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IDAHO PUBLIC  
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR AN )  
ACCOUNTING ORDER AUTHORIZING THE )  
INCLUSION OF POWER SUPPLY )  
EXPENSES ASSOCIATED WITH THE )  
PURCHASE OF CAPACITY AND ENERGY )  
FROM TELOCASET WIND POWER )  
PARTNERS, LLC IN THE COMPANY'S )  
POWER COST )  
ADJUSTMENT. )

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Case No. IPC-E-06-31

IDAHO POWER COMPANY  
DIRECT TESTIMONY  
OF  
CELESTE SCHWENDIMAN

1 Q. Please state your name and business address.

2 A. My name is Celeste Schwendiman, and my  
3 business address is 1221 West Idaho Street, Boise, Idaho.

4 Q. By whom are you employed and in what  
5 capacity?

6 A. I am employed by Idaho Power Company (Idaho  
7 Power or the Company) as a Senior Pricing Analyst in the  
8 Pricing and Regulatory Services Department.

9 Q. Please describe your educational background.

10 A. I received a Master's Degree in Business  
11 Administration from Northwest Nazarene University and a  
12 Bachelor of Arts Degree in Psychology from Eastern Oregon  
13 University. I have attended the Center for Public Utilities  
14 and National Association of Regulatory Utility  
15 Commissioners' Practical Skills for a Changing Utility  
16 Environment conference, and in 2004, the Edison Electric  
17 Institute's Electric Rate Advanced Course.

18 Q. Please describe your work experience with  
19 Idaho Power Company.

20 A. I became employed by Idaho Power Company in  
21 1997 as a Research Assistant II in the Pricing & Regulatory  
22 Services Department. I have been promoted as follows:  
23 February 1998, Entry Analyst; August 1998, Analyst; and July  
24 2001, Senior Analyst. From 1998 through 2004, one of my  
25 responsibilities was to assist in the preparation of the

1 Power Cost Adjustment (PCA) filings. In 2005 and 2006, I  
2 sponsored testimony in the Company's annual PCA filings. In  
3 2005, I sponsored testimony as the Company's Revenue  
4 Requirement witness in its General Rate Case (Case No. IPC-  
5 E-05-28.)

6 In 2000, I served on the Company's 250 MW Peaking  
7 Resource Request for Proposal (RFP) team. In 2003, I served  
8 on the Company's 200 MW Peaking Resource RFP team. The 2003  
9 RFP resulted in the 2004 purchase of the Bennett Mountain  
10 combustion turbine project. Most recently, I participated  
11 in evaluating the respondents' bids submitted in the  
12 Company's 2005 Wind RFP.

13 Q. Please outline the major topics you will  
14 address in your testimony in this proceeding.

15 A. There are three major topics that comprise my  
16 testimony. First, I will briefly summarize the events that  
17 preceded the development of the Power Purchase Agreement  
18 (PPA) between the Company and Telocaset Wind Power Partners,  
19 LLC (Telocaset). Second, I will describe the principal  
20 provisions of the PPA and its similarity to the Company's  
21 existing Firm Energy Sales Agreements with PURPA Qualifying  
22 Facilities (FESAs). Third, I will discuss the treatment of  
23 the PPA costs within the Company's PCA.

24 Q. Could you please describe the events that led  
25 to the development of the PPA?

1           A.       The Company identified a need for wind-  
2 powered electric generation in the 2004 Integrated Resource  
3 Plan (IRP). As a result of this identified need, on January  
4 13, 2005, the Company issued an RFP to purchase first-call,  
5 physically-delivered energy from wind-powered generation  
6 resources located inside or near the Company's service  
7 territory.

8           Q.       Please describe the RFP process.

9           A.       The Company followed a process similar to its  
10 three previous RFP projects. This process consisted of: (1)  
11 selection of an independent consultant to serve on the team,  
12 (2) identification of specific attributes the Company would  
13 require to meet the needs specified in the IRP, (3)  
14 documentation of those attributes in the RFP document and  
15 the evaluation document, (4) release of the RFP document,  
16 (5) abiding to a pre-determined schedule which included a  
17 pre-bid conference and question/answer opportunities, (6)  
18 identification of a short-list of bidders based on pre-  
19 determined evaluation procedures, and finally (7) selection  
20 of a preferred bid.

21           Q.       Who outside of the Company also served on the  
22 Company's RFP evaluation team?

23           A.       Mr. William M. Eddie, JD, representing  
24 Advocates for the West, accepted the Company's invitation to  
25 serve on the evaluation team. The Company also retained the

1 services of Garrad Hassan America, Inc., (Garrad Hassan) for  
2 additional analysis. Garrad Hassan is an international  
3 consulting company that provides independent expert advice  
4 on wind energy. Finally, the Company retained the services  
5 of outside legal counsel, with experience in negotiating  
6 wind contracts, to assist in developing the PPA.

7 Q. Did the Company keep the Commission Staff  
8 apprised of the RFP evaluation process?

9 A. Yes. Representatives from the Company met  
10 twice with the Commission staff, during the course of the  
11 RFP evaluation, to provide informational updates.

12 Q. How was the project selected?

13 A. Prior to the release of the Company's RFP  
14 document, the evaluation team created an evaluation manual  
15 with specific criteria to score the respondents' bids. The  
16 criteria for which each project was scored included price,  
17 non-price, and wind attributes. Telocaset's project scored  
18 the highest, over all other short-listed bids, in all three  
19 areas identified. Of the short-listed bids, the Telocaset  
20 project had the lowest price, the highest non-price  
21 attribute score, and was Garrad Hassan's top scoring project  
22 for wind attributes.

23 Q. Has the Company successfully negotiated a  
24 firm wholesale power purchase agreement with Telocaset?

25 A. Yes. A copy of the PPA is attached as

1 Exhibit 1.

2 Q. What is the location of the wind generation  
3 project?

4 A. The project, which has been named the Elkhorn  
5 Wind Power Project, will be located on a 23,900 acre site in  
6 Union County, Oregon. The project will interconnect to the  
7 Idaho Power Company transmission system at a point  
8 approximately three miles northeast of North Powder, Oregon,  
9 on the Company's Brownlee-Quartz-LaGrande 230kV transmission  
10 line.

11 Q. What is the size of the project?

12 A. The project will consist of 61 Vestas V82  
13 wind turbine generators with a maximum installed nameplate  
14 capacity of 104 MWs, and an expected capacity of 100.65 MWs.

15 Q. When is the project expected to be in  
16 service?

17 A. The project's guaranteed operation date is  
18 March 21, 2008; however, Telocaset intends to attain an in-  
19 service date of December 31, 2007. I have been advised that  
20 the in-service date is critical, because at the time of this  
21 testimony, Federal Production Tax Credits (PTCs) are only  
22 available to projects in-service by December 31, 2007.

23 Q. Could you briefly discuss why the PPA with  
24 Telocaset should be approved?

25 A. Contracting with Telocaset for this project,

1 is advantageous for a number of reasons. First, the  
2 Telocaset project was the best fit for the Company's  
3 identified need for wind-generation as evaluated through the  
4 Company's RFP process.

5           Second, Telocaset's parent company, Horizon Wind  
6 Energy is an experienced wind developer. Horizon has  
7 developed more than 1,000 MWs of operating wind farms and  
8 currently owns and operates eight wind generation projects  
9 with generation capacity of 569 MWs.

10           Third, the A+ (Standard & Poor) and Aa3 (Moody's  
11 Investors Services) credit ratings of Horizon Wind Energy's  
12 holding company, Goldman Sachs, made a good match for the  
13 type of PPA partner that Idaho Power was seeking through the  
14 RFP process.

15           Fourth, of all of the short-listed bidders'  
16 projects, the Telocaset project's generation output most  
17 closely matched the Company's seasonal load shape. The  
18 project is expected to have an output profile that coincides  
19 with the Company's summer and winter peaks.

20           Q.        Could you briefly summarize the principal  
21 provisions of the PPA?

22           A.        The principal provisions of the PPA are  
23 similar to the Company's existing FESAs with PURPA  
24 Qualifying Facilities (QFs). The initial term of the PPA is  
25 twenty years commencing on the in-service date and the

1 Company has an option to extend the term by ten years.

2 Q. Please describe the pricing provisions of the  
3 PPA.

4 A. The purchase price will start at a base rate  
5 of \$48/MWh in 2008, with an annual escalation adjustment of  
6 3%. The rate will also be subject to seasonal adjustments.  
7 No payment is required by the Company for energy deliveries  
8 that exceed the maximum contract amounts. Prices for energy  
9 during any term extension will be negotiated by the parties,  
10 should the Company exercise its option to extend the term of  
11 the PPA.

12 Q. How does the energy price of \$48/MWh in this  
13 PPA compare to other options the Company might have?

14 A. The cost associated with this PPA is  
15 competitive and favorable, when compared to alternative  
16 resource options such as: (1) purchasing from a PURPA QF  
17 project, or (2) purchasing a forward market product. The  
18 current 2008 published first-year avoided cost rate for a  
19 twenty-year, non-levelized QF FESA, as established through  
20 Order No. 29646, is \$53.90/MWh.

21 On November 15, 2006, I received quotes from the  
22 Company's Power Supply Operations Manager for a Q3 2007,  
23 forward-market bid and offer at Mid-Columbia of \$77.50/MWh  
24 and \$78.50/MWh, respectively. Bid and offer quotes for the  
25 same product at Palo Verde were \$85.50/MWh and \$90.50/MWh,

1 respectively. With an energy purchase at either of these  
2 hubs, additional costs would be incurred for transmission  
3 wheeling to the Idaho Power system.

4 Q. Does the purchase price include the cost to  
5 deliver energy to the Company's system?

6 A. Yes. The point-of-delivery is located on the  
7 Idaho Power Company transmission system and Telocaset will  
8 pay all interconnection costs.

9 Q. Does acceptance of the power under the PPA  
10 require the construction of any transmission system  
11 upgrades?

12 A. I have been advised that transmission system  
13 upgrades will be required for this project, and Telocaset  
14 has committed to fund the upgrades in accordance with FERC  
15 requirements.

16 Q. Please describe the generation forecasting  
17 provisions of the PPA.

18 A. This PPA marks the first time a wind  
19 generator, supplying electricity to Idaho Power, will  
20 deliver detailed wind velocity and duration forecast data to  
21 the Company. The project will provide the Company with  
22 real-time access to the wind forecasting service used by the  
23 project, including forecasts of the energy to be delivered  
24 during the next hour, next day, and next week. Having  
25 access to real-time forecasting data will be beneficial to

1 the Company when integrating the wind generation into the  
2 Company's resource supply mix.

3 Q. What assurances does the PPA contain to  
4 ensure that the Company will obtain timely and reliable wind  
5 forecast data?

6 A. To ensure the Company receives timely and  
7 reliable wind forecast data, the PPA contains a provision  
8 that allows the Company to implement the same 90%-110%  
9 performance band provision from the Company's typical QF  
10 FESAs, should the Telocaset project fail to provide reliable  
11 forecasts.

12 Q. What other types of liability and damage  
13 provisions are considered in the PPA?

14 A. The project will be subject to additional  
15 damages and caps, including delay damages of \$100/MW for  
16 each day the project does not become operational beyond the  
17 guaranteed in-service date of March 21, 2008. This delay  
18 damage provision is capped at \$1.8 million. Total liability  
19 for any and all damages during the term of the PPA is capped  
20 at \$15 million. There are no limits for damages  
21 attributable to willful breach of the PPA by the project.

22 Q. Does the PPA include any damage provisions  
23 should the project fail to deliver the guaranteed annual  
24 output of 196,000 MWh?

25 A. Yes. The project's compliance with its

1 delivery obligations will be examined at the end of the  
2 second year of the PPA. If the project failed to deliver  
3 agreed-upon energy amounts during either of the first two  
4 years, the project will have two years in which to make up  
5 its delivery obligation to Idaho Power. If after the make-  
6 good period (three years, including the year at issue), the  
7 project does not make up the obligation, the project will  
8 pay Idaho Power, at a starting rate of \$25/MWh, subject to a  
9 cap of \$500,000/year, for the delivery obligation shortfall.  
10 Both the price to be paid for the shortfall, and the cap of  
11 the project's liability for any energy delivery shortfall,  
12 will be subject to an annual escalation adjustment of 3% per  
13 year.

14 Q. Does the PPA allow Idaho Power an option to  
15 purchase the project?

16 A. Yes, it does. Should Telocaset decide to  
17 sell the facility assets comprised of all, or a substantial  
18 portion of the project, Telocaset must first offer to sell  
19 the assets to Idaho Power.

20 Q. Under what circumstances can the PPA be  
21 terminated beyond events of *force majeure* or other  
22 traditional termination events?

23 A. Telocaset can terminate the PPA if: (1)  
24 Telocaset does not enter into an acceptable interconnection  
25 agreement by February 28, 2007, or (2) the scheduled

1 operation date is extended beyond December 31, 2007 due to  
2 *force majeure*. The termination provisions are explained in  
3 detail in Section 22 of Exhibit 1.

4 Q. What type of credit and collateral  
5 requirements are built into the PPA?

6 A. Prior to the in-service date, Telocaset will  
7 provide performance assurance of \$1 million. On or after  
8 the in-service date, Telocaset will maintain performance  
9 assurance of \$10 million. Additionally, the obligations of  
10 Telocaset will be secured by a guaranty issued by Goldman  
11 Sachs. Should the credit rating of Goldman Sachs fall below  
12 a predetermined level, Goldman Sachs will be required to  
13 post a liquid form of performance assurance. The  
14 obligations of Idaho Power will be secured by the Company's  
15 balance sheet.

16 Q. Please describe any other benefits of the  
17 PPA.

18 A. First, the PPA contains performance and  
19 forecasting requirements above what would be typical for a  
20 QF FESA. For example, the PPA contains requirements that,  
21 at the project's expense, Idaho Power will be given detailed  
22 real-time forecasting data. However, if the project does  
23 not adhere to the forecasting requirements, a 90%-110%  
24 performance band will be implemented. The 90%-110%  
25 performance band is similar to the performance mechanism

1 used in existing QF FESAs.

2           Second, if damages are incurred, the PPA includes  
3 security assurances that allow the Company to collect the  
4 calculated damages. Goldman Sachs, Telocaset's parent  
5 company, is the backing entity on the guarantee.

6           Finally, in addition to the items identified above,  
7 the PPA package includes other items of value. Examples  
8 include: (1) Telocaset will provide all renewable attributes  
9 (green energy tags) from the project to Idaho Power for no  
10 additional cost, (2) Idaho Power will receive an option to  
11 extend the contract, and (3) Idaho Power will receive  
12 termination rights within the PPA.

13           Q.       How does the Company propose the costs  
14 associated with this PPA be treated in the Company's PCA?

15           A.       The Company entered into negotiations with  
16 Telocaset with the intention of securing contract provisions  
17 that would justify rate treatment similar to a typical QF  
18 FESA. It is the Company's belief that it was not only  
19 successful in this endeavor, but also that the price and the  
20 provisions of the PPA are more attractive to the Company and  
21 its customers than if the project had contracted with Idaho  
22 Power as a PURPA Qualifying Facility. Although the PCA  
23 tracks 100% of QF expense deviations, the Company proposes  
24 that the costs of the PPA be recovered in a manner similar  
25 to non-QF expenses with 90% of variations captured through

1 the Company's PCA mechanism until the Company's next General  
2 Revenue Requirement case, at which time the Company be  
3 allowed to include the costs of the PPA in base rates.

4 Q. Based upon your testimony in this proceeding,  
5 what is the Company's recommendation, with regard to the  
6 Telocaset Wind Power Partners, LLC Agreement?

7 A. The Company recommends the Commission approve  
8 the Telocaset Wind Power Partners, LLC Agreement for  
9 ratemaking purposes and authorize Idaho Power to recover  
10 expenses associated with power purchases from the PPA in the  
11 Company's PCA.

12 Q. Does this conclude your testimony?

13 A. Yes, it does.

BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-06-31

IDAHO POWER COMPANY

EXHIBIT NO. 1

CELESTE SCHWENDIMAN

DIRECT TESTIMONY

**POWER PURCHASE SALES AGREEMENT  
BETWEEN  
TELOCASET WIND POWER PARTNERS, LLC  
AND  
IDAHO POWER COMPANY**

This Power Purchase Agreement ("Agreement"), is entered into this \_\_\_\_\_ day of December, 2006, by and between TELOCASET WIND POWER PARTNERS, LLC, a Delaware limited liability company with a principal place of business at 808 Travis, Suite 700, Houston, TX 77002 ("Seller"), and IDAHO POWER COMPANY, an Idaho corporation with a principal place of business at 1221 W. Idaho Street, Boise, ID 83702 ("Buyer"). Seller and Buyer may be referred to individually as "Party," or jointly as "Parties."

**Recitals**

A. Seller desires to develop, construct, own and operate a wind turbine electric generating facility with an expected total installed nameplate capacity not to exceed one hundred four (104) MW.

