





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

**Qualifying Facility Number from to be obtained from FERC: QF10-536-000**

**The following Documents are required prior to delivery of any output from the Facility:**

**Generation Interconnection Agreement**

**Agreement permitting Seller access to shared interconnection facilities**

**Property rights required to maintain and operate the Project in accordance with this Agreement (site leases, transmission easements, etc).**

**The following Permits are required on or before the milestone date specified in Section 2.2.1.**

**Federal Aviation Administration Determinations of No Hazard**

**Bingham County Special Use Permit**

**Crossing agreements with parties other than PacifiCorp Transmission**

**EXHIBIT D**  
**SUBSEQUENT ENERGY DELIVERY SCHEDULE**

<b>Coyote Hill Wind Project</b>		
	<b>Scheduled Monthly Energy Delivery</b>	<b>Ave kW/mo</b>
<b>January</b>		
<b>February</b>		
<b>March</b>		
<b>April</b>		
<b>May</b>		
<b>June</b>		
<b>July</b>		
<b>August</b>		
<b>September</b>		
<b>October</b>		
<b>November</b>		
<b>December</b>		
<b>TOTAL:</b>		

**Planned Outages.** Seller will provide a Planned Outage schedule annually not to exceed 150 hours per year (150 hours excludes first year "break in" or similar startup period outages).



## **EXHIBIT E**

### **START-UP TESTING**

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

1. Test of mechanical and electrical equipment;
2. Calibration of all monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Point-to-point continuity tests;
6. Bench tests of protective devices; and
7. Tests required by manufacturer(s) and designer(s) of equipment.

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

1. Turbine/generator mechanical runs and functionality;
2. System operation tests;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Excitation and voltage regulation operation tests;
7. Auto stop/start sequence;
8. Completion of any state and federal environmental testing requirements; and
9. Tests required by manufacturer(s) and designer(s) of equipment.

For wind projects only, the following Wind Turbine Generator Installation Checklists are required documents to be signed off by Manufacturer or Subcontract Category Commissioning Personnel as part of the Commissioning and startup testing:

Turbine Installation

Foundation Inspection (by Owner's independent inspector)

Controller Assembly

Power Cables

Cable Installation Checklists including:

Controller

Top Deck / Yaw Deck

Tower Top Section / Saddle

Mid Section Cables or buss bars

Base Section

Tower Base Section

Tower Lights and Outlets

Tower Mid Section

Tower Top Section

Nacelle

Rotor

*Cedar Creek Wind, LLC—Five Pine*

**EXHIBIT F-1**  
**MOTIVE FORCE PLAN**  
**WIND SPEED DATA SUMMARIES & HOURLY WIND PROFILE**



Five Pins Wind Farm - Optimized Turbine Layout (Version 8)

Turbines: Siemens SWT-2.3-101

Average of Wind Speed (m/s)	98.5 meters												
	Normalized												
	Month												
Local Hour (GMT -8)	1	2	3	4	5	6	7	8	9	10	11	12 Grand Total	
0	7.82	7.31	6.35	7.50	6.61	5.26	6.34	5.88	7.02	8.03	7.73	7.68	6.98
1	7.80	7.45	6.38	7.36	6.65	5.20	5.79	5.97	7.05	8.13	7.87	7.65	6.94
2	7.86	7.71	6.62	7.45	6.60	5.69	5.74	5.93	6.90	8.02	7.98	7.59	7.01
3	7.79	7.63	6.93	7.36	6.69	6.23	5.30	5.76	6.85	7.95	7.95	7.68	7.01
4	7.87	7.60	7.05	6.92	6.65	6.41	5.05	5.76	6.82	7.07	7.79	7.36	6.86
5	8.08	7.56	6.54	6.92	6.81	6.28	5.31	5.83	7.02	7.15	7.75	7.42	6.89
6	7.98	7.30	6.50	7.12	5.78	5.08	4.00	5.07	7.16	6.69	7.82	7.49	6.50
7	8.04	7.49	6.57	6.55	4.90	5.24	3.45	4.05	6.41	6.51	7.84	7.26	6.20
8	8.06	7.34	6.71	6.16	4.68	5.05	3.44	4.00	5.12	5.83	7.54	7.16	5.92
9	7.03	6.95	6.84	5.89	4.96	5.35	3.84	4.26	4.28	4.68	6.81	7.10	5.66
10	6.66	6.19	6.47	5.81	5.57	6.01	4.18	5.08	4.94	4.74	6.24	7.09	5.75
11	6.74	5.60	6.24	5.90	6.02	7.01	5.10	5.69	5.59	4.75	6.05	6.83	5.96
12	6.88	5.47	6.38	6.26	6.34	7.77	6.07	6.11	5.83	4.83	5.86	6.59	6.19
13	6.34	5.69	6.97	6.30	6.64	8.02	6.33	6.66	6.17	4.63	5.94	6.49	6.37
14	6.04	5.66	7.23	6.05	6.88	8.13	8.09	7.25	6.37	5.08	6.03	6.75	6.63
15	6.55	5.63	7.27	5.80	6.96	7.81	8.20	6.94	6.64	5.62	6.26	7.02	6.70
16	6.44	6.14	7.31	6.36	6.52	7.57	8.05	7.80	5.89	5.77	6.38	7.10	6.76
17	6.63	5.95	7.21	6.14	6.69	8.12	7.99	7.35	5.79	6.14	6.98	6.98	6.80
18	7.01	6.23	7.47	7.05	7.09	7.86	7.76	7.33	5.78	6.90	6.61	7.40	7.05
19	7.36	6.89	6.87	7.35	7.35	7.04	7.52	7.14	5.77	7.22	6.31	7.18	7.00
20	7.71	7.43	6.91	7.49	6.94	6.84	7.45	7.20	6.37	7.39	6.89	7.54	7.18
21	7.74	7.37	7.08	6.90	7.27	6.10	6.66	7.09	6.70	8.08	7.53	7.75	7.19
22	7.67	7.38	7.07	6.63	6.81	5.33	6.60	6.62	7.52	8.12	7.41	7.66	7.07
23	8.14	7.61	6.56	7.01	6.56	5.18	6.86	5.84	7.39	8.11	7.34	7.70	7.02
Grand Total	7.33	6.82	6.83	6.68	6.40	6.44	6.07	6.10	6.31	6.35	7.02	7.27	6.95

Cedar Creek Wind, LLC—Five Pine

Five Pine Wind Farm - Optimized Turbine Layout (Version 8)

Turbine: Siemens SWT-2.3-101

Average of Net Capacity Factor (%) Local Hour (GMT-8)	59.5 meters											
	Normalized											
	1	2	3	4	5	6	7	8	9	10	11	12 Grand Total
0	31.95	37.44	29.95	39.31	28.15	18.79	24.82	24.08	33.14	37.55	36.15	31.62
1	33.04	37.11	27.27	37.14	26.75	20.93	23.97	24.13	31.17	43.64	34.35	31.40
2	33.58	36.38	26.01	36.95	27.64	22.87	23.85	26.32	31.72	41.66	36.35	31.51
3	33.64	34.00	33.39	35.30	29.79	23.22	20.71	24.89	32.87	38.16	36.65	31.94
4	33.82	38.43	33.99	33.99	28.20	26.66	19.98	22.51	32.89	33.20	39.56	31.95
5	32.34	34.44	28.84	32.19	28.78	28.33	22.56	23.21	27.51	32.13	41.53	31.16
6	32.44	31.28	31.85	33.87	21.64	19.36	11.97	19.41	35.38	27.97	39.13	28.78
7	28.13	37.96	32.12	26.97	16.81	18.70	7.80	11.35	25.22	31.12	36.34	38.32
8	36.19	36.23	34.48	27.26	15.28	16.12	6.47	9.54	14.07	28.02	38.43	25.89
9	27.60	34.05	31.84	24.51	13.82	17.86	8.29	10.49	10.03	15.15	32.75	24.45
10	24.63	26.08	32.10	24.07	20.18	22.18	5.45	17.42	13.76	14.17	31.17	22.17
11	25.04	24.57	28.14	25.58	24.33	29.66	34.19	20.75	13.44	19.87	31.31	24.06
12	25.56	21.48	28.97	28.96	26.71	37.58	20.94	22.86	20.74	15.81	29.28	25.67
13	22.73	25.93	34.20	27.49	29.06	39.03	23.83	26.14	24.35	13.36	23.10	26.72
14	22.24	21.99	26.68	23.61	30.10	37.56	37.91	30.21	27.56	15.11	29.71	28.24
15	22.31	23.31	36.80	23.61	30.10	37.56	35.87	34.38	21.91	19.34	33.00	25.16
16	23.66	27.19	32.91	25.99	28.02	36.93	35.87	34.96	20.27	24.05	32.89	29.70
17	23.11	28.23	34.55	24.51	31.15	41.61	31.95	32.11	24.03	33.68	26.62	31.31
18	27.29	28.85	37.43	31.18	34.84	36.39	34.33	32.11	25.43	33.84	29.59	31.84
19	28.85	31.49	32.88	32.93	37.91	29.75	34.77	31.15	28.99	35.77	34.79	32.53
20	26.16	35.47	31.93	36.07	38.72	27.56	30.66	31.80	32.13	41.39	37.23	33.53
21	28.30	35.70	33.16	34.92	37.42	25.24	26.20	32.60	32.13	41.39	37.23	33.53
22	32.02	35.21	31.56	30.54	30.97	19.01	26.80	25.91	37.47	40.70	36.41	31.93
23	37.09	36.64	27.17	33.68	30.40	16.53	29.23	25.97	34.70	42.63	32.96	32.12
Grand Total	28.91	31.64	31.98	30.47	27.54	27.36	23.28	24.88	26.09	28.75	33.84	29.06



*Cedar Creek Wind, LLC—Five Pine*

**EXHIBIT G**  
**SAMPLE ENERGY PURCHASE PRICE CALCULATIONS**

The calculation for the non-levelized purchase price during an On-Peak Hour in May of 2012 equals \$63.97/MWh (the 2012 annual rate for Conforming Energy) multiplied by 92% (0.92) (the May On-Peak Hour multiplier) minus \$6.50/MWh (the wind integration cost), which equals \$52.35/MWh.

**Table 1: Sample calculations for non-levelized On-Peak Conforming Energy in 2012: Purchase Price = (annual rate \* monthly On-Peak multiplier) – wind integration cost.**

Month	Conforming Energy Annual Rate for 2011 (per MWh)	On-Peak Hour Multiplier	Wind Integration Cost	Calculated Purchase Price for 2011 On-Peak Conforming Energy (per MWh)
January	\$63.97	103%	\$6.50	\$59.39
February	\$63.97	105%	\$6.50	\$60.67
March	\$63.97	95%	\$6.50	\$54.27
April	\$63.97	95%	\$6.50	\$54.27
May	\$63.97	92%	\$6.50	\$52.35
June	\$63.97	94%	\$6.50	\$53.63
July	\$63.97	121%	\$6.50	\$70.90
August	\$63.97	121%	\$6.50	\$70.90
September	\$63.97	109%	\$6.50	\$63.23
October	\$63.97	115%	\$6.50	\$67.07
November	\$63.97	110%	\$6.50	\$63.87
December	\$63.97	129%	\$6.50	\$76.02

**Table 2: Sample calculations for non-levelized Off-Peak Conforming Energy in 2012: Purchase Price = (annual rate \* monthly Off-Peak multiplier) – wind integration cost.**

Month	Conforming Energy Annual Rate for 2012 (per MWh)	Off-Peak Hour Multiplier	Wind Integration Cost	Calculated Purchase Price for 2012 Off-Peak Conforming Energy (per MWh)
January	\$63.97	94%	\$6.50	\$53.63
February	\$63.97	97%	\$6.50	\$55.55
March	\$63.97	80%	\$6.50	\$44.68
April	\$63.97	76%	\$6.50	\$42.12
May	\$63.97	63%	\$6.50	\$33.80
June	\$63.97	65%	\$6.50	\$35.08
July	\$63.97	92%	\$6.50	\$52.35
August	\$63.97	106%	\$6.50	\$61.31



*Cedar Creek Wind, LLC—Five Pine*

<b>Month</b>	<b>Conforming Energy Annual Rate for 2012 (per MWh)</b>	<b>Off-Peak Hour Multiplier</b>	<b>Wind Integration Cost</b>	<b>Calculated Purchase Price for 2012 Off- Peak Conforming Energy (per MWh)</b>
September	\$63.97	99%	\$6.50	\$56.83
October	\$63.97	105%	\$6.50	\$60.67
November	\$63.97	96%	\$6.50	\$54.91
December	\$63.97	120%	\$6.50	\$70.26

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



**WESTERNENERGY**



May 7, 2010

Pacificorp  
Attn: Kenneth Huston  
825 NE Multnomah, Ste. 1600,  
Portland, Oregon 97232

**RE: Cedar Creek Wind, LLC PacifiCorp Transmission**

**Dear Mr. Huston:**

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

Sincerely,

Dana C. Zentz, P.E.  
Vice President  
Summit Power Group, Inc./Cedar Creek Wind, LLC  
(509) 448-7589 (Office)  
(509) 954-4103 (Mobile)

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**Cedar Creek Wind, LLC**  
701 Winslow Way E., Suite B  
Bainbridge Island, WA 98110

206-780-3551  
fax: 206-780-3571  
**CONFIDENTIAL**

## ADDENDUM L

### STATION LOAD, LOSSES, and NET OUTPUT ALLOCATION ALGORITHM FOR THE CEDAR CREEK WIND, LLC PROJECTS

This Addendum L is hereby made a part of, and clarifies certain terms in, the *Power Purchase Agreement between Cedar Creek Wind, LLC relating to FIVE PINE, and PacifiCorp* ("Agreement") entered into the \_\_\_\_ day of December, 2011. Capitalized terms not defined herein shall have the meaning set forth in the Agreement. Cedar Creek Wind, LLC ("Seller") and PacifiCorp are at times referred to herein individually as a "Party" or collectively as the "Parties".

Cedar Creek Wind, LLC shall own a complex of two (namely, Five Pine and North Point) separate, Idaho Qualifying Facilities (each, a "Cedar Creek Project" and collectively, the "Cedar Creek Projects") that share collector wires, a 34.5/345 kV substation (Cedar Creek Substation), and related equipment, which connect the Qualifying Facilities to the Point of Delivery ("Shared Interconnection Facilities").

PacifiCorp has agreed to buy (and Seller has agreed to sell), at the Point of Delivery, Seller's total energy output net of: (1) Seller's station service; (2) energy provided by Seller to another Cedar Creek Project for station service; (3) Seller's share of the transformation losses; and (4) Seller's share of the line losses between Seller's Facility and the Point of Delivery (together Seller's "Station Auxiliary Load and Losses"). However, Seller and PacifiCorp agree that it is impossible to measure Seller's Station Auxiliary Load and Losses separate and apart from the Station Auxiliary Load and Losses of the other Cedar Creek Project. Therefore, in order to implement an objective, practicable, and equitable process by which PacifiCorp may quantify energy delivered by Seller to the Point of Delivery (net of its Station Auxiliary Load and Losses), the Parties do agree as follows:

A. **Billing Formulae.** PacifiCorp shall determine Seller's Net Output in kWh for purposes of the Agreement using the method specified below.

1. **Definitions**

- NR<sub>i</sub> = the nameplate rating (a/k/a Facility Capacity Rating) of Cedar Creek Project i.  
NR<sub>T</sub> = the sum of all the nameplate ratings of Cedar Creek Projects (i = 1 to 2).  
PALL<sub>T</sub> = the accumulated purchased energy from Utility Supplier, as determined at the Point of Delivery, to supply the net total station auxiliary load and losses for the Shared Interconnection Facilities for Cedar Creek Projects i = 1 to 2 whenever such total load and losses exceeds total generation output.  
PALL<sub>i</sub> = the allocated share of PALL<sub>T</sub> for Project i as determined by multiplying PALL<sub>T</sub> by NR<sub>i</sub> and dividing by NR<sub>T</sub>.  
OP<sub>i</sub> = for a given integration interval, the metered output energy of Cedar Creek Project i, as determined by PacifiCorp's meter at the point where Cedar Creek Project i connects to the Shared Interconnection Facilities. For any integration interval during which any energy is delivered to a Project from the Shared Interconnection Facilities, such delivered energy is accumulated in a separate meter register and does not decrement the register used to measure accumulated OP<sub>i</sub>. Therefore OP<sub>i</sub> is by definition always greater than or equal to zero, and in the event the meter records OP<sub>i</sub> less than zero, OP<sub>i</sub> shall be deemed to equal zero.



- $OP_T$  = the sum of all  $OP_i$  ( $i = 1$  to  $2$ ).
- $NO_T$  = for a given integration interval, the total energy delivered to the Point of Delivery (345 kV bus at Goshen Substation).  $NO_T$  shall be as measured at PacifiCorp's meter near the Point of Delivery (kWh, in 10-minute intervals), adjusted for any transformation losses between the meter and the Point of Delivery. For any integration interval during which any energy is delivered to the Point of Delivery from PacifiCorp's system, such delivered energy is accumulated in a separate meter register of the PacifiCorp meter and does not decrement the register used to measure accumulated Net Output energy. Therefore  $NO_T$  is by definition always greater than or equal to zero and in the event the meter records  $NO_T$  less than zero,  $NO_T$  shall be deemed to equal zero.
- $NO_i$  = the net energy sold to PacifiCorp by Cedar Creek Project  $i$  during the integration interval.
- $SALL_T$  = the total of all station auxiliary load and losses for the Shared Interconnection Facilities for Cedar Creek Projects ( $i = 1$  to  $2$ ) when  $NO_T$  is positive.
- $SALL_i$  = the allocated share for Cedar Creek Project  $i$  of  $SALL_T$ .

## 2. Calculations

Calculations shall be reconciled and settled monthly. Calculations shall be based upon raw data gathered from specified meters using a metering integration interval of 5, 10, or 15 minutes at PacifiCorp's election to match the metering installation PacifiCorp specified ("integration interval"). Calculations shall be rounded to the nearest kilowatt-hour in the final step.

### (a). When Total Generation Output $\leq$ Station Auxiliary Load and Losses

When, for any integration interval, the total of all  $OP_i$  Project output amounts of energy among all Cedar Creek Projects ( $OP_T$ ) is less than or equal to the total station auxiliary load and losses for the Shared Interconnection Facilities, the meters at the Point of Delivery will accumulate the Utility Supplier's delivery of purchased energy,  $PALL_T$ , to supply such net total load and losses in a meter register that is separate from that which accumulates  $NO_T$  and  $NO_T$  shall equal zero or if negative, be deemed to equal zero. The "Utility Supplier" shall be the utility providing retail electric service at the Facility (Rocky Mountain Power). PacifiCorp shall have no obligation to serve any of the Cedar Creek Projects' retail electric needs absent a separate written agreement with PacifiCorp and then only with the permission of Seller's Utility Supplier. None of the costs associated with provision of retail electric service to Seller shall be borne by PacifiCorp.

### (b). When Total Generation Output $>$ Station Auxiliary Load and Losses

When, for any integration interval, the total generation of energy among all Cedar Creek Projects is greater than the total station auxiliary load and losses for the Shared Interconnection Facilities, the meters at the Point of Delivery will accumulate in a separate register PacifiCorp's receipt of the total combined energy from all the Projects ( $NO_T$ ). The difference between  $OP_T$  and  $NO_T$  for that interval ( $SALL_T$ ) is allocated to each Cedar Creek Project in proportion to its generation output ( $OP_i$ ) in the same integration interval to determine  $NO_i$  by the formulae:

Let  $SALL_T = [OP_T - NO_T]$  and

$$SALL_i = [SALL_T] * [OP_i / OP_T]$$

The Net Output energy sold by each Project  $i$  is then determined as:

$NO_i = [OP_i - SALL_i]$  and substituting for  $SALL_i$ ;

$NO_i = NO_T * [OP_i / OP_T]$

**B. Limitation of PacifiCorp Purchase Liability.** PacifiCorp's total purchase obligation to the Cedar Creek Projects shall at no time exceed total energy delivered by the Cedar Creek Projects to the Point of Delivery. Therefore, in the event the sum of the Net Output energy (calculated according to the preceding formulae) for all the Cedar Creek Projects is greater than  $NO_T$ , then PacifiCorp shall reduce calculated Net Output energy from each Cedar Creek Project, pro rata each Cedar Creek Project's share of the  $OP_T$ , such that the total energy purchased from all the Cedar Creek Projects at the Point of Delivery by PacifiCorp equals  $NO_T$ .

**C. PacifiCorp Right to Offset.** In the event PacifiCorp determines it has underpaid one or more Cedar Creek Projects (due to metering error or otherwise) and, as a result of underpaying one or more Cedar Creek Projects, has overpaid Seller, PacifiCorp may adjust Seller's future payment(s) accordingly in order to recapture any overpayment received by Seller in a reasonable time.

**D. Condition Subsequent.** This Addendum L was negotiated jointly among the Cedar Creek Projects and PacifiCorp and is intended by all of the Cedar Creek Projects and PacifiCorp to be one of five identical bilateral agreements, each between PacifiCorp and a Cedar Creek Project, but each related to the other. Therefore, in the event one or more Cedar Creek Projects does not agree to be bound by the terms and conditions set forth in this Addendum L, PacifiCorp may, upon thirty days written notice, cancel all Addendum L agreements. In the event PacifiCorp cancels this Addendum L in accordance with this Section D, PacifiCorp may satisfy its obligation to pay Seller by depositing when due, with an escrow agent chosen by the Cedar Creek Projects, the total payment due to all Cedar Creek Projects under their respective Power Purchase Agreements, less offsets (if any) calculated based upon  $NO_T$  and the Contract Price.

[END]



EXHIBIT 4.7(A)

GREEN TAG ATTESTATION AND BILL OF SALE

\_\_\_\_\_ ("Seller") hereby sells, transfers and delivers to PacifiCorp the Green Tags (including all Environmental Attributes and Green Tag Reporting Rights) associated with the generation of Net Output under the Power Purchase Agreement (Renewable Energy) between Seller and PacifiCorp dated [\_\_\_\_\_] (the "PPA"), as described below, in the amount of one Green Tag for each megawatt hour generated. Defined terms (as indicated by initial capitalization) used in this Green Tag Attestation and Bill of Sale shall have the meaning set forth in the PPA.

Facility name and location: \_\_\_\_\_ Fuel Type: Wind

Capacity (MW): \_\_\_\_ MW Operational Date: \_\_\_\_\_

Energy Admin. ID no.: \_\_\_\_\_

Dates	MWh generated
_____	_____

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to PacifiCorp is its one and only sale of the Green Tags and associated Environmental Attributes referenced herein;
- iii) the Facility generated Output is the amount indicated above; and
- iv) to the best of Seller's knowledge, each of the Green Tags and Environmental Attributes associated with the Facility's Output are being sold to Buyer.

This Green Tag Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to PacifiCorp of all of Seller's right, title and interest in and to the Green Tags (including Green Tag Reporting Rights and Environmental Attributes), as set forth above.