B. Seller has responded to Buyer's solicitation of bids for the provision of renewable energy, and Buyer has accepted Seller's offer in accordance with the terms and conditions set forth in this Agreement.

C. Seller and Buyer wish to enter into this Agreement in order to set forth the terms and conditions under which Seller will sell and Buyer will purchase Net Energy from Seller's Elkhorn wind power project.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the sufficiency and adequacy of which are hereby acknowledged by each Party, the Parties agree to the following:

**ARTICLE 1.  
DEFINITIONS**

1.1 "Affiliate" means any other person or entity that controls, is under the control of, or is under common control with, the named person or entity. For purposes of this definition, the term "control" (including the terms "controls," "under the control of,"

and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or the policies of a person or entity, whether through ownership interest, by contract or otherwise.

1.2 “Aggregate Price Adjustment” shall have the meaning given to that term in Section 6.5.1.

1.3 “Alternative Contract Price” means the price for all Net Energy after the Operation Date that has been agreed to by the Parties in this Agreement and referenced in Appendix A as “Post-Operation Date Alternative Pricing.”

1.4 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due. The term “Bankruptcy” shall have a corollary meaning when used herein.

1.5 “Business Day” means any calendar day that is not a Saturday, a Sunday, or a NERC recognized holiday.

1.6 “Commission” means the Idaho Public Utilities Commission (or its successor).

1.7 “Commission Approval” means an order issued by the Commission approving this Agreement and finding the Contract Price to be reasonable and that all payments to be made to Seller under this Agreement shall be allowed as prudently incurred expenses of Buyer for ratemaking purposes, without conditions or modifications other than condition(s) or modification(s) accepted in writing by the Party or Parties adversely affected by such condition(s) or modification(s).

1.8 “Conditions Precedent to Alternative Pricing” shall mean the conditions set forth in Appendix J.

1.9 “Contract Price” means the price for all Net Energy after the Operation Date that has been agreed to by the Parties in this Agreement and referenced in Appendix A as “Post-Operation Date Pricing.”

1.10 “Contract Year” means the period commencing each calendar year on the same calendar date as the Operation Date and ending one (1) year later.

1.11 “Credit Rating” means (i) with respect to any entity other than a financial institution, the (a) current ratings issued or maintained by S&P’s or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third-party credit enhancements) or (b) corporate credit rating or long-term

issuer rating issued or maintained with respect to such entity by S&P's or Moody's, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P's or Moody's with respect to such entity's long-term, unsecured, unsubordinated deposits.

1.12 "Curtailed Period" means the period of time during which deliveries of energy by Seller to Buyer at the Point of Delivery are curtailed in whole or in part as provided in Section 9.2 of this Agreement.

1.13 "Deemed Delivered Net Energy" has the meaning given to that term in Section 9.2.

1.14 "Delay Damages" has the meaning given to that term in Section 21.4.

1.15 "Delivery Obligation" has the meaning given to that term in Section 6.4.1.4.

1.16 "Designated Dispatch Facility" means Buyer's Systems Operations Group, or any subsequent group designated by Buyer.

1.17 "Economic Dispatch" means curtailing or restricting the energy output of the Facility because energy is available, or perceived to be available, from an alternative source for a lower price.

1.18 "Effective Date" means the date first written above.

1.19 "Emergency" means an emergency condition as defined under the Interconnection Agreement or the applicable OATT.

1.20 "Environmental and Renewable Energy Credits" means the aggregate amount of environmental air quality credits, off-sets, or other benefits related to the Net Energy from the Facility that Buyer purchases from Seller under this Agreement in a manner that reduces, displaces or off-sets emissions resulting from fuel combustion at another location pursuant to any federal, state or local legislation or regulation, and the aggregate amount of credits, offsets or other benefits related to Buyer's current marketing program, any successor green pricing program, or other environmental or renewable energy credit trading program derived from the use, purchase or distribution of Net Energy from the Facility or any similar program pursuant to any federal, state or local legislation or regulation. Notwithstanding any other provision of this Agreement, "Environmental and Renewable Energy Credits" *do not include*: (i) the PTCs, (ii) any investment tax credits, and any other tax credits, deductions or tax benefits associated with the Facility, and (iii) any state, federal, local or private cash payments or grants relating in any way to the Facility, the output of the Facility or the PTCs.

1.21 "Facility" means the electric generation facility described in Appendix B, commonly known as Seller's Elkhorn wind project and expected to have a capacity of 100.65MW.

1.22 "Facility Assets" shall have the meaning given to that term in Section 25.7.1.

1.23 "Facility Debt" means the obligations of Seller to any lender pursuant to the Financing Documents with respect to any Project Financing.

1.24 "Facility Lender" means, collectively, any lender(s) providing any Facility Debt and any successor(s) or assigns thereto.

1.25 "Federal Production Tax Credit Legislation" means validly enacted Federal legislation extending the applicability and rate of the renewable energy production tax credit (26 U.S.C. § 45) to owners of generating facilities which use wind to produce electric energy that are placed in service on or before December 31, 2008, or such other date as may be agreed to in a writing signed by both Parties, on terms no less favorable to owners of wind generating facilities than those available with respect to such facilities placed in service on or after January 1, 2004, and before January 1, 2008, pursuant to the law governing federal PTCs as in effect on the Effective Date including, but not limited to, a tax credit allowable for at least ten years of at least \$19.47 per MWh in 2006 dollars adjusted for inflation as set forth in the law governing federal PTCs on the Effective Date.

1.26 "Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, and other documents relating to any Project Financing for the Facility, including any working capital financing or refinancing documents (but only if such refinancing is a Project Financing), and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with any Project Financing of the Facility.

1.27 "First Energy Date" means the day commencing at 0001 hours, Pacific Time, following the day that the conditions in Section 3.1 have been satisfied.

1.28 "Forecast Cure Period" has the meaning given to that term in Section 6.3.1.

1.29 "Good Utility Practice(s)" means the practices, methods, and acts (including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry and/or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Facility, Good Utility Practice(s) include, but are not limited to, taking reasonable steps to ensure that: (i) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility's needs; (ii) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate

the Facility properly, efficiently, and in coordination with Buyer, and are capable of responding to reasonably foreseeable Emergency conditions; (iii) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools; (iv) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (v) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations, or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, Volt-Ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization and/or control system limits; and (vi) equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and conditions involving an Emergency.

1.30 "Guaranteed Operation Date" means March 31, 2008.

1.31 "Guaranteed Output" means 196,000 MWh per Contract Year assuming a 100.65MW Facility. If the Facility is for any reason completed at a capacity different from 100.65MW, the Guaranteed Output shall be adjusted on a *pro rata* basis to reflect the changed capacity.

1.32 "Guaranty" means an instrument or agreement pursuant to which a guarantor guarantees the performance of the obligations of an obligor, which instrument or agreement is substantially in the form set forth as Appendix C.

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

1.34 "Initial Term" has the meaning given to that term in Section 4.1.1.

1.35 "Interconnection Agreement" the agreement between the Interconnection Provider and the Seller that enables the Seller's energy to be delivered and integrated into the Interconnection Provider's electrical system.

1.36 "Interconnection Failure" means any condition, contingency or event under the Interconnection Agreement or OATT authorizing the Interconnection Provider to disconnect, or restrict the delivery of energy from, Seller's Interconnection Facilities, including but not limited to any emergency or *force majeure* as defined in the Interconnection Agreement (or comparable uncontrollable circumstances as may be defined in the applicable OATT) to the extent it causes the curtailment of Seller's deliveries of energy at the Point of Delivery, or other need for the Interconnection Provider to protect the Interconnection Provider's System.

1.37 "Interconnection Facilities" means all equipment specified in the Interconnection Agreement and any additional equipment specified in Appendix B.

1.38 "Interconnection Provider" means Idaho Power Company acting in its capacity as a transmission provider and any successor(s) or assign(s) of that entity that operate the transmission lines and other equipment and facilities that interconnect with the Facility.

1.39 "Interest Rate" means: (i) for purposes of identifying the Interest Rate to be paid on cash collateral, an annual interest rate equal to the overnight federal funds rates, and (ii) for purposes of identifying the Interest Rate to be paid in an event of default, an annual interest rate equal to one hundred percent (100%) of the LIBOR three (3) month rate plus two hundred (200) basis points. The designated Interest Rate shall be the rate published on the date of the invoice, or other notice, in *The Wall Street Journal* (or, if *The Wall Street Journal* is not published on that day, the next succeeding date of publication); *provided, however*, that the annual interest rate used as the Interest Rate shall not exceed the maximum rate permitted by law.

1.40 "Investor" means any investor or investors (including any transferees of such investors) that acquire a direct or indirect interest in Seller as part of a transaction to cause the Facility to be owned in whole or in part by an entity that can use the PTCs or any other tax subsidies that the federal government offers to encourage production of energy from wind energy facilities.

1.41 "Lost Output" means the Net Energy, measured in MWh, that the Facility was available to produce and could reasonably have been expected to produce over the relevant measurement period, based upon historical performance and/or actual operating conditions, but that was not generated or delivered due to (1) *force majeure*, (2) Buyer's default under this Agreement; (3) any curtailment under Section 9.2, or (4) the energy having been used by or for the benefit of the Interconnection Provider at the Facility's substation if required by the Interconnection Provider. Seller shall provide Buyer evidence of Lost Output hours that have occurred during a given calendar month at the time it provides Buyer with the invoice for the calendar month following the month in which the Lost Output occurred.

1.42 "Market Price of Energy" shall mean (1) if the Buyer sells the energy that would have been curtailed as a result of Section 9.2.1 of this Agreement to a party other than Idaho Power, the Market Price of Energy shall be the price received by the Buyer from the purchasing party, (2) if the Buyer is able to arrange for delivery of the energy that would have been curtailed as a result of Section 9.2.1 of this Agreement to Idaho Power at an additional point of delivery, the Market Price of Energy shall be the Contract Price specified within this Agreement.

1.43 "Material Adverse Change" means with respect to Seller's Guarantor, Seller's Guarantor has (a) a Credit Rating below BBB- by S&P or below Baa3 by Moody's, or (b) a Credit Rating of BBB- by S&P accompanied by a negative watch or Baa3 by Moody's accompanied by a negative watch, or (c) both ratings are withdrawn or terminated on a voluntary basis by the rating agencies. If S&P changes its rating system during the Term, "BBB-" shall be replaced by S&P's lowest investment grade rating under the new rating system; likewise, if Moody's changes its rating system during the Term, "Baa3" shall be replaced by Moody's lowest investment grade rating under the new rating system.

1.44 "Metering Equipment" means all equipment specified in the Interconnection Agreement, this Agreement, and any additional equipment specified in Appendix D required to measure, record and telemeter power flows between the Facility and Buyer's system.

1.45 "Moody's" means Moody's Investor Services, Inc. (or its successor).

1.46 "NERC" means the North American Electric Reliability Council (or its successor).

1.47 "Net Energy" means all of the electric energy produced by the Facility, delivered by the Seller to the Point of Delivery (including Test Energy), expressed in megawatt hours (MWh).

1.48 "Net Energy Shortfall" has the meaning given to that term in Section 6.4.1.3.

1.49 "Net Energy Shortfall Damages" has the meaning given to that term in Section 6.4.2.

1.50 "OATT" means the Open Access Transmission Tariff applicable to the Interconnection Provider's System.

1.51 "Operation Date" means the day commencing at 0001 hours, Pacific Time, following the day that all conditions of Section 4.4 have been satisfied.

1.52 "Performance Assurance" means collateral in the form of either a Guaranty, cash, letter(s) of credit, or other security acceptable to Buyer.

1.53 "Point of Delivery" means the point where the Facility's interconnection facilities interconnect to Interconnection Provider's interconnection facilities on the 230 kV (high side) of the transformer at a point on the LaGrande-Brownlee 230 kV transmission line, as more particularly described in Appendix B.

1.54 "Project Financing" means financing for the acquisition, construction and installation of the Facility: (A) that is not obtained from an Affiliate of Seller; and (B) the recourse on which is limited to the Facility and the revenues generated by the Facility.

1.55 "PTCs" means Production Tax Credits applicable to electricity produced from certain renewable resources pursuant to 26 U.S.C. § 45, or such substantially equivalent tax credit that provides Seller with a tax credit based on energy production from any portion of the Facility. For purposes of this definition, "substantially equivalent" means a federal income tax credit that, at a minimum, produces the same aggregate present value amount of tax credits (as determined by Seller in a commercially reasonable manner and expressed in dollars) over the same period of time (based on the reasonably expected Net Energy output of the Facility during such period) as is currently provided pursuant to 26 U.S.C. § 45 and that includes an annual inflation adjustment factor at least equal to that currently provided pursuant to 26 U.S.C. § 45.

1.56 "Scheduled Operation Date" means December 1, 2007.

1.57 "Seller's Guarantor" means The Goldman Sachs Group, Inc., or a successor or assignee thereof that is not experiencing a Material Adverse Change.

1.58 "Shortfall Year" has the meaning given to that term in Section 6.4.1.3.

1.59 "Site" means the parcel of real property on which the Facility will be constructed and located, including any easements, rights-of-way, surface use agreements, and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Appendix B.

1.60 "S&P" means Standard & Poor's, a division of McGraw-Hill Companies, Inc. (or its successor).

1.61 "Tax Benefits" means an amount equal to: (A) the PTCs to which Seller would have been entitled with respect to energy not taken by Buyer under Section 6.10; plus (B) a "gross up" amount to take into account the federal, state and local income tax to Seller on such payments in lieu of PTCs so that the net amount retained by Seller, after payment of federal, state and local income taxes, is equal to the amount set forth in clause (A) of this definition. For purposes of determining the foregoing, Seller shall deliver a certificate from an officer of Seller stating the corporate income tax rates (federal, state or local, as applicable) that are in effect for Seller during the tax year in which the receipt of such Tax Benefits payment is taxed, and such income tax rates shall be used in the calculation of Tax Benefits.

1.62 "Term" means the period of time during which this Agreement shall remain in full force and effect, including the Initial Term and any extension of the Term as provided in Article 4.

1.63 "Test Energy" means the Net Energy that is produced by the Facility prior to the Operation Date.

1.64 "Total Annual Facility Energy" means the sum of Net Energy plus Lost Output, if any, for a particular Contract Year.

1.65 "Transaction Costs" means, as applicable, (1) all costs incurred in a commercially reasonable manner by the Buyer to sell energy that would otherwise be curtailed under Section 9.2 at Mid-Columbia transaction point, or (2) costs incurred in a commercially reasonable manner by the Buyer to deliver such energy to an alternative point of delivery other than the Point of Delivery specified within this Agreement. Transaction Costs include, but are not limited to; transmission electric losses, transmission, network service, ancillary service costs, energy firming service costs, transaction fees and service charges associated with marketing and/or delivering the energy to the point of sale or to the alternative point of delivery, whichever delivery point is applicable.

1.66 "Transferred Assets" has the meaning given to that term in Section 22.5.5.

1.67 "True-Up Period" has the meaning given to that term in Section 6.4.1.3.

1.68 "True-Up Shortfall" has the meaning given to that term in Section 6.4.1.4.

## **ARTICLE 2. RULES OF CONSTRUCTION**

2.1 General. The defined terms listed in Article 1 (as indicated by initial capitalization) shall have the meanings set forth in Article 1 whenever the terms appear in this Agreement and attached Appendices, whether in the singular or the plural or in the present or past tense. Other terms used in this Agreement but not listed in Article 1 shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined in this Agreement that have well-known and generally accepted technical or trade meanings are used in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

2.1.1 The masculine shall include the feminine and neuter.

2.1.2 References to "Articles," "Sections," or "Appendices" shall be to articles, sections, or appendices of this Agreement.

2.1.3 The Appendices attached to this Agreement are incorporated in and are intended to be a part of this Agreement.

2.1.4 This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement, and none of the provisions of this Agreement shall be construed against one Party on the ground that such Party is the author of this Agreement or any part of this Agreement.

2.1.5 The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) where the Agreement requires consent, approval, or a similar action by a Party, such consent, approval or other action shall not be unreasonably withheld, conditioned or delayed, and (ii) where the Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

2.2 Interpretation of Interconnection Agreement. The Parties recognize that the Seller will enter into a separate Interconnection Agreement with the Interconnection Provider.

2.2.1 The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract, and that the terms of this Agreement are not binding upon the Interconnection Provider.

2.2.2 Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify the Buyer's or Seller's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between the Seller and the Interconnection Provider.

2.2.3 Seller expressly recognizes that, for purposes of this Agreement, the Interconnection Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Interconnection Provider or an Affiliate of the Buyer.

### **ARTICLE 3. CONDITIONS TO ACCEPTANCE OF NET ENERGY FIRST ENERGY DATE**

3.1 Conditions. Before the First Energy Date and as a condition of the Buyer's acceptance of deliveries of energy from the Seller:

3.1.1 The Commission shall have approved this Agreement as contemplated by Article 24, or Buyer shall have waived such approval.

3.1.2 Seller shall have notified Buyer of the expected First Energy Date no later than five (5) Business Days before the expected First Energy Date.

3.1.3 Seller shall have delivered to the Buyer a certificate signed by an officer of Seller (1) certifying that all licenses, permits or approvals necessary for Seller's commencement of deliveries have been obtained from applicable federal, state or local authorities, and (2) listing all such licenses, permits and approvals.

3.1.4 Opinion of Counsel. Seller shall have submitted to the Buyer an Opinion Letter signed by a law firm that includes attorneys admitted to practice and in good standing in the State of Oregon providing an opinion that Seller's licenses, permits and approvals as set forth in Section 3.1.3 above are legally and validly issued, are held in the name of the Seller and, based on a reasonable review (which may include reliance on certificates provided by officers or other responsible personnel of Seller), the firm is of the opinion that Seller is in substantial compliance with said permits as of the date of the Opinion Letter. The Opinion Letter will be in a form acceptable to Buyer and will acknowledge that the firm rendering the opinion understands that Buyer is relying on said opinion in connection with and for the purposes of this transaction. Buyer's acceptance of the form will not be unreasonably withheld, conditioned or delayed. The Opinion Letter will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991). If Buyer does not object in writing to the proposed form of Opinion Letter within ten (10) Business Days after receiving in it, it shall be deemed accepted.

3.1.5 Seller shall have submitted written proof to the Buyer that Seller has obtained all insurance required in Article 11.

3.1.6 Seller shall have delivered to the Buyer a certificate signed by an officer of Seller certifying that all Seller and Interconnection Provider interconnection equipment is installed, tested and is able to accept and transmit the energy from the Seller's Facility to the Buyer in a safe and reliable manner.

3.1.7 Seller shall have delivered to Buyer a true and correct copy of the "Commissioning Completion Certificate" received from the turbine supplier for each wind turbine that has been commissioned in accordance with the terms of Seller's turbine supply agreement, together with a complete copy of the associated "Commissioning Completion Checklist" and the "Commissioning Data Sheet" for each such wind turbine.

The conditions set forth in this Section 3.1 are to be used solely for purposes of determining when the Facility has achieved its First Energy Date. They are not

intended to affect in any way when wind turbines are deemed to have been “placed in service” for purposes of PTC eligibility.

3.2 Intermittent Deliveries of Test Energy. Buyer acknowledges and agrees that Seller may deliver Test Energy from the Facility intermittently after the First Energy Date.

#### **ARTICLE 4. TERM AND OPERATION DATE**

##### 4.1 Term.

4.1.1 Initial Term. This Agreement shall become effective as of the Effective Date, and shall remain in full force and effect through the December 31st next following the twentieth (20<sup>th</sup>) anniversary of the Operation Date, subject to any termination provisions set forth in this Agreement (the “Initial Term”).

4.1.2 Buyer’s Option to Extend Term. Buyer shall have the option to extend the Term so that this Agreement remains in full force and effect through the December 31<sup>st</sup> next following the thirtieth (30<sup>th</sup>) anniversary of the Operation Date, subject to any termination provisions set forth in this Agreement. Buyer may exercise this option by giving irrevocable notice of exercise to Seller on or before the eighteenth (18<sup>th</sup>) anniversary of the Operation Date. If Buyer does not timely exercise this option, the option shall automatically expire. The option set forth in this Section shall automatically terminate upon any termination of this Agreement. If Buyer timely exercises this option, the parties will negotiate, in good faith, the terms and conditions under which the Term of this Agreement would be extended through the December 31<sup>st</sup> next following the thirtieth (30<sup>th</sup>) anniversary of the Operation Date; *provided, however,* the option set forth in this Section shall terminate without liability to either Party if the Parties fail to enter into a definitive written agreement concerning the extension to the Term within six (6) months following the date of Buyer’s notice. The terms and conditions of any such extension shall be subject to the Parties’ respective management, Board of Directors, and any required Commission approval.

4.2 Progress Reports. On the first day of each calendar month following the Effective Date until the Operation Date is achieved, Seller shall submit to the Buyer progress reports to the Buyer on the development and construction of the Facility in a form reasonably satisfactory to the Buyer.

4.3 Monitoring of Facility. Buyer shall have the right at its sole risk and expense to monitor the construction, start-up and testing of the Facility and the Seller shall comply with all reasonable requests of the Buyer with respect to these monitoring events. Seller shall cooperate in such physical inspections of the Facility as may be

reasonably requested by the Buyer during and after completion of construction. All persons visiting the Facility on behalf of the Buyer shall comply with all of the Seller's applicable safety and health rules and requirements. Buyer's technical review and inspection of the Facility shall not be construed as endorsing the design of the Facility nor as any warranty of the safety, durability, or reliability of the Facility.

4.4 Operation Date. Seller will in good faith seek to achieve the Operation Date by the Scheduled Operation Date. The Operation Date shall occur after all of the following conditions have been satisfied:

4.4.1 Wind turbines with an aggregate nameplate capacity of at least ninety percent (90%) of the wind turbines to be installed at the Facility have been installed and commissioned in accordance with Section 3.1.7.

4.4.2 All Facility systems necessary for the operation of the installed wind turbines are complete, any testing of the installed wind turbines required pursuant to the Interconnection Agreement has been completed, and the Facility is available for operation in all material respects in accordance with Applicable Laws.

4.4.3 Seller shall have delivered to Buyer a "Certificate of Facility Completion" signed by an officer of Seller certifying that the requirements of Sections 4.4.1 and 4.4.2 have been satisfied with respect to the Facility and all installed wind turbines.

4.4.4 Seller shall notify the Buyer of the Seller's proposed Operation Date no later than five (5) Business Days prior to the proposed Operation Date.

These Operation Date requirements are to be used solely for purposes of determining when the Facility has achieved its Operation Date. They are not intended to affect in any way when wind turbines are deemed to have been "placed in service" for purposes of PTC eligibility.

4.5 Buyer's Approval of Operation Date; Disagreements. Seller's designation of the Operation Date shall be subject to Buyer's approval, which Buyer shall not unreasonably withhold, condition or delay. No later than five (5) Business Days after Seller's notification to the Buyer of the Seller's proposed Operation Date, as specified in Section 4.4.4, Buyer shall send Seller a written response notice, either (A) approving the Operation Date specified in the notice, or (B) setting forth in reasonable detail Buyer's reasons for concluding that the Operation Date has not been achieved or will be achieved on a date other than the date designated in Seller's notice. If Buyer does not respond on or before the fifth (5<sup>th</sup>) Business Day after Seller's notice, the Operation Date shall be deemed to have occurred on the date designated in Seller's notice. If Buyer reasonably disagrees that the Operation Date has been achieved, the Parties shall cooperate promptly and in good faith to address Buyer's concerns and agree upon the Operation Date. If the

Parties are unable to agree to an Operation Date within ten (10) Business Days of Buyer's notice of disagreement, either Party may pursue dispute resolution under Article 20 to determine the Operation Date.

4.6 Continuing Obligations. Seller shall provide Buyer with the following during the Term of this Agreement:

4.6.1 At Buyer's request, Seller shall provide evidence that it is in compliance with the insurance requirements set forth in Section 11.2.

4.6.2 Seller shall maintain compliance with all permits and licenses described in Section 3.1.3 of this Agreement. In addition, Seller shall supply Buyer with copies of any new or additional permits or licenses.

## **ARTICLE 5. PRICE**

5.1 Test Energy Price: Notwithstanding any other energy pricing provisions in the Agreement, Buyer shall pay the Seller at a rate equal to \$40.80 for each MWh of Test Energy delivered in 2007 and \$42.02 for each MWh of Test Energy delivered in 2008.

5.2 Net Energy Price. For all Net Energy delivered by the Seller to the Buyer from the Operation Date through the end of the Initial Term, Buyer shall (except to the extent that pricing in Section 6.10 and/or Section 9.2 is applicable) pay the Seller the Contract Price (or, if Buyer has exercised the option set forth in Appendix J, the Alternative Contract Price).

5.3 Environmental and Renewable Energy Credits. The price that the Buyer is to pay Seller under this Agreement for all Net Energy includes payment for all Environmental and Renewable Energy Credits associated with such Net Energy. Title to such Environmental and Renewable Energy Credits shall pass to the Buyer concurrently with the transfer of title to such Net Energy to the Buyer. Buyer shall own or be entitled to claim all Environmental and Renewable Energy Credits to the extent such credits may exist during the Term (including any value in the ownership, use or allocation of Environmental and Renewable Energy Credits created by legislation or regulation after the Effective Date).

5.4 Alternative Pricing Option. Buyer shall have the option to elect to use the Post-Operation Date Alternative Pricing after it satisfies the Conditions Precedent to Alternative Pricing.

5.5 Prices, Terms and Conditions to Remain in Effect for Term. The prices, terms and conditions of service specified in this Agreement shall remain in effect until expiration of the Term. Notwithstanding any provision in this Agreement, neither Party shall seek, nor shall support any third party in seeking, to prospectively or retroactively revise the prices, terms or conditions of service of this Agreement through application or

complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent the prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the prices, terms and conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

## ARTICLE 6.

### DELIVERY, FORECASTING AND TRANSMISSION OBLIGATIONS

6.1 Delivery of Net Energy. Seller shall sell and deliver, and Buyer shall pay for, all Net Energy up to a maximum amount of 100.65MWs per hour (2,415.6 MWhs per day) throughout the Term, assuming a 100.65MW Facility. If the Facility is for any reason completed at a capacity different than 100.65MW, the maximum amount of Net Energy will be adjusted on a *pro rata* basis to reflect the actual capacity of the Facility; *provided* that the actual capacity of the Facility shall not exceed 104MW. If Seller delivers energy from the Facility to the Point of Delivery in an amount that exceeds the maximum amount determined under this Section, Buyer may receive, but shall not be obligated to pay for, any energy in excess of the maximum amount determined pursuant to this Section.

6.2 Forecasting. At its expense, Seller shall provide to Buyer for the Term, or shall engage a third party to provide to Buyer for the Term, the forecasting service used by the Seller and set forth in this Section 6.2, via (i) a web-based interface hosted at a forecast service provider selected by Seller, and (ii) a direct data feed to Buyer including up to ten (10) designees of Buyer. The expenses to be borne by Seller include but are not limited to all initial setup costs, ongoing maintenance costs and periodic update costs for the forecasting service. Each forecast will take into account any scheduled outages and any known forced outages or deratings affecting the Facility. No later than sixty (60) days after the Commission approves this Agreement, Seller shall propose to Buyer the detailed format of all services contemplated by this Section 6.2. The proposed format shall be subject to Buyer's approval, which Buyer shall not unreasonably withhold, condition or delay. The forecasting services shall consist of:

6.2.1 Next Week Forecast. A forecast of the Facility's hourly average wind speed and Net Energy for the next week. The Next Week Forecast shall be delivered to Buyer daily (no later than 5:00 am Pacific time) by electronic mail and shall cover each hour of the following seven (7) days in 168-hour time slots. To generate the Next Week Forecast, Seller or its service provider shall configure, customize, and operate a non-hydrostatic mesoscale atmospheric model for the prediction of wind speed, direction and power production at the Site.

6.2.2 Next Day Forecast. A forecast of the Facility's hourly average wind speed and Net Energy for each hour up to forty-eight (48)

hours into the future. The Next Day Forecast shall be updated approximately every six (6) hours. The initial update frequency of the forecast shall be four (4) times per day with forecasts covering the next forty-eight (48) hours. New forecasts shall be delivered to Buyer as soon as they are available. To generate the Next Day Forecast, Seller's forecast provider shall configure, customize, and operate a non-hydrostatic mesoscale atmospheric model for the prediction of wind speed, direction, and Net Energy production at the site.

6.2.3 Daily Generation Forecast. A daily generation forecast, which shall be delivered to Buyer each day before 5:00 a.m. Pacific time, for the period beginning at 6:00 a.m. Pacific time that day and continuing through the succeeding forty-eight (48) hours, in scheduling intervals to be specified along with the format proposed under Section 6.2, updated within ten (10) minute increments.

6.2.4 Next Hour Forecast. A forecast of the hourly average wind speed and Net Energy generation of the Facility. The Next Hour Forecast shall be updated as often as every ten (10) minutes and cover every hour for the next twelve (12) hours. Initial update frequency of the hour ahead forecast shall be three (3) times per hour at 10, 30 and 50 minutes past the top of the hour. To generate the Next Hour Forecast, Seller or the forecast provider shall train a neural network (or other suitable adaptive statistical technique) on the leading predictors of wind energy output, which may include combinations of on-site, off-site (if and when available) and mesoscale numerical weather prediction model output.

6.2.5 Designation of Confidence Intervals. The forecast product for hour, day, and week-ahead forecasts will include confidence intervals surrounding each forecast. Forecast confidence intervals will be calculated from a combination of previous forecast errors, the current forecast production, and the expected confidence of the current numerical weather prediction forecast based on ensembles of numerical weather prediction solutions. The confidence interval shall be clearly shown and included in all forecasts delivered to Buyer and its designees.

6.2.6 Basis of Forecasts. The forecasts called for by this Agreement shall be consistent with Good Utility Practices but shall be non-binding, good faith estimates only. The Parties acknowledge and agree that wind is difficult to forecast and that forecasts for the Facility will vary from actual wind speeds and Facility output even though forecasting is being performed in a manner consistent with Good Utility Practice. On or before July 1 during each calendar year in the Term, Seller shall determine (after consulting with the Buyer), which forecasting model or models, and which forecasting service or services to utilize in the next calendar year. The proposed forecasting model(s) and service(s)

shall be subject to Buyer's approval, which Buyer shall not unreasonably withhold, condition or delay.

### 6.3 Good Utility Practices and Forecasting Services.

6.3.1 Provision of Forecasting Services. The provision of the forecasting services described in Section 6.2 in accordance with Good Utility Practices is an integral component of this Agreement. Accordingly, Seller shall act in a manner consistent with Good Utility Practices with the goal of providing timely, useful, quality forecasts for Buyer under Section 6.2. If Seller fails in any material respect to act in conformity with the preceding sentence, Buyer may provide notice to Seller stating in reasonable detail the basis for Buyer's belief that Seller is defaulting in its obligations under this Article 6. Seller shall have ten (10) Business Days in which to cure the alleged default, to commence the cure of the alleged default if it cannot reasonably be cured within the ten (10) Business Day period (and thereafter diligently pursue such cure to completion), or to submit the matter to dispute resolution under Article 20. With respect to any Facility Lender or Investor, the ten (10) Business Day periods set forth in the preceding sentence shall be extended to thirty (30) days from date of Buyer's notice to Seller under this Section 6.3.1. As long as Seller is pursuing dispute resolution under Article 20 in good faith, Seller shall not be in default of this Section and shall have sixty (60) days from any final resolution of the dispute in which to implement any agreed-upon or required cure (the "Forecast Cure Period"). Except as provided for in Section 6.5, if Seller fails to cure the default within the Forecast Cure Period, the provisions contained in Appendix E shall govern in lieu of Sections 6.2, 6.3 and 6.4 effective as of the first day of the next calendar month following the end of the Forecast Cure Period, subject to Section 6.5.

6.3.2 Compliance with Good Utility Practices for Forecasting Purposes. Seller shall be deemed to be using efforts consistent with Good Utility Practices in full compliance with this Article 6 (including without limitation Sections 6.2 and 6.3.1) if Seller: (i) shows to Buyer the features and operating characteristics of the proposed wind forecasting package and any updates thereto that Seller intends to use and receives Buyer's acceptance thereof before the First Energy Date and thereafter as required under Section 6.2.6 (with Buyer's acceptance not to be unreasonably withheld, conditioned or delayed); (ii) implements the wind forecasting package and any updates thereto in accordance with vendor instructions or, in the absence of vendor instructions, in accordance with forecasting practices prevailing in the wind energy industry; and (iii) provides data from the wind forecasting package for Buyer's use.

## 6.4 Seller's Output Guarantee.

### 6.4.1 Energy Delivery Guarantee, Reconciliation, and Net Energy Shortfall Determination.

6.4.1.1 Seller guarantees that the Total Annual Facility Energy shall equal or exceed the Guaranteed Output for each Contract Year during the Initial Term beginning with the second Contract Year. The determination of whether Seller has met its Guaranteed Output shall be made on an annual basis beginning at the end of the second Contract Year by comparing the amount of Total Annual Facility Energy to the Guaranteed Output as provided for in this Section.

6.4.1.2 If the Total Annual Facility Energy is equal to or greater than the Guaranteed Output in a Contract Year, Seller shall be deemed to have met its Guaranteed Output obligation for that Contract Year, and Seller shall have no obligation to pay Net Energy Shortfall Damages or to true-up energy delivery obligations with respect to that Contract Year.