**Seller's Contact Person:** \_\_\_\_\_

**WITNESS MY HAND,**

\_\_\_\_\_

a \_\_\_\_\_

**By** \_\_\_\_\_

**Its** \_\_\_\_\_

**Date:** \_\_\_\_\_

**This Attestation may be disclosed by Seller and PacifiCorp to others, including the Center for Resource Solutions and the public utility commissions having jurisdiction over PacifiCorp, to substantiate and verify the accuracy of PacifiCorp's advertising and public communication claims, as well as in PacifiCorp's advertising and other public communications.**



**EXHIBIT 4.7(B)**

**QUALIFIED REPORTING ENTITY SERVICES AGREEMENT**

C & T Master v1.1; 071411

This Qualified Reporting Entity Services Agreement (this "Agreement") is entered into by and between PacifiCorp ("PacifiCorp") and \_\_\_\_\_ ("Counterparty"; PacifiCorp and Counterparty may be referred to individually herein as "Party" and collectively as "Parties") as of \_\_\_\_\_, \_\_\_\_\_, with reference to the following:

WHEREAS, Counterparty represents to PacifiCorp that it owns or otherwise has the rights to all or part of the non-energy attributes of the generation from that certain electric generation facility more particularly described on Exhibit A hereto (the "Facility"), or other rights respecting the Facility itself enabling it to lawfully enter hereinto; and

WHEREAS, The Western Renewable Electricity Generation Information System ("WREGIS") is a system tracking quantities of renewable energy generation generated by electric generating facilities in the nature of the Facility, as a Facility pursuant to WREGIS Terms of Use ("TOU"); and

WHEREAS, WREGIS requires that each Facility have a designated Qualified Reporting Entity; and

WHEREAS, Counterparty is an Account Holder in WREGIS and wishes to register the Facility with WREGIS; and

WHEREAS, Counterparty wishes to retain PacifiCorp to act as its WREGIS-defined Qualified Reporting Entity ("QRE") for the Facility;

NOW THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

**I. Definitions; Rules of Construction.**

1.1 Initially capitalized terms used and not otherwise defined herein are defined in the in the Operating Rules or in Attachment 1 Definitions of the WREGIS TOU.

1.2 "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 shall only include MidAmerican Energy Holdings Company and its direct, wholly owned subsidiaries.

1.3 "Business Day" means a day of the week other than Saturday, Sunday, or a federal holiday.

1.4 "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.

1.5 "FERC" means the Federal Energy Regulatory Commission.

1.6 "Generation Interconnection Agreement" means the agreement entered into separately between Counterparty and Interconnection Provider concerning the Interconnection Facilities.

1.7 "Facility" is defined in the Preamble.

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

1.9 "Interconnection Provider" means the FERC-regulated or United States Department of Energy entity with whom the Facility has contracted for interconnection to the electric transmission grid; in the event Interconnection Provider is PacifiCorp, PacifiCorp would be the Interconnection Provider operating in its regulated transmission function, and not as the party hereto.



- 1.10 "Metering External Webpage" means a website owned and operated by PacifiCorp that PacifiCorp may at its option, but without being obligated to do so, make available and operate for the display of all data that will be included in the Monthly Generation Extract File.
- 1.11 "Monthly Generation Extract File" means a data file that contains generation data from Counterparty's Points of Metering and conforms to the characteristics and requirements set forth in the WREGIS Interface Control Document.
- 1.12 "NERC" means the North American Electric Reliability Corporation.
- 1.13 "Points of Metering" means the points at which electric generation is measured.
- 1.14 "Prudent Electrical Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.
- 1.15 "QRE" means a WREGIS-defined Qualified Reporting Entity.
- 1.16 "Renewable" is defined in section 2 of the WREGIS Operating Rules.
- 1.17 "Requirements of Law" means any applicable federal, state and local law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).
- 1.18 "Settlement Estimation Procedures" means a calculation based on standard utility estimation rules using algorithms developed and approved by PacifiCorp's billing department.
- 1.19 "System" means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generation Interconnection Agreement.
- 1.20 "Tariff" means PacifiCorp FERC Electric Tariff Fifth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff.
- 1.21 "Transmission Provider" means the FERC-regulated or United States Department of Energy entity with whom the Facility has contracted for electric transmission at and away from the Facility to any point on, or interconnection with, the electric transmission grid; in the event Transmission Provider is PacifiCorp, PacifiCorp would be the Interconnection Provider operating in its regulated transmission function, and not as the party hereto..
- 1.22 "Wholesale Generation Also Serving On-Site Loads" is defined in section 2 of the WREGIS Operating Rules.
- 1.23 "WECC" means the Western Electricity Coordinating Council.
- 1.24 "WREGIS" means the Western Renewable Energy Generation Information System.
- 1.25 "WREGIS Certificate" or "Certificate" means "Certificate" as defined by the WREGIS Operating Rules.
- 1.26 "WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS, including the TOU.
- 1.27 General Rules of Interpretation. 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," "Annexes," "Appendices" or "Exhibits" are to articles, sections, schedules, annexes, appendices or exhibits hereof; (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 herein shall 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; and (i) the word "or" is not necessarily exclusive.

1.28 Interpretation with FERC Orders. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that each of Transmission Provider's and Interconnection Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. Counterparty agrees to conduct itself and operate the Facility in accordance with all Requirements of Law, all requirements of all applicable Electric System Authorities, and all requirements of the Interconnection Agreement.

1.28.1 Counterparty agrees to enter into the Generation Interconnection Agreement with the Interconnection Provider. The Generation Interconnection Agreement shall be a separate and free standing contract and the terms hereof are not binding upon the Interconnection Provider or Transmission Provider, although both are express third party beneficiaries hereof.

1.28.2 Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Counterparty on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation hereunder. Likewise, nothing herein or connected with the performance by PacifiCorp hereof shall affect or impair the rights of Interconnection Provider or Transmission Provider, under the Interconnection Agreement or otherwise. This Agreement shall not be construed to create any rights between Counterparty and the Interconnection Provider or between Counterparty and the Transmission Provider.

1.28.3 Counterparty expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an affiliate thereof. Counterparty acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider. Nothing in this Agreement shall operate to diminish, nor shall this Agreement extend to, Interconnection Provider or Transmission Provider's use, retention, or disclosure of Counterparty or Facility information (including information within the scope of this Agreement) in connection with PacifiCorp operating in its transmission function, including its carrying out of its obligations and business practices as a Balancing Authority or activities undertaken pursuant to the Tariff.

## II. Term and Termination.

2.1 This Agreement shall be effective upon execution by the Parties and shall continue in effect until such time as either Party, upon providing 60 days written notice to the other Party, chooses to terminate. PacifiCorp may initiate any regulatory proceedings it deems appropriate to terminate this Agreement prior to the effectiveness of such termination. Notwithstanding the foregoing, (a) Counterparty may terminate this Agreement upon an event of default by PacifiCorp if PacifiCorp does not cure such event of default within 10 days of written notice; (b) PacifiCorp may terminate this Agreement upon an event of default by Counterparty if Counterparty does not cure such event of default within 10 days of written notice, (c) PacifiCorp may terminate this Agreement if the Facility fails to meet the requirements of Section 3.1 hereof and such failure is not cured within 30 days; and (d) Either Party may terminate this Agreement immediately upon notice to the other if Counterparty or the Facility fail to comply with Section 1.28. This Agreement may also be terminated as otherwise set forth herein.

## III. QRE Services.

3.1 QRE Services. PacifiCorp will, on the terms set forth herein, serve as a QRE for the Facility so long as the Facility meets the definition of Renewable, is within the metered boundaries of both PacifiCorp's Balancing Authority and is equipped with either: (1) Transmission Provider or Interconnection Provider (as



applicable) owned and operated meters; or (2) meters that meet the Interconnection Provider's requirements and (3) meet all applicable WREGIS requirements.

**3.2 Compensation to PacifiCorp.** In exchange for the services performed by PacifiCorp hereunder, Counterparty shall pay PacifiCorp as follows: Counterparty shall pay PacifiCorp a one-time initial setup fee of \$280, which shall be due upon execution of this Agreement. The Counterparty shall pay PacifiCorp a monthly reporting fee of \$50 per generating unit for which PacifiCorp reports output to WREGIS, provided that PacifiCorp may, in its discretion, assess and bill for all fees due hereunder on an annual, rather than monthly, basis. Other than the initial setup fee, which shall be due in advance, all other fees due hereunder shall be due within ten days of PacifiCorp's issuance of an invoice for such fees. PacifiCorp will review costs associated with this service on an annual basis, and may make necessary adjustments to the monthly reporting fee charged herein. Any change in the monthly reporting fee will become effective only after a minimum thirty (30) days prior written notice to Counterparty. In the event WREGIS, WECC, or any other entity with the ability or jurisdiction to modify the QRE reporting process requires a change that materially increases the costs to PacifiCorp of providing QRE services, PacifiCorp may pass those costs to the Counterparty by increasing the monthly reporting fee. PacifiCorp will use best efforts to provide Counterparty with prior notice before billing Counterparty for such increased costs. The fees set forth herein relate to PacifiCorp serving as a QRE for Counterparty pursuant to the terms of this Agreement. The necessary metering is a prerequisite for this service and is not covered in the fees described above.

**3.3 Points of Metering.** The Points of Metering that PacifiCorp will use are set forth in Exhibit A. Counterparty certifies that all Points of Metering listed in Exhibit A measure data only from Facility that meet the definition of Renewable. Counterparty shall notify PacifiCorp at least thirty (30) Business Days prior to making any proposed material changes to the Points of Metering. Following such notification, the Parties will decide whether such changes are mutually acceptable. If such changes are not acceptable to PacifiCorp, PacifiCorp may terminate this Agreement.

**3.4 Expenses.** Except as otherwise provided in the Interconnection Agreement (and in such case, only vis-à-vis Interconnection Provider), Counterparty shall bear all costs and expenses, including those incurred by PacifiCorp, relating to all metering or other equipment installed to accommodate Counterparty's Facility.

**3.5 Reporting.** Counterparty hereby grants to PacifiCorp sole and exclusive permission and authority to report Data and Output to WREGIS and warrants and represents that neither Counterparty nor any other person or entity acting on behalf of Counterparty has granted, or will hereafter grant during the term hereof any similar data reporting authority or permission to any other QRE or WREGIS Account Holder or to any other party or Agent for use in WREGIS, or any other energy tracking system, for the Facility. As a precondition for PacifiCorp to be able to perform hereunder, Counterparty shall submit Counterparty's Output data to PacifiCorp by allowing PacifiCorp to collect such data, at the Points of Metering, and report such data in the manner set forth herein.

**3.5.1 Monthly Generation Extract File.** Once a month PacifiCorp shall submit a Monthly Generation Extract File to WREGIS on Counterparty's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document.

**3.5.2 Reporting Cycle.** PacifiCorp shall submit the Monthly Generation Extract File to WREGIS no sooner than the last business day of each month for data collected during the previous month, or previous portion of month. PacifiCorp shall submit such data no later than the end of the calendar month following the end date of the output being reported.

**3.5.3 Verification.** Should PacifiCorp choose at its option to operate and make available a Metering External Webpage, PacifiCorp may in its reasonably exercised discretion grant Counterparty access for Counterparty to verify such information as prescribed by PacifiCorp from time to time, and to timely notify PacifiCorp in writing of any errors Counterparty detects.

**3.5.4 Adjustments.** After PacifiCorp submits the Monthly Generation Extract File to WREGIS, any information contained in the Monthly Generation Extract File shall be final for purposes of WREGIS reporting, subject only to the adjustment procedures set forth in the WREGIS Operating Rules, which shall be Counterparty's responsibility to implement if necessary.

**3.6 Obligations of Counterparty.** Counterparty shall report and provide to PacifiCorp accurate and complete generation Data and Output information for the Facility. Counterparty shall send the Data and other



Output Information in a format and in compliance with any protocols which PacifiCorp may specify to Counterparty. Counterparty has a continuing duty to immediately notify PacifiCorp, if and when any generation Data or Output information has been sent in error or ceases to be truthful, accurate, or complete and to supply the corrected data as soon as practical, but not later than five (5) Business Days from the date Counterparty discovers that discrepancy in the Data or Output information.

**3.7 WREGIS Fees.** Counterparty is solely responsible for the payment directly to WREGIS of any and all WREGIS fees and costs that are required to register Counterparty's Facility and, to the extent the Generator Owner is a WREGIS Account Holder, Counterparty is responsible for the payment directly to WREGIS of all other WREGIS fees incident to the reporting of Generator Data and Output to WREGIS. Counterparty acknowledges and agrees that PacifiCorp shall have no obligation to advance or make payment of WREGIS fees or costs on Counterparty's behalf. Upon request by PacifiCorp made if PacifiCorp has received such a request from WREGIS or any regulator or third party, Counterparty shall provide PacifiCorp with evidence of payment of WREGIS fees and costs; failure to provide such information to PacifiCorp, upon request, shall constitute an event of default under this Agreement.

**3.8 WREGIS Accounts.** Counterparty will be solely responsible to make arrangements and registrations and for entering into any such agreements that are necessary to establish transfer of Certificates directly to proper Accounts or Subaccounts of Counterparty. Counterparty agrees that such arrangements shall preclude the need for PacifiCorp to act as custodian of such Certificates or to be responsible in any way to hold such Certificates in any Account or Subaccount of PacifiCorp or bear any responsibility, possession, obligation, or risk of loss with respect to Certificates created, held, or owned, with respect to the Facility. Counterparty acknowledges that, pursuant to section 11 of the WREGIS TOU, any generation data that PacifiCorp, acting as a QRE, provides to WREGIS shall reside in WREGIS and Counterparty will have no control over such data's use other than that provided for under the WREGIS TOU.

**3.9 Obligations of PacifiCorp.** PacifiCorp shall specify for Counterparty the protocols, reporting frequency, data file formats, and communication protocols for reporting generating Data, or Output, as necessary. PacifiCorp shall timely report to WREGIS Counterparty Data and/or Output information as specified in the most current WREGIS Interface Control Document (ICD). PacifiCorp shall not use or disclose Counterparty generation Data for any other purpose than reporting the Data to WREGIS, except as may be required by law, the Public Utility Commission of Oregon, any other state, federal, municipal or other regulator or governmental authority with jurisdiction over PacifiCorp or any of its assets, or a court of competent jurisdiction or as required under the terms of an existing agreement between the Parties. PacifiCorp shall not use Generator Owner generation Data for any other purpose. Notwithstanding the foregoing, PacifiCorp shall not be responsible for handling, account administration, transfer, evidence of, or any determination of Counterparty Certificate ownership or any other obligations for Certificates of Counterparty with regard to Certificates; and Counterparty shall bear all responsibility for such handling, account administration, evidence of, or any determination of Counterparty Certificate ownership and all other obligations pertaining to creation and ownership of such Certificates.

**3.10 Measurement.**

**3.10.1 Meter Data.** Counterparty authorizes PacifiCorp's metering services organization to provide Counterparty's meter data directly to WREGIS in the form of the Monthly Generation Extract File. Counterparty authorizes PacifiCorp to gather data from the Points of Metering listed in Exhibit A. All such data is considered data which Counterparty has created and submitted to PacifiCorp, notwithstanding that PacifiCorp, rather than Counterparty will gather it.

**3.10.2 Wholesale Generation Also Serving On-Site Loads.** If Counterparty has any Wholesale Generation Also Serving On-Site Loads (as defined in Article One above), such Facility will need to have the on-site load generation metered (and registered) separately from the generation that is supplied to the grid, in accordance with the WREGIS Operating Rules. Otherwise, PacifiCorp will not report any data from such Facility. If such Facility exist, they must be specified in Exhibit A.

**3.10.3 Estimates.** When meter readings are not available due to meter hardware failure or data that is determined to be invalid due to meter malfunction or calibration or configuration error, to the extent deemed by PacifiCorp to be appropriate and permitted pursuant to WREGIS TOU, PacifiCorp will, if possible, rely on readings from redundant meters whether such meters are PacifiCorp owned or not. If readings from redundant



meters are not possible, PacifiCorp will estimate and report meter data according to PacifiCorp's Settlement Estimation Procedures.

3.10.4 Responsibility. Counterparty is solely responsible for the data created and submitted to PacifiCorp, acting as a QRE, to forward to WREGIS.

3.11 Regulatory Requirements. PacifiCorp may release information provided by Counterparty hereunder, or gathered by PacifiCorp in connection herewith, to comply with any regulatory requirements applicable to PacifiCorp or if requested by a PacifiCorp regulator or if required by any other federal law or court order. Counterparty waives all applicable provisions of the Tariff which require PacifiCorp to hold confidential information with respect to the Generator Owner and the Facility, to the extent necessary for PacifiCorp to report, as a QRE, generation Data and Output regarding the Generation Unit(s) and to carry out PacifiCorp's obligations under this Agreement. This provision shall survive any termination of this Agreement.

3.12 Grant by Counterparty. Counterparty hereby grants to, permits, and authorizes PacifiCorp the following:

3.12.1 PacifiCorp is hereby authorized to communicate and transact with WREGIS as Counterparty's sole and exclusive reporting source of generation data for the Facility, and WREGIS is hereby authorized to communicate and transact directly with PacifiCorp regarding any generation data issues for the Facility. PacifiCorp is hereby authorized to act on behalf of Counterparty, but only to the extent that PacifiCorp has lawful, contractual access to WREGIS.

3.12.2 PacifiCorp is hereby authorized to provide WREGIS with all generation data for the Facility that WREGIS requires, including, but not limited to, data required for preparation of required reports and billing.

3.12.3 PacifiCorp is authorized to undertake all actions which are reasonable and necessary to carry out the obligations set forth in the subsections above.

3.12.4 Counterparty retains all other rights and responsibilities and all other obligations to WREGIS.

#### IV. Indemnity and Hold Harmless by Counterparty.

4.1 Indemnity. To the extent permitted by Requirements of Law, Counterparty hereby indemnifies and agrees to hold PacifiCorp, its officers, employees, agents, or representatives, harmless for any and all liability that is in any way associated with PacifiCorp's performance hereunder. This includes liability arising from: the data contained in the Monthly Generation Extract File, or any other financial injury, or damage to persons or property. Without limiting the generality of the foregoing:

4.1.1 Waiver of Causes of Action and Claims for Damages. Counterparty hereby waives any and all causes of action arising under or in respect to this Agreement, whether in contract, tort or any other legal or equitable theory (including strict liability) against PacifiCorp. In no event shall PacifiCorp be liable to Counterparty its board of directors, employees, agents, or representatives for any demands, direct costs, lost or prospective profits or any other losses, liabilities or expenses, whether special, punitive, exemplary, consequential, incidental, or indirect in nature, that are in any way associated with PacifiCorp's performance of the QRE function or otherwise under or in respect of this Agreement.

4.2 Indemnity by Counterparty. Counterparty shall release, indemnify and hold harmless PacifiCorp, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "PacifiCorp Indemnities") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorney's fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") resulting from, or arising out of, or in any way connected with, the performance by Counterparty of its obligations hereunder, or relating to the Facility, for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the PacifiCorp Indemnities.

4.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, COUNTERPARTY ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM (1) THE FAILURE TO SEND DATA IN A FORMAT SPECIFIED BY PACIFICORP, (2) THE FAILURE TO USE PROTOCOLS SPECIFIED BY PACIFICORP OR (3) THE SENDING OF ERRONEOUS, UNTRUTHFUL, INACCURATE,



AND/OR INCOMPLETE GENERATING DATA TO PACIFICORP OR THE SENDING OF ERRONEOUS, UNTRUTHFUL, INACCURATE, AND/OR INCOMPLETE DATA BY PACIFICORP TO WREGIS. IN NO EVENT SHALL PACIFICORP BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR OTHER INDIRECT LOSS OR DAMAGES RESULTING FROM ANY BREACH OF THIS AGREEMENT, WHETHER CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACTIONS OF PACIFICORP (AND/OR ITS CONTRACTORS, AGENTS, AND EMPLOYEES), REGARDLESS OF WHETHER SUCH CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL PACIFICORP BE LIABLE FOR ANY LOSS OR HARM SUFFERED BY COUNTERPARTY OR ANY THIRD PARTY DUE TO ANY ACTION OR INACTION BY PACIFICORP TAKEN HEREUNDER THAT CAUSES A FACILITY TO LOSE ANY CREDENTIALS, REGISTRATION OR QUALIFICATION UNDER THE RENEWABLE PORTFOLIO STANDARD OR SIMILAR LAW OF ANY STATE OR OTHER JURISDICTION.

4.4 PACIFICORP WILL NOT BE RESPONSIBLE FOR ANY DAMAGES RESULTING FROM ECONOMIC LOSS, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, LOSS OF PROFIT, LOSS OF PRODUCTION TAX CREDITS, LOSS OF SAVINGS OR REVENUE, LOSS OF GOODWILL, THE CLAIMS OF THIRD PARTIES (INCLUDING CUSTOMERS AND SHAREHOLDERS OR OTHER EQUITY OWNERS), PERSONAL INJURIES OR PROPERTY DAMAGES SUSTAINED BY THE COUNTERPARTY OR ANY THIRD PARTIES, EVEN IF PACIFICORP HAS BEEN NOTIFIED BY COUNTERPARTY (OR BY ANY THIRD PARTY) OF SUCH DAMAGES.

4.5 PACIFICORP DISCLAIMS ANY LIABILITY FOR AND COUNTERPARTY WAIVES ANY CLAIM FOR LOSS OR DAMAGE RESULTING FROM ERRORS, OMISSIONS, OR OTHER INACCURACIES IN ANY PART OF WREGIS OR THE REPORTS, CERTIFICATES OR OTHER INFORMATION COMPILED OR PRODUCED BY AND FROM OR INPUT INTO WREGIS USING COUNTERPARTY SUPPLIED GENERATION DATA, WHETHER OR NOT SUCH ERRORS, OMISSIONS OR INACCURACIES ARE DUE TO ERRONEOUS, UNTRUTHFUL, INCOMPLETE, OR INACCURATE INFORMATION INPUT BY PACIFICORP INTO WREGIS.

4.6 COUNTERPARTY HEREBY RELEASES PACIFICORP AND ANY OF ITS CONTRACTORS, AGENTS, AND EMPLOYEES FROM ANY AND ALL LIABILITY WITH RESPECT TO DAMAGES OR INJURIES INCURRED BY GENERATOR OWNER AS RELATES TO THE FOREGOING, EXCLUDING ANY ARISING AS A RESULT OF TORTIOUS AND INTENTIONALLY KNOWING OR RECKLESS CONDUCT BY PACIFICORP.

4.7 COUNTERPARTY ACKNOWLEDGES AND AGREES THAT, IN THE EVENT OF BREACH OF THIS CONTRACT OR ANY OTHER ACTION RESULTING IN LOSS OR POTENTIAL LOSS OR DAMAGE TO COUNTERPARTY, THE SOLE RECOURSE TO GENERATOR/OWNER IS TERMINATION OF THIS AGREEMENT.

4.8 Counterparty agrees to defend, indemnify, and hold harmless PacifiCorp and its directors, officers, employees, and agents from and against any and all claims (including third-party claims); causes of action, whether in contract, tort, or any other legal theory (including strict liability); demands; damages; costs; liabilities; losses and expenses (including reasonable attorney's fees and court costs) of any nature whatsoever, whenever arising, arising out of, resulting from, attributable to, or related to Counterparty generation Data our Output for: any inaccuracy, error, or delay in or omission of (i) any Data, information, or service, or (ii) the transmission or delivery of any Data, information, or service; any interruption of any such Data, Output, information, or service (whether or not caused by PacifiCorp); or any financial, business, commercial, or other judgment, decision, act, or omission made by any person or entity based upon or related to the information.

4.9 Interconnection. Counterparty shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise. Counterparty shall defend, indemnify and hold PacifiCorp harmless against any liability arising due to Counterparty's performance or failure to perform under the Generation Interconnection Agreement. Counterparty's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not a Force Majeure.



4.10 THIS ARTICLE SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH TERMINATION IS BY PACIFICORP OR COUNTERPARTY, AND WHETHER OR NOT SUCH TERMINATION IS ON ACCOUNT OF A DEFAULT.

V. Further Counterparty Obligations.

5.1 No Sale. Nothing herein constitutes a sale or purchase of energy or renewable energy certificates to or by PacifiCorp.

5.2 PTCs. Counterparty shall bear all risks, financial and otherwise throughout the Term, associated with Counterparty's or the Facility's eligibility to receive production tax credits ("PTCs") or qualify for accelerated depreciation for Counterparty's accounting, reporting or tax purposes.