6.4.1.3 If the Total Annual Facility Energy is less than the Guaranteed Output in a Contract Year (the negative difference being the "Net Energy Shortfall"), Seller shall be in jeopardy of having failed to meet its Guaranteed Output obligation for that Contract Year and may be subject to Net Energy Shortfall Damages pursuant to Section 6.4.2 (each such Contract Year being referred to as a "Shortfall Year"). Up to and including the end of Contract Year 18, Seller shall have a three (3) Contract Year period (including the Contract Year at issue) in which to true-up its energy delivery obligations for the Shortfall Year; *provided, however,* that with respect to Contract Year 19, Seller shall have a two (2) Contract Year period (including the Contract Year at issue) in which to true-up its energy delivery obligations for the Shortfall Year (each, a "True Up Period"). Failure to true up the energy delivery obligations within the applicable True-Up Period shall result in the assessment of Net Energy Shortfall Damages pursuant to Section 6.4.2. If a Net Energy Shortfall occurs in Contract Year 20, or a Contract Year 18 or Year 19 Net Energy Shortfall has not been trueed up by the end of Contract Year 20, Seller may elect to settle the Net Energy Shortfall with Buyer either by (i) paying Net Energy Shortfall Damages to Buyer as provided in Section 6.4.2, or (ii) delivering renewable energy and associated renewable energy credits in an amount equal to the Net Energy Shortfall, with such delivery to take place at Mid-Columbia, another delivery point on the Idaho Power electric system or another mutually agreed-upon delivery point in the first quarter

following Contract Year 20 (in each case subject to the Net Energy Shortfall Damages cap set forth for Contract Year 20 in Appendix F).

6.4.1.4 The determination of whether Seller has reconciled its energy delivery obligations for the particular Shortfall Year shall be made by comparing (a) the Total Annual Facility Energy amounts for the True-Up Period to (b) the sum of the Guaranteed Output for the True-Up Period. The sum of the Guaranteed Output for the True-Up Period is the "Delivery Obligation." If the Total Annual Facility Energy amount for the True-Up Period is equal to or greater than the sum of the Delivery Obligation for the True-Up Period, Seller shall be deemed to have reconciled its energy delivery obligations and no longer be subject to any Net Energy Shortfall Damages for the Shortfall Year. If, however, the average Total Annual Facility Energy Amount for the True-Up Period is less than the sum of the Delivery Obligation for the True-Up Period ("True-Up Shortfall"), Seller shall be liable for Net Energy Shortfall Damages calculated pursuant to Section 6.4.2 for the Shortfall Year. To the extent that a Total Annual Facility Energy amount or portion thereof for a given Contract Year has previously been used to reconcile Seller's energy delivery obligations for a prior Shortfall Year, the amount of Total Annual Facility Energy so used shall be excluded on a first in, first out basis from the preceding calculations, such that the previously used Total Annual Facility Energy amount or portion thereof will not be counted twice in determining whether Seller has met the Delivery Obligation for a given True-Up Period.

6.4.2 Net Energy Shortfall Damages. If a True-Up Shortfall occurs, Seller shall pay Buyer, as liquidated damages, the appropriate price shown in the Liquidated Damages Table in Appendix F (*i.e.*, \$25.00 per MWh for any payments made for Net Energy Shortfall Damages in Contract Year 4) multiplied by the lesser of the True-Up Shortfall or the Net Energy Shortfall ("Net Energy Shortfall Damages"). The liquidated damages amount shall escalate as set forth in Appendix F.

6.4.3 Calculation and Payment of Net Energy Shortfall Damages. No later than thirty (30) days after the end of each Contract Year beginning with the end of the fourth Contract Year, Seller shall calculate any Net Energy Shortfall Damages, and shall provide notice to Buyer of any Net Energy Shortfall Damages owing, if applicable, including a detailed explanation of Seller's calculation methodology, annotated workpapers, and source data. If Buyer disputes Seller's calculations or determination, Buyer shall give Seller notice of the dispute in accordance with the provisions of Article 20 no later than sixty (60) days after receiving such calculations or determination. Along with the notice, Seller

shall pay Buyer for any Net Energy Shortfall Damages then due. An Example illustrating the calculation of Net Energy Shortfall Damages under certain stated assumptions is attached as Appendix G.

6.4.4 Limits on Liability; Buyer's Exclusive Remedy. Notwithstanding any other provision of this Agreement, the aggregate amount of Net Energy Shortfall Damages shall not exceed \$500,000 per Contract Year beginning with the fourth Contract Year. For all subsequent Contract Years, the \$500,000 per Contract Year limit shall escalate as set forth on Appendix F. Any unused portion of the liability limit for any given Contract Year shall be extinguished to the extent not used for that Contract Year and shall not be carried forward or otherwise added to later Contract Years. Net Energy Shortfall Damages are Buyer's exclusive remedy for all shortfalls in Buyer's Delivery Obligation and any other operational or performance defects or defaults affecting the Facility (other than forecasting defaults for which Buyer's exclusive remedy is set forth in Section 6.3).

6.5 Agreements with Respect to Appendix E (90-110).

6.5.1 Calculation of Aggregate Price Adjustment. Solely for purposes of determining whether the damage limits contemplated by this Agreement have been reached, the difference between (a) the Contract Price (or Alternative Contract Price, if applicable) that Seller would have received for all Net Energy delivered under this Agreement without regard to the operation of Appendix E, and (b) the amount actually received by Seller for such Net Energy after the application of Appendix E (such difference for any period being the "Aggregate Price Adjustment"), shall be counted toward the limits on damages set forth in this Agreement (including Section 6.5.3 and Section 21.5 of this Agreement). Notwithstanding any other provision of this Agreement (including Appendix E), the Surplus Energy Price (as defined in Appendix E) shall equal the Contract Price (or Alternative Contract Price, if applicable) in all circumstances in which the continued use of the Surplus Energy Price would produce an Aggregate Price Adjustment that, when combined with any damages owed by Seller under this Agreement, would result in an exceedance of any limit on damages set forth in this Agreement.

6.5.2 Appendix E Damages. The provisions contained in Appendix E cannot result in Seller suffering an Aggregate Price Adjustment of more than \$250,000 in any one (1) Contract Year period *over* the Term.

6.5.3 Limits on Damages and Aggregate Price Adjustment. Seller's liability for damages under this Agreement shall be subject to the limits set forth in Section 21.5, and Aggregate Price Adjustments calculated under Section 6.5.1 shall count as damages against such limits

along with any other damages paid or incurred by Seller under this Agreement. In addition, during any Contract Year where the provisions of Appendix E are implemented and the provisions concerning Seller's Guaranteed Output (*i.e.*, the Annual Energy Delivery Guarantee Analysis in Appendix G) are in effect for any Contract Years prior to implementation of the provisions contained in Appendix E, the aggregate amount of an Aggregate Price Adjustment under this Agreement in any Contract Year when combined with any Net Energy Shortfall Damages owed in the same Contract Year shall not exceed \$500,000 per Contract Year (and in any case the Aggregate Price Adjustment in any one Contract Year shall not exceed the cap set forth in Section 6.5.2). For all subsequent Contract Years after Contract Year 4, the limit shall escalate as set forth on Appendix F. Any unused portion of the limit for any given Contract Year shall be extinguished to the extent not used for that Contract Year and shall not be carried forward or otherwise added to later Contract Years.

6.5.4 Appendix E is Exclusive Remedy. Except as noted in Section 6.5.3, while Appendix E is in effect, the price adjustment contemplated by Appendix E shall be Buyer's exclusive remedy for all shortfalls in Net Energy and any other operational or performance defects or defaults affecting the Facility (including forecasting).

6.5.5 Effect of Appendix E on Net Energy Shortfalls and Net Energy Shortfall Damages. After any transition period during which the provisions concerning Seller's Guaranteed Output obligations remain in effect for any Contract Years prior to the exclusive implementation of the provisions contained in Appendix E, no Net Energy Shortfall Damages shall be owed for the Contract Year and accordingly no Net Energy Shortfall calculations shall be performed for any such Contract Year.

6.5.6 Seller's Reversion Rights. At any time after Appendix E takes effect, Seller may from time to time propose to Buyer forecasting services that are in accord with Good Utility Practices. The proposed forecasting services shall be subject to Buyer's approval, which Buyer shall not unreasonably withhold, condition or delay. If the proposed forecasting services are approved by Buyer, Appendix E shall cease to be effective as of the first day of the calendar month following such approval (or as otherwise agreed by the Parties). If Appendix E ceases to be effective pursuant to this Section 6.5.6, Sections 6.2, 6.3 and 6.4 of this Agreement shall become operative again (including the right to invoke Appendix E under Section 6.3.1), with Total Annual Facility Energy to be tested against Guaranteed Output beginning with the first Contract Year in which such sections become operative again.

6.6 Interconnection and Transmission Responsibilities. Except as provided in Section 6.8, Seller shall be responsible for all interconnection, electric losses, and costs

required to deliver the energy from the Facility to Buyer at the Point of Delivery. Except to the extent of a curtailment of energy from the Facility under Section 9.2.2(a), (b), or (c), Buyer shall be responsible for all electric losses, transmission, network service and ancillary service arrangements and costs required to receive the Net Energy and transmit it beyond the Point of Delivery (including without limitation any imbalance penalties). With respect to energy that would otherwise be curtailed under Section 9.2.2(a), (b), or (c), Seller shall be responsible for Transaction Costs as provided in Section 9.2.

6.7 Title and Risk of Loss. As between the Parties, Seller shall be deemed to be in control of the energy output from the Facility up to and until delivery at the Point of Delivery. Title and risk of loss of the energy output from the Facility shall transfer from Seller to Buyer at the Point of Delivery.

6.8 Network Upgrades. Seller shall be responsible for the cost of network upgrades with respect to the first 66MW only of the Facility. The Parties acknowledge and agree that Transmission Provider has estimated the cost of network upgrades as \$1.3 million and transmission system interconnection of approximately \$2.3 million, for a total estimated cost of \$3.6 million. Seller shall bear costs in excess of Transmission provider's estimate for such upgrades and interconnection. Seller shall enter into arrangements with the Interconnection Provider on terms satisfactory to the Seller for the reimbursement of these network upgrades by cash payments or by transmission credits from Interconnection Provider. The Parties acknowledge and agree that network upgrades are required only with respect to the first 66MW of the Facility and will not be required with respect to the 34MW increment. Seller shall have no obligation to contract for network upgrades or to pay for network upgrade costs with respect to the 34MW increment.

6.9 Station Energy. This Agreement does not require Buyer to supply any electric service to Seller or to the Facility. Seller shall enter into separate arrangements for the supply of electric services to the Facility, including the supply of turbine unit start-up and shut-down power and energy. Seller is responsible for causing these electric services to be available to commence its testing before the Operation Date.

6.10 Buyer's Failure to Take Energy. If Buyer fails to receive all or part of the energy that the Facility is able to generate and deliver to the Point of Delivery after the Operation Date, and such failure is not excused under the terms of this Agreement (including by Section 9.2) or by Seller's failure to perform, then Buyer shall pay Seller as provided in this Section 6.10.

6.10.1 To the extent Seller generates and sells energy from the Facility despite Buyer's failure, Buyer shall pay Seller an amount for such deficiency equal to the positive difference, if any, obtained by subtracting (i) the sales price received by the Seller from the purchasing party for such generation, from (ii) the Contract Price (or Alternative Contract Price, if applicable) for such generation.

6.10.2 To the extent that Seller does not generate and sell energy because of Buyer's unexcused failure to receive such energy at the Point of Delivery, Buyer shall pay Seller the sum of (a) the Contract Price (or Alternative Contract Price, if applicable), plus (b) Tax Benefits, with respect to all energy not received.

Each payment under this Section 6.10 shall be due for the month in which the failure occurred or within five (5) Business Days after Buyer's receipt of an invoice. The invoice for such amount shall include a written statement explaining in reasonable detail Seller's calculation of the energy that would have been delivered to Buyer but for Buyer's failure to receive it and the amount due. Seller shall have the remedy set forth in this Section 6.10 if Buyer fails to take Test Energy in default of its obligations under this Agreement; *provided, however*, that Buyer shall not have any obligation to pay under Article 9 or otherwise for any curtailed Test Energy.

## **ARTICLE 7. METERING AND TELEMETRY**

7.1 Metering and Telemetry. Buyer shall provide, install, and maintain Metering Equipment to be located at the Point of Delivery to record and measure power flows to Buyer in accordance with this Agreement and the Interconnection Agreement. The Metering Equipment shall be at the location and of the type required to accurately measure, record and report the Net Energy to provide Buyer adequate Net Energy measurement data to administer this Agreement and to integrate the Facility's Net Energy into Buyer's electrical system. All Metering Equipment and installation costs shall be borne by Seller, including costs incurred by Buyer for inspecting and testing such equipment at reasonable intervals at Buyer's actual cost of providing this Metering Equipment and services. The Metering Equipment shall be at the location described in Appendix D. All meters used to determine the billing hereunder shall be sealed and the seals shall be broken only by Buyer when the meters are to be inspected, tested or adjusted.

7.2 Meter Inspection. Buyer shall inspect installations annually and test meters on the applicable periodic test schedule relevant to the equipment installed as specified in Appendix D. If requested by Seller, Buyer shall make a special inspection or test of a meter and Seller shall pay the reasonable costs of such special inspection. Both Parties shall be notified of the time when any inspection or test shall take place, and each Party may have representatives present at the test or inspection. If a meter is found to be inaccurate or defective, it shall be adjusted, repaired or replaced, at Buyer's expense, in order to provide accurate metering. If a meter fails to register, or if the measurement made by a meter during a test varies by more than one percent (1%) from the measurement made by the standard meter used in the test, adjustment (either upward or downward) to the payments Seller has received shall be made to correct those payments affected by the inaccurate meter for the actual period during which inaccurate measurements were made. If the actual period cannot be determined, corrections to the

payments shall be based on the shorter of (i) a period equal to one-half (1/2) the time from the date of the last previous test of the meter to the date of the test which established the inaccuracy of the meter; or (ii) six (6) months. Seller shall state such adjustment as a credit or additional charge, as appropriate, on its next invoice.

7.3 Additional Telemetry. If the Buyer requests telemetry equipment, information or services of any nature beyond that expressly required by the Interconnection Provider in the Interconnection Agreement, the Seller and Buyer shall mutually cooperate to make efficient use of Seller's and Buyer's telemetry equipment to provide the additional information requested by Buyer in the most cost-effective manner. The Buyer shall be responsible for any cost associated with additional telemetry equipment, information, services or requirements that are beyond those expressly required by the Interconnection Provider in the Interconnection Agreement.

## **ARTICLE 8. SYSTEM PROTECTION**

8.1 Operation and Maintenance of Seller's Facilities. Seller shall construct, operate and maintain the Facility and Seller's side of the Interconnection Facilities in accordance with the Interconnection Agreement, Appendix D, Good Utility Practices, the National Electrical Code, the National Electrical Safety Code, and any other applicable local, state and federal codes.

8.2 Operation and Maintenance of Buyer's Facilities. Buyer shall construct, operate and maintain its utility system in accordance with Good Utility Practices and any other applicable local, state and federal codes.

## **ARTICLE 9. GENERAL OPERATIONS**

9.1 Communications. Seller and Buyer shall maintain appropriate operating communications through the Designated Dispatch Facility in accordance with Appendix H. At least thirty (30) days before the Operation Date, the Parties shall cooperate to develop a communications protocol that the Parties will adhere to and that will enable Buyer to relay instructions from Transmission Provider.

### 9.2 Curtailments.

9.2.1 No Economic Dispatch. Buyer shall not curtail or cause the curtailment of the Facility's energy for Economic Dispatch reasons.

9.2.2 Curtailment. If delivery from the Facility is curtailed as a result of (a) an Interconnection Failure or Emergency, (b) *force majeure* affecting the transmission system, (c) transmission or interconnection maintenance, or (d) transmission congestion, the Parties agree that Seller shall bear the risk of the curtailment of the portion of the Facility in excess of 66MW and, subject to the *pro rata* curtailment principle for network resources set forth below, the 66MW portion of the Facility that is a network resource. With respect to the 66MW

portion of the Facility, the parties agree that curtailment will be subject to the *pro rata* curtailment of all firm schedules across the restricted transmission path. If there is a partial curtailment of the Facility, the Parties agree that any energy produced from the Facility shall first be allocated to the 66MW portion of the Facility (it being understood that the 66MW portion of the Facility is a network resource). To the extent that curtailment of energy can be avoided using short-term firm or non-firm, point-to-point transmission from the Point of Delivery to Mid-Columbia, another transaction point, or an additional point of delivery on the Idaho Power electrical system, or cost-effective redispatch, then (unless Seller has provided notice to Buyer that Seller has arranged for a sale to a third party to avoid the curtailment) Buyer shall use commercially reasonable efforts to arrange such deliveries or cost-effective redispatch to avoid curtailment of the Facility. Buyer shall pay Seller the Market Price of Energy minus the Transaction Costs for any curtailed energy that is subsequently sold or transferred to a third party through a market transaction, or Buyer shall pay Seller the Contract Price minus any Transaction Costs for any curtailed energy that is delivered to Idaho Power at an additional point of delivery on the Idaho Power electrical system as provided in this Section 9.2, whether using secondary network transmission service, short-term firm or non-firm, point-to-point transmission. In the course of using commercially reasonable efforts to arrange for such deliveries, Idaho Power will first consider delivery of Seller's energy to Idaho Power at an additional point of delivery on the Idaho Power electrical system as provided in this Section 9.2 and shall use commercially reasonable efforts to propose delivery arrangements with the lowest Transaction Costs. On or before the fifth (5) Business Day of any calendar month following a month in which a curtailment occurred, Buyer shall provide Seller with notice stating the cause of the curtailment. The Parties shall use commercially reasonable efforts to determine the quantity of energy that, based on the wind data, would have been produced during the Curtailment Period (the "Deemed Delivered Net Energy"). Deemed Delivered Net Energy shall be used solely for the purpose of calculating Lost Output.