5.3 Further Assurances. At PacifiCorp's request, the Parties shall execute such documents and instruments as may be reasonably required to effect the essential intent and purposes hereof.

5.4 Station Service. Counterparty shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof, Counterparty shall be 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 hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or renewable energy certificates.

5.6 Coordination with System. Counterparty shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System, and shall be solely responsible for (and shall defend and hold PacifiCorp harmless against) any damage that may occur as a direct result of Counterparty's breach of the Generation Interconnection Agreement.

5.7 Data Request. Counterparty shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data reasonably required for information requests from any Governmental Authorities, state or federal agency intervenor or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any governmental authority. Counterparty shall use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review it and meet any submission deadlines.

5.8 Additional Information. Counterparty shall provide to PacifiCorp such other information respecting Counterparty or the Facility as PacifiCorp may, from time to time, reasonably request.

5.9 No Dedication. Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party hereto. No undertaking by one Party to the other under any provision hereof shall constitute the dedication of PacifiCorp's facilities or any portion thereof to Counterparty or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Counterparty as an independent individual or entity.

5.10 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Counterparty hereunder, Counterparty shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified in the Generation Interconnection Agreement.

VI. Representations and Warranties.

6.1 Mutual Representations and Warranties. Each Party represents and warrants to the other that: (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization; (ii) it has the corporate, governmental and other legal capacity and authority to enter hereinto and to perform its obligations hereunder; (iii) such execution and performance do not violate or conflict with any law, order or agreement applicable to it; (iv) it has all governmental and other authorizations that are required to have been obtained or submitted by it with respect hereto, and they are in full force and effect; (v) its obligations hereunder are valid, binding and enforceable in accordance with their terms (subject to bankruptcy or similar laws affecting creditors' rights generally); and (vi) no Event of Default, or event which with notice and/or lapse



of time would constitute such an Event of Default, has occurred and is continuing or would occur as a result of its entering into or performing its obligations hereunder.

6.2 Representations and Warranties of Counterparty. Counterparty hereby represents and warrants to PacifiCorp: (i) it is not relying upon any representations of PacifiCorp other than those expressly set forth herein; (ii) it has entered hereinto with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks; (iii) it has made its trading and investment decisions based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by PacifiCorp; (iv) it has not received from PacifiCorp any assurances or promises regarding any financial results or benefits hereunder; (v) service hereunder is not a utility service within the meaning of Section 466 of the United States Bankruptcy Code; and (vi) Counterparty holds legal title to the Facility or otherwise holds the legal right to cause the Facility to enter into this Agreement.

## **VII. Financial Responsibility.**

7.1 Adequate Assurances. Without limiting PacifiCorp's rights under Article VIII hereof, if Counterparty has failed to make a timely payment hereunder, and PacifiCorp has reasonable grounds for insecurity regarding the performance of any obligation of Counterparty hereunder (whether or not then due), PacifiCorp may demand Adequate Assurances of Performance. "Adequate Assurances of Performance" means sufficient security in the form, amount, by an issuer or guarantor, and for the term reasonably acceptable to PacifiCorp, including, but not limited to, cash, a standby irrevocable letter of credit, a prepayment, a security interest in government securities, an asset or a performance bond or guaranty. Such Adequate Assurances of Performance shall be provided within three business days after a written demand is made by PacifiCorp.

## **VIII. Events of Default; Remedies.**

8.1 Event of Default. "Event of Default" means, with respect to a Party (the "Defaulting Party"):

8.1.1 the failure to render when due any payment or performance hereunder, if such failure is not remedied within five days after written notice;

8.1.2 the failure to timely provide adequate assurances required pursuant to Article VII hereof;

8.1.3 any such Party's representation or warranty proves to have been incorrect or misleading in any material respect when made;

8.1.4 the failure to perform any other covenant set forth herein if such failure is not remedied within five days after written notice;

8.1.5 its bankruptcy, if adequate assurances acceptable to PacifiCorp and approved by the Bankruptcy Court are not provided;

8.1.6 the expiration or termination of any credit support of Counterparty's obligations hereunder (other than in accordance with its terms) prior to the satisfaction of all obligations of Counterparty without the written consent of PacifiCorp; or

8.1.7 In the case of Counterparty:

8.1.7.1 Counterparty fails to report generation Data or Output information to PacifiCorp for the Facility or Counterparty fails to send the data in a format and use the protocols specified by PacifiCorp as determined by PacifiCorp to be required to meet the requirements of the WREGIS Operating Rules;

8.1.7.2 Counterparty is delinquent in payment to WREGIS of any WREGIS fees for registration or maintenance of Accounts or Subaccounts, which payment impairs the ability of PacifiCorp to report Generator Data, Output, or other information to WREGIS regarding the Facility, which delinquency continues for a period of thirty (30) days;

8.1.7.3 Counterparty fails to comply with a request by PacifiCorp to provide evidence of payment of WREGIS fees pertaining to the Facility; or

8.1.7.4 Counterparty knowingly or intentionally falsifies or misrepresents any Data, Output information, or other information required by WREGIS.



8.2 Remedies Upon Event of Default. In the Event of Default by a Party and for so long as the Event of Default is continuing, the non-defaulting Party (the "Performing Party") shall have the right to do any or all of the following: (1) upon two business days' written notice to the Defaulting Party, terminate this Agreement; (2) withhold any payments or performance due in respect of this Agreement; and (3) exercise such other remedies as may be available at law or in equity or as otherwise provided for herein, to the extent such remedies have not been otherwise waived or limited pursuant to the terms hereof.

8.3 Setoff. If an Event of Default occurs, the Performing Party may, at its election, set off any or all amounts which the Defaulting Party owes to it or any Affiliate of the Performing Party (whether under this Agreement or otherwise and whether or not then due) against any or all amounts which it or any Affiliate of the Performing Party owes to the Defaulting Party (whether under this Agreement or otherwise and whether or not then due).

8.4 Payment of Damages. Any amounts due on account of default shall be paid by the close of business on the next business day following the Defaulting Party's receipt of the Performing Party's written termination notice setting forth the termination payment due.

8.5 Limitation of Liability. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED HEREIN SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. LIABILITY THAT HAS NOT BEEN OTHERWISE EXCLUDED PURSUANT TO THE TERMS HEREOF SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AS THE SOLE AND EXCLUSIVE REMEDY. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

8.6 Survival. This Article survives the expiration or termination hereof.

#### IX. Force Majeure.

9.1 Except with regard to a Party's obligation to make payments hereunder, in the event either Party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect hereto, then upon such Party's (the "Claiming Party") giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing or by facsimile to the other Party, then the obligations of the Claiming Party shall, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party shall not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure shall have until the end of the Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure. "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations hereunder, which event or circumstance was not anticipated, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Counterparty's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not a Force Majeure.

9.2 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

9.3 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

#### X. Miscellaneous.



**10.1 CHOICE OF LAW.** This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

**10.2 Restriction on Assignments.** Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment in violation hereof shall be void ab initio. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

**10.3 Notices.** All notices, requests, statements or payments shall be made to the addresses set out on the Notices Exhibit. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section.

**10.4 Entire Agreement: Counterparts.** This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties. This Agreement may be executed in counterparts, including by telefacsimile transmission, each of which is an original and all of which taken together constitute one and the same original instrument. This Agreement completely and fully supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof. If any provision of this Agreement is determined to be invalid, void or unenforceable by any court of competent jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.

**10.5 No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default, nor shall any delay by a Party in the exercise of any right under this Agreement be considered as a waiver or relinquishment thereof.

**10.6 Jurisdiction.** Any judicial action arising out of, resulting from or in any way relating to this Agreement shall be brought only in a state or federal court of Multnomah County, Oregon. In the event such judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its costs and attorneys' fees incurred in connection with such proceedings.

**10.7 Jury Trial Waiver.** THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING HERETO, ANY GREEN TAGS OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

**10.8 No Third Party Beneficiaries.** With the exception of Transmission Provider and Interconnection Provider, who are express third party beneficiaries hereof, this Agreement confers no rights whatsoever upon any person other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person not a Party hereto.

**10.9 Relationship of the Parties.** Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the date first above written.

PacifiCorp

[Counterparty]

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**Exhibit A**

Facility and Generation Data to be sent by QRE

For Facility enter the following information:

Facility Name and Address

Resource ID and Meter Number (Device ID) as listed on the Meter Service Agreement for the ISO Metered Entities (MSA/ISOME) Schedule 1

WREGIS ID

Meter Points



**ADDENDUM M**

**Amended and Restated Power Purchase Agreement**

*[Insert], LLC—Five Pines*

**AMENDED AND RESTATED POWER PURCHASE AGREEMENT**

**BETWEEN**

***[INSERT NAME OF RIDGELINE AFFILIATE]***

**AND**

**PACIFICORP**

**Relating to Five Pines Project, an up to 40 MW Wind Turbine Generation Project  
a non-fueled, on-system, Intermittent Resource with Mechanical Availability Guarantee,  
Idaho Qualifying Facility**



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### AMENDED AND RESTATED POWER PURCHASE AGREEMENT

THIS AMENDED AND RESTATED POWER PURCHASE AGREEMENT, relating to FIVE PINES, an up to 40 MW wind turbine generation project, entered into this \_\_\_ day of [Insert Month and Year of Signing], is between [Insert Name of Ridgeline Affiliate], a Delaware limited liability company (the "Seller") and PacifiCorp, an Oregon corporation acting in its merchant function capacity ("PacifiCorp"). Seller and PacifiCorp are referred to collectively as the "Parties" and individually as a "Party".

### RECITALS

A. Cedar Creek Wind, LLC ("CCW") and PacifiCorp entered into that certain Power Purchase Agreement dated as of December \_\_, 2011 (the "Original PPA"), pursuant to which CCW has been granted the right to assign the Original PPA to an affiliate of Ridgeline Energy, LLC.

B. CCW has elected to exercise its right to assign the Original PPA to Seller, an affiliate of Ridgeline Energy, LLC, and pursuant to the terms of the Original PPA, effective upon such assignment, the Original PPA is to be amended and restated on the terms set forth in this Agreement.

C. Seller intends to construct, own, operate and maintain a wind facility, including Seller's Interconnection Facilities, for the generation of electric power located in Idaho, with an expected Facility Capacity Rating of up to 40 megawatts as further described in Exhibit A and Exhibit B ("Facility").

D. Seller has secured rights to deliver output from its Facility to PacifiCorp across the interconnection and other facilities as further described in Addendum L.

E. Seller intends to operate the Facility as a Qualifying Facility, as such term is defined in Section 1.59 below, and to sell Net Output to PacifiCorp in Idaho.

F. Seller estimates that the average annual Net Output (based on the maximum capacity of 40 megawatts) to be delivered by the Facility to PacifiCorp is 109,011,621 kilowatt hours (kWh) ("Average Annual Net Output") pursuant to the Initial Year Energy Delivery Schedule in Section 4.3.1, which amount of energy PacifiCorp will include in its resource planning.

G. Seller intends to sell and PacifiCorp intends to purchase all the Net Output from the Facility in accordance with the terms and conditions of this Agreement.

H. PacifiCorp intends to designate Seller's Facility as a Network Resource for the purposes of serving Network Load.

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

J. Seller has authorized Transmission Provider to release generation data to PacifiCorp. If yes, the authorization is attached as Exhibit H.

NOW, THEREFORE, the Parties mutually agree to amend and restate the Original PPA to read in its entirety as follows:



## SECTION 1. DEFINITIONS

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

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

1.2 **"Availability"** means, for any Billing Period, the ratio, expressed as a percentage, of (x) the aggregate sum of the turbine-minutes in which each of the Wind Turbines at the Facility was available to generate at the Maximum Facility Delivery Rate during the Billing Period over (y) the product of the number of Wind Turbines that comprise the Facility Capacity Rating as of Commercial Operation multiplied by the number of minutes in such Billing Period. A Wind Turbine shall be deemed not available to operate during minutes in which it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; or (c) otherwise not operational or capable of delivering at the Maximum Facility Delivery Rate to the Point of Delivery; unless if unavailable due solely to (i) a default by PacifiCorp; (ii) to the extent not caused by Seller's actions, a curtailment in accordance with Section 6.3 or (iii) insufficient wind (including the normal amount of time required by the generating equipment to resume operations following a period when wind speed is below the Cut-In Wind Speed).

1.3 **"Billing Period"** means the time period between PacifiCorp's reading of its power purchase meter at the Facility, which for this Agreement shall coincide with calendar months.

1.4 **"CAMD"** means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving Green Tags or any attribute thereof.

1.5 **"Commercial Operation"** means that not less than the 90% of the expected Facility Capacity Rating is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the System, all of which shall be Seller's responsibility to receive or obtain, and which occurs when all of the following events (i) have occurred, and (ii) remain simultaneously true and accurate as of the date and moment on which Seller gives PacifiCorp notice that Commercial Operation has occurred:

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

1.5.2 Start-Up Testing of the Facility has been completed in accordance with Exhibit E.

1.5.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, an attorney in good standing in Idaho, or a letter from Transmission Provider, stating that, in accordance with the Generation Interconnection



Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the System in conformance with the Generation Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement, and the Facility is fully integrated and synchronized with the System.

1.5.4 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, or an attorney in good standing in Idaho, stating that Seller has obtained all Required Facility Documents and, if requested by PacifiCorp in writing, Seller shall have provided copies of any or all such requested Required Facility Documents.

1.5.5 Seller has complied with the security requirements of Section 11.

1.5.6 Network Resource Designation and Transmission Service Request.  
(i) PacifiCorp has received confirmation from the Transmission Provider that the Facility has been designated as a Network Resource and (ii) PacifiCorp has received confirmation from the Transmission Provider that the transmission service request has been granted in sufficient capacity to meet or exceed the Maximum Facility Delivery Rate and the Seller has paid all costs associated with any requirements of the transmission service request.

1.6 "Commercial Operation Date" means the date, as designated by PacifiCorp pursuant to Section 2.4, the Facility first achieves Commercial Operation.

1.7 "Commission" means the Idaho Public Utilities Commission.

1.8 "Conforming Energy" means all Net Energy except Non-Conforming Energy.

1.9 "Conforming Energy Purchase Price" means the applicable price for Conforming Energy and capacity, specified in Section 5.1.

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

1.11 "Cut-in Wind Speed" means the wind speed at which a stationary wind turbine begins producing Net Energy, as specified by the turbine manufacturer and set forth in Exhibit A.

1.12 "Default Security" shall have the meaning set forth in Section 11.2 of this Agreement.

1.13 "Delay Liquidated Damages", "Delay Daily Minimum", "Delay Period", "Delay Price" and "Delay Volume" shall have the meanings set forth in Section 2.5 of this Agreement.



1.14 "Delay Period Commencement Date" means October 1, 2013.

1.15 "Delay Security" shall have the meaning set forth in Section 11.1.1 of this Agreement.

1.16 "Effective Date" shall have the meaning set forth in Section 2.1 of this Agreement.

1.17 "Energy Delivery Schedule" shall have the meaning set forth in Section 4.3 of this Agreement.

1.18 "Environmental Attributes" means any and all claims, credits, emissions reductions, offsets, and allowances, howsoever entitled, associated with the generation of Output from the Facility or the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, that is capable of being measured, verified, or calculated. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and, (3) all WREGIS Certificates. Environmental Attributes do not include (i) Production Tax Credits or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, or (ii) adverse wildlife or environmental impacts.

1.19 "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 and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

1.20 "Expected Facility Capacity Rating" shall be between 10 and 40 MW but shall not exceed 40 MW in any event, nor shall the sum of the Facility Capacity Rating of this Agreement, the facility capacity rating under the amended and restated power purchase agreement between PacifiCorp and Ridgeline relating to North Point, and the facility capacity rating under the power purchase agreement between PacifiCorp and CCW relating to Coyote Hill exceed 133.4 MW.

1.21 "Expiration Date" shall have the meaning set forth in Section 2.1 of this Agreement.

1.22 "Facility" is defined in Recital A of this Agreement.

1.23 "Facility Capacity Rating" means the sum of the Nameplate Capacity Ratings for all Wind Turbine generators comprising the Facility.

1.24 "Force Majeure" has the meaning set forth in Section 15.1.



1.25 **"Forced Outage"** means an outage that requires removal of one or more Wind Turbines from service, another outage state or a reserve shutdown state before the end of the next weekend. Maintenance Outages and Planned Outages are not Forced Outages.

1.26 **"Generation Interconnection Agreement"** means the generation interconnection agreement entered into separately between Seller and Transmission Provider, as applicable, specifying the Point of Delivery and providing for the construction and operation of the Interconnection Facilities.

1.27 **"Green Tags"** means (a) the Environmental Attributes associated with all Output, together with (b) the Green Tag Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified," or otherwise. One Green Tag represents the Environmental Attributes made available by the generation of one MWh of energy from the Facility.

1.28 **"Green Tag Reporting Rights"** means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, and include reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

1.29 **"Governmental Authority"** means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, PacifiCorp or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

1.30 **"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.

1.31 **"Inadvertent Energy"** means energy delivered to the Point of Delivery at a rate exceeding the Maximum Facility Delivery Rate on an hour-averaged basis. Inadvertent Energy is not included in Net Energy.

1.32 **"Index Price"**, for each day, shall mean the weighted average of the average Peak and Off-Peak firm energy market prices, as published in the *Intercontinental Exchange (ICE) Day Ahead Power Price Report* for the Palo Verde Hub for such day. For Sunday and NERC holidays, the 24-Hour Index Price shall be used, unless ICE shall publish a Firm On-Peak and Firm Off-Peak Price for such days for Palo Verde, in which event such indices shall be utilized for such days. If the ICE index or any replacement of that index ceases to be published during the term of this Agreement, PacifiCorp shall select as a replacement a substantially equivalent index that, after any appropriate or necessary adjustments, provides the most reasonable substitute for the index in question. PacifiCorp's selection shall be subject to Seller's consent, which Seller shall not unreasonably withhold, condition or delay.



1.33 **"Initial Year Energy Delivery Schedule"** shall have the meaning set forth in Section 4.3.1.

1.34 **"Interconnection Facilities"** means all the facilities and ancillary equipment used to interconnect the Facility to the System, as defined in the Generation Interconnection Agreement.

1.35 **"Letter of Credit"** means an irrevocable standby letter of credit in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder. Such letter of credit shall be provided by an institution that is a United States office of a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, with a credit rating on its long-term senior unsecured debt of at least "A" from Standard & Poor's and "A2" from Moody's Investor Services, and (unless otherwise agreed) having assets of at least \$10,000,000,000 (net of reserves).

1.36 **"Licensed Professional Engineer"** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Idaho, who has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called to provide a certification, evaluation and/or opinion, who has no economic relationship, association, or nexus with Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with the Seller.

1.37 **"Maintenance Outage"** means any outage of one or more Wind Turbines that is not a Forced Outage or a Planned Outage. A Maintenance Outage is an outage that can be deferred until after the end of the next weekend, but that requires that the Wind Turbine(s) be removed from service before the next Planned Outage. A Maintenance Outage may occur any time during the year and must have a flexible start date.

1.38 **"Material Adverse Change"** shall mean, with respect to the Seller, if the Seller has experienced a change in facts or circumstances related to development or operation of the Facility that materially and adversely impact Seller's ability to fulfill its obligations under this Agreement.

1.39 **"Maximum Facility Delivery Rate"** means the maximum instantaneous rate (kW) at which the Facility is capable of delivering Net Output at the Point of Delivery, as specified in Exhibit A, and in compliance with the Generation Interconnection Agreement.

1.40 **"Maximum GIA Delivery Rate"** means the maximum rate (kW) at which the Generator Interconnection Agreement allows the Facility to deliver energy to the Point of Delivery and is set forth in Exhibit A.



- 1.41 **"Nameplate Capacity Rating"** means the maximum instantaneous generating capacity of any qualifying small power or cogeneration generating unit supplying all or part of the energy sold by the Facility, expressed in MW or kW, when operated consistent with the manufacturer's recommended power factor and operating parameters, as set forth in a notice from Seller to PacifiCorp delivered before the Commercial Operation Date and, if applicable, updated in the As-built Supplement.
- 1.42 **"NERC"** means the North American Electric Reliability Corporation.
- 1.43 **"Net Energy"** means the energy component, in kWh, of Net Output. Net Energy does not include Inadvertent Energy.
- 1.44 **"Net Output"** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments, if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be calculated as set forth in Addendum L. Net Output does not include Inadvertent Energy.
- 1.45 **"Network Resource"** shall have the meaning set forth in the Tariff.
- 1.46 **"Network Service Provider"** means PacifiCorp Transmission, as a provider of network service to PacifiCorp under the Tariff.
- 1.47 **"Non-Conforming Energy"** means Net Output produced by the Facility prior to the Commercial Operation Date.
- 1.48 **"Non-Conforming Energy Purchase Price"** means the applicable price for Non-Conforming Energy and capacity, specified in Section 5.1.
- 1.49 **"Off-Peak Hours"** means all hours of the week that are not On-Peak Hours.
- 1.50 **"On-Peak Hours"** means hours from 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time, Monday through Saturday, excluding Western Electricity Coordinating Council (WECC) and North American Electric Reliability Corporation (NERC) holidays.
- 1.51 **"Output Shortfall"** and **"Output Shortfall Damages"** shall have the meanings set forth in Section 4.5 of this Agreement.
- 1.52 **"PacifiCorp"** is defined in the first paragraph of this Agreement, and excludes PacifiCorp Transmission.
- 1.53 **"PacifiCorp Transmission"** means PacifiCorp, an Oregon corporation, acting in its interconnection and transmission function capacity.
- 1.54 **"Planned Outage"** means an outage of predetermined duration that is scheduled in Seller's Energy Delivery Schedule. Boiler overhauls, turbine overhauls or inspections are typical planned outages. Maintenance Outages and Forced Outages are not Planned Outages.
- 1.55 **"Point of Delivery"** means the point of interconnection between the Facility and the System, as specified in the Generation Interconnection Agreement and in Exhibit B.



1.56 **"Premises"** means the real property on which the Facility is or will be located, as more fully described on Exhibit A.

1.57 **"Prime Rate"** means 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 JPMorgan Chase & Co. If a JPMorgan Chase & Co. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.58 **"Production Tax Credits"** means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the term hereof or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Facility is eligible. Production Tax Credits do not include any tax credit determined by reference to investment.

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

1.60 **"QF"** means **"Qualifying Facility"**, as that term is defined in the version of FERC Regulations (codified at 18 CFR Part 292) in effect on the date of this Agreement.

1.61 **"Required Facility Documents"** means all deeds, titles, leases (including Wind Leases), licenses, permits, authorizations, and agreements demonstrating that Seller controls the necessary property rights and government authorizations to construct, operate, and maintain the Facility, including without limitation those set forth in Exhibit C.

1.62 **"Requirements of Law"** means any applicable and mandatory (but not merely advisory) federal, state and local law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

1.63 **"Scheduled Commercial Operation Date"** means December 31, 2012, as such date shall be extended from time to time as a result of Force Majeure; provided, that the Scheduled Commercial Operation Date shall not be extended beyond September 30, 2013.

1.64 **"Scheduled Monthly Energy Delivery"** means the Net Energy scheduled to be delivered during a given calendar month, as specified by Seller in the Energy Delivery Schedule.



1.65 **"Shared Interconnection Facilities"** means that portion of the Interconnection Facilities used by the Facility and one or more other Qualifying Facilities as further described in Exhibit B.

1.66 **"Seller's Forecast-Cost Share"** and **"Seller's Capped Forecast-Cost Share"** shall have the meanings set forth in Sections 8.2 and 8.3 respectively.

1.67 **"Subsequent Energy Delivery Schedule"** shall have the meaning set forth in Section 4.3.3.