9.3 Determination of Deemed Delivered Net Energy. Seller shall install two (2) meteorological towers around the Site or in conjunction with the Facility's wind turbines to provide the capability of measuring and recording representative wind data twenty-four (24) hours per day. Seller shall calculate the amount of Deemed Delivered Net Energy using data from the Facility's SCADA system and based on actual wind speed measurements derived from the meteorological towers and other Facility wind speed instrumentation during the period in which the curtailment occurs. If data required for determining Deemed Delivered Net Energy ceases to be available or is determined to be unreliable, the Parties shall cooperate to develop a commercially reasonable methodology to facilitate the accurate determination of Deemed Delivered Net Energy and to make appropriate adjustments for any period in which data was interrupted or unavailable.

9.4 Seller's Declared Suspension of Net Energy Deliveries. If Seller's Facility experiences a forced outage or derating due to equipment failure or derating,

Seller shall promptly notify Buyer of the nature and expected duration of the forced outage or derating and shall update its generation forecasts under Section 6.2 accordingly. Because Seller will take one or more wind turbines off line from time to time in the ordinary course of Facility maintenance, the Facility shall not be deemed to be experiencing a "derating" unless the Facility's capacity is reduced by at least fifteen percent (15%).

9.5 Scheduled Maintenance. On or before January 31 of each calendar year, Seller shall submit a written proposed maintenance schedule of significant Facility maintenance for that calendar year, and Buyer and Seller shall mutually agree as to the acceptability of the proposed schedule. The Parties determination as to the acceptability of Seller's timetable for scheduled maintenance will take into consideration the need to perform maintenance and perform other work as required to maintain wind turbine and other equipment warranties, Good Utility Practices, Buyer's system requirements, and Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed maintenance schedule.

9.6 Maintenance Coordination. Seller shall, to the extent practical, coordinate its line and Facility maintenance schedules with Interconnection Provider's maintenance schedules such that they occur simultaneously.

## **ARTICLE 10. BILLING; RECORDS; AUDITS**

10.1 Billing Invoices. The monthly billing period shall be the calendar month. No later than three (3) Business Days after the end of each calendar month, Seller shall provide to Buyer, by email or fax and confirmed by first-class mail, an invoice for the amount due Seller by Buyer for the Net Energy purchased by the Buyer under this Agreement during the previous calendar month billing period. Seller's invoice shall show all billing parameters, rates and factors, and any other data reasonably pertinent to the calculation of monthly payments due to the Seller. Each such monthly invoice shall calculate the amount that Buyer owes to the Seller for Test Energy, and Net Energy delivered during the calendar month, at the Test Energy Price, the Contract Price or Alternative Contract Price, as applicable, and the Buyer shall pay for such Test Energy, and/or Net Energy at such price.

10.2 Payments. Unless otherwise specified in this Agreement, undisputed payments due under this Agreement shall be due and payable by electronic funds transfer on or before the fifteenth (15th) Business Day following receipt of the billing invoice. If the undisputed amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the Interest Rate applicable in the event of a default. If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

10.3 Maintenance of Records. Seller shall maintain at the Facility or such other location mutually acceptable to the Parties adequate total generation, net generation, and

maximum generation (MW) records in a form and content consistent with Good Utility Practices.

#### 10.4 Right to Audit; Refunds; Billing Disputes.

10.4.1 Audit Rights. Each Party shall have the right, upon reasonable notice to the other Party and during the other Party's regular business hours and without unduly interfering with the conduct of that Party's business, to access all of that Party's records pertaining to invoices under this Agreement and to audit reports, data, calculations, invoices, Net Energy, transactions under Section 9.2 (including Transaction Costs), and maximum generation records pertaining to the Facility. The auditing Party shall bear its own costs of performing such audit; *provided, however,* that the other Party shall cooperate with the audit and shall not charge the auditing Party for any reasonable costs (including without limitation the cost of photocopies) that the other Party may incur as a result of such audit. A Party shall have twenty-four (24) months from the date on which an invoice or notice is received to audit and to challenge that invoice or notice.

10.4.2 Refunds of Overpayments and Underpayments. If an audit discovers a billing error or errors that resulted in an overpayment by the Buyer, Seller shall refund to the Buyer the amount of the overpayment plus interest calculated at the Interest Rate thereon from the date such overpayment was made by the Buyer to (but not including) the date the Buyer actually receives the refund from the Seller. If the audit discovers a billing error or errors that resulted in an underpayment by the Buyer, the Buyer shall pay to the Seller the amount of the underpayment plus interest calculated at the Interest Rate thereon from the due date thereof to (but not including) the date the Seller actually receives the payment thereof from the Buyer. The Interest Rate used in this Section shall be the Interest Rate applicable to cash collateral.

10.4.3 Billing Disputes. Either Party may dispute invoiced amounts, but shall pay to the other Party at least the undisputed portion of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Article 20. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with interest charges calculated on the amount owed in accordance with the provisions of Section 10.4.2. Buyer at any time may offset against any and all amounts that may be due and owed to Seller under this Agreement, any and all undisputed amounts, including damages and other payments, that are owed by Seller to Buyer pursuant to this Agreement. Likewise, Seller at any time may offset against any and all amounts that may be due and owed to Buyer under this Agreement, any and all undisputed amounts, including damages and other payments, that are owed by Buyer to Seller

pursuant to this Agreement. Undisputed and non-offset portions of amounts invoiced under this Agreement shall be paid on or before the due date or shall be subject to the interest charges set forth in Section 10.4.2.

## **ARTICLE 11. INDEMNIFICATION AND INSURANCE**

11.1 Indemnification. Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, affiliates, subsidiaries, parent company and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.

11.2 Insurance. During the term of this Agreement, Seller shall secure and continuously carry the following insurance coverage:

11.2.1 Commercial General Liability Insurance for both bodily injury and property damage with limits not less than \$1,000,000, each occurrence, combined single limit.

11.2.2 Excess/Umbrella Liability Insurance with limits not less than \$5,000,000.

11.2.3 The above insurance coverage shall be placed with an insurance company with an A.M. Best Company rating of A- or better. In addition:

11.2.3.1 Buyer shall be an additional insured on the policy providing such insurance coverage; and

11.2.3.2 The policy shall include a provision stating that such policy shall not be canceled or the limits of liability reduced without sixty (60) days' prior written notice to Seller. Seller shall notify Buyer within five (5) Business Days after Seller receives any such notice.

11.3 Seller to Provide Certificate of Insurance. As required in Section 3.1.5 of this Agreement and annually thereafter, Seller shall furnish Buyer a Certificate of Insurance evidencing the coverage as set forth above.

11.4 Seller to Notify Buyer of Loss of Coverage. If the insurance coverage required by Section 11.2 shall lapse for any reason, Seller will immediately notify the Buyer in writing. The notice will advise the Buyer of the specific reason for the lapse and the steps the Seller is taking to reinstate the coverage.

**ARTICLE 12.**  
**CREDIT AND COLLATERAL REQUIREMENTS**

12.1 Financial Information. Each Party shall deliver to the other Party (i) within one hundred twenty (120) days following the end of a Party's fiscal year, a copy of that Party's audited consolidated financial statements for its fiscal year, and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of that Party's unaudited consolidated financial statements for such fiscal quarter. In all cases, the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; *provided, however*, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the Party diligently pursues the preparation, certification and delivery of the statements.

12.2 Seller's Performance Assurance. To secure the obligations of the Seller to the Buyer under this Agreement, Seller shall provide one or a combination of the following as its "Performance Assurance":

12.2.1 Cause Seller's Guarantor to execute and deliver to the Buyer a Guaranty in the form attached as Appendix C (or, at Seller's discretion, cause another guarantor that is not experiencing a Material Adverse Change to execute and deliver to the Buyer a Guaranty in the form of Appendix C or in another form acceptable to the Buyer); or

12.2.2 Establish and maintain at the Seller's expense an escrow account for the benefit of the Buyer in a form and amount reasonably acceptable to the Buyer; or

12.2.3 Provide a cash deposit to the Buyer; or

12.2.4 Provide a letter of credit in a form reasonably acceptable to the Buyer.

Beginning on the tenth (10<sup>th</sup>) Business Day after receipt of Commission Approval and continuing until the Operation Date, the Seller shall maintain such Performance Assurance in the aggregate amount of One Million Dollars (\$1,000,000). On and after the Operation Date, the Seller shall maintain such Performance Assurance in the aggregate amount of Ten Million Dollars (\$10,000,000). Seller shall have no duty to replenish or replace any such Performance Assurance if drawn upon, and the amounts set forth in the preceding sentences shall be caps on the Seller's Performance Assurance obligations.

The Seller shall deliver to the Buyer Performance Assurance in the form of a Guaranty from Seller's Guarantor (the form of which is attached as Appendix C) in the amounts and at the time specified in the preceding paragraph (with the \$10,000,000 Guaranty to replace the initial \$1,000,000 Guaranty upon delivery of the \$10,000,000 Guaranty to Buyer, which \$1,000,000 Guaranty shall thereupon be deemed terminated).

By giving at least ten (10) Business Days prior notice to the Buyer, the Seller may from time to time replace any Performance Assurance, in whole or in part, by posting with the Buyer a replacement Guaranty, escrow account, cash deposit, letter of credit, or combination thereof in compliance with this Article. Upon the posting of such replacement Performance Assurance, the Buyer shall release and return to the Seller the Performance Assurance being replaced, and all such replaced Performance Assurance shall be deemed terminated.

12.3 Grant of Security Interest in Certain Collateral and Security. To secure its obligations under this Agreement, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the secured Party. Seller shall take such action as Buyer reasonably requires in order to perfect Buyer's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

12.5 Interest Rate on Cash Collateral. Performance Assurance in the form of cash shall bear interest at the Interest Rate and shall be paid to Seller on the third Business Day of each calendar month.

12.6 Notice to Seller's Guarantor. Seller shall be responsible for notifying Seller's Guarantor of all modifications and amendments made to this to this Agreement after execution of the Agreement.

### **ARTICLE 13.** ***FORCE MAJEURE***

#### 13.1 Force Majeure.

13.1.1 General. As used in this Agreement, "force majeure" or "an event of force majeure" means any cause beyond the reasonable

control of the Party claiming *force majeure* which, despite the exercise of due diligence, such Party is unable to prevent or overcome. *Force majeure* includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances (even if such strikes or disturbances could be resolved by conceding to the demands of a labor group), earthquakes, fires, lightning, epidemics, sabotage, severe weather, or changes in law or regulation or governmental orders occurring after the Effective Date, which, by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence it shall be unable to overcome.

13.1.2 Events That Are Not “Force Majeure.” Notwithstanding Section 13.1.1, the term *force majeure* does not include: (a) Seller’s ability to sell, or Buyer’s ability to purchase, Net Energy or Environmental and Renewable Energy Credits at a more advantageous price than is provided under this Agreement; (b) governmental or regulatory action occurring after receipt of the Commission Approval contemplated by Article 24 that impairs Buyer’s ability to recover the Contract Price or the Alternative Contract Price (if applicable) in its rates or that otherwise affects the value of this Agreement to Buyer.

13.1.3 Requirements Upon Occurrence of Force Majeure. If either Party is rendered wholly or in part unable to perform its obligations 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:

13.1.3.1 The Party claiming *force majeure* shall, as soon as is reasonably possible after the occurrence of the *force majeure*, give the other Party written notice describing the particulars of the occurrence.

13.1.3.2 The suspension of performance shall be of no greater scope and of no longer duration than is required by the event of *force majeure*.

13.1.3.3 No obligations of either Party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

13.1.3.4 The Party claiming *force majeure* shall proceed with reasonable diligence to remedy its inability to perform and shall provide weekly progress reports to the other Party describing actions taken to end the *force majeure*.

13.1.3.5 When the Party claiming *force majeure* is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

13.2 Extension of Scheduled Operation Date, Guaranteed Operation Date, and the Term. The Scheduled Operation Date and the Guaranteed Operation Date shall be extended on a day-for-day basis in the event of *force majeure*. In no event will any delay or failure of performance caused by any conditions or events of *force majeure* extend this Agreement beyond its stated Term.

13.3 Termination for Extended Force Majeure. If a delay or failure of performance caused by events of *force majeure* materially affects the delivery or receipt of Net Energy at the Point of Delivery of the Facility and continues for an uninterrupted period of three hundred sixty-five (365) Days from its occurrence or inception, the Party not claiming *force majeure* may, at any time following the end of such three hundred sixty-five (365) Day period, terminate this Agreement upon written notice to the party claiming *force majeure*, without further obligation by either Party except as to costs and balances incurred before the effective date of such termination. The Party not claiming *force majeure* may, but shall not be obligated to, extend such three hundred sixty-five (365) Day period, for such additional time as it, at its sole discretion, deems appropriate.

#### **ARTICLE 14. BUYER ACCESS RIGHTS**

14.1 Seller to Provide Access. To the extent necessary, Seller hereby grants to the Buyer for the term of this Agreement all necessary rights-of-way and easements to install, operate, maintain, replace, and remove the Buyer's Metering Equipment, and other equipment and facilities necessary or useful to this Agreement, including adequate and continuing access rights on property of the Seller.

14.2 Indemnity. If the Buyer exercises any right under this Agreement to access or enter upon the Seller's property, such access or entry shall be at the Buyer's sole risk and expense. Buyer shall hold the Seller harmless from, and indemnify the Seller against, any and all liability for any loss, damage or injury to property or persons arising from the Buyer's access to or entry upon to the Seller's property, except to the extent that such loss, damage or injury is caused by the Seller's negligence or willful misconduct.

#### **ARTICLE 15. NO THIRD PARTY LIABILITY, NO DEDICATION OF FACILITY OR SYSTEM**

15.1 No Third Party Liability. 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. There are no third party beneficiaries of this Agreement.

15.2 No Dedication. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or Facility or any portion thereof to the other Party or to the public or affect the status of the Buyer as an independent public utility corporation or the Seller as an independent entity.

## **ARTICLE 16. SEVERAL OBLIGATIONS**

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture, or impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

## **ARTICLE 17. 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 shall not be deemed a waiver with respect to any subsequent default or other matter.

## **ARTICLE 18. CHOICE OF LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the state of Idaho without reference to its choice of law provisions.

## **ARTICLE 19. LIMITATIONS**

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

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

19.3 No Punitive, Consequential or Incidental Damages. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY

AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS AGREEMENT ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

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

## **ARTICLE 20. DISPUTES**

20.1 Disputes. If a dispute arises under this Agreement (a “Dispute”), within ten (10) days following the delivered date of a written request by either Party (a “Dispute Notice”), (i) each Party shall appoint a representative, and (ii) the Parties’ representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. If the Parties’ representatives cannot resolve the Dispute within thirty (30) days after commencement of negotiations, then within ten (10) Business Days following any request by either Party at any time thereafter, each Party representative (A) shall independently prepare a written summary of the Dispute describing the issues and claims, (B) shall exchange its summary with the summary of the Dispute prepared by the other Party representative, and (C) shall submit a copy of both summaries to a senior officer of the representative’s Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within fourteen (14) Business Days following receipt of the Dispute summaries by the senior offices, either Party may seek available remedies.

20.2 Twenty-Four (24) Month Limitation Period. Notwithstanding any provision in this Agreement to the contrary, if no Dispute Notice has been issued within twenty-four (24) months following the occurrence of all events and the existence of all circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related to the Dispute shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

20.3 Venue. Venue for any litigation arising out of or related to this Agreement shall lie in the District Court of the Fourth Judicial District of Idaho in and for the county of Ada.

## ARTICLE 21.

### EVENTS OF DEFAULT; DELAY DAMAGES; DAMAGE CAPS

21.1 Events of Default. The following shall be deemed to be Events of Default:

21.1.1 A Party's dissolution or liquidation;

21.1.2 A Party's assignment of this Agreement or any of its rights under this Agreement for the benefit of creditors (except for an assignment to the Facility Lender as security under the Financing Documents as permitted by this Agreement);

21.1.3 A Party's filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or a Party voluntarily taking advantage of any such law or act by answer or otherwise.