1.68 **"System"** means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generation Interconnection Agreement.

1.69 **"Tariff"** means the PacifiCorp Transmission FERC Electric Tariff Seventh Revised Volume No. 11 Pro Forma Open Access Transmission Tariff or the Transmission Provider's corresponding FERC tariff or both, as revised from time to time.

1.70 **"Transmission Provider"** means PacifiCorp Transmission or a successor, including any regional transmission organization ("RTO").

**"Wind Leases"** means the memoranda of wind lease and redacted wind leases recorded in the county in which the Facility is located in connection with the development of the Facility, as the same may be supplemented, amended, extended, restated, or replaced from time to time.

1.71 **"Wind Turbine"** means the type of wind turbine specified and more fully described in Exhibit A as such Exhibit A may be updated pursuant to Section 2.2.7.

1.72 **"WREGIS"** means the Western Renewable Energy Generation Information System.

1.73 **"WREGIS Certificate"** means "Certificate" as defined by WREGIS in the WREGIS Operating Rules.

1.74 **"WREGIS Operating Rules"** means the operating rules and requirements adopted by WREGIS.

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

2.1 This Agreement shall become effective after execution by both Parties and after approval by the Commission pursuant to a final and non-appealable order ("Effective Date"), that the prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the costs incurred by PacifiCorp for purchases of capacity and energy from Seller are legitimate expenses, all of which the Commission will allow PacifiCorp to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses. Unless earlier terminated as provided herein, this Agreement shall remain in effect



until the twentieth (20<sup>th</sup>) anniversary of the earlier of the Commercial Operation Date or the Scheduled Commercial Operation Date ("Expiration Date").

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

2.2.1 By the date that is four (4) months prior to the Scheduled Commercial Operation Date, Seller shall obtain and provide to PacifiCorp copies of all governmental permits and authorizations listed in Exhibit C.

2.2.2 By the date that is thirty (30) days after the Effective Date, Seller shall provide one hundred percent (100%) of the Delay Security required under Section 11.1.1, as applicable.

2.2.3 By December 31, 2011, Seller: (i) has provided all information and paid all fees the Transmission Provider requires to designate the Facility as a Network Resource in accordance with the Tariff (OATT); and (ii) has provided all information reasonably required by PacifiCorp to submit a transmission service request for the Facility to the Transmission Provider pursuant to the Tariff.

2.2.4 PacifiCorp, within ten (10) days of receiving from Seller the information identified in Section 2.2.3, shall (i) withdraw the request with respect to the facility (as defined in the Original PPA) and (ii) request designation of the Facility as a Network Resource for the purposes of serving Network Load.

2.2.5 Seller shall provide written confirmation of the expected Facility Capacity Rating for the Facility on or before January 31, 2012. This notice shall definitively establish a single Capacity Rating for the Facility within the range contemplated in the Expected Facility Capacity Rating.

2.2.6 At least ten (10) business days prior to delivery of any energy from the Facility to PacifiCorp, Seller shall provide PacifiCorp with an executed Generation Interconnection Agreement.

2.2.7 Within one hundred eighty (180) days prior to the Scheduled Commercial Operation Date, Seller shall provide PacifiCorp with amended Exhibits, which may include the designation of alternative Wind Turbines for the Facility, and such other updates to the information contained therein.

2.2.8 Prior to the Commercial Operation Date, Seller shall provide Default Security required under Section 11.2, if applicable.

2.2.9 Prior to the Commercial Operation Date, Seller shall provide PacifiCorp with an As-built Supplement reasonably acceptable to PacifiCorp.

2.2.10 Seller shall use commercially reasonable efforts to achieve Commercial Operation by 00:00 PPT December 31, 2012.



23 Beginning on January 6, 2012 and on the fifth (5<sup>th</sup>) business day of each month thereafter until the Commercial Operation Date, Seller shall provide PacifiCorp with a one-page monthly update by e-mail on the progress of financing and/or construction of the Project and status of completion of the milestones in Section 2.2.

2.4 Establishing Commercial Operation. Seller shall provide written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation. PacifiCorp shall have ten (10) business days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PacifiCorp reasonably believes has not been satisfied. If, within such ten (10) business day period, PacifiCorp either does not respond or else confirms that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PacifiCorp notifies Seller within such ten (10) business day period that PacifiCorp reasonably believes the Facility has not achieved Commercial Operation, Seller may, if it has a good faith belief that Commercial Operation has been achieved, submit a Technical Dispute Notice, or else Seller shall address the concerns stated in PacifiCorp's notice to the mutual satisfaction of both Parties. If Seller submits a Technical Dispute Notice and the Technical Expert determines that Commercial Operation has been achieved, then the Commercial Operation Date shall be the date, as determined by the Technical Expert, that the Facility first met all the requirements of Commercial Operation; otherwise the date upon which Seller has addressed the concerns stated in PacifiCorp's notice to PacifiCorp's reasonable satisfaction, as specified in a notice from PacifiCorp to Seller, shall be the Commercial Operation Date. If Commercial Operation is achieved at less than one hundred percent (100%) of the expected Facility Capacity Rating and Seller informs PacifiCorp that Seller intends to bring the Facility to one hundred percent (100%) of the expected Facility Capacity Rating, Seller shall provide PacifiCorp with a list of all items to be completed in order to achieve the expected Facility Capacity Rating.

2.4.1 Technical Expert. If, and only if, a dispute regards (i) whether or not Commercial Operation has been achieved, and/or (ii) the date when Commercial Operation was achieved, the Parties may have such dispute, and only such dispute, resolved pursuant to this Section 2.4.1. Any such dispute will be determined by an independent technical expert, who shall be a mutually acceptable third party with training and experience in the disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion (the "Technical Expert"), which determination shall be (X) made (subject to the terms in this Section 2.4) in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on October 1, 2009 (the "Technical Dispute Procedures"), notwithstanding any dollar amounts or dollar limitations contained therein, and (Y) binding upon the Parties.

(a) Either Party may commence the dispute process as to the matters set forth in paragraph 2.4.1, above, with the American Arbitration Association ("AAA") by notifying AAA and the other Party in writing ("Technical Dispute Notice") of such Party's desire that the dispute be resolved through a determination by a Technical Expert.

(b) The determination shall be conducted by a sole Technical Expert. The Parties may select any mutually acceptable Technical Expert. If the Parties cannot agree on a Technical Expert within five (5) days after the date of the Technical Dispute Notice, then the AAA's



Arbitration Administrator shall send a list and resumes of three (3) available technical experts meeting the qualifications set forth in Section 2.4.1 to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the Technical Expert. If more than one name remains, either because one or both Parties have failed to respond to the AAA's Arbitration Administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's Arbitration Administrator will choose the Technical Expert from the remaining names. If the designated Technical Expert shall die, become incapable or, unwilling to, or unable to serve or proceed with the determination, a substitute Technical Expert shall be appointed in accordance with the selection procedure described above, and such substitute Technical Expert shall have all such powers as if he or she has been originally appointed herein.

(c) Within thirty (30) days of the appointment of the Technical Expert pursuant to the foregoing sub-section, each Party shall submit to the Technical Expert (and copy the other Party) a written report containing its position with respect to the dispute, and arguments therefor together with supporting documentation and calculations. Discovery shall be limited to Facility documentation relating to the disputed matter. Within sixty (60) days from receipt of such submissions, the Technical Expert shall select one or the other Party's position with respect to the disputed, arbitratable issues set forth in Section 2.4.1 above, whereupon such selection shall be a binding determination upon the Parties for all purposes hereof. The costs of the Technical Expert, including his or her fees and expenses, shall be borne by the Party whose position was not selected by the Technical Expert; each Party shall otherwise bear its own expenses. If the Technical Expert fails to render a decision within ninety (90) days from receipt of each Party's submissions, either Party may, prior to the Technical Expert's final decision, initiate litigation, in which case the Technical Expert's final decision shall not be binding on the Parties unless otherwise agreed.

2.4.2 All verbal and written communications between the Parties and issued or prepared in connection with this Section 2.4.1 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

2.4.3 All deadlines specified in this Section 2.4 may be extended by mutual agreement of the Parties.

2.5 Delay Damages. Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be liable to pay PacifiCorp delay damages for the number of days ("Delay Period") that the Commercial Operation Date occurs after October 1, 2013, until the earlier of occurrence of the Commercial Operation Date or the termination of this Agreement ("Delay Liquidated Damages"); *provided that* Seller shall not accrue any Delay Liquidated Damages after: (i) Seller has timely achieved the milestone in Section 2.2.3; and (ii) Seller has satisfied all requirements of Commercial Operation except for one or more requirements in Section 1.5.6. Billings and payments for Delay Liquidated Damages shall be made in accordance with Section 11.1.



**2.5.1 Delay Liquidated Damages.** Delay Liquidated Damages equals the sum of: for each day in the Delay Period, the greater of (1) the Delay Daily Minimum or (2) the Delay Price times the Delay Volume,

Where:

"Delay Daily Minimum" equals (a) for the first forty-five (45) calendar days following the Scheduled Commercial Operation Date: one-ninetieth (1/90th) of forty-five dollars (\$45) multiplied by the Maximum Facility Delivery Rate with the Maximum Facility Delivery Rate being measured in kW; (b) after the forty-fifth (45<sup>th</sup>) calendar day following the Scheduled Commercial Operation Date: the Delay Price times the Delay Volume.

"Delay Price" equals the positive difference, if any, of the Index Price minus the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices; and

"Delay Volume" equals the applicable Scheduled Monthly Energy Delivery divided by the number of days in that month.

**2.5.2 Appropriateness of Damages.** The Parties agree that the damages PacifiCorp would incur due to delay in the Facility achieving Commercial Operation on or before the Scheduled Commercial Operation Date would be difficult or impossible to predict with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages.

### **SECTION 3. REPRESENTATIONS AND WARRANTIES**

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

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

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

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

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

**3.1.5** Subject to Commission approval, this Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability



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

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

3.2.1 Seller is a limited liability company duly organized and validly existing under the laws of Delaware.

3.2.2 Seller has the requisite power and authority to enter into this Agreement and has, or will have at the date of Commercial Operation of the Facility, all requisite power and authority to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Seller's shareholders, directors, and officers have taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

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

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

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF. Within thirty (30) days after the Effective Date, Seller shall provide the appropriate QF certification, which may include a Federal Energy Regulatory Commission self-certification to PacifiCorp. At any time thereafter that PacifiCorp has reason to believe during the term of this Agreement that Seller's status as a QF is in question, PacifiCorp may require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing in the state of Idaho and who has no economic relationship, association or nexus with the Seller or the Facility (other than in a capacity as counsel providing such requested legal opinion), stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained the Facility as a QF.

3.2.7 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.

3.2.8 Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.



3.2.9 Seller is not in default under any of its other material agreements that would result in Seller's failure to perform its material obligations hereunder.

3.2.10 Seller owns all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances created by or through Seller related to third-party financing of the Facility, and Seller (or its successor in interest) will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.

3.2.11 In entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of PacifiCorp in connection with the transactions contemplated by this Agreement.

3.2.12 All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

3.2.13 All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibit C. Upon request by PacifiCorp, Seller shall provide copies of the Wind Leases to PacifiCorp.

3.2.14 All information about the Facility set forth in Exhibit A, Exhibit B, and Exhibit C has been verified by Seller and is accurate to the best of its knowledge.

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

#### **SECTION 4. DELIVERY OF POWER; AVAILABILITY GUARANTY**

4.1 **Delivery and Acceptance of Net Output.** Except for any curtailment specified in Section 6.3, unless otherwise provided herein, PacifiCorp will purchase and Seller will sell all Net Output from the Facility.

4.2 **No Sales to Third Parties.** During the term of this Agreement, Seller shall not sell any Net Output from the Facility to any entity other than PacifiCorp.

4.3 **Energy Delivery Schedule.** Seller shall prepare and provide to PacifiCorp, on an ongoing basis, a written schedule of Net Energy expected to be delivered by the Facility ("Energy Delivery Schedule"), in accordance with the following:



4.3.1 During the first twelve full calendar months following the Commercial Operation Date, Seller predicts that the Facility will produce and deliver the following monthly amounts ("Initial Year Energy Delivery Schedule"):

<u>Month</u>	<u>Energy Delivery (kWh)</u>	<u>Average kW</u>
January	9,881,887	13,247
February	8,191,635	12,170
March	11,360,594	15,282
April	9,085,733	12,608
May	10,185,738	13,686
June	8,069,166	11,212
July	7,384,339	9,935
August	8,155,779	10,933
September	7,590,732	10,574
October	8,615,123	11,611
November	10,166,694	14,125
December	10,324,201	13,885
TOTAL:	109,011,621	12,439

4.3.2 Seller may revise the Initial Year Energy Delivery Schedule any time prior to the Commercial Operation Date.

4.3.3 Beginning at the end of the ninth full calendar month of operation, and at the end of every third month thereafter, Seller shall supplement the Energy Delivery Schedule with three additional months of forward estimates (which shall be appended to this Agreement using the format specified in Exhibit D) ("Subsequent Energy Delivery Schedule"), such that the Energy Delivery Schedule will provide at least three months of scheduled energy estimates at all times. Seller shall provide Subsequent Energy Delivery Schedules no later than 5:00 pm PPT of the 5th day after the due date. If Seller does not provide a Subsequent Energy Delivery Schedule by the above deadline, scheduled energy for the omitted period shall equal the amounts scheduled by Seller for the same three-month period during the previous year.

4.3.4 Upon and after the Commercial Operation Date, Seller may no longer revise the Energy Delivery Schedule for the first six full calendar months of Commercial Operation. After 5:00 p.m. PPT of the fifth business day following the end of the third full calendar month of Commercial Operation and the end of each third calendar month thereafter, Seller may no longer revise the Energy Delivery Schedule for the six calendar months immediately following such third month. Subject to the foregoing restrictions in this Section 4.3.4, Seller may revise the Energy Delivery Schedule for any unrestricted month by providing written notice to PacifiCorp. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

4.4 Minimum Availability Obligation. Seller shall cause the Facility to achieve an Availability of at least 85% during each month ("Guaranteed Availability").

4.5 Liquidated Damages for Output Shortfall. If the Availability in any given month falls below the Guaranteed Availability, the resulting shortfall shall be expressed in kWh as the "Output Shortfall." The Output Shortfall shall be calculated in accordance with the following formula:

$$\text{Output Shortfall} = (\text{Guaranteed Availability} - \text{Availability}) * \text{Scheduled Monthly Energy Delivery}$$

Seller shall pay PacifiCorp for any Output Shortfall at the lower of (1) the positive difference, if any, of the Index Price minus the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices; or (2) the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices ("Output Shortfall Damages").

$$\text{Output Shortfall Damages} = \text{Output Shortfall} * \text{Output Shortfall Price}$$

Where:

$$\text{Output Shortfall Price} = (\text{Index Price} - \text{Weighted Average CEPP}), \text{ except that if Output Shortfall Price} < 0, \text{ then Output Shortfall Price} = 0, \text{ and except that if Output Shortfall Price} > \text{Weighted Average CEPP, then Output Shortfall Price} = \text{Weighted Average CEPP}$$

$$\text{Weighted Average CEPP} = \text{the Weighted Average On-Peak and Off-Peak Conforming Energy Purchase Prices for the month of Output Shortfall}$$

If an Output Shortfall occurs in any given month, Seller may owe PacifiCorp liquidated damages. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to the Facility's failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty, and (b) the liquidated damages contemplated in this Section 4.5 are a fair and reasonable calculation of such damages.

4.6 Audit Rights. In addition to data provided under Sections 9.3 and 9.4, PacifiCorp shall have the right, but not the obligation, to audit the Facility's compliance with its Guaranteed Availability using any reasonable methods. Seller agrees to retain all performance related data for the Facility for a minimum of three years, and to cooperate with PacifiCorp in the event PacifiCorp decides to audit such data.

4.7 For a period of ten (10) years from the Commercial Operation Date, Seller shall have title to the Green Tags immediately upon the generation of the Output at the Facility that gives rise to such Green Tags. On the tenth (10<sup>th</sup>) anniversary of the Commercial Operation Date through and including the Expiration Date, PacifiCorp shall have title to the Green Tags immediately upon the generation of the Output at the Facility that gives rise to such Green Tags. Each Party shall execute all additional documents and instruments reasonably requested by the other Party in order to further document the ownership of the Green Tags during the respective Party's ownership. Without limiting the generality of the foregoing, Seller shall, on or before the 10th day of each month during



which PacifiCorp has ownership rights to the Green Tags, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale (in the form attached as Exhibit 4.7(A)) for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any verification that is in conformance with the then-current Center for Resource Solution's Green-e program, or any successor program. The Party having ownership of the Green Tags at the time (the "Green Tag Owner"), at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. The Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. The Green Tag Owner shall be responsible for any costs charged by the qualified reporting entity for the Facility to participate in and comply with, during the Term, all aspects of WREGIS. The Green Tag Owner shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules, including but not limited to those rules related to effectuating the transfer of WREGIS Certificates and transferring such WREGIS Certificates in accordance with WREGIS reporting protocols and WREGIS Operating Rules and as required under this Agreement. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form similar to that in Exhibit 4.7(B) or elect to act as its own WREGIS-defined Qualified Reporting Entity. Seller shall upon written request from PacifiCorp provide copies of all documentation submitted to WREGIS in connection with the Facility. Further, upon notification by WREGIS or CAMD that any transfers of Green Tags contemplated by this Agreement have not been recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall at its expense cause the Facility to maintain its registration in good standing with the Center for Resource Solution's Green-e program, or any successor program, throughout the Term; provided, however that each Party shall (a) not take any action (other than the provision of truthful information) to impair the Facility's good standing with such program and (b) shall provide such information as is reasonably requested to maintain such registration. The Parties shall reasonably cooperate in any registration of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which the Parties may wish to register or maintained registered the Facility by providing copies of all such information as reasonably required for such registration. Neither Party represents or warrants that the Green Tags can be used for any purpose. The Parties acknowledge that the Green Tags may be subject to action by Governmental Authority and neither Party is liable to the other Party for action taken by a Governmental Authority in connection with the Green Tags that is not a result of a breach of this Agreement.

## SECTION 5. PURCHASE PRICES

5.1 Energy Purchase Price. Except as provided in Section 5.3, PacifiCorp will pay Seller Conforming Energy Purchase Prices or Non-Conforming Energy Purchase Prices, as applicable, for Net Output adjusted for the month and On-Peak Hours or Off-Peak Hours and the wind integration cost using the following formulae:

$$\text{Conforming Energy Purchase Price} = (AR_{ce} * MPM) - WIC$$

$$\text{Non-Conforming Energy Purchase Price} = (A_{nce} * MPM) - WIC$$

Where:

ARce = Conforming Energy annual rate from Table 1, below, for the year of the Net Output.

ARnce = the lower of:

85% of the Conforming Energy annual rate from Table 1 below, for the year of Net Output

or

85% of average of the daily Index Price for each day of the month, or portion of month, of Net Output.

MPM = monthly On-Peak or Off-Peak multiplier from Table 2 below, that corresponds to the month of the Net Output and whether the Net Output occurred during On-Peak Hours or Off-Peak Hours.

WIC = \$6.50/MWh, the wind integration cost prescribed in Commission Order No. 31021.

Example calculations are provided in Exhibit G.

**Table 1: Conforming Energy Annual Rates**

Year	Conforming Energy Annual Rate (AR") S/MWh
2012	63.97
2013	67.51
2014	71.32
2015	75.40
2016	77.76
2017	80.07
2018	82.58
2019	85.05
2020	87.61
2021	90.63
2022	93.78
2023	97.05
2024	100.44
2025	103.98
2026	106.98
2027	110.07
2028	113.26
2029	116.56
2030	119.95
2031	124.51
2032	128.50
2033	132.64



2034	136.92
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Table 2: Monthly On-Peak/Off-Peak Multipliers

Month	On-Peak Hours	Off-Peak Hours
January	103%	94%
February	105%	97%
March	95%	80%
April	95%	76%
May	92%	63%
June	94%	65%
July	121%	92%
August	121%	106%
September	109%	99%
October	115%	105%
November	110%	96%
December	129%	120%

## 5.2 Payment.

For each Billing Period in each Contract Year, PacifiCorp shall pay Seller as follows:

For delivery of Conforming Energy:

$$\text{Payment} = (\text{CEnergy}_{\text{On-Peak}} * \text{CEPPrice}_{\text{On-Peak}} / 1000) + (\text{CEnergy}_{\text{Off-Peak}} * \text{CEPPrice}_{\text{Off-Peak}} / 1000)$$

For delivery of Non-Conforming Energy:

$$\text{Payment} = (\text{NCEnergy}_{\text{On-Peak}} * \text{NCEPPrice}_{\text{On-Peak}} / 1000) + (\text{NCEnergy}_{\text{Off-Peak}} * \text{NCEPPrice}_{\text{Off-Peak}} / 1000)$$

Where:

CEnergy	=	Conforming Energy in kWh
CEPPrice	=	Conforming Energy Purchase Price in \$/MWh
NCEnergy	=	Non-Conforming Energy Purchase Price in kWh
NCEPPrice	=	Non-Conforming Energy Purchase Price in \$/MWh
On-Peak	=	the corresponding value for On-Peak Hours
Off-Peak	=	the corresponding value for Off-Peak Hours

**5.3 Inadvertent Energy.** So long as acceptance of Inadvertent Energy does not cause PacifiCorp to violate the terms of its Network Transmission Service and is consistent with Prudent Electrical Practices, PacifiCorp will accept Inadvertent Energy, but will not purchase or pay for Inadvertent Energy.

5.4 Additional Compensation. Seller shall not be entitled to any compensation over and above the Conforming Energy Purchase Prices or Non-Conforming Energy Purchase Prices, as the case may be, for the Green Tags associated therewith.

## SECTION 6. OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of any construction affecting the Facility, Seller shall provide PacifiCorp an As-built Supplement bearing the stamp of a Licensed Professional Engineer that accurately depicts the Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Operation. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.3 Curtailment. PacifiCorp shall not be obligated to purchase, receive, pay for, or pay any damages associated with, Net Output (or associated Production Tax Credits or Environmental Attributes) if such Net Output (or associated Production Tax Credits or Environmental Attributes) is not delivered to the System or Point of Delivery due to any of the following: (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement, (b) the Transmission Provider or Network Service Provider directs a general curtailment, reduction, or redispatch of generation in the area (which would include the Net Output) for any reason, even if such curtailment or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in order to meet its obligations to the Transmission Provider or Network Service Provider to operate within system limitations, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output. Seller shall reasonably determine the MWh amount of Net Output curtailed pursuant to this Section 6.3 after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of such curtailed energy based on (x) the time and duration of the curtailment period and (y) wind conditions recorded at the Facility during the period of curtailment and the power curve specified for the Wind Turbines as shown in Exhibit A. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably



require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a curtailment described in this Section 6.3.

6.4 PacifiCorp as Merchant. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission or any successor Transmission Provider.

6.5 Outages.

6.5.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule Planned Outage during any portion of the months of November, December, January, February, June, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above or to the extent such Planned Outage is required in accordance with Prudent Electrical Practices. Seller shall, in Exhibit D, provide PacifiCorp 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 day of that Contract Year, and shall promptly update such schedule, or otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule more than one hundred fifty (150) hours of Planned Outages for each calendar year. Seller shall notify PacifiCorp of any deviation to the annual Planned Outage schedule, above, on the Monday preceding the scheduling week in which the sooner of the following will occur: (a) the outage as predicted in the Planned Outage schedule; or (b) the outage per Seller's revised plans. Such notice shall consist of a Monday-Sunday, hourly spreadsheet showing the revised total Facility curtailment (MW) for that scheduling week. Seller shall not schedule any maintenance of Shared Interconnection Facilities during November, December, January, February, June, July, or August, without the prior written approval of PacifiCorp, which approval may be reasonably withheld by PacifiCorp.

6.5.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then existing wind conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp. Seller shall take all reasonable measures and use commercially reasonable efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: June 15 through June 30, July, August, and September 1 through September 15. Seller shall include in such notice of a proposed Maintenance Outage 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. Seller may provide notices under this Section 6.5.2 orally. Seller shall confirm any such oral notification in writing as soon as practicable. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with PacifiCorp's request to modify the schedule for a Maintenance Outage if such modification has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity of the Facility during such Maintenance Outage and any changes in the Maintenance Outage completion date and time. Seller shall take all



reasonable measures and exercise its commercially reasonable efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.5.3 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp, of any Forced Outage of the Facility. Such report shall include the amount of generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date and time of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. If the Forced Outage resulted in more than 15% of the Facility Capacity Rating of the Facility being unavailable, Seller shall confirm the oral report in writing as soon as practicable. Seller shall take all reasonable measures and exercise its commercially reasonable efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.5.4 Notice of Deratings and Outages. Without limiting other notice requirements, Seller shall notify PacifiCorp, via telephone or via electronic mail, to a number or email address specified by PacifiCorp, of any limitation, restriction, derating or outage known to Seller that affects the generation capacity of the Facility in an amount greater than five percent (5%) of the Facility Capacity Rating for the following day. Seller shall promptly update such notice to reflect any material changes to the information in such notice.

6.5.5 Effect of Outages on Estimated Output. Seller shall factor Planned Outages and Maintenance Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility into the Scheduled Monthly Energy Delivery amounts in the Energy Delivery Schedule set forth in Exhibit D.

## 6.6 Scheduling.

6.6.1 Cooperation and Standards. With respect to any and all scheduling requirements in this Agreement, (a) Seller shall cooperate with PacifiCorp with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder.

6.6.2 Schedule Coordination. If, as a result of this Agreement, PacifiCorp is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement due to Seller's lack of standing as a "scheduling coordinator" or other RTO recognized designation, qualification or otherwise, then (a) Seller shall acquire such RTO recognized standing (or shall contract with a third party who has such RTO recognized standing) such that PacifiCorp is no longer responsible for Seller's performance under the Generation Interconnection Agreement, and (b) Seller shall defend, indemnify and hold PacifiCorp harmless against any liability arising due to Seller's performance or failure to perform under the Generation Interconnection Agreement or RTO requirement.

6.7 Delivery Exceeding the Maximum GIA Delivery Rate. Seller shall not deliver energy from the Facility to the Point of Delivery at a rate that exceeds the Maximum GIA Delivery Rate. Seller's failure to limit such deliveries to the Maximum GIA Delivery Rate shall be a breach of a material obligation subject to Section 12.1.8.

6.8 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety,



Seller shall provide PacifiCorp and its authorized agents, employees and inspectors ("PacifiCorp Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) for purposes of implementing Section 4.6, and (d) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp shall release Seller against and from any and all any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal resulting from actions or omissions by any of the PacifiCorp Representatives in connection with their access to the Facility, except to the extent that such damages are caused or by the intentional or grossly negligent act or omission of Seller.

## SECTION 7. MOTIVE FORCE

Prior to the execution of this Agreement, Seller provided to PacifiCorp Wind Leases and a motive force plan including an hourly wind profile acceptable to PacifiCorp in its reasonable discretion and attached hereto as Exhibit F-1. Within three (3) months after the Effective Date, Seller will provide a wind report from any of GL Garrad Hassan, AWS Truepower, LLC, or DNV Global Energy Concepts, Inc. certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Average Annual Net Output. Seller will provide an updated estimate of Average Annual Net Output at the time it provides an amended Exhibit A pursuant to Section 2.2.7 if Seller has selected different Wind Turbines.

## SECTION 8. GENERATION FORECASTING COSTS

8.1 Forecast Service Election. PacifiCorp may, in its discretion, add forecasting services for Seller's Facility to PacifiCorp's existing contract with a qualified wind-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement.

8.2 Seller's Forecast-Cost Share. Pursuant to Commission Order No. 30497, Seller shall be responsible for 50% of PacifiCorp's cost of adding such forecasting services ("Seller's Forecast-Cost Share") up to Seller's Capped Forecast-Cost Share.

8.3 Cap on Seller's Forecast-Cost Share. Seller's Forecast-Cost Share for a given Contract Year is capped at 0.1% of total payments made by PacifiCorp to Seller for Net Output during the previous Contract Year ("Seller's Capped Forecast-Cost Share"). If the last Contract Year of this Agreement is shorter than a full calendar year, the cap will be prorated for that shortened year. For the year(s) prior to the second Contract Year of this agreement that equals a full calendar year, Seller's Forecast-Cost Share is capped at 0.1% of estimated payments for Net Output based on the Energy Delivery Schedule.

8.4 Payment. Seller shall pay to PacifiCorp Seller's Forecast-Cost Share uncapped by Section 8.3 for each Contract Year in equal payments for each month of such year except the last month of such year. (For example, in a Contract Year equaling a full calendar year, Seller would pay 1/11th of Seller's Forecast-Cost Share during each of the first 11 months.) In the last month of each Contract Year, PacifiCorp shall refund to Seller the amount paid by Seller under this Section in excess, if any, of Seller's Capped Forecast-Cost Share. For a Contract Year encompassed by just one calendar month, Seller's payment to PacifiCorp and



PacifiCorp's refund to Seller shall be calculated and paid simultaneously. To the extent practicable, payments and refunds under this Section shall be included in monthly payments and invoices under Section 10.

## SECTION 9. METERING: REPORTS AND RECORDS

9.1 Metering Adjustment. Metering will be performed at the location specified in Exhibit B and in the manner specified in the Generator Interconnection Agreement. All quantities of energy purchased hereunder shall be adjusted in accordance with Addendum L, so that the purchased amount reflects the net amount of power flowing into the System at the Point of Delivery.<sup>12</sup>

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

9.3 Telemetering. In accordance with the Generation Interconnection Agreement, Seller shall provide telemetering equipment and facilities capable of transmitting to Transmission Provider (who will share it with PacifiCorp as authorized by Exhibit H, "Seller Authorization to Release Generation Data to PacifiCorp") the following information concerning the Facility on a real-time basis, and will operate such equipment when requested by PacifiCorp to indicate:

- (a) instantaneous M W output at the Point of Delivery;
- (b) Net Output;
- (c) the Facility's total instantaneous generation capacity; and
- (d) wind velocity at turbine hub height.

Seller shall also transmit to PacifiCorp any other data from the Facility that Seller receives on a real-time basis, including meteorological data, wind speed data, wind direction data and gross output data. Seller shall provide such real-time data to PacifiCorp in the same detail that Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp shall also receive the data in four second intervals). PacifiCorp shall have the right from time to time to require Seller to provide additional telemetering equipment and facilities to the extent necessary and reasonable.

<sup>12</sup> If station service is supplied via separate facilities, PacifiCorp will deduct station service from the metered facility output to calculate Net Output.



#### 9.4 Monthly Reports and Logs and Other Information.

9.4.1 Reports. Within thirty (30) calendar days after the end of each Billing Period, Seller shall provide to PacifiCorp a report in electronic format, which report shall include (a) summaries of the Facility's wind and output data for the Billing Period in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Billing Period; (c) details of Availability of the Facility for the Billing Period sufficient to calculate Availability and including hourly average wind velocity measured at turbine hub height and ambient air temperature; and (d) any supporting information that PacifiCorp may from time to time reasonably request (including historical wind data for the Facility).

9.4.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the term of this Agreement commencing on the Commercial Operation Date. Seller shall provide PacifiCorp with a copy of the electronic fault log within thirty (30) calendar days after the end of the Billing Period to which the fault log applies.

9.4.3 Upon the request of PacifiCorp, Seller shall provide PacifiCorp the manufacturers' guidelines and recommendations for maintenance of the Facility equipment.

9.4.4 By each January 10 following the Commercial Operation Date, Seller shall provide to PacifiCorp written certification that Seller has completed all the manufacturers' guidelines and recommendations for maintenance of the Facility equipment applicable to the previous calendar year.

9.4.5 At any time from the Effective Date, one (1) year's advance notice of the termination or expiration of any agreement, including Wind Leases, pursuant to which the Facility or any equipment relating thereto is upon the Facility site; provided that the foregoing does not authorize any early termination of any land lease.

9.4.6 As soon as it is known to Seller, Seller shall disclose to PacifiCorp, the extent of any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises.

9.5 Maintenance of Metering Equipment. To the extent not otherwise provided in the Generator Interconnection Agreement, PacifiCorp shall inspect, test, repair and replace the metering equipment periodically, or at the request of Seller if Seller has reason to believe metering may be off and requests an inspection in writing. To the extent not otherwise provided in the Generator Interconnection Agreement, all PacifiCorp's costs relating to designing, installing, maintaining, and repairing metering equipment installed to accommodate Seller's Facility shall be borne by Seller.



9.6 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility.

## SECTION 10. BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Payment for Net Output. On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement or the Generation Interconnection Agreement. Any such offsets shall be separately itemized on the statement accompanying each payment to Seller.

10.2 Annual Invoicing for Output Shortfall. Thirty calendar days after the end of each Contract Year, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of Output Shortfall, if any, for all Billing Periods in the prior Contract Year and Output Shortfall Damages, if any. In preparing such invoices, PacifiCorp shall utilize the meter data provided to PacifiCorp for the Contract Year in question, but may also rely on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation if the meter data for such Contract Year is then incomplete or otherwise not available. To the extent required, PacifiCorp shall prepare any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Year. Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, and shall within thirty (30) days after receiving the invoice raise any objections regarding any disputed portion of the invoice. Objections not made by Seller within the thirty-day period shall be deemed waived.

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

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall 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 shall be paid within five (5) days after such determination or resolution, along with interest in accordance with Section 10.3.

## SECTION 11. SECURITY

### 11.1 Delay Security:

11.1.1 Duty to Post Security. By the date provided in Section 2.2.2, Seller shall post a Letter of Credit, cash or a parental guaranty, each in a form acceptable to PacifiCorp, in



the amount calculated pursuant to Section 11.1.2 ("Delay Security"). To the extent PacifiCorp makes a drawing under the Delay Security, Seller shall, within fifteen (15) calendar days, restore the Delay Security as if no such deduction had occurred.

**11.1.2 Calculation of Delay Security.** The dollar value of Delay Security shall equal the greater of: (1) forty-five dollars (\$45) multiplied by the Maximum Facility Delivery Rate with the Maximum Facility Delivery Rate being measured in kW (based on the final Facility Capacity Rating determined by January 31, 2012); or (2) the sum of the products, for each of the first three calendar months after the Delay Period Commencement Date, of:

the energy in the Initial Year Energy Delivery Schedule for the month (kWh) multiplied by the monthly weighted average On-Peak and Off-Peak Conforming Energy Purchase Price for the months (\$/MWh) divided by 1000.

Such amount shall be fixed upon execution of this Agreement.

**11.1.3 Right to Draw on Security.** PacifiCorp shall have the right to draw on the Delay Security to collect Delay Liquidated Damages. Commencing on or about first of each month, PacifiCorp will invoice Seller for Delay Liquidated Damages incurred, if any, during the preceding month. If insufficient Delay Security is available, Seller shall pay PacifiCorp for invoiced Delay Liquidated Damages no later than five business days after receiving such invoice. The Parties will make billings and payments for Delay Liquidated Damages in accordance with Section 10.

**11.1.4 Partial Release of Delay Security.** Provided that Seller has maintained Delay Security in accordance with Section 11.1.1, PacifiCorp shall release one-third of the original amount of Delay Security stated in Section 11.1.1 each time Seller accomplishes a milestone (a) or (b), below:

(a) Seller has (i) executed the Generation Interconnection Agreement with Transmission Provider; and (ii) paid in full any interconnection and/or system upgrade costs Seller is obligated to pay in advance of interconnection construction.

(b) Seller has poured the concrete foundation at each of its planned individual Wind Turbine locations.

PacifiCorp shall make the partial refund of Delay Security required above within ten business days of the date Seller provides PacifiCorp written notice (along with satisfactory documentation thereof) that it has accomplished milestone (a) or (b) above.

**11.1.5 Full Release of Delay Security.** Unless PacifiCorp disputes whether Seller has paid all Delay Liquidated Damages, PacifiCorp shall release all remaining Delay Security upon the earlier of the 30th calendar day following commencement of Commercial Operation or the 60th calendar day following PacifiCorp's termination of this Agreement.

**11.1.6 Default.** Seller's failure to post and maintain Delay Security in accordance with Section 11.1 will constitute an event of default, unless cured in accordance with Section 12.1.1 of this Agreement.

**11.2 Default Security (Levelized Pricing Only). (Reserved)**



## SECTION 12. DEFAULTS AND REMEDIES

12.1 The following events shall constitute defaults under this Agreement:

12.1.1 Non-Payment. A Party's failure to make a payment when due under this Agreement or post and maintain security in conformance with the requirements of Section 11 or maintain insurance in conformance with the requirements of Section 14 of this Agreement, if the failure is not cured within ten (10) business days after the non-defaulting Party gives the defaulting Party a notice of the default.

12.1.2 Breach of Representation. Breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within thirty (30) days following written notice.

12.1.3 Default on Other Agreements. Seller's failure to cure any default under the Generation Interconnection Agreement or any other agreement between the parties related to this Agreement, the Generation Interconnection Agreement, or the Facility within the time allowed for a cure under such agreement or instrument.

12.1.4 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

12.1.5 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, within thirty (30) days from the date of such request.

12.1.6 Sale to Third-Party. Seller's sale of Net Output to an entity other than PacifiCorp, as prohibited by Section 4.2.

12.1.7 Non-Delivery. Unless excused by an event of Force Majeure (including PacifiCorp's breach of its obligations under this Agreement), Seller's failure to deliver any Net Energy for three consecutive calendar months.

12.1.8 A Party otherwise fails to perform any material obligation (including but not limited to failure by Seller to meet any deadline set forth in Section 2.2.1 through 2.2.10, but excluding Sections 4.7 and 9.6) imposed upon that Party by this Agreement if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default. For the avoidance of doubt, the failure of Seller to achieve the Commercial Operation Date by December 31, 2012 shall not give rise to an Event of Default pursuant to this Section 12.1.8 and the failure to achieve Commercial Operation Date shall be exclusively governed by Section 12.1.9.

12.1.9 Seller fails to achieve the Commercial Operation Date by the 91<sup>st</sup> day following the Delay Period Commencement Date, *provided, however*, that, upon written notice from the defaulting Party delivered prior to the ninety-first (91<sup>st</sup>) day of delay, this ninety (90) day period shall be extended by an additional one hundred and fifty (150) days if (a) Seller has



poured the concrete foundation at each of its planned individual wind turbine locations; and (b) Seller replenishes Delay Default Security in accordance with Section 11.1.1. Seller shall continue to accrue Delay Liquidated Damages in accordance with Section 2.5 (Delay Price times the Delay Value) until the Project achieves Commercial Operation or this Agreement is terminated.

12.2 In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default. If the default has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 12 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

12.3 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output from the Facility using the same motive force to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller do so subject to the terms of this Agreement, including but not limited to the purchase prices as set forth in (Section 5), until the Expiration Date (as set forth in Section 2.1). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

12.4 If this Agreement is terminated as a result of Seller's default, in addition to and not in limitation of any other right or remedy under this Agreement or applicable law (including any right to set-off, counterclaim, or otherwise withhold payment), Seller shall pay PacifiCorp Output Shortfall Damages for a period of eighteen (18) months from the date of termination plus the estimated administrative cost to acquire the replacement power. The Parties agree that the damages PacifiCorp would incur due to termination resulting from Seller's default would be difficult or impossible to predict with certainty, and that the damages in this Section 12.4 are an appropriate approximation of such damages.

#### 12.5 Recoupment of Damages.

(a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.

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

12.6 Upon an event of default or termination event resulting from default under this Agreement, in addition to and not in limitation of any other right or remedy under this Agreement or applicable law (including any right to set-off, counterclaim, or otherwise withhold payment), the non-defaulting Party may at its option set-off, against any amounts owed to the defaulting Party, any amounts owed by the defaulting Party under any contract(s) or agreement(s) between the Parties. The obligations of the Parties shall be deemed satisfied and discharged to the extent of any such set-off. The non-defaulting Party shall give the defaulting Party



written notice of any set-off, but failure to give such notice shall not affect the validity of the set-off.

12.7 Amounts owed by Seller pursuant to this Section 12 shall be due within five (5) business days after any invoice from PacifiCorp for the same.

### SECTION 13. INDEMNIFICATION: LIABILITY

#### 13.1 Indemnities.

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

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

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

13.3 No Warranty. Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by PacifiCorp and PacifiCorp makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

13.4 CONSEQUENTIAL DAMAGES. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR



SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

#### SECTION 14. INSURANCE

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

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

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

14.2.2 All Risk Property insurance providing coverage in an amount at least equal to 80% of the replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Property policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

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

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

14.5 Commercial General Liability insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the



completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

## SECTION 15. FORCE MAJEURE

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

15.1.1 the non-performing Party, shall, as soon as practicable but no later than within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence, including the start date of the Force Majeure, the cause of Force Majeure, whether the Facility remains partially operational and the expected end date of the Force Majeure;

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

15.1.3 the non-performing Party uses its best efforts to remedy its inability to perform; and

15.1.4 the non-performing Party shall provide prompt written notice to the other Party at the end of the Force Majeure event detailing the end date, cause thereof, damage caused there by and any repairs that were required as a result of the Force Majeure event, and the end date of the Force Majeure.

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

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

## SECTION 16. SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability



between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### **SECTION 17. CHOICE OF LAW**

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

#### **SECTION 18. PARTIAL INVALIDITY**

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

#### **SECTION 19. WAIVER**

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

#### **SECTION 20. GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

PacifiCorp's compliance with the terms of this Agreement is conditioned on Seller's submission to PacifiCorp prior to the Commercial Operation Date of copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility. Failure to maintain such lawful status after the Commercial Operation Date shall be an event of default, subject to Section 12.

#### **SECTION 21. SUCCESSORS AND ASSIGNS**

21.1 This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no assignment hereof by either Party shall become effective without the written consent of both Parties being first obtained. Such consent shall not be unreasonably withheld; provided that the Parties agree that commercially reasonable written amendments to the Exhibits to this Agreement and such other written updates to the information contained therein related to the Facility may be made in the event of any assignment of this Agreement pursuant to the terms of this Section 21.1. Notwithstanding the first sentence of this Section, (a) any entity with which PacifiCorp may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of PacifiCorp's rights, obligations, and interests under this Agreement and (b) Seller shall have the right to assign this Agreement, subject to PacifiCorp's written consent, which consent shall not be



unreasonably withheld or delayed, for collateral security purposes to one or more financing entities (or a collateral agent acting on their behalf) providing financing to Seller for the Facility, in which event PacifiCorp agrees to provide a written consent in favor of Seller's financing entities in form and substance similar to consents executed by PacifiCorp in connection with non-recourse project financings. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. PacifiCorp shall have the right to be notified by the financing entity that it is exercising such rights or remedies and all such other rights as provided in the written consent.

21.2 Notwithstanding Section 21.1, if, as of December 31, 2012, Seller has not achieved Commercial Operation, then Seller shall have the right to terminate this Agreement by providing written notice of termination to PacifiCorp on or before January 5, 2013. Upon PacifiCorp's receipt of written notice of termination from Seller, the Original PPA shall automatically be deemed to be reinstated and in full force and effect. Upon such termination, PacifiCorp shall return the Delay Security to Seller and Seller shall have no further liability or obligations of any kind under this Agreement.

21.3 Seller and all successors and assigns acknowledge that this Agreement is in part the result of a settlement stipulation between PacifiCorp, CCW and the Staff of the Idaho Public Utilities Commission that was approved by the Idaho Public Utilities Commission is Case Nos. PAC-E-11 -01 through PAC-E-11-05 (the "Stipulation"). This Agreement is subject to, and incorporates, the terms of the Stipulation.

## SECTION 22. ENTIRE AGREEMENT

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

22.2 By executing this Agreement, each Party releases the other from any claims, known or unknown, that may have arisen prior to the execution date of this Agreement with respect to the Facility and any predecessor facility proposed to have been constructed on the site of the Facility.

## SECTION 23. NOTICES

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

Notices	PacifiCorp	Seller
All Notices	PacifiCorp	[Insert Name of Ridgeline Affiliate] Creek Wind, LLC 83 S. King Street, Suite 200 Seattle, WA 98104



825 NE Multnomah Street Portland,  
OR 97232

Attn: Contract Administration,  
Suite 600  
Phone:(503)813-5380  
Facsimile: (503) 813-  
6291 E-mail:

Attn: Joan Hutchinson  
Phone: 206-462-4846  
Facsimile: 503-296-5450  
E-mail: [jhutchinson@rl-en.com](mailto:jhutchinson@rl-en.com)

Duns: 00-790-9013

Duns: [TBD]

Federal Tax ID Number: 93-0246090

Federal Tax ID Number: 80-0326448

**Notices**

**PacifiCorp**

**Seller**

**All Invoices:**

Attn: Back Office, Suite  
700 Phone:(503)813-5578  
Facsimile: (503) 813 -5580

Attn: Lindsay Whitney  
Controller  
Phone: 206-508-4727  
Email: [lwhitney@rl-en.com](mailto:lwhitney@rl-en.com)

**Scheduling:**

Attn: Resource Planning, Suite 600  
Phone: (503) 813 - 6090  
Facsimile: (503) 813-6265

Attn: Joan Hutchinson  
SVP – Origination & Marketing  
Phone: 206-462-4846  
[jhutchinson@rl-en.com](mailto:jhutchinson@rl-en.com)

**Payments:**

Attn: Back Office, Suite  
700 Phone:(503)813-5578  
Facsimile: (503) 813-5580

Attn: Lindsay Whitney  
Controller  
Phone: 206-508-4727  
Email: [lwhitney@rl-en.com](mailto:lwhitney@rl-en.com)

**Wire Transfer:**

Bank One N.A.  
To be provided in separate letter from  
PacifiCorp to Seller

Attn: Lindsay Whitney  
Controller  
Phone: 206-508-4727  
Email: [lwhitney@rl-en.com](mailto:lwhitney@rl-en.com)

**Credit and  
Collections  
:**

Attn: Credit Manager, Suite 700  
Phone:(503)813-5684  
Facsimile: (503) 813-5609

Attn: Lindsay Whitney  
Controller  
Phone: 206-508-4727  
Email: [lwhitney@rl-en.com](mailto:lwhitney@rl-en.com)

**With Additional  
Notices of an  
Event of Default  
or Potential  
Event of Default  
to:**

Attn: PacifiCorp General Counsel  
Phone:(503)813-5029 Facsimile:  
(503) 813-6761

Attn: Legal Department  
Email: [legal@rl-en.com](mailto:legal@rl-en.com)  
Phone: 425-455-9014

*[Insert], LLC—Five Pines*

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



*[Insert], LLC—Five Pines*

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written:

**PACIFICORP,**  
an Oregon corporation

**[INSERT NAME OF RIDGELINE  
AFFILIATE]**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**

Seller's Facility consists of 19 wind turbine generator(s) manufactured by Suzlon. More specifically, each generator at the Facility is described as:

**Type (synchronous or inductive):** Asynchronous with Inverter

**Model:** Suzlon S97-2.1

**Number of Phases:** Three

**Rated Output (kW):** 2,100 **Rated Output (kVA):** 2,234 kVA

**Rated Voltage (line to line):** Line side converter: 600V, machine side converter: 600V

**Rated Current Line(A):** Line side converter: 500A, machine side converter: 435 A

**Maximum kW Output:** 2100 kW **Maximum kVA Output:** 2,234 kVA

**Minimum kW Output:** -60 kW

**Manufacturer's Published Cut-in Wind Speed:** 3.5 meters/second

**Facility Capacity Rating:** 39,900 kW at or above rated wind speed and below cut-out Speed

**Maximum Facility Delivery Rate:** 39,900 kW at PacifiCorp Goshen Substation at 161 kV

**Maximum GIA Delivery Rate** 119,700 kW [combined with the other Ridgeline Projects described in Addendum L]

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating: Maximum generator output is 2100 kW (same as Nameplate Capacity Rating)

**Station service requirements, and other loads served by the Facility, if any, are described as follows:** Station service requirements consist of Ridgeline Energy Operations and Maintenance building loads, turbine standby loads, and turbine cutout loads. Average turbine standby load for Five Pine is approximately 45-60 kW. Cutout loads would be infrequent and not concurrent with standby loads.