21.1.4 The filing of a case in bankruptcy or any proceeding under any other insolvency law against a Party that could materially impact Buyer's ability to perform its obligations under this Agreement if the affected Party does not obtain a stay or dismissal of the filing within sixty (60) days after the Party receives a notice of default.

21.1.5 A Party's assignment of this Agreement, except as permitted by this Agreement;

21.1.6 Any representation or warranty made by a Party in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true during the Term if such inaccuracy or cessation would reasonably be expected to result in a significant adverse impact on the other Party and such default is not cured within thirty (30) days after the Party's receipt of a notice of default;

21.1.7 Seller's failure to establish and maintain Performance Assurance as required by this Agreement if the failure is not cured within thirty (30) days of Seller's receipt of a notice of default;

21.1.8 A Guaranty Default affecting a Guaranty delivered in support of this Agreement if the Guaranty Default is not cured within the time permitted by the Guaranty and the Seller does not provide substitute Performance Assurance to replace the Guaranty within fifteen (15) Business Days after the Seller's receipt of a notice of the Guaranty Default.

21.1.9 Seller's failure to deliver energy from the Facility to Buyer as required under this Agreement if the failure is not cured within fifteen (15) Business Days of Seller's receipt of a notice of default;

21.1.10 Buyer's failure to receive energy from the Facility as required under this Agreement if the failure is not cured within fifteen (15) days of Buyer's receipt of a notice of default;

21.1.11 A Party's failure to make a payment to the other Party when due under this Agreement if the failure is not cured within ten (10) Business Days of the Party's receipt of a notice of default.

21.1.12 A Party's failure to comply with any material obligation under this Agreement, if the failure would result in a significant adverse impact on the other Party (other than a default already specifically enumerated in this Article) and the failure is not cured within thirty (30) days of the Party's receipt of a notice of default; *provided, however*, if such default cannot be cured within thirty (30) days despite the Party's diligent efforts, but the Party commences the cure within the thirty (30) day period and thereafter diligently pursues the cure, the thirty (30) day period shall be extended for as long as is reasonably required to cure the default (but in no event more than ninety (90) days).

21.2 Notice of Default. If either Party defaults in its performance of this Agreement as provided in Section 21.1, the non-defaulting Party may give notice of the default in writing to the defaulting Party, specifying in reasonable detail the nature of the default. If the defaulting Party fails to cure the default within any cure period allowed for the default in Section 21.1, the non-defaulting Party may, at its option, terminate this Agreement and/or pursue its legal or equitable remedies, subject to any limitation on remedies and damages set forth in this Agreement.

21.3 Facility Lender's Right to Cure Default of Seller. Seller shall provide Buyer with a notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such notice, Buyer shall provide notice of any Event of Default of Seller to the Facility Lender, and Buyer will accept a cure to an Event of Default of Seller performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this Agreement plus an additional sixty (60) days.

21.4 Delay Damages. If Seller fails to achieve the Operation Date on or before the Guaranteed Operation Date, and such failure is not excused by *force majeure* or the default or delay of Buyer, Seller shall pay damages to Buyer on account of such delay ("Delay Damages") in the amount of One Hundred Dollars (\$100) per day for each MW of installed capacity at the Facility that has not satisfied the conditions set forth in Section 4.4 (excluding Section 4.4.1) on or before the Guaranteed Operation Date. All Delay Damages shall begin to accrue on the day after the Guaranteed Operation Date and shall continue to accrue until the first to occur of (a) the Operation Date, or (b) one

hundred eighty (180) days after the Guaranteed Operation Date. Seller shall not be required to pay Delay Damages with respect to installed capacity for which Seller has satisfied the conditions of Section 4.4 (excluding Section 4.4.1). Seller shall pay Buyer for any Delay Damages accrued during a given calendar month on or before the tenth (10<sup>th</sup>) day of the next month. Seller shall have no liability for any failure to achieve the Operation Date by the Scheduled Operation Date, and Delay Damages shall be Buyer's sole and exclusive remedy for Seller's failure to achieve the Operation Date on or before the Guaranteed Operation Date. In no event shall Seller be liable for Delay Damages in an aggregate amount in excess of the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000). Seller shall not be in default under this Agreement if it does not achieve the Guaranteed Operation Date but is paying Delay Damages when due or has paid all Delay Damages required to be paid under this Agreement.

21.5 Limitations on Seller's Damages. The following limits shall apply to Seller's liability for damages: (a) Seller's aggregate financial liability to Buyer for Delay Damages shall not exceed the amount specified in Section 21.4, (b) Seller's aggregate liability for damages arising from a termination for default before the Operation Date shall not exceed One Million Eight Hundred Thousand Dollars (\$1,800,000), minus Delay Damages previously paid, and (c) Seller's aggregate liability to Buyer for any and all damages under this Agreement (including Delay Damages, Net Energy Shortfall Damages and Aggregate Price Adjustments) shall not exceed Fifteen Million Dollars (\$15,000,000). Except as noted in Section 21.5.1 and Section 21.5.2, this \$15,000,000 damages cap shall remain fixed for the Term of the Agreement and shall not be escalated or reduced. The limitations on damages set forth in this Section 21.5 shall not apply to damages arising out of either of the following events:

21.5.1 Willful breach of this Agreement by Seller resulting in the sale by Seller to a third party, or the diversion by Seller for any use, of energy that Seller has agreed to sell to Buyer under this Agreement; or

21.5.2 Any claim for indemnification under Article 11.

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

21.7 Obligations Immediately Due and Payable. If a Party terminates this Agreement under Section 21.2 because of the other Party's default, the non-defaulting Party, upon notice to the defaulting Party (and if applicable, to the Facility Lender and Guarantor), may declare the defaulting Party's obligations under this Agreement to be immediately due and payable. The non-defaulting Party's right to obtain damages shall be subject to the non-defaulting Party's duty to mitigate damages under Section 21.6 and to all other rights, remedies, defenses, offsets and arguments available to the defaulting Party under this Agreement, at law and in equity. In the case of Seller, such damages shall also be subject to the limitations on Seller's damages set forth in this Agreement

(including, but not limited to, the caps set forth in Section 21.5). This provision shall survive the termination of this Agreement.

## **ARTICLE 22. TERMINATION**

22.1 Termination. Upon execution, this Agreement shall continue in full force and effect for the Term unless terminated in accordance with this Article.

22.2 Mutual Agreement. The Parties can mutually terminate this Agreement by a writing signed by both Parties.

22.3 Event of Default. A non-defaulting Party may terminate this Agreement in accordance with Section 21.2.

22.4 Prolonged Force Majeure. A Party not claiming *force majeure* may terminate this Agreement in accordance with Section 13.3.

### 22.5 Right to Terminate.

22.5.1 If (a) despite Seller's commercially reasonable efforts to do so, Seller does not, on or before February 28, 2007, enter into an Interconnection Agreement for the Facility with the Interconnection Provider on terms reasonably acceptable to Seller, or (b) if such Interconnection Agreement for the Facility becomes impracticable to obtain on commercially reasonable terms and conditions, Seller shall have the right to terminate this Agreement by giving notice to Buyer not later than March 2, 2007.

22.5.2 If (a) the Scheduled Operation Date is extended due to *force majeure* such that the Facility will not be placed into service for PTC purposes on or before December 31, 2007, and (b) Federal Production Tax Credit Legislation has not been enacted before 11:59 p.m. on December 31, 2007, then Seller shall have the right to terminate this Agreement by giving notice to Buyer not later than June 30, 2008.

22.5.3 If for any reason, including *force majeure*, Commission Approval is not obtained on or before February 28, 2007, then either Party shall have the right to terminate this Agreement by written notice to the other Party given on or before the earlier of: (i) the date that is ten (10) Business Days after the issuance of an order by the Commission disapproving this Agreement or approving it with condition(s) or modification(s) unacceptable to the Party or Parties adversely affected by such modification(s) or condition(s), or (ii) March 2, 2007. Except as provided in Section 22.5.4, any such termination under this Section shall be effective ten (10) Business Days after such notice is given.

22.5.4 Notwithstanding Section 22.5.3, if Buyer gives Seller a notice of termination under subparagraph (ii) of Section 22.5.3 because Commission Approval has not been obtained on or before February 28, 2007, Seller may in its sole discretion give Buyer notice within the ten (10) Business Day period irrevocably extending the Scheduled Operation Date to October 1, 2008, and the Guaranteed Commercial Operation Date to December 31, 2008. In such case, Buyer's notification of termination shall be of no effect, this Agreement shall remain in full force and effect with such changes, and neither Party shall have any further rights to terminate this Agreement under Section 22.5.3(ii). The Parties retain the right to terminate under Section 22.5.3(i). If Seller exercises the preceding option to extend the Scheduled Operation Date and the Guaranteed Commercial Operation Date,

22.5.4.1 and the Operation Date occurs after January 1, 2008, the Contract Price in 2008 shall be the Contract Price (or Alternative Contract Price, if applicable) for 2008 as set forth in Appendix A and shall thereafter change from year to year as provided in Appendix A;

22.5.4.2 and Federal Production Tax Credit Legislation has not been enacted before 11:59 p.m. on December 31, 2007, then Seller shall have the right to terminate this Agreement by giving notice to Buyer not later than June 30, 2008;

22.5.4.3 and for any reason, including *force majeure*, Commission Approval is not obtained on or before December 31, 2007, then either Party shall have the right to terminate this Agreement by written notice to the other Party given on or before January 31, 2008.

22.5.5 If Buyer terminates this Agreement under Section 22.5.3, Buyer shall within ten (10) Business Days of the termination notice pay Seller a termination payment in accordance with the following terms:

22.5.5.1 If notice of termination is given on or before December 31, 2006, Buyer shall pay Seller a termination payment in the amount of up to \$600,000;

22.5.5.2 If a notice of termination is given after December 31, 2006, and on or before January 31, 2007, Buyer shall pay Seller a termination payment in the amount of up to \$1,200,000;

22.5.5.3 If a notice of termination is given after January 31, 2007, Buyer shall pay Seller a termination payment in the amount of up to \$2,000,000.

In exchange for the termination payment from Buyer, Seller shall simultaneously transfer to Buyer all of Seller's right, title and interest in and to the assets listed on Appendix I (the "Transferred Assets") such that Buyer will assume Seller's position with respect to the Transferred Assets and all executory commitments affecting those assets. The amount paid by Buyer shall equal Seller's actual out-of-pocket costs with respect to the Transferred Assets up to the applicable cap set forth in Sections 22.5.5.1, 22.5.5.2, and 22.5.5.3 above. Buyer acknowledges and agrees that some or all of the Transferred Assets may consist of contractual rights to physical assets for which partial payments (such as down payments or deposits) have been made rather than the physical assets themselves. Seller shall include with the Transferred Assets sufficient verifiable data, invoices, evidence, and other relevant information for Buyer to confirm the cost paid or incurred by Buyer with respect to the Transferred Assets. At any time before the transfer to Buyer has closed, Seller shall have the right, in its sole discretion, to retain the Transferred Assets or any portion thereof and waive its right to receive the applicable termination payment (or a portion thereof equal the cost of any assets that Seller elects to retain if Seller does not retain all of the Transferred Assets).

22.5.6 If a Party does not give the other Party a notice of termination in accordance with this Section 22.5 on or before the applicable date specified above, the affected termination right under this Section 22.5 shall be deemed waived and this Agreement shall remain in full force and effect in accordance with its terms regardless of any subsequent Commission order, subject to each Party's right to terminate this Agreement under Section 22.5.3(i).

22.5.7 Neither Party shall have any liability to the other Party for any termination under this Section 22.5, except for the termination payments set forth in Section 22.5.5.

### **ARTICLE 23. GOVERNMENTAL AUTHORIZATION**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party of this Agreement.

### **ARTICLE 24. REGULATORY APPROVAL**

Within ten (10) Business Days after the Effective Date, Buyer shall file this Agreement with the Commission, seeking Commission Approval. Buyer shall use

commercially reasonable and diligent efforts to obtain Commission Approval as soon as practicable but in no event later than February 28, 2007.

**ARTICLE 25.  
SUCCESSORS AND ASSIGNS**

25.1 Binding Agreement. This Agreement and all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the respective permitted successors and assigns of the Parties.

25.2 No Assignment without Consent. Except as permitted in this Article, neither Party shall assign this Agreement or any portion of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

25.3 When Seller's Consent Not Required. Seller's consent shall not be required for Buyer to assign this Agreement to an Affiliate of the Buyer, provided that the assignee meets the credit requirements set forth for Buyer in the definition of Material Adverse Change.

25.4 When Buyer's Consent Not Required. Buyer's consent shall not be required:

25.4.1 For Seller to assign this Agreement for collateral purposes to the Facility Lender;

25.4.2 For Seller to assign this Agreement to any Affiliate of the Seller, provided that the assignee or its credit-support provider meets the Credit Requirements set forth for the Seller's Guarantor in the definition of Material Adverse Change; or

25.4.3 For Seller to Assign this Agreement to any third party or parties in connection with a sale of the Facility to such third party or parties, provided that such third party or parties shall either: (1) have at least three (3) years' experience in operating wind powered electric generating facilities with an installed nameplate capacity of 25MW or greater; or (2) enter into an operating agreement with another person (who may be the Seller or an Affiliate of the Seller) who has at least three year's experience in operating wind powered electric generating facilities with an installed nameplate capacity of 25MW or greater, and (3) meet (or have a guarantor that meets) the Credit Requirements set forth for the Seller's Guarantor in the definition of Material Adverse Change.

25.4.4 For any direct or indirect change of control of the Seller (whether voluntary or by operation of law), for any private placement or public offering involving the Seller or an Affiliate of the Seller, for any tax or equity investment in the Seller or any Affiliate of the Seller, or in

connection with any sale of all or substantially all of the assets of the Seller or any Affiliate of the Seller.

25.5 Accommodation of Facility Lender or Investor. To facilitate the Seller's obtaining of financing to construct and operate the Facility or to facilitate investments in the Seller, Buyer shall use commercially reasonable efforts to provide such consents to assignments, certifications, representations, information, opinions or other documents as may be reasonably requested by the Seller, the Facility Lender or the Investor in connection with the financing of or investment in the Facility; provided that in responding to any such request, the Buyer shall have no obligation to provide any consent, or enter into any agreement that significantly adversely affects any of the Buyer's rights, benefits, risks and/or obligations under this Agreement. Seller shall reimburse, or shall cause the Facility Lender or the Investor to reimburse, the Buyer for the incremental direct expenses (including, without limitation, the reasonable fees and expenses of counsel) incurred by the Buyer in the preparation, negotiation, execution and/or delivery of any documents requested by the Seller, Facility Lender or Investor, and provided by the Buyer, pursuant to this Article. The rights of the Facility Lender or Investor will be set forth in a collateral assignment, estoppel agreement, consent agreement or similar instrument delivered at the closing of any Facility financing or any investment and will include the following provisions:

25.5.1 Right to Cure Defaults. Facility Lender or Investor shall have the right, but not the obligation, to perform any act required to be performed by the Seller under this Agreement to prevent or cure a default by the Seller, and such act performed by Facility Lender or Investor shall be as effective to prevent or cure a default as if done by the Seller. Seller shall provide the Buyer with a notice identifying the agent or trustee of any Facility Lender or any Investor and providing appropriate contact information for any Facility Lender or Investor. Following receipt of such notice, Buyer shall provide notice of the occurrence of any default or Event of Default described in this Agreement to the agent or trustee of any Facility Lender or Investor, and the Buyer will accept a cure performed by the agent or trustee of any Facility Lender or Investor and will negotiate in good faith with the agent or trustee of any Facility Lender and Investor as to the cure period(s) that will be allowed for any Facility Lender or Investor to cure any the Seller default or Event of Default hereunder and the Buyer will accept a cure performed by any Facility Lender or Investor, so long as the cure is accomplished within the applicable cure period so agreed to by the Buyer and any Facility Lender or Investor.

25.5.2 Right to Assume Agreement. If the Seller defaults under any financing or investment documents, any Facility Lender or Investor may (but shall not be obligated to) assume, or cause its designee to assume, all of the interests, rights, and obligations of the Seller thereafter arising under this Agreement. Notwithstanding any such assumption, the Seller shall not be released or discharged from and shall remain liable for

any and all obligations to the Buyer arising or accruing under this Agreement.

25.5.3 No Obligation to Perform. Buyer agrees that no Facility Lender or Investor shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the Seller or shall have any obligation or liability to the Buyer with respect to this Agreement except to the extent any Facility Lender or Investor has assumed the obligations of the Seller under this Agreement pursuant to this Article; *provided that* the Buyer shall nevertheless be entitled to exercise all of its rights under this Agreement against the Seller in the event that the Seller, Facility Lender or Investor fails to perform the Seller's obligations under this Agreement.

25.5.4 Notice of Facility Lender or Investor Action. Within ten (10) Business Days following the Seller's receipt of each written notice from a Facility Lender or an Investor of a default, or of Facility Lender's or Investor's intent to exercise any remedies, under the Financing Documents or any investment agreement, Seller shall deliver a copy of such notice to the Buyer.

25.6 Subcontracting. Seller may subcontract its duties or obligations under this Agreement without the prior written consent of the Buyer, provided, that no such subcontract shall relieve the Seller of any of its duties or obligations under this Agreement.

25.7 Right of First Offer upon Sale of Facility Assets.

25.7.1 Facility Assets. If, at any time during the Term Seller intends to sell the assets comprising all or substantially all of the Facility (the "Facility Assets") to a person or entity that is not an Affiliate of Seller, Seller shall first offer the Facility Assets to Buyer. Seller's offer shall set forth the terms and conditions of the offer in writing and in reasonable detail. Seller shall promptly answer any questions that Buyer may have concerning the offered terms and conditions and shall meet with Buyer to discuss the offer.

25.7.2 Buyer's Rejection of Offer; Revival of Offer. If Buyer does not provide notice of its intent to accept the offered terms and conditions within thirty (30) days after receiving Seller's offer, Seller may in its sole discretion enter into an agreement to sell the Facility Assets to a third party in compliance with the requirements of this Article 25 and on terms and conditions satisfactory to Seller in its sole discretion. Seller may elect not to proceed with the sale of the Facility Assets.

25.7.3 Buyer's Acceptance of Offer. If Buyer provides notice of its intent to accept the offer made by Seller under this Section, the Parties

shall negotiate in good faith to enter into a definitive sale agreement that incorporates the terms and conditions of Seller's offer. The definitive agreement shall be subject to each Party's management and regulatory approvals. If Buyer does not provide notice of its intent to accept the offered terms and conditions within thirty (30) days after providing notice of intent to accept Seller's offer, Seller may in its sole discretion enter into an agreement to sell the Facility Assets to a third party on terms and conditions satisfactory to Seller in its sole discretion.

25.7.4 Limit on Right of First Offer. The right of first offer set forth in this Section shall apply only if Seller sells all or substantially all of the assets comprising the Facility in an asset sale to a third party. It shall not apply to changes in the membership of Seller or any other reorganization, change of control or other transaction directly or indirectly affecting Seller or an Affiliate of Seller.

#### **ARTICLE 26. MODIFICATION**

No modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.

#### **ARTICLE 27. TAXES**

Each Party shall pay before delinquency all taxes and other governmental charges which, if failed to be paid when due, could result in a lien upon the Facility or the Interconnection Facilities.

#### **ARTICLE 28. NOTICES**

All written notices under this Agreement shall be directed as follows and shall be considered delivered when faxed, e-mailed and confirmed with deposit in the U.S. Mail, first-class, postage prepaid, as follows:

To Seller:	Telocaset Wind Power Partners, LLC c/o Horizon Wind Energy 800 Travis, Suite 700 Houston, TX 77002 Attn: Chief Operating Officer Fax: 713-265-0365 Email: rick.winsor@horizonwind.com
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with a copy to: Telocaset Wind Power Partners, LLC  
c/o Horizon Wind Energy  
800 Travis, Suite 700  
Houston, TX 77002  
Attn: General Counsel  
Fax: 713-265-0365  
Email: leslie.freiman@horizonwind.com

To Buyer: Idaho Power Company  
Attn: Vice President, Power Supply  
Idaho Power Company  
PO Box 70  
Boise, ID 83707  
Fax: 208-388-6936  
Email: JimMiller@IdahoPower.com

with a copy to: Idaho Power Company  
Attn: Legal Department  
PO Box 70  
Boise, ID 83707  
Fax: 208-388-6936  
Email: mmoen@idahopower.com

By giving notice to the other Party, either Party may from time to time change the address (es) to which notices or copies are to be sent to it under this Agreement.

**ARTICLE 29.  
ADDITIONAL TERMS AND CONDITIONS**

This Agreement includes the following appendices, which are attached hereto and included by reference:

Appendix A	Post-Operation Date Pricing/Post-Operation Date Alternative Pricing
Appendix B	Facility, Point of Delivery and Site Description
Appendix C	Form of Guaranty
Appendix D	Metering
Appendix E	Default Performance Provisions (90-110)
Appendix F	Liquidated Damages Escalation Tables
Appendix G	Analysis and Examples of Annual Energy Delivery Guarantee Analysis
Appendix H	Communications with Designated Dispatch Facility
Appendix I	Transferred Assets
Appendix J	Conditions Precedent to Alternative Pricing

**ARTICLE 30.  
SEVERABILITY**

The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other terms or provisions and this Agreement shall be construed in all other respects as if the invalid or unenforceable term or provision were omitted.

**ARTICLE 31.  
CONFIDENTIAL BUSINESS INFORMATION**

31.1 Definition. The following constitutes "Confidential Business Information," whether oral or written: (i) Parties' proposals and negotiations before the Effective Date concerning this Agreement, (ii) the terms of this Agreement, (iii) the actual invoices billed to the Buyer under this Agreement, and (iv) information that a Party stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other Party. Such Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this Agreement and for no other purpose. Notwithstanding the foregoing, "Confidential Business Information" does not include (A) information that was publicly available at the time of the disclosure thereof by one Party to the other, other than as a result of a disclosure by the receiving Party in breach of this Article; (B) information that becomes publicly available through no fault of the receiving Party after the time of the disclosure by the disclosing Party to the receiving Party; (C) information that was rightfully in the possession of the receiving Party (without confidential or proprietary restriction) at the time of disclosure or that becomes available to the receiving Party from a source not subject to any restriction against disclosing such information to the receiving Party; and (D) information that the receiving Party independently developed without a violation of this Agreement.

31.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its Affiliates, counsel, consultants, lenders, prospective lenders, purchasers, prospective purchasers, investors, prospective investors, contractors constructing or providing services to the Facility (including, but not limited to, turbine suppliers), employees, officers and directors who agree to be bound by the provisions of this Article), without the prior written consent of the other Party, provided that either Party may disclose Confidential Business Information if and to the extent such disclosure is required (i) by any Requirements of Law, (ii) in order for the Buyer to receive regulatory recovery of expenses related to the Agreement, (iii) pursuant to an order of a court or regulatory agency or (iv) in order to enforce this Agreement or to seek approval of this Agreement. In addition, Seller may include information concerning the terms or conditions of this Agreement in financial statements to the extent that such information is required to be included in financial statements prepared with respect to the Facility, Seller or any Affiliate of the Seller in accordance with generally accepted accounting principles consistently applied. In the event a Party is required by Requirements of Law or by a court or regulatory agency to

disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

31.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Article constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including but not limited to injunctive relief.

31.4 News Releases and Publicity. Before issuing any news release or promotional material regarding the Facility that refers to this Agreement or any term or condition of this Agreement, the Party proposing to issue the release shall first provide a copy to the other Party for review and comment. If no response is received within five (5) Business Days after the copy of the news release or promotional material is given to the Party to which it is directed, then the news release or promotional material shall be deemed approved.

## **ARTICLE 32. REPRESENTATIONS AND WARRANTIES**

32.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

32.1.1 Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of the Seller; and the Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

32.1.2 The execution, delivery, and performance of its obligations under this Agreement by the Seller have been duly authorized by all necessary corporate or limited liability company action, and do not and will not:

32.1.2.1 require any consent or approval by any governing body of the Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the Buyer upon its request);

32.1.2.2 violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to the Seller or violate any provision in any formation documents of the Seller, the violation of which could have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement;

32.1.2.3 result in a breach or constitute a default under the Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of the Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which the Seller is a party or by which the Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement; or

32.1.2.4 result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of the Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement.

32.1.3 This Agreement is a valid and binding obligation of the Seller.

32.1.4 The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Seller is a party or any judgment, order, statute, or regulation that is applicable to the Seller or the Facility.

32.2 Seller's Disclaimer of Certain Representations and Warranties.  
NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT,

32.2.1 SELLER DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SALE OF NET ENERGY AND ENVIRONMENTAL AND RENEWABLE ENERGY CREDITS.

32.2.2 SELLER MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, REGARDING THE CURRENT OR FUTURE EXISTENCE OF ANY ENVIRONMENTAL AND RENEWABLE ENERGY CREDITS UNDER THIS AGREEMENT OR OTHERWISE OR THEIR CHARACTERIZATION OR TREATMENT UNDER APPLICABLE LAW OR OTHERWISE.

32.3 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

32.3.1 Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Idaho and is qualified in

each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of the Buyer; and the Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

32.3.2 The execution, delivery, and performance of its obligations under this Agreement by the Buyer will have been duly authorized by all necessary corporate action, and do not and will not:

32.3.2.1 require any consent or approval of the Buyer's Board of Directors, or shareholders, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the Seller upon its request);

32.3.2.2 violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to the Buyer or violate any provision in any corporate documents of the Buyer, the violation of which could have a material adverse effect on the ability of the Buyer to perform its obligations under this Agreement;

32.3.2.3 result in a breach or constitute a default under the Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of the Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which the Buyer is a party or by which the Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of the Buyer to perform its obligations under this Agreement; or

32.3.2.4 result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of the Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of the Buyer to perform its obligations under this Agreement.

32.3.3 This Agreement is a valid and binding obligation of the Buyer.

32.3.4 The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Buyer is a party or any judgment, order, statute, or regulation that is applicable to the Buyer.

32.3.5 To the best knowledge of the Buyer, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize the Buyer's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect.

32.3.6 Buyer has obtained a determination that 66MW of the Facility will be designated a network resource and agrees that such designation will remain in place for the Initial Term and will result in firm transmission of energy from the Facility to Buyer's load. Buyer shall, at its expense (if any), obtain transfer capability from Transmission Provider to allow receipt of energy in excess of 66MW at the Point of Delivery in accordance with this Agreement. Buyer agrees to consider the portion of the facility in excess of the 66MW as a potential network resource in its future integrated resource planning process and include it as a network resource in its Integrated Resource Plan if it is cost effective to do so.

**ARTICLE 33.  
ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement of the Parties concerning the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written agreements between the Parties concerning the subject matter of this Agreement.

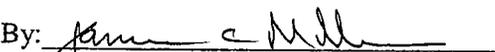
*[Signatures on following page.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names on the dates set forth below:

TELOCASET WIND POWER  
PARTNERS, LLC

IDAHO POWER COMPANY

By: 

By: 

Title: Alec G. Dreyer  
President & Chief Executive Officer

Title: SVP - Power Supply

**APPENDIX A**  
**TO**  
**POWER PURCHASE SALES AGREEMENT**  
**BETWEEN**  
**TELOCASET WIND POWER PARTNERS, LLC**  
**AND**  
**IDAHO POWER COMPANY**

**POST-OPERATION DATE PRICING (\$/MWH)**  
**AND**  
**POST-OPERATION DATE ALTERNATIVE PRICING**

**POST-OPERATION DATE PRICING (\$/MWH)**

**FOR**

**POWER PURCHASE SALES AGREEMENT**

**BETWEEN**

**TELOCASET WIND POWER PARTNERS, LLC**

**AND**

**IDAHO POWER COMPANY**

Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Base	100.0%	100.0%	73.5%	73.5%	73.5%	100.0%	120.0%	120.0%	100.0%	100.0%	120.0%	120.0%
2007	\$48.00	\$48.00	\$35.28	\$35.28	\$35.28	\$48.00	\$57.60	\$57.60	\$48.00	\$48.00	\$57.60	\$57.60
2008	\$49.44	\$49.44	\$36.34	\$36.34	\$36.34	\$49.44	\$59.33	\$59.33	\$49.44	\$49.44	\$59.33	\$59.33
2009	\$50.92	\$50.92	\$37.43	\$37.43	\$37.43	\$50.92	\$61.11	\$61.11	\$50.92	\$50.92	\$61.11	\$61.11
2010	\$52.45	\$52.45	\$38.55	\$38.55	\$38.55	\$52.45	\$62.94	\$62.94	\$52.45	\$52.45	\$62.94	\$62.94
2011	\$54.02	\$54.02	\$39.71	\$39.71	\$39.71	\$54.02	\$64.83	\$64.83	\$54.02	\$54.02	\$64.83	\$64.83
2012	\$55.65	\$55.65	\$40.90	\$40.90	\$40.90	\$55.65	\$66.77	\$66.77	\$55.65	\$55.65	\$66.77	\$66.77
2013	\$57.31	\$57.31	\$42.13	\$42.13	\$42.13	\$57.31	\$68.78	\$68.78	\$57.31	\$57.31	\$68.78	\$68.78
2014	\$59.03	\$59.03	\$43.39	\$43.39	\$43.39	\$59.03	\$70.84	\$70.84	\$59.03	\$59.03	\$70.84	\$70.84
2015	\$60.80	\$60.80	\$44.69	\$44.69	\$44.69	\$60.80	\$72.97	\$72.97	\$60.80	\$60.80	\$72.97	\$72.97
2016	\$62.63	\$62.63	\$46.03	\$46.03	\$46.03	\$62.63	\$75.15	\$75.15	\$62.63	\$62.63	\$75.15	\$75.15
2017	\$64.51	\$64.51	\$47.41	\$47.41	\$47.41	\$64.51	\$77.41	\$77.41	\$64.51	\$64.51	\$77.41	\$77.41
2018	\$66.44	\$66.44	\$48.84	\$48.84	\$48.84	\$66.44	\$79.73	\$79.73	\$66.44	\$66.44	\$79.73	\$79.73
2019	\$68.44	\$68.44	\$50.30	\$50.30	\$50.30	\$68.44	\$82.12	\$82.12	\$68.44	\$68.44	\$82.12	\$82.12
2020	\$70.49	\$70.49	\$51.81	\$51.81	\$51.81	\$70.49	\$84.59	\$84.59	\$70.49	\$70.49	\$84.59	\$84.59
2021	\$72.60	\$72.60	\$53.36	\$53.36	\$53.36	\$72.60	\$87.13	\$87.13	\$72.60	\$72.60	\$87.13	\$87.13
2022	\$74.78	\$74.78	\$54.97	\$54.97	\$54.97	\$74.78	\$89.74	\$89.74	\$74.78	\$74.78	\$89.74	\$89.74
2023	\$77.03	\$77.03	\$56.61	\$56.61	\$56.61	\$77.03	\$92.43	\$92.43	\$77.03	\$77.03	\$92.43	\$92.43
2024	\$79.34	\$79.34	\$58.31	\$58.31	\$58.31	\$79.34	\$95.20	\$95.20	\$79.34	\$79.34	\$95.20	\$95.20
2025	\$81.72	\$81.72	\$60.06	\$60.06	\$60.06	\$81.72	\$98.06	\$98.06	\$81.72	\$81.72	\$98.06	\$98.06
2026	\$84.17	\$84.17	\$61.86	\$61.86	\$61.86	\$84.17	\$101.00	\$101.00	\$84.17	\$84.17	\$101.00	\$101.00