**Location of the Facility:** The Facility is located in Bonneville County, Idaho. The location is more particularly described as follows: 43° 31.347' Latitude, 111° 48.313' Longitude WGS84. Locations of each turbine tower relative to other qualifying facilities owned by the same entity showing compliance with the spacing requirements in 18 C.F.R. § 292.204 are attached hereto.

**Power factor requirements:**

**Rated Power Factor (PF) or reactive load (WAR):** 0.94 Leading to 0.94 Lagging

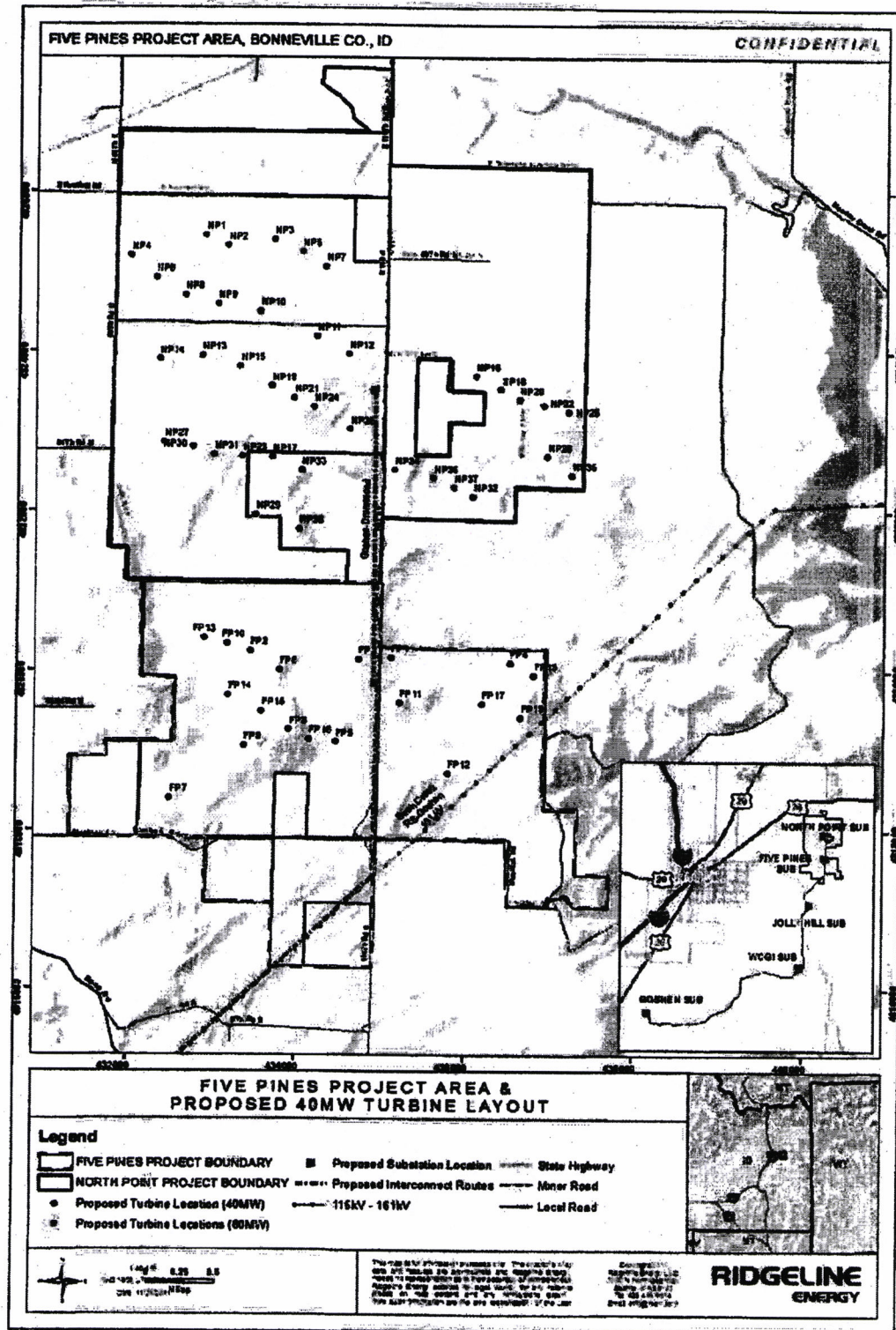
Seller has provided a copy of manufacturer's Power Curve for the Suzlon S97-2.1. PacifiCorp maintains the power curve in its files pursuant to a Non-Disclosure Agreement between PacifiCorp and Seller



*[Insert], LLC—Five Pines*

**EXHIBIT A - Attachments**

1. Five Pine Wind Farm Site Map
2. Distance Between Wind Turbines of Adjacent Qualifying Facilities





*[Insert], LLC—Five Pines*

The table below lists the distance between turbines in separate Qualifying Facilities.

FIVE PINES II/NORTH POINT		
Five Pine TURBINE #	North Point TURBINE #	DISTANCE (FT)
2	29	5620
3	29	7238
10	29	5558
13	29	5522
2	38	5350
3	38	5832
10	38	5467
13	38	5770
Distances measured from tower base to tower base in North Point area and from tower base to tower base in Five Pine II area		

**Five Pine**

**EXHIBIT B**

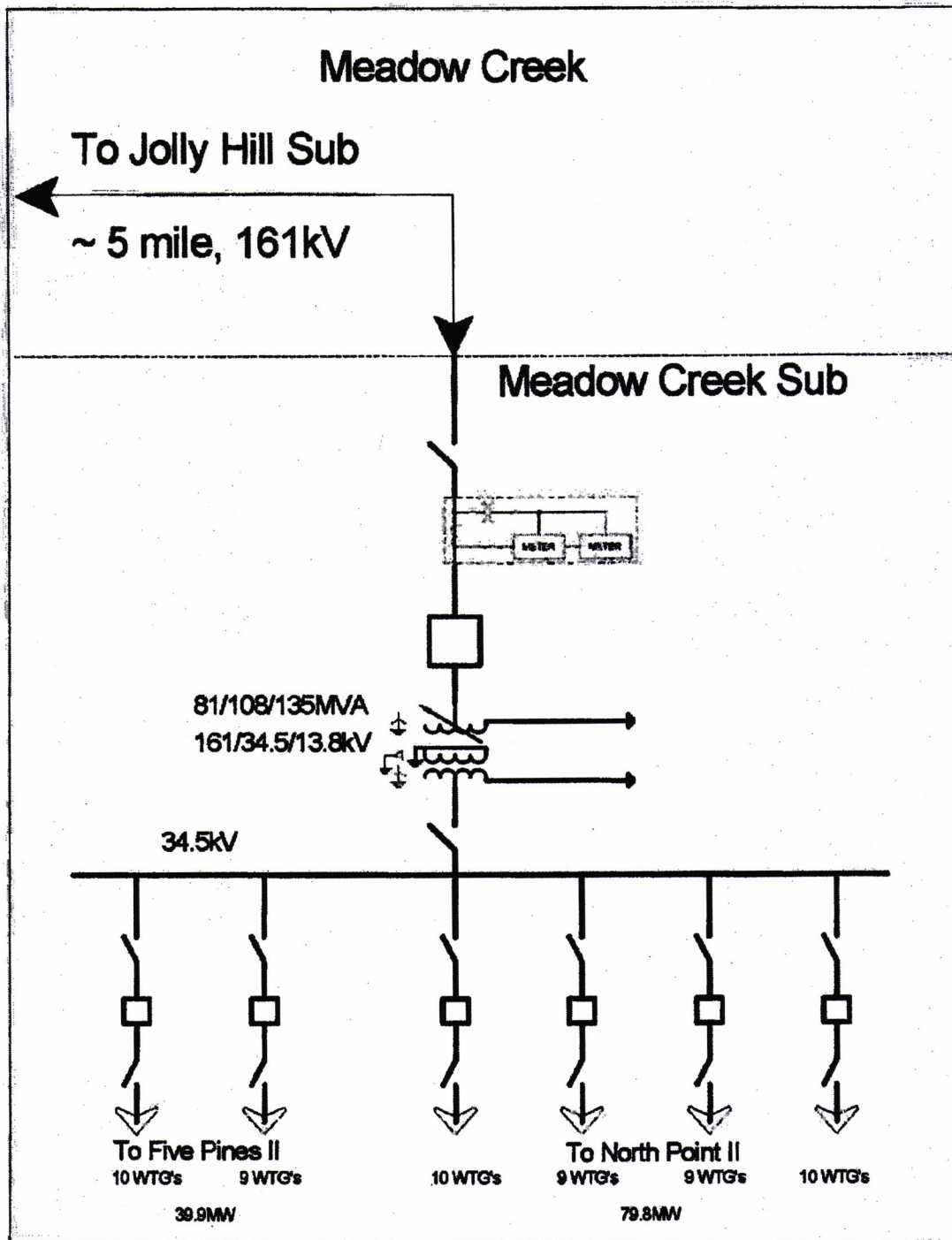
**POINT OF DELIVERY / PARTIES' INTERCONNECTION FACILITIES**

[Seller has provided the following single line drawing of the Facility interconnection facilities including metering points used to calculate Net Output and any transmission facilities on Seller's side of the Point of Delivery.]

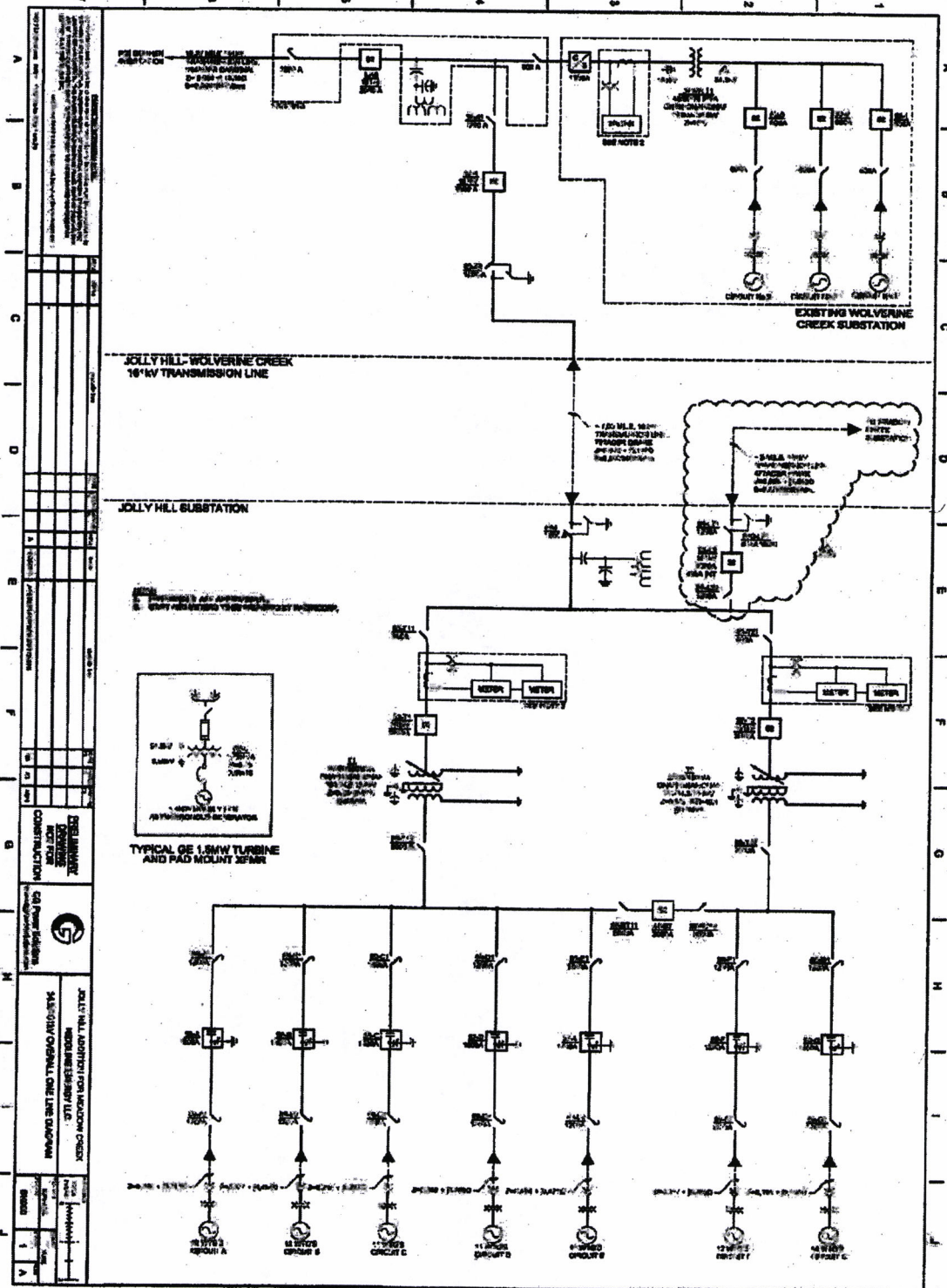
The Point of Delivery is the PacifiCorp 161kV bus at the Goshen substation. The Metering Point is the high side of the 34.5-161kV step up transformer at Meadow Creek substation. The meters will be compensated for losses to the Point of Delivery.

North Point and Five Pine will share the Meadow Creek 34.5kV-161kV collector substation. Each project will have 34.5kV breakers that will connect to a common 34.5kV bus. The bus will connect to a single 34.5-161kV Power Transformer, 161kV breaker, metering equipment, line disconnect switch and a 5 mile 161kV transmission line to the Jolly Hill Substation.





November 27, 2011





**EXHIBIT C**

**REQUIRED FACILITY DOCUMENTS** Qualifying Facility Number to be obtained from FERC

The following Documents are required prior to delivery of any output from the Facility:

Generation Interconnection Agreement

Agreement permitting Seller access to shared interconnection facilities

Property rights required to maintain and operate the Project in accordance with this Agreement (site leases, transmission easements, etc).

The following Permits are required on or before the milestone date specified in Section 2.2.1.

Federal Aviation Administration Determination of No Hazard Bonneville County

Special Use Permit Crossing agreements with parties other than PacifiCorp Transmission

**EXHIBIT D**

**SUBSEQUENT ENERGY DELIVERY SCHEDULE**

<b>Five Pine Wind Project</b>		
<b>Scheduled Monthly Energy Delivery</b>		
	<b>(kWh)</b>	<b>Ave kW/mo</b>
January	9,881,887	13,247
February	8,191,635	12,170
March	11,360,594	15,282
April	9,085,733	12,608
May	10,185,738	13,686
June	8,069,166	11,212
July	7,384,339	9,935
August	8,155,779	10,933
September	7,590,732	10,574
October	8,615,123	11,611
November	10,166,694	14,125
December	10,324,201	13,885
<b>TOTAL:</b>	<b>109,011,621</b>	<b>12,439</b>

Planned Outages. Seller will provide a Planned Outage schedule annually not to exceed 150 hours per year.



## **EXHIBIT E**

### **START-UP TESTING**

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

1. Test of mechanical and electrical equipment;
2. Calibration of all monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Point-to-point continuity tests;
6. Bench tests of protective devices; and
7. Tests required by manufacturers) and designer(s) of equipment.

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

1. Turbine/generator mechanical runs and functionality;
2. System operation tests;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Excitation and voltage regulation operation tests;
7. Auto stop/start sequence;
8. Completion of any state and federal environmental testing requirements; and
9. Tests required by manufacturer(s) and designer(s) of equipment.

For wind projects only, the following Wind Turbine Generator Installation Checklists are required documents to be signed off by Manufacturer or Subcontract Category Commissioning Personnel as part of the Commissioning and startup testing:

Turbine Installation  
Foundation Inspection (by Owner's independent inspector)  
Controller Assembly  
Power Cables  
Cable Installation Checklists including:

Controller  
Top Deck / Yaw Deck Tower  
Top Section / Saddle Mid  
Section Cables or buss bars  
Base Section  
Tower Base Section  
Tower Lights and Outlets  
Tower Mid Section  
Tower Top Section  
Nacelle & Rotor

*[Insert], LLC—Five Pines*

**EXHIBIT F-1**  
**MOTIVE FORCE PLAN**  
**WIND SPEED DATA SUMMARIES & HOURLY WIND PROFILE**

**F1-1**



[Insert], LLC—Five Pines

Five Pines - Optimized Turbine Layout (Version 1)

Five Pines

Turbine: Suzlon S97-2.1

90 meters		Month												Grand Total
Average of Wind Speed (m/s)	Local Hour (GMT -8)	1	2	3	4	5	6	7	8	9	10	11	12	
0		6.64	6.36	8.44	8.73	8.19	8.31	8.52	7.82	7.77	7.96	7.87	7.52	7.84
1		6.38	6.46	8.21	8.48	7.87	8.55	8.61	7.84	7.56	7.55	8.07	7.72	7.78
2		6.67	6.38	8.64	8.74	7.85	8.56	8.39	7.66	7.56	7.58	8.10	7.84	7.83
3		6.81	6.65	9.01	8.78	7.74	8.50	8.32	7.44	7.81	7.68	8.32	7.77	7.90
4		6.88	6.80	9.12	8.77	7.70	8.43	7.95	7.70	7.68	7.54	8.48	7.88	7.91
5		6.66	6.83	8.94	8.81	7.55	8.13	7.95	8.09	7.66	7.50	8.47	7.65	7.85
6		6.77	6.71	8.67	8.85	7.52	7.79	8.00	8.07	8.10	7.47	8.25	7.46	7.81
7		6.54	6.63	8.59	8.20	7.03	7.36	6.89	7.07	7.95	7.33	8.32	7.77	7.47
8		6.75	7.17	8.48	7.73	6.87	7.08	6.22	5.69	6.47	7.01	8.28	8.19	7.16
9		7.05	6.79	8.01	7.90	6.85	6.93	5.82	4.95	5.51	6.36	7.62	7.56	6.78
10		7.06	6.76	7.72	7.92	6.80	6.80	5.81	4.79	5.11	5.98	7.12	7.05	6.58
11		6.82	6.32	7.50	7.95	6.97	7.05	6.12	5.14	5.41	6.37	7.03	6.47	6.60
12		6.00	5.81	7.48	8.28	7.42	7.41	6.27	5.65	5.88	6.69	6.99	6.44	6.69
13		5.70	5.57	7.46	8.46	7.61	7.70	6.71	5.86	6.01	6.75	6.91	6.43	6.76
14		5.86	5.27	7.15	8.68	7.44	7.92	7.11	6.09	6.17	6.87	6.97	6.40	6.83
15		5.68	5.48	7.13	8.70	7.52	8.03	7.36	6.27	6.55	6.80	6.73	6.47	6.89
16		5.64	5.46	7.08	8.86	7.90	8.01	7.02	6.41	6.53	6.50	6.61	6.72	6.90
17		5.80	5.26	7.18	8.68	7.87	7.59	7.18	6.31	6.13	6.42	6.81	7.00	6.85
18		6.18	5.53	7.29	8.46	7.84	7.15	7.06	6.46	5.62	6.85	6.99	7.47	6.91
19		6.48	5.68	7.64	8.19	8.10	7.14	7.07	6.73	5.97	7.29	7.44	7.73	7.12
20		6.70	5.76	8.02	9.01	7.87	7.58	7.13	7.18	6.44	7.70	7.86	7.99	7.44
21		6.92	5.80	8.43	9.00	7.86	8.14	7.46	7.45	7.10	7.96	7.70	7.81	7.63
22		6.95	5.95	8.56	9.08	8.08	8.18	7.79	7.94	7.59	8.00	7.57	7.76	7.79
23		6.66	6.24	8.49	8.97	8.11	8.14	8.01	8.08	7.60	8.16	7.64	7.81	7.83
Grand Total		6.48	6.15	8.05	8.55	7.61	7.77	7.28	6.78	6.76	7.18	7.99	7.37	7.30

[Insert], LLC—Five Phases

Five Phases - Optimized Turbine Layout (Version 1)  
 Five Phases  
 Turbine: Suzlon S97-2.1

90 meters

Average of Net Capacity Factor (%)		Month												Grand Total
Local Hour (GMT-8)		1	2	3	4	5	6	7	8	9	10	11	12	
0		35.8%	32.6%	41.4%	35.7%	36.9%	37.1%	31.7%	34.8%	31.8%	35.1%	37.8%	37.7%	35.7%
1		34.4%	34.8%	42.2%	37.5%	35.5%	35.7%	29.6%	32.6%	31.0%	34.2%	37.9%	36.1%	35.1%
2		35.0%	32.6%	42.3%	35.7%	36.3%	31.9%	29.7%	33.0%	33.3%	33.0%	38.1%	36.0%	34.7%
3		35.0%	33.6%	40.2%	35.5%	38.0%	31.7%	28.1%	33.9%	30.8%	32.6%	37.6%	36.4%	34.4%
4		36.5%	33.9%	38.4%	35.0%	36.8%	31.0%	28.7%	33.1%	30.7%	32.0%	39.5%	37.4%	34.4%
5		35.5%	32.9%	37.3%	34.0%	33.1%	27.4%	25.9%	33.5%	32.6%	33.5%	39.6%	35.9%	33.4%
6		35.9%	33.4%	36.9%	29.2%	28.4%	22.0%	18.5%	26.1%	28.5%	33.2%	36.8%	36.4%	30.5%
7		35.2%	33.4%	35.8%	25.3%	26.0%	20.0%	14.4%	20.7%	20.4%	27.5%	36.6%	37.9%	27.8%
8		34.7%	33.3%	33.4%	26.5%	25.9%	18.1%	11.8%	16.6%	17.6%	23.7%	35.2%	37.6%	26.4%
9		35.4%	33.3%	34.9%	25.8%	25.6%	17.1%	12.0%	14.2%	16.0%	21.7%	32.3%	35.2%	25.3%
10		34.9%	29.4%	35.0%	27.9%	29.7%	18.8%	14.6%	15.9%	17.1%	21.3%	29.7%	32.7%	25.6%
11		31.7%	28.5%	35.9%	27.5%	33.4%	22.1%	16.3%	18.5%	19.7%	22.0%	30.3%	30.6%	26.4%
12		27.6%	26.7%	35.8%	27.7%	35.5%	23.6%	19.9%	21.2%	21.4%	23.5%	30.8%	29.0%	26.9%
13		28.6%	22.7%	35.1%	29.3%	35.7%	25.4%	23.3%	23.6%	22.8%	24.4%	29.8%	29.4%	27.5%
14		29.0%	23.3%	36.3%	29.5%	35.8%	26.6%	25.6%	26.1%	24.1%	24.5%	30.9%	28.9%	28.4%
15		28.8%	25.6%	36.7%	29.4%	38.1%	27.7%	26.0%	27.0%	24.2%	23.4%	29.7%	31.6%	29.8%
16		30.1%	27.2%	37.9%	29.6%	37.4%	27.7%	28.1%	27.5%	21.5%	24.0%	31.0%	33.7%	29.7%
17		30.7%	26.3%	37.5%	28.7%	35.7%	28.9%	26.0%	26.6%	21.5%	26.8%	34.9%	35.2%	29.9%
18		30.0%	26.6%	37.8%	30.3%	35.0%	28.6%	26.6%	26.4%	27.4%	29.3%	37.7%	35.2%	30.9%
19		30.7%	29.6%	37.3%	34.0%	35.5%	32.5%	30.1%	29.7%	30.3%	31.7%	39.4%	35.5%	33.0%
20		34.3%	32.9%	41.3%	35.9%	37.0%	34.8%	30.9%	32.8%	33.1%	34.6%	39.3%	36.4%	35.3%
21		35.6%	31.0%	43.8%	37.8%	37.6%	33.9%	31.7%	34.4%	33.8%	35.0%	38.5%	35.5%	35.7%
22		37.6%	32.8%	43.4%	36.3%	36.9%	34.9%	33.3%	35.8%	32.9%	35.4%	37.6%	37.2%	36.2%
23		34.8%	34.6%	41.8%	35.1%	36.8%	35.8%	33.8%	35.0%	32.9%	35.4%	38.6%	37.4%	36.0%
Grand Total		33.2%	30.5%	38.3%	31.6%	34.3%	28.1%	24.9%	27.4%	26.5%	29.1%	35.4%	34.8%	31.2%



**EXHIBIT G****SAMPLE ENERGY PURCHASE PRICE CALCULATIONS**

The following are samples of calculations of energy purchase prices using the formula and tables in Section 5.1.

The calculation for the non-levelized purchase price during an On-Peak Hour in May of 2012 equals \$60.24/MWh (the 2012 annual rate for Conforming Energy) multiplied by 92% (0.92) (the May On-Peak Hour multiplier) minus \$6.50/MWh (the wind integration cost), which equals \$48.92/MWh.

**Table 1: Sample calculations for non-levelized On-Peak Conforming Energy in 2012: Purchase Price = (annual rate \* monthly On-Peak multiplier) - wind integration cost.**

Month	Conforming Energy Annual Rate for 2012 (per MWh)	On-Peak Hour Multiplier	Wind Integration Cost	Calculated Purchase Price for 2012 On-Peak Conforming Energy (per MWh)
January	\$60.24	103%	\$6.50	\$55.55
February	\$60.24	105%	\$6.50	\$56.75
March	\$60.24	95%	\$6.50	\$50.73
April	\$60.24	95%	\$6.50	\$50.73
May	\$60.24	92%	\$6.50	\$48.92
June	\$60.24	94%	\$6.50	\$50.13
July	\$60.24	121%	\$6.50	\$66.39
August	\$60.24	121%	\$6.50	\$66.39
September	\$60.24	109%	\$6.50	\$59.16
October	\$60.24	115%	\$6.50	\$62.78
November	\$60.24	110%	\$6.50	\$59.76
December	\$60.24	129%	\$6.50	\$71.21

**Table 2: Sample calculations for non-levelized Off-Peak Conforming Energy in 2012: Purchase Price = (annual rate \* monthly Off-Peak multiplier) - wind integration cost.**

Month	Conforming Energy Annual Rate for 2012 (per MWh)	Off-Peak Hour Multiplier	Wind Integration Cost	Calculated Purchase Price for 2012 Off-Peak Conforming Energy (per MWh)
January	\$60.24	94%	\$6.50	\$50.13
February	\$60.24	97%	\$6.50	\$51.93
March	\$60.24	80%	\$6.50	\$41.69

[Insert], LLC—Five Pines

Month	Conforming Energy Annual Rate for 2012 (per MWh)	Off-Peak Hour Multiplier	Wind Integration Cost	Calculated Purchase Price for 2012 Off- Peak Conforming Energy (per MWh)
April	\$60.24	76%	\$6.50	\$39.28
May	\$60.24	63%	\$6.50	\$31.45
June	\$60.24	65%	\$6.50	\$32.66
July	\$60.24	92%	\$6.50	\$48.92
August	\$60.24	106%	\$6.50	\$57.35
September	\$60.24	99%	\$6.50	\$53.14
October	\$60.24	105%	\$6.50	\$56.75
November	\$60.24	96%	\$6.50	\$51.33
December	\$60.24	120%	\$6.50	\$65.79



*[Insert], LLC—Five Pines*

## **EXHIBIT H**

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

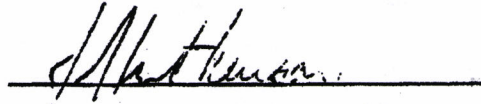
Ridgeline Energy LLC  
1300 N Northlake Way  
Seattle, WA 98103

Director, Transmission Services  
PacifiCorp  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

29 November, 2011

To Whom it May Concern:

Ridgeline Energy LLC, on behalf of Meadow Creak Project, ("Seller") hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Seller's interconnection information with Marketing Affiliate employees of PacifiCorp Energy, including but not limited to those in the Commercial and Trading group. Seller acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

A handwritten signature in cursive script, appearing to read "Joan Hutchinson", is written over a horizontal line.

Joan Hutchinson  
SVP  
Ridgeline Energy LLC



## ADDENDUM L

### *To be Revised*

#### STATION LOAD, LOSSES, and NET OUTPUT ALLOCATION ALGORITHM FOR THE CEDAR CREEK WIND, LLC PROJECTS

This Addendum L is hereby made a part of, and clarifies certain terms in, the *Power Purchase Agreement between Cedar Creek Wind, LLC relating to FIVE PINE, and PacifiCorp* ("Agreement") entered into the 22nd day of December, 2010. Capitalized terms not defined herein shall have the meaning set forth in the Agreement. Cedar Creek Wind, LLC ("Seller") and PacifiCorp are at times referred to herein individually as a "Party" or collectively as the "Parties".

Cedar Creek Wind, LLC shall own a complex of five (namely, Coyote Hill, Five Pine, Steep Ridge, North Point, and Rattlesnake Canyon) separate, Idaho small wind Qualifying Facilities (each, a "Cedar Creek Project" and collectively, the "Cedar Creek Projects") that share collector wires, a 34.5/345 kV substation (Cedar Creek Substation), and related equipment, which connect the Qualifying Facilities to the Point of Delivery ("Shared Interconnection Facilities").

PacifiCorp has agreed to buy (and Seller has agreed to sell), at the Point of Delivery, Seller's total energy output net of: (1) Seller's station service; (2) energy provided by Seller to another Cedar Creek Project for station service; (3) Seller's share of the transformation losses; and (4) Seller's share of the line losses between Seller's Facility and the Point of Delivery (together Seller's "Station Auxiliary Load and Losses"). However, Seller and PacifiCorp agree that it is impossible to measure Seller's Station Auxiliary Load and Losses separate and apart from the Station Auxiliary Load and Losses of the other Cedar Creek Projects. Therefore, in order to implement an objective, practicable, and equitable process by which PacifiCorp may quantify energy delivered by Seller to the Point of Delivery (net of its Station Auxiliary Load and Losses), the Parties do agree as follows:

A. Billing Formulae. PacifiCorp shall determine Seller's Net Output in kWh for purposes of the Agreement using the method specified below.

#### 1. Definitions

NR<sub>j</sub> = the nameplate rating (a/k/a Facility Capacity Rating) of Cedar Creek Project *i*.

NRT = the sum of all the nameplate ratings of Cedar Creek Projects (*i* = 1 to 5).

PALLT = the accumulated purchased energy from Utility Supplier, as determined at the Point of Delivery, to supply the net total station auxiliary load and losses for the Shared Interconnection Facilities for Cedar Creek Projects *i* = 1 to 5 whenever such total load and losses exceeds total generation output.



PALL<sub>i</sub> = the allocated share of PALLT for Project i as determined by multiplying PALL<sub>T</sub> by NR<sub>j</sub> and dividing by NRT.

OP<sub>i</sub> = for a given integration interval, the metered output energy of Cedar Creek Project i, as determined by PacifiCorp's meter at the point where Cedar Creek Project i connects to the Shared Interconnection Facilities. For any integration interval during which any energy is delivered to a Project from the Shared Interconnection Facilities, such delivered energy is accumulated in a separate meter register and does not decrement the register used to measure accumulated OP<sub>j</sub>. Therefore OP<sub>j</sub> is by definition always greater than or equal to zero, and in the event the meter records OP<sub>j</sub> less than zero, OP<sub>i</sub> shall be deemed to equal zero.

OP<sub>T</sub> = the sum of all OP<sub>j</sub> (i = 1 to 5).

NOT<sub>T</sub> = for a given integration interval, the total energy delivered to the Point of Delivery (345 kV bus at Goshen Substation). NOT shall be as measured at PacifiCorp's meter near the Point of Delivery (kWh, in 10-minute intervals), adjusted for any transformation losses between the meter and the Point of Delivery. For any integration interval during which any energy is delivered to the Point of Delivery from PacifiCorp's system, such delivered energy is accumulated in a separate meter register of the PacifiCorp meter and does not decrement the register used to measure accumulated Net Output energy. Therefore NOT is by definition always greater than or equal to zero and in the event the meter records NOT less than zero, NOT shall be deemed to equal zero.

NO<sub>i</sub> the net energy sold to PacifiCorp by Cedar Creek Project i during the integration interval.

SALLT = the total of all station auxiliary load and losses for the Shared Interconnection Facilities for Cedar Creek Projects (i = 1 to 5) when NOT is positive.

SALL<sub>j</sub> = the allocated share for Cedar Creek Project i of SALLT.

## 2. Calculations

Calculations shall be reconciled and settled monthly. Calculations shall be based upon raw data gathered from specified meters using a metering integration interval of S, 10, or 15 minutes at PacifiCorp's election to match the metering installation PacifiCorp specified ("integration interval"). Calculations shall be rounded to the nearest kilowatt-hour in the final step.

### fa). When Total Generation Output <= Station Auxiliary Load and Losses

When, for any integration interval, the total of all OP<sub>j</sub> Project output amounts of energy among all Cedar Creek Projects (OP<sub>T</sub>) is less than or equal to the total station auxiliary load and losses for the Shared Interconnection Facilities, the meters at the Point of Delivery will accumulate the Utility Supplier's delivery of purchased energy, PALLT, to supply such net total load and losses in a meter register that is separate from that which accumulates NOT and NOT shall equal zero or if negative, be deemed to equal zero. The "Utility Supplier" shall be the utility providing retail electric service at the Facility (Rocky Mountain Power). PacifiCorp shall have no obligation to serve any of the Cedar Creek Projects' retail electric needs absent a separate written agreement



with PacifiCorp and then only with the permission of Seller's Utility Supplier. None of the costs associated with provision of retail electric service to Seller shall be borne by PacifiCorp.

**(b). When Total Generation Output > Station Auxiliary Load and Losses**

When, for any integration interval, the total generation of energy among all Cedar Creek Projects is greater than the total station auxiliary load and losses for the Shared Interconnection Facilities, the meters at the Point of Delivery will accumulate in a separate register PacifiCorp's receipt of the total combined energy from all the Projects (NOT). The difference between OPT and NOT for that interval (SALLr) is allocated to each Cedar Creek Project in proportion to its generation output (OPj) in the same integration interval to determine NOj by the formulae:

Let  $SALLr = [OP_T - NO_T]$  and

$SALLi = [SALLr] * [OPi / OP_T]$

The Net Output energy sold by each Project i is then determined as:

$NOj = [OPj - SALLi]$  and substituting for SALLi;

$NOj = NO_T * [OPi / OP_T]$

**B. Limitation of PacifiCorp Purchase Liability.** PacifiCorp's total purchase obligation to the Cedar Creek Projects shall at no time exceed total energy delivered by the Cedar Creek Projects to the Point of Delivery. Therefore, in the event the sum of the Net Output energy (calculated according to the preceding formulae) for all the Cedar Creek Projects is greater than NOT, then PacifiCorp shall reduce calculated Net Output energy from each Cedar Creek Project, pro rata each Cedar Creek Project's share of the OPT, such that the total energy purchased from all the Cedar Creek Projects at the Point of Delivery by PacifiCorp equals NO<sub>r</sub>.

**C. PacifiCorp Right to Offset.** In the event PacifiCorp determines it has underpaid one or more Cedar Creek Projects (due to metering error or otherwise) and, as a result of underpaying one or more Cedar Creek Projects, has overpaid Seller, PacifiCorp may adjust Seller's future payment(s) accordingly in order to recapture any overpayment received by Seller in a reasonable time.

**D. Condition Subsequent.** This Addendum L was negotiated jointly among the Cedar Creek Projects and PacifiCorp and is intended by all of the Cedar Creek Projects and PacifiCorp to be one of five identical bilateral agreements, each between PacifiCorp and a Cedar Creek Project, but each related to the other. Therefore, in the event one or more Cedar Creek Projects does not agree to be bound by the terms and conditions set forth in this Addendum L, PacifiCorp may, upon thirty days written notice, cancel all Addendum L agreements. In the event PacifiCorp cancels this Addendum L in accordance with this Section D, PacifiCorp may satisfy its obligation to pay Seller by depositing when due, with an escrow agent chosen by the Cedar Creek Projects, the total payment due to all Cedar Creek Projects under their respective Power Purchase Agreements, less offsets (if any) calculated based upon NOT and the Contract Price.

[END]

**EXHIBIT 4.7(A)**

**GREEN TAG ATTESTATION AND BILL OF SALE**

\_\_\_\_\_ ("Seller") hereby sells, transfers and delivers to PacifiCorp the Green Tags (including all Environmental Attributes and Green Tag Reporting Rights) associated with the generation of Net Output under the Power Purchase Agreement (Renewable Energy) between Seller and PacifiCorp dated [\_\_\_\_\_] (the "PPA"), as described below, in the amount of one Green Tag for each megawatt hour generated. Defined terms (as indicated by initial capitalization) used in this Green Tag Attestation and Bill of Sale shall have the meaning set forth in the PPA.

Facility name and location: \_\_\_\_\_ Fuel Type: Wind

Capacity (MW): \_\_\_\_ MW Operational Date: \_\_\_\_\_

Energy Admin. ID no.: \_\_\_\_\_

Dates	MWh generated
_____	_____

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to PacifiCorp is its one and only sale of the Green Tags and associated Environmental Attributes referenced herein;
- iii) the Facility generated Output is the amount indicated above; and
- iv) to the best of Seller's knowledge, each of the Green Tags and Environmental Attributes associated with the Facility's Output are being sold to Buyer.

This Green Tag Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to PacifiCorp of all of Seller's right, title and interest in and to the Green Tags (including Green Tag Reporting Rights and Environmental Attributes), as set forth above.



**Seller's Contact Person:** \_\_\_\_\_

**WITNESS MY HAND,**

\_\_\_\_\_

**a** \_\_\_\_\_

**By** \_\_\_\_\_

**Its** \_\_\_\_\_

**Date:** \_\_\_\_\_

**This Attestation may be disclosed by Seller and PacifiCorp to others, including the Center for Resource Solutions and the public utility commissions having jurisdiction over PacifiCorp, to substantiate and verify the accuracy of PacifiCorp's advertising and public communication claims, as well as in PacifiCorp's advertising and other public communications.**

## EXHIBIT 4.7(B)

### QUALIFIED REPORTING ENTITY SERVICES AGREEMENT

C & T Master v1.1; 071411

This Qualified Reporting Entity Services Agreement (this "Agreement") is entered into by and between PacifiCorp ("PacifiCorp") and \_\_\_\_\_ ("Counterparty"; PacifiCorp and Counterparty may be referred to individually herein as "Party" and collectively as "Parties") as of \_\_\_\_\_, \_\_\_\_\_, with reference to the following:

WHEREAS, Counterparty represents to PacifiCorp that it owns or otherwise has the rights to all or part of the non-energy attributes of the generation from that certain electric generation facility more particularly described on Exhibit A hereto (the "Facility"), or other rights respecting the Facility itself enabling it to lawfully enter hereinto; and

WHEREAS, The Western Renewable Electricity Generation Information System ("WREGIS") is a system tracking quantities of renewable energy generation generated by electric generating facilities in the nature of the Facility, as a Facility pursuant to WREGIS Terms of Use ("TOU"); and

WHEREAS, WREGIS requires that each Facility have a designated Qualified Reporting Entity; and

WHEREAS, Counterparty is an Account Holder in WREGIS and wishes to register the Facility with WREGIS; and

WHEREAS, Counterparty wishes to retain PacifiCorp to act as its WREGIS-defined Qualified Reporting Entity ("QRE") for the Facility;

NOW THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

#### I. Definitions: Rules of Construction.

1.1 Initially capitalized terms used and not otherwise defined herein are defined in the in the Operating Rules or in Attachment I Definitions of the WREGIS TOU.

1.2 "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 shall only include MidAmerican Energy Holdings Company and its direct, wholly owned subsidiaries.

1.3 "Business Day" means a day of the week other than Saturday, Sunday, or a federal holiday.

1.4 "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.

1.5 "FERC" means the Federal Energy Regulatory Commission.

1.6 "Generation Interconnection Agreement" means the agreement entered into separately between Counterparty and Interconnection Provider concerning the Interconnection Facilities.

1.7 "Facility" is defined in the Preamble.

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

1.9 "Interconnection Provider" means the FERC-regulated or United States Department of Energy entity with whom the Facility has contracted for interconnection to the electric transmission grid; in the event Interconnection Provider is PacifiCorp, PacifiCorp would be the Interconnection Provider operating in its regulated transmission function, and not as the party hereto.



- 1.10 "Metering External Webpage" means a website owned and operated by PacifiCorp that PacifiCorp may at its option, but without being obligated to do so, make available and operate for the display of all data that will be included in the Monthly Generation Extract File.
- 1.11 "Monthly Generation Extract File" means a data file that contains generation data from Counterparty's Points of Metering and conforms to the characteristics and requirements set forth in the WREGIS Interface Control Document.
- 1.12 "NERC" means the North American Electric Reliability Corporation.
- 1.13 "Points of Metering" means the points at which electric generation is measured.
- 1.14 "Prudent Electrical Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.
- 1.15 "QRE" means a WREGIS-defined Qualified Reporting Entity.
- 1.16 "Renewable" is defined in section 2 of the WREGIS Operating Rules.
- 1.17 "Requirements of Law" means any applicable federal, state and local law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).
- 1.18 "Settlement Estimation Procedures" means a calculation based on standard utility estimation rules using algorithms developed and approved by PacifiCorp's billing department.
- 1.19 "System" means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generation Interconnection Agreement.
- 1.20 "Tariff" means PacifiCorp FERC Electric Tariff Fifth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff.
- 1.21 "Transmission Provider" means the FERC-regulated or United States Department of Energy entity with whom the Facility has contracted for electric transmission at and away from the Facility to any point on, or interconnection with, the electric transmission grid; in the event Transmission Provider is PacifiCorp, PacifiCorp would be the Interconnection Provider operating in its regulated transmission function, and not as the party hereto..
- 1.22 "Wholesale Generation Also Serving On-Site Loads" is defined in section 2 of the WREGIS Operating Rules.
- 1.23 "WECC" means the Western Electricity Coordinating Council.
- 1.24 "WREGIS" means the Western Renewable Energy Generation Information System.
- 1.25 "WREGIS Certificate" or "Certificate" means "Certificate" as defined by the WREGIS Operating Rules.
- 1.26 "WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS, including the TOU.
- 1.27 General Rules of Interpretation. 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," "Annexes," "Appendices" or "Exhibits" are to articles, sections, schedules, annexes, appendices or exhibits hereof; (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 herein shall 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; and (i) the word "or" is not necessarily exclusive.

1.28 Interpretation with FERC Orders. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that each of Transmission Provider's and Interconnection Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. Counterparty agrees to conduct itself and operate the Facility in accordance with all Requirements of Law, all requirements of all applicable Electric System Authorities, and all requirements of the Interconnection Agreement.

1.28.1 Counterparty agrees to enter into the Generation Interconnection Agreement with the Interconnection Provider. The Generation Interconnection Agreement shall be a separate and free standing contract and the terms hereof are not binding upon the Interconnection Provider or Transmission Provider, although both are express third party beneficiaries hereof.

1.28.2 Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Counterparty on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation hereunder. Likewise, nothing herein or connected with the performance by PacifiCorp hereof shall affect or impair the rights of Interconnection Provider or Transmission Provider, under the Interconnection Agreement or otherwise. This Agreement shall not be construed to create any rights between Counterparty and the Interconnection Provider or between Counterparty and the Transmission Provider.

1.28.3 Counterparty expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an affiliate thereof. Counterparty acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider. Nothing in this Agreement shall operate to diminish, nor shall this Agreement extend to, Interconnection Provider or Transmission Provider's use, retention, or disclosure of Counterparty or Facility information (including information within the scope of this Agreement) in connection with PacifiCorp operating in its transmission function, including its carrying out of its obligations and business practices as a Balancing Authority or activities undertaken pursuant to the Tariff.

## II. Term and Termination.

2.1 This Agreement shall be effective upon execution by the Parties and shall continue in effect until such time as either Party, upon providing 60 days written notice to the other Party, chooses to terminate. PacifiCorp may initiate any regulatory proceedings it deems appropriate to terminate this Agreement prior to the effectiveness of such termination. Notwithstanding the foregoing, (a) Counterparty may terminate this Agreement upon an event of default by PacifiCorp if PacifiCorp does not cure such event of default within 10 days of written notice; (b) PacifiCorp may terminate this Agreement upon an event of default by Counterparty if Counterparty does not cure such event of default within 10 days of written notice, (c) PacifiCorp may terminate this Agreement if the Facility fails to meet the requirements of Section 3.1 hereof and such failure is not cured within 30 days, and (d) Either Party may terminate this Agreement immediately upon notice to the other if Counterparty or the Facility fail to comply with Section 1.28. This Agreement may also be terminated as otherwise set forth herein.

## III. QRE Services.

3.1 QRE Services. PacifiCorp will, on the terms set forth herein, serve as a QRE for the Facility so long as the Facility meets the definition of Renewable, is within the metered boundaries of both PacifiCorp's Balancing Authority and is equipped with either: (1) Transmission Provider or Interconnection Provider (as



applicable) owned and operated meters; or (2) meters that meet the Interconnection Provider's requirements and (3) meet all applicable WREGIS requirements.

**3.2 Compensation to PacifiCorp.** In exchange for the services performed by PacifiCorp hereunder, Counterparty shall pay PacifiCorp as follows: Counterparty shall pay PacifiCorp a one-time initial setup fee of \$280, which shall be due upon execution of this Agreement. The Counterparty shall pay PacifiCorp a monthly reporting fee of \$50 per generating unit for which PacifiCorp reports output to WREGIS, provided that PacifiCorp may, in its discretion, assess and bill for all fees due hereunder on an annual, rather than monthly, basis. Other than the initial setup fee, which shall be due in advance, all other fees due hereunder shall be due within ten days of PacifiCorp's issuance of an invoice for such fees. PacifiCorp will review costs associated with this service on an annual basis, and may make necessary adjustments to the monthly reporting fee charged herein. Any change in the monthly reporting fee will become effective only after a minimum thirty (30) days prior written notice to Counterparty. In the event WREGIS, WECC, or any other entity with the ability or jurisdiction to modify the QRE reporting process requires a change that materially increases the costs to PacifiCorp of providing QRE services, PacifiCorp may pass those costs to the Counterparty by increasing the monthly reporting fee. PacifiCorp will use best efforts to provide Counterparty with prior notice before billing Counterparty for such increased costs. The fees set forth herein relate to PacifiCorp serving as a QRE for Counterparty pursuant to the terms of this Agreement. The necessary metering is a prerequisite for this service and is not covered in the fees described above.

**3.3 Points of Metering.** The Points of Metering that PacifiCorp will use are set forth in Exhibit A. Counterparty certifies that all Points of Metering listed in Exhibit A measure data only from Facility that meet the definition of Renewable. Counterparty shall notify PacifiCorp at least thirty (30) Business Days prior to making any proposed material changes to the Points of Metering. Following such notification, the Parties will decide whether such changes are mutually acceptable. If such changes are not acceptable to PacifiCorp, PacifiCorp may terminate this Agreement.

**3.4 Expenses.** Except as otherwise provided in the Interconnection Agreement (and in such case, only vis-à-vis Interconnection Provider), Counterparty shall bear all costs and expenses, including those incurred by PacifiCorp, relating to all metering or other equipment installed to accommodate Counterparty's Facility.

**3.5 Reporting.** Counterparty hereby grants to PacifiCorp sole and exclusive permission and authority to report Data and Output to WREGIS and warrants and represents that neither Counterparty nor any other person or entity acting on behalf of Counterparty has granted, or will hereafter grant during the term hereof any similar data reporting authority or permission to any other QRE or WREGIS Account Holder or to any other party or Agent for use in WREGIS, or any other energy tracking system, for the Facility. As a precondition for PacifiCorp to be able to perform hereunder, Counterparty shall submit Counterparty's Output data to PacifiCorp by allowing PacifiCorp to collect such data, at the Points of Metering, and report such data in the manner set forth herein.

**3.5.1 Monthly Generation Extract File.** Once a month PacifiCorp shall submit a Monthly Generation Extract File to WREGIS on Counterparty's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document.

**3.5.2 Reporting Cycle.** PacifiCorp shall submit the Monthly Generation Extract File to WREGIS no sooner than the last business day of each month for data collected during the previous month, or previous portion of month. PacifiCorp shall submit such data no later than the end of the calendar month following the end date of the output being reported.

**3.5.3 Verification.** Should PacifiCorp choose at its option to operate and make available a Metering External Webpage, PacifiCorp may in its reasonably exercised discretion grant Counterparty access for Counterparty to verify such information as prescribed by PacifiCorp from time to time, and to timely notify PacifiCorp in writing of any errors Counterparty detects.

**3.5.4 Adjustments.** After PacifiCorp submits the Monthly Generation Extract File to WREGIS, any information contained in the Monthly Generation Extract File shall be final for purposes of WREGIS reporting, subject only to the adjustment procedures set forth in the WREGIS Operating Rules, which shall be Counterparty's responsibility to implement if necessary.

**3.6 Obligations of Counterparty.** Counterparty shall report and provide to PacifiCorp accurate and complete generation Data and Output information for the Facility. Counterparty shall send the Data and other



Output Information in a format and in compliance with any protocols which PacifiCorp may specify to Counterparty. Counterparty has a continuing duty to immediately notify PacifiCorp, if and when any generation Data or Output information has been sent in error or ceases to be truthful, accurate, or complete and to supply the corrected data as soon as practical, but not later than five (5) Business Days from the date Counterparty discovers that discrepancy in the Data or Output information.

3.7 WREGIS Fees. Counterparty is solely responsible for the payment directly to WREGIS of any and all WREGIS fees and costs that are required to register Counterparty's Facility and, to the extent the Generator Owner is a WREGIS Account Holder, Counterparty is responsible for the payment directly to WREGIS of all other WREGIS fees incident to the reporting of Generator Data and Output to WREGIS. Counterparty acknowledges and agrees that PacifiCorp shall have no obligation to advance or make payment of WREGIS fees or costs on Counterparty's behalf. Upon request by PacifiCorp made if PacifiCorp has received such a request from WREGIS or any regulator or third party, Counterparty shall provide PacifiCorp with evidence of payment of WREGIS fees and costs; failure to provide such information to PacifiCorp, upon request, shall constitute an event of default under this Agreement.

3.8 WREGIS Accounts. Counterparty will be solely responsible to make arrangements and registrations and for entering into any such agreements that are necessary to establish transfer of Certificates directly to proper Accounts or Subaccounts of Counterparty. Counterparty agrees that such arrangements shall preclude the need for PacifiCorp to act as custodian of such Certificates or to be responsible in any way to hold such Certificates in any Account or Subaccount of PacifiCorp or bear any responsibility, possession, obligation, or risk of loss with respect to Certificates created, held, or owned, with respect to the Facility. Counterparty acknowledges that, pursuant to section 11 of the WREGIS TOU, any generation data that PacifiCorp, acting as a QRE, provides to WREGIS shall reside in WREGIS and Counterparty will have no control over such data's use other than that provided for under the WREGIS TOU.

3.9 Obligations of PacifiCorp. PacifiCorp shall specify for Counterparty the protocols, reporting frequency, data file formats, and communication protocols for reporting generating Data, or Output, as necessary. PacifiCorp shall timely report to WREGIS Counterparty Data and/or Output information as specified in the most current WREGIS Interface Control Document (ICD). PacifiCorp shall not use or disclose Counterparty generation Data for any other purpose than reporting the Data to WREGIS, except as may be required by law, the Public Utility Commission of Oregon, any other state, federal, municipal or other regulator or governmental authority with jurisdiction over PacifiCorp or any of its assets, or a court of competent jurisdiction or as required under the terms of an existing agreement between the Parties. PacifiCorp shall not use Generator Owner generation Data for any other purpose. Notwithstanding the foregoing, PacifiCorp shall not be responsible for handling, account administration, transfer, evidence of, or any determination of Counterparty Certificate ownership or any other obligations for Certificates of Counterparty with regard to Certificates; and Counterparty shall bear all responsibility for such handling, account administration, evidence of, or any determination of Counterparty Certificate ownership and all other obligations pertaining to creation and ownership of such Certificates.

### 3.10 Measurement.

3.10.1 Meter Data. Counterparty authorizes PacifiCorp's metering services organization to provide Counterparty's meter data directly to WREGIS in the form of the Monthly Generation Extract File. Counterparty authorizes PacifiCorp to gather data from the Points of Metering listed in Exhibit A. All such data is considered data which Counterparty has created and submitted to PacifiCorp, notwithstanding that PacifiCorp, rather than Counterparty will gather it.

3.10.2 Wholesale Generation Also Serving On-Site Loads. If Counterparty has any Wholesale Generation Also Serving On-Site Loads (as defined in Article One above), such Facility will need to have the on-site load generation metered (and registered) separately from the generation that is supplied to the grid, in accordance with the WREGIS Operating Rules. Otherwise, PacifiCorp will not report any data from such Facility. If such Facility exist, they must be specified in Exhibit A.

3.10.3 Estimates. When meter readings are not available due to meter hardware failure or data that is determined to be invalid due to meter malfunction or calibration or configuration error, to the extent deemed by PacifiCorp to be appropriate and permitted pursuant to WREGIS TOU, PacifiCorp will, if possible, rely on readings from redundant meters whether such meters are PacifiCorp owned or not. If readings from redundant



meters are not possible, PacifiCorp will estimate and report meter data according to PacifiCorp's Settlement Estimation Procedures.

3.10.4 Responsibility. Counterparty is solely responsible for the data created and submitted to PacifiCorp, acting as a QRE, to forward to WREGIS.

3.11 Regulatory Requirements. PacifiCorp may release information provided by Counterparty hereunder, or gathered by PacifiCorp in connection herewith, to comply with any regulatory requirements applicable to PacifiCorp or if requested by a PacifiCorp regulator or if required by any other federal law or court order. Counterparty waives all applicable provisions of the Tariff which require PacifiCorp to hold confidential information with respect to the Generator Owner and the Facility, to the extent necessary for PacifiCorp to report, as a QRE, generation Data and Output regarding the Generation Unit(s) and to carry out PacifiCorp's obligations under this Agreement. This provision shall survive any termination of this Agreement.

3.12 Grant by Counterparty. Counterparty hereby grants to, permits, and authorizes PacifiCorp the following:

3.12.1 PacifiCorp is hereby authorized to communicate and transact with WREGIS as Counterparty's sole and exclusive reporting source of generation data for the Facility, and WREGIS is hereby authorized to communicate and transact directly with PacifiCorp regarding any generation data issues for the Facility. PacifiCorp is hereby authorized to act on behalf of Counterparty, but only to the extent that PacifiCorp has lawful, contractual access to WREGIS.

3.12.2 PacifiCorp is hereby authorized to provide WREGIS with all generation data for the Facility that WREGIS requires, including, but not limited to, data required for preparation of required reports and billing.

3.12.3 PacifiCorp is authorized to undertake all actions which are reasonable and necessary to carry out the obligations set forth in the subsections above.

3.12.4 Counterparty retains all other rights and responsibilities and all other obligations to WREGIS.

#### IV. Indemnity and Hold Harmless by Counterparty.

4.1 Indemnity. To the extent permitted by Requirements of Law, Counterparty hereby indemnifies and agrees to hold PacifiCorp, its officers, employees, agents, or representatives, harmless for any and all liability that is in any way associated with PacifiCorp's performance hereunder. This includes liability arising from: the data contained in the Monthly Generation Extract File, or any other financial injury, or damage to persons or property. Without limiting the generality of the foregoing:

4.1.1 Waiver of Causes of Action and Claims for Damages. Counterparty hereby waives any and all causes of action arising under or in respect to this Agreement, whether in contract, tort or any other legal or equitable theory (including strict liability) against PacifiCorp. In no event shall PacifiCorp be liable to Counterparty its board of directors, employees, agents, or representatives for any demands, direct costs, lost or prospective profits or any other losses, liabilities or expenses, whether special, punitive, exemplary, consequential, incidental, or indirect in nature, that are in any way associated with PacifiCorp's performance of the QRE function or otherwise under or in respect of this Agreement.

4.2 Indemnity by Counterparty. Counterparty shall release, indemnify and hold harmless PacifiCorp, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "PacifiCorp Indemnities") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorney's fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") resulting from, or arising out of, or in any way connected with, the performance by Counterparty of its obligations hereunder, or relating to the Facility, for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the PacifiCorp Indemnities.

4.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, COUNTERPARTY ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM (1) THE FAILURE TO SEND DATA IN A FORMAT SPECIFIED BY PACIFICORP, (2) THE FAILURE TO USE PROTOCOLS SPECIFIED BY PACIFICORP OR (3) THE SENDING OF ERRONEOUS, UNTRUTHFUL, INACCURATE,



AND/OR INCOMPLETE GENERATING DATA TO PACIFICORP OR THE SENDING OF ERRONEOUS, UNTRUTHFUL, INACCURATE, AND/OR INCOMPLETE DATA BY PACIFICORP TO WREGIS. IN NO EVENT SHALL PACIFICORP BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR OTHER INDIRECT LOSS OR DAMAGES RESULTING FROM ANY BREACH OF THIS AGREEMENT, WHETHER CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACTIONS OF PACIFICORP (AND/OR ITS CONTRACTORS, AGENTS, AND EMPLOYEES), REGARDLESS OF WHETHER SUCH CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL PACIFICORP BE LIABLE FOR ANY LOSS OR HARM SUFFERED BY COUNTERPARTY OR ANY THIRD PARTY DUE TO ANY ACTION OR INACTION BY PACIFICORP TAKEN HEREUNDER THAT CAUSES A FACILITY TO LOSE ANY CREDENTIALS, REGISTRATION OR QUALIFICATION UNDER THE RENEWABLE PORTFOLIO STANDARD OR SIMILAR LAW OF ANY STATE OR OTHER JURISDICTION.

4.4 PACIFICORP WILL NOT BE RESPONSIBLE FOR ANY DAMAGES RESULTING FROM ECONOMIC LOSS, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, LOSS OF PROFIT, LOSS OF PRODUCTION TAX CREDITS, LOSS OF SAVINGS OR REVENUE, LOSS OF GOODWILL, THE CLAIMS OF THIRD PARTIES (INCLUDING CUSTOMERS AND SHAREHOLDERS OR OTHER EQUITY OWNERS), PERSONAL INJURIES OR PROPERTY DAMAGES SUSTAINED BY THE COUNTERPARTY OR ANY THIRD PARTIES, EVEN IF PACIFICORP HAS BEEN NOTIFIED BY COUNTERPARTY (OR BY ANY THIRD PARTY) OF SUCH DAMAGES.

4.5 PACIFICORP DISCLAIMS ANY LIABILITY FOR AND COUNTERPARTY WAIVES ANY CLAIM FOR LOSS OR DAMAGE RESULTING FROM ERRORS, OMISSIONS, OR OTHER INACCURACIES IN ANY PART OF WREGIS OR THE REPORTS, CERTIFICATES OR OTHER INFORMATION COMPILED OR PRODUCED BY AND FROM OR INPUT INTO WREGIS USING COUNTERPARTY SUPPLIED GENERATION DATA, WHETHER OR NOT SUCH ERRORS, OMISSIONS OR INACCURACIES ARE DUE TO ERRONEOUS, UNTRUTHFUL, INCOMPLETE, OR INACCURATE INFORMATION INPUT BY PACIFICORP INTO WREGIS.

4.6 COUNTERPARTY HEREBY RELEASES PACIFICORP AND ANY OF ITS CONTRACTORS, AGENTS, AND EMPLOYEES FROM ANY AND ALL LIABILITY WITH RESPECT TO DAMAGES OR INJURIES INCURRED BY GENERATOR OWNER AS RELATES TO THE FOREGOING, EXCLUDING ANY ARISING AS A RESULT OF TORTIOUS AND INTENTIONALLY KNOWING OR RECKLESS CONDUCT BY PACIFICORP.

4.7 COUNTERPARTY ACKNOWLEDGES AND AGREES THAT, IN THE EVENT OF BREACH OF THIS CONTRACT OR ANY OTHER ACTION RESULTING IN LOSS OR POTENTIAL LOSS OR DAMAGE TO COUNTERPARTY, THE SOLE RECOURSE TO GENERATOR/OWNER IS TERMINATION OF THIS AGREEMENT.

4.8 Counterparty agrees to defend, indemnify, and hold harmless PacifiCorp and its directors, officers, employees, and agents from and against any and all claims (including third-party claims); causes of action, whether in contract, tort, or any other legal theory (including strict liability); demands; damages; costs; liabilities; losses and expenses (including reasonable attorney's fees and court costs) of any nature whatsoever, whenever arising, arising out of, resulting from, attributable to, or related to Counterparty generation Data our Output for: any inaccuracy, error, or delay in or omission of (i) any Data, information, or service, or (ii) the transmission or delivery of any Data, information, or service; any interruption of any such Data, Output, information, or service (whether or not caused by PacifiCorp); or any financial, business, commercial, or other judgment, decision, act, or omission made by any person or entity based upon or related to the information.

4.9 Interconnection. Counterparty shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise. Counterparty shall defend, indemnify and hold PacifiCorp harmless against any liability arising due to Counterparty's performance or failure to perform under the Generation Interconnection Agreement. Counterparty's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not a Force Majeure.



4.10 THIS ARTICLE SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH TERMINATION IS BY PACIFICORP OR COUNTERPARTY, AND WHETHER OR NOT SUCH TERMINATION IS ON ACCOUNT OF A DEFAULT.

#### V. Further Counterparty Obligations.

5.1 No Sale. Nothing herein constitutes a sale or purchase of energy or renewable energy certificates to or by PacifiCorp.

5.2 PTCs. Counterparty shall bear all risks, financial and otherwise throughout the Term, associated with Counterparty's or the Facility's eligibility to receive production tax credits ("PTCs") or qualify for accelerated depreciation for Counterparty's accounting, reporting or tax purposes.

5.3 Further Assurances. At PacifiCorp's request, the Parties shall execute such documents and instruments as may be reasonably required to effect the essential intent and purposes hereof.

5.4 Station Service. Counterparty shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof, Counterparty shall be 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 hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or renewable energy certificates.

5.6 Coordination with System. Counterparty shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System, and shall be solely responsible for (and shall defend and hold PacifiCorp harmless against) any damage that may occur as a direct result of Counterparty's breach of the Generation Interconnection Agreement.

5.7 Data Request. Counterparty shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data reasonably required for information requests from any Governmental Authorities, state or federal agency intervenor or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any governmental authority. Counterparty shall use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review it and meet any submission deadlines.

5.8 Additional Information. Counterparty shall provide to PacifiCorp such other information respecting Counterparty or the Facility as PacifiCorp may, from time to time, reasonably request.

5.9 No Dedication. Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party hereto. No undertaking by one Party to the other under any provision hereof shall constitute the dedication of PacifiCorp's facilities or any portion thereof to Counterparty or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Counterparty as an independent individual or entity.

5.10 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Counterparty hereunder, Counterparty shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified in the Generation Interconnection Agreement.

#### VI. Representations and Warranties.

6.1 Mutual Representations and Warranties. Each Party represents and warrants to the other that: (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization; (ii) it has the corporate, governmental and other legal capacity and authority to enter hereinto and to perform its obligations hereunder; (iii) such execution and performance do not violate or conflict with any law, order or agreement applicable to it; (iv) it has all governmental and other authorizations that are required to have been obtained or submitted by it with respect hereto, and they are in full force and effect; (v) its obligations hereunder are valid, binding and enforceable in accordance with their terms (subject to bankruptcy or similar laws affecting creditors' rights generally); and (vi) no Event of Default, or event which with notice and/or lapse



of time would constitute such an Event of Default, has occurred and is continuing or would occur as a result of its entering into or performing its obligations hereunder.

6.2 Representations and Warranties of Counterparty. Counterparty hereby represents and warrants to PacifiCorp: (i) it is not relying upon any representations of PacifiCorp other than those expressly set forth herein; (ii) it has entered hereinto with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks; (iii) it has made its trading and investment decisions based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by PacifiCorp; (iv) it has not received from PacifiCorp any assurances or promises regarding any financial results or benefits hereunder; (v) service hereunder is not a utility service within the meaning of Section 466 of the United States Bankruptcy Code; and (vi) Counterparty holds legal title to the Facility or otherwise holds the legal right to cause the Facility to enter into this Agreement.

## VII. Financial Responsibility.

7.1 Adequate Assurances. Without limiting PacifiCorp's rights under Article VIII hereof, if Counterparty has failed to make a timely payment hereunder, and PacifiCorp has reasonable grounds for insecurity regarding the performance of any obligation of Counterparty hereunder (whether or not then due), PacifiCorp may demand Adequate Assurances of Performance. "Adequate Assurances of Performance" means sufficient security in the form, amount, by an issuer or guarantor, and for the term reasonably acceptable to PacifiCorp, including, but not limited to, cash, a standby irrevocable letter of credit, a prepayment, a security interest in government securities, an asset or a performance bond or guaranty. Such Adequate Assurances of Performance shall be provided within three business days after a written demand is made by PacifiCorp.

## VIII. Events of Default: Remedies.

8.1 Event of Default. "Event of Default" means, with respect to a Party (the "Defaulting Party"):

8.1.1 the failure to render when due any payment or performance hereunder, if such failure is not remedied within five days after written notice;

8.1.2 the failure to timely provide adequate assurances required pursuant to Article VII hereof;

8.1.3 any such Party's representation or warranty proves to have been incorrect or misleading in any material respect when made;

8.1.4 the failure to perform any other covenant set forth herein if such failure is not remedied within five days after written notice;

8.1.5 its bankruptcy, if adequate assurances acceptable to PacifiCorp and approved by the Bankruptcy Court are not provided;

8.1.6 the expiration or termination of any credit support of Counterparty's obligations hereunder (other than in accordance with its terms) prior to the satisfaction of all obligations of Counterparty without the written consent of PacifiCorp; or

8.1.7 In the case of Counterparty:

8.1.7.1 Counterparty fails to report generation Data or Output information to PacifiCorp for the Facility or Counterparty fails to send the data in a format and use the protocols specified by PacifiCorp as determined by PacifiCorp to be required to meet the requirements of the WREGIS Operating Rules;

8.1.7.2 Counterparty is delinquent in payment to WREGIS of any WREGIS fees for registration or maintenance of Accounts or Subaccounts, which payment impairs the ability of PacifiCorp to report Generator Data, Output, or other information to WREGIS regarding the Facility, which delinquency continues for a period of thirty (30) days;

8.1.7.3 Counterparty fails to comply with a request by PacifiCorp to provide evidence of payment of WREGIS fees pertaining to the Facility; or

8.1.7.4 Counterparty knowingly or intentionally falsifies or misrepresents any Data, Output information, or other information required by WREGIS.



8.2 Remedies Upon Event of Default. In the Event of Default by a Party and for so long as the Event of Default is continuing, the non-defaulting Party (the "Performing Party") shall have the right to do any or all of the following: (1) upon two business days' written notice to the Defaulting Party, terminate this Agreement; (2) withhold any payments or performance due in respect of this Agreement; and (3) exercise such other remedies as may be available at law or in equity or as otherwise provided for herein, to the extent such remedies have not been otherwise waived or limited pursuant to the terms hereof.

8.3 Setoff. If an Event of Default occurs, the Performing Party may, at its election, set off any or all amounts which the Defaulting Party owes to it or any Affiliate of the Performing Party (whether under this Agreement or otherwise and whether or not then due) against any or all amounts which it or any Affiliate of the Performing Party owes to the Defaulting Party (whether under this Agreement or otherwise and whether or not then due).

8.4 Payment of Damages. Any amounts due on account of default shall be paid by the close of business on the next business day following the Defaulting Party's receipt of the Performing Party's written termination notice setting forth the termination payment due.

8.5 Limitation of Liability. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED HEREIN SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. LIABILITY THAT HAS NOT BEEN OTHERWISE EXCLUDED PURSUANT TO THE TERMS HEREOF SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AS THE SOLE AND EXCLUSIVE REMEDY. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

8.6 Survival. This Article survives the expiration or termination hereof.

#### IX. Force Majeure.

9.1 Except with regard to a Party's obligation to make payments hereunder, in the event either Party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect hereto, then upon such Party's (the "Claiming Party") giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing or by facsimile to the other Party, then the obligations of the Claiming Party shall, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party shall not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure shall have until the end of the Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure. "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations hereunder, which event or circumstance was not anticipated, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Counterparty's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not a Force Majeure.

9.2 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

9.3 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

#### X. Miscellaneous.



10.1 CHOICE OF LAW. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

10.2 Restriction on Assignments. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment in violation hereof shall be void ab initio. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

10.3 Notices. All notices, requests, statements or payments shall be made to the addresses set out on the Notices Exhibit. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section.

10.4 Entire Agreement: Counterparts. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties. This Agreement may be executed in counterparts, including by telefacsimile transmission, each of which is an original and all of which taken together constitute one and the same original instrument. This Agreement completely and fully supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof. If any provision of this Agreement is determined to be invalid, void or unenforceable by any court of competent jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.

10.5 No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default, nor shall any delay by a Party in the exercise of any right under this Agreement be considered as a waiver or relinquishment thereof.

10.6 Jurisdiction. Any judicial action arising out of, resulting from or in any way relating to this Agreement shall be brought only in a state or federal court of Multnomah County, Oregon. In the event such judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its costs and attorneys' fees incurred in connection with such proceedings.

10.7 Jury Trial Waiver. THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING HERETO, ANY GREEN TAGS OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

10.8 No Third Party Beneficiaries. With the exception of Transmission Provider and Interconnection Provider, who are express third party beneficiaries hereof, this Agreement confers no rights whatsoever upon any person other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person not a Party hereto.

10.9 Relationship of the Parties. Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership; or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.



IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the date first above written.

PacifiCorp

[Counterparty]

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

Exhibit A

Facility and Generation Data to be sent by QRE

For Facility enter the following information:

Facility Name and Address

Resource ID and Meter Number (Device ID) as listed on the Meter Service Agreement for the ISO Metered Entities (MSA/ISOME) Schedule 1

WREGIS ID

Meter Points