**POST-OPERATION DATE ALTERNATIVE PRICING**

**FOR**

**POWER PURCHASE SALES AGREEMENT**

**BETWEEN**

**TELOCASET WIND POWER PARTNERS, LLC**

**AND**

**IDAHO POWER COMPANY**

Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANN
Base	100.0%	100.0%	73.5%	73.5%	73.5%	100.0%	120.0%	120.0%	100.0%	100.0%	120.0%	120.0%	120.0%
2007	\$45.10	\$45.10	\$33.15	\$33.15	\$33.15	\$45.10	\$54.12	\$54.12	\$45.10	\$45.10	\$54.12	\$54.12	\$54.12
2008	\$46.45	\$46.45	\$34.14	\$34.14	\$34.14	\$46.45	\$55.74	\$55.74	\$46.45	\$46.45	\$55.74	\$55.74	\$55.74
2009	\$47.85	\$47.85	\$35.17	\$35.17	\$35.17	\$47.85	\$57.42	\$57.42	\$47.85	\$47.85	\$57.42	\$57.42	\$57.42
2010	\$49.28	\$49.28	\$36.22	\$36.22	\$36.22	\$49.28	\$59.14	\$59.14	\$49.28	\$49.28	\$59.14	\$59.14	\$59.14
2011	\$50.76	\$50.76	\$37.31	\$37.31	\$37.31	\$50.76	\$60.91	\$60.91	\$50.76	\$50.76	\$60.91	\$60.91	\$60.91
2012	\$52.28	\$52.28	\$38.43	\$38.43	\$38.43	\$52.28	\$62.74	\$62.74	\$52.28	\$52.28	\$62.74	\$62.74	\$62.74
2013	\$53.85	\$53.85	\$39.58	\$39.58	\$39.58	\$53.85	\$64.62	\$64.62	\$53.85	\$53.85	\$64.62	\$64.62	\$64.62
2014	\$55.47	\$55.47	\$40.77	\$40.77	\$40.77	\$55.47	\$66.56	\$66.56	\$55.47	\$55.47	\$66.56	\$66.56	\$66.56
2015	\$57.13	\$57.13	\$41.99	\$41.99	\$41.99	\$57.13	\$68.56	\$68.56	\$57.13	\$57.13	\$68.56	\$68.56	\$68.56
2016	\$58.85	\$58.85	\$43.25	\$43.25	\$43.25	\$58.85	\$70.61	\$70.61	\$58.85	\$58.85	\$70.61	\$70.61	\$70.61
2017	\$60.61	\$60.61	\$44.55	\$44.55	\$44.55	\$60.61	\$72.73	\$72.73	\$60.61	\$60.61	\$72.73	\$72.73	\$72.73
2018	\$62.43	\$62.43	\$45.89	\$45.89	\$45.89	\$62.43	\$74.91	\$74.91	\$62.43	\$62.43	\$74.91	\$74.91	\$74.91
2019	\$64.30	\$64.30	\$47.26	\$47.26	\$47.26	\$64.30	\$77.16	\$77.16	\$64.30	\$64.30	\$77.16	\$77.16	\$77.16
2020	\$66.23	\$66.23	\$48.68	\$48.68	\$48.68	\$66.23	\$79.48	\$79.48	\$66.23	\$66.23	\$79.48	\$79.48	\$79.48
2021	\$68.22	\$68.22	\$50.14	\$50.14	\$50.14	\$68.22	\$81.86	\$81.86	\$68.22	\$68.22	\$81.86	\$81.86	\$81.86
2022	\$70.26	\$70.26	\$51.64	\$51.64	\$51.64	\$70.26	\$84.32	\$84.32	\$70.26	\$70.26	\$84.32	\$84.32	\$84.32
2023	\$72.37	\$72.37	\$53.19	\$53.19	\$53.19	\$72.37	\$86.85	\$86.85	\$72.37	\$72.37	\$86.85	\$86.85	\$86.85
2024	\$74.54	\$74.54	\$54.79	\$54.79	\$54.79	\$74.54	\$89.45	\$89.45	\$74.54	\$74.54	\$89.45	\$89.45	\$89.45
2025	\$76.78	\$76.78	\$56.43	\$56.43	\$56.43	\$76.78	\$92.14	\$92.14	\$76.78	\$76.78	\$92.14	\$92.14	\$92.14
2026	\$79.08	\$79.08	\$58.13	\$58.13	\$58.13	\$79.08	\$94.90	\$94.90	\$79.08	\$79.08	\$94.90	\$94.90	\$94.90

**APPENDIX B**  
**TO**  
**POWER PURCHASE SALES AGREEMENT**  
**BETWEEN**  
**TELOCASET WIND POWER PARTNERS, LLC**  
**AND**  
**IDAHO POWER COMPANY**

**FACILITY, POINT OF DELIVERY, AND SITE DESCRIPTION**

The Project is known as the Elkhorn wind power project and is expected to have a maximum nameplate capacity of 104 megawatts (MW).

*Site Data*

The Site consists of approximately 23,900 acres in Union County, Oregon. The Site covers the following tax parcels:

05S40E00800  
05S40E03901  
05S40E03902  
05S40E03903  
05S40E04500  
05S40E04600  
05S40E04701  
05S40E05400  
05S40E05500  
06S39E00100  
06S40E00500  
06S40E00700  
06S40E00702  
06S40E00704  
06S40E00900  
06S40E02100  
06S40E02200

*Facility Description*

As proposed, the Project will have an installed nameplate capacity of up to 104MW and is expected to consist of 61 Vestas V82 wind turbine generators with a total capacity of 100.65MW. The Project's significant components include roads, foundations, underground and overhead electrical lines, grid interconnection facilities, a substation, an operations and maintenance (O&M) center, and associated supporting infrastructure and facilities.

Electrical power generated by the wind turbines will be transformed and collected through a network of underground and overhead cables that terminate at the Project substation.

Power from the wind turbines will be generated at 600 Volts (V). Power from the turbines is fed through a breaker panel at the turbine base inside the tower and is interconnected to a pad-mounted step-up transformer at the tower base that steps the voltage up to 34.5 kilovolts (kV).

For the 34.5 kV overhead power lines, a fused, switch-riser pole will be used to run the cables from the underground trench to the overhead conductors. At the substation, the electrical power from the entire wind plant is stepped up to transmission level at 230 kV and delivered to the point of interconnection.

#### ***Interconnection Facilities and Point of Delivery***

The point of interconnection is on Idaho Power Company's 230kV LaGrande-Brownlee line approximately seventeen (17) miles southeast of the LaGrande substation in Section 6, Township 6 South, Range 40 East as indicated on the attached generalized layout map.

The basic elements of the substation and interconnection facilities are a control house, a bank of main transformers, outdoor breakers, relaying equipment, high voltage bus work, steel support structures, and overhead lightning suppression conductors. All of these main elements will be installed on concrete foundations. The substation and interconnection facilities each consist of a graveled footprint area of approximately five (5) acres, a chain link perimeter fence, and an outdoor lighting system. The specific substation and interconnection facility components will be identified in the Interconnection Agreement.

Each turbine will be connected to a central Supervisory Control and Data Acquisition (SCADA) System, through a network of underground fiber optic cable.

An O&M facility will be located near Telocaset Lane at the center of the Project site. The O&M facility will include a main building with offices, spare parts storage, restrooms, a shop area, outdoor parking facilities, a turn around area for larger vehicles, outdoor lighting and a gated access with partial or full perimeter fencing.

**APPENDIX C**  
**TO**  
**POWER PURCHASE SALES AGREEMENT**  
**BETWEEN**  
**TELOCASET WIND POWER PARTNERS, LLC**  
**AND**  
**IDAHO POWER COMPANY**

**FORMS OF SELLER GUARANTY**

**FORM OF SELLER GUARANTY**  
**(\$1,000,000)**

\_\_\_\_\_, 200\_\_

Idaho Power Company  
PO Box 70  
Boise, ID 83707  
Fax: 208-388-6936

Ladies and Gentlemen:

The Goldman Sachs Group, Inc. (the "Guarantor"), a corporation duly organized under the laws of the state of Delaware, is the parent company of Telocaset Wind Power Partners, LLC, a limited liability company duly organized under the laws of the state of Delaware (the "Company"). Guarantor understands and acknowledges that Idaho Power Company, an Idaho corporation ("Buyer"), is not willing to enter into that certain Power Purchase Sales Agreement between the Company and Buyer dated as of the date hereof (the "Power Purchase Sales Agreement") unless and until Guarantor unconditionally and, subject to the provisions of the fifth and sixth paragraphs hereof, irrevocably guarantees the prompt and complete payment as and when due, whether by acceleration or otherwise, of the payment obligations, whether now in existence or hereafter arising, under the Power Purchase Sales Agreement. For value received, and to induce Buyer to enter into the Power Purchase Sales Agreement, Guarantor hereby unconditionally and, subject to the provisions of the fifth and sixth paragraphs hereof, irrevocably guarantees the prompt and complete payment as and when due, whether by acceleration or otherwise, of the payment obligations, whether now in existence or hereafter arising, under the Power Purchase Sales Agreement (which guaranty, along with the other terms and conditions set forth herein, is hereafter referred to as the "Guaranty"). This Guaranty is one of payment and not of collection. Capitalized terms used but not defined in this Guaranty have the meaning given to them in the Power Purchase Sales Agreement.

The maximum aggregate liability of the Guarantor in respect of amounts claimed by Buyer under or pursuant to this Guaranty shall at no time exceed an amount equal to One Million Dollars (\$1,000,000); provided, however, that Guarantor also guaranties payment in full (that is, without limitation as to amount) of any reasonable out-of-pocket legal fees, costs and/or expenses, whether at trial, on appeal or in any arbitration, by Buyer in connection with prevailing in enforcing the terms of this Guaranty.

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Buyer against, and any other notice to, the Company, the Guarantor or others.

Buyer may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of any obligation or liability of the Company to Buyer, including any modification or amendment to the Power Purchase Sales Agreement, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Company to Buyer, (3) exercise or refrain from exercising any rights against the Company or others, (4) fail to first take action against the Company for amounts due under the Power Purchase Sales Agreement, and/or (5) compromise or subordinate any obligation or liability of the Company to Buyer including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall terminate on the earlier to occur of (i) the substitution of an alternate form of Seller Performance Assurance in accordance with Section 12.2 of the Power Purchase Sales Agreement; (ii) the Operation Date; and (iii) the later of (A) the termination or expiration of the Power Purchase Sales Agreement and (B) the satisfaction of all obligations of the Company under the Power Purchase Sales Agreement. Notwithstanding the foregoing, the Guarantor further agrees that if at any time payment, or any part thereof, of any of the obligations guaranteed hereunder, is rescinded, is demanded to be returned and/or must otherwise be restored or returned by Buyer in connection with the bankruptcy, insolvency, dissolution, reorganization or similar proceeding of the Company, this Guaranty shall continue to be effective or be reinstated as the case may be; provided that this Guaranty may not be reinstated for any reason after its termination under clause (i) or (ii) of this paragraph.

Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part, without prior written consent of Buyer, and any purported assignment or delegation absent such consent is void, except for an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise. Upon any such delegation and assumption of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption.

In the event any payment owing to Buyer under the Power Purchase Sales Agreement or under this Guaranty is not promptly and completely paid as and when due, any indebtedness of Company to Guarantor and any payment or distribution right held by Guarantor against the Company shall be subordinated to the due and unpaid indebtedness to Buyer until paid in full. Guarantor shall have no right of subrogation until the Company's due and unpaid indebtedness to Buyer is paid in full.

This Guaranty constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between Guarantor and Buyer with respect to the subject

matter hereof. This Guaranty may not be modified except pursuant to a written instrument signed by Buyer and Guarantor. The execution, delivery and performance of this Guaranty have been duly authorized by all requisite corporate action on the part of the Guarantor. The provisions of this Guaranty are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and shall not affect the validity or enforceability of any other clause or provision.

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: \_\_\_\_\_  
Authorized Officer

**FORM OF SELLER GUARANTY**  
**(\$10,000,000)**

\_\_\_\_\_, 200\_\_

Idaho Power Company  
PO Box 70  
Boise, ID 83707  
Fax: 208-388-6936

Ladies and Gentlemen:

The Goldman Sachs Group, Inc. (the "Guarantor"), a corporation duly organized under the laws of the state of Delaware, is the parent company of Telocaset Wind Power Partners, LLC, a limited liability company duly organized under the laws of the state of Delaware (the "Company"). Guarantor understands and acknowledges that Idaho Power Company, an Idaho corporation ("Buyer"), is not willing to enter into that certain Power Purchase Sales Agreement between the Company and Buyer dated as of the date hereof (the "Power Purchase Sales Agreement") unless and until Guarantor unconditionally and, subject to the provisions of the fifth and sixth paragraphs hereof, irrevocably guarantees the prompt and complete payment as and when due, whether by acceleration or otherwise, of the payment obligations, whether now in existence or hereafter arising, under the Power Purchase Sales Agreement. For value received, and to induce Buyer to enter into the Power Purchase Sales Agreement, Guarantor hereby unconditionally and, subject to the provisions of the fifth and sixth paragraphs hereof, irrevocably guarantees the prompt and complete payment as and when due, whether by acceleration or otherwise, of the payment obligations, whether now in existence or hereafter arising, under the Power Purchase Sales Agreement (which guaranty, along with the other terms and conditions set forth herein, is hereafter referred to as the "Guaranty"). This Guaranty is one of payment and not of collection. Capitalized terms used but not defined in this Guaranty have the meaning given to them in the Power Purchase Sales Agreement.

The maximum aggregate liability of the Guarantor in respect of amounts claimed by Buyer under or pursuant to this Guaranty shall at no time exceed an amount equal to Ten Million Dollars (\$10,000,000); provided, however, that Guarantor also guaranties payment in full (that is, without limitation as to amount) of any reasonable out-of-pocket legal fees, costs and/or expenses, whether at trial, on appeal or in any arbitration, by Buyer in connection with prevailing in enforcing the terms of this Guaranty.

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Buyer against, and any other notice to, the Company, the Guarantor or others.

Buyer may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of any obligation or liability of the Company to Buyer, including any modification or amendment to the Power Purchase Sales Agreement, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Company to Buyer, (3) exercise or refrain from exercising any rights against the Company or others, (4) fail to first take action against the Company for amounts due under the Power Purchase Sales Agreement, and/or (5) compromise or subordinate any obligation or liability of the Company to Buyer, including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall terminate on the earlier to occur of (i) the substitution of an alternate form of Seller Performance Assurance in accordance with Section 12.2 of the Power Purchase Sales Agreement; and (ii) the later of (A) the termination or expiration of the Power Purchase Sales Agreement and (B) the satisfaction of all obligations of the Company under the Power Purchase Sales Agreement. Notwithstanding the foregoing, the Guarantor further agrees that if at any time payment, or any part thereof, of any of the obligations guaranteed hereunder, is rescinded, is demanded to be returned and/or must otherwise be restored or returned by Buyer in connection with the bankruptcy, insolvency, dissolution, reorganization or similar proceeding of the Company, this Guaranty shall continue to be effective or be reinstated as the case may be; provided that this Guaranty may not be reinstated for any reason after its termination under clause (i) of this paragraph.

Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part, without prior written consent of Buyer, and any purported assignment or delegation absent such consent is void, except for an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise. Upon any such delegation and assumption of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption.

In the event any payment owing to Buyer under the Power Purchase Sales Agreement or under this Guaranty is not promptly and completely paid as and when due, any indebtedness of Company to Guarantor and any payment or distribution right held by Guarantor against the Company shall be subordinated to the due and unpaid indebtedness to Buyer until paid in full. Guarantor shall have no right of subrogation until the Company's due and unpaid indebtedness to Buyer is paid in full.

This Guaranty constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between Guarantor and Buyer with respect to the subject

matter hereof. This Guaranty may not be modified except pursuant to a written instrument signed by Buyer and Guarantor. The execution, delivery and performance of this Guaranty have been duly authorized by all requisite corporate action on the part of the Guarantor. The provisions of this Guaranty are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and shall not affect the validity or enforceability of any other clause or provision.

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: \_\_\_\_\_  
Authorized Officer

**APPENDIX D**  
**TO**  
**POWER PURCHASE SALES AGREEMENT**  
**BETWEEN**  
**TELOCASET WIND POWER PARTNERS, LLC**  
**AND**  
**IDAHO POWER COMPANY**

**METERING EQUIPMENT**

*[See following page]*



**APPENDIX E**

**TO  
POWER PURCHASE SALES AGREEMENT  
BETWEEN  
TELOCASET WIND POWER PARTNERS, LLC  
AND  
IDAHO POWER COMPANY**

**90%-110% PERFORMANCE REQUIREMENTS**

1. **Determination of Surplus Energy Price.** The Buyer shall pay the Contract Price for Net Energy from the Seller's Facility in accordance with the Agreement. For Surplus/Shortfall Energy only, the Buyer shall pay the Surplus Energy Price, which shall be calculated in accordance with this Appendix and used in lieu of the Contract Price solely with respect to the Surplus/Shortfall Energy as defined in this Appendix.

2. **Definitions.** The following defined terms (as indicated by initial capitalization) shall have the meaning given to them in this Appendix.

**"Surplus Energy Price"** – For all Surplus/Shortfall Energy, Buyer shall pay to the Seller the current month's Market Energy Cost or the Contract Price specified in Article 5 of this Agreement, whichever is lower.

**"Market Energy Cost"** is defined as eighty-five percent (85%) of the load weighted average of the daily on-peak and off-peak Dow Jones Mid-Columbia Index (Dow Jones Mid-C Index) prices for non-firm energy. If the Dow Jones Mid-Columbia Index price is discontinued by the reporting agency, the Parties will mutually agree upon a replacement index, which is similar to the Dow Jones Mid-Columbia Index. The selected replacement index will be consistent with other similar agreements and a commonly used index by the electrical industry.

**"Surplus/Shortfall Energy"** is defined as either (1) Net Energy produced by the Seller's Facility and delivered to Buyer pursuant to this Agreement during the calendar month to the extent such Net Energy exceeds one hundred ten percent (110%) of the monthly Net Energy Target for the corresponding calendar month specified pursuant to this Appendix, or (2) if the Net Energy produced by the Seller's Facility and delivered to Buyer pursuant to this Agreement during the calendar month is less than ninety percent (90%) of the monthly Net Energy Target for the corresponding calendar month specified pursuant to this Appendix, then all Net Energy delivered by the Facility to the Buyer electrical system for that given month.

“Initial Date” – is defined as the first day of the calendar month following the date on which the Seller fails to timely cure a default as determined under Section 6.3.1 and the terms and conditions within this Appendix are therefore implemented in lieu of Sections 6.2, 6.3 and 6.4 of the Agreement.

“Initial Year” – is defined as twelve (12) calendar months starting with the Initial Date.

“Net Energy Target” is defined as the monthly Net Energy that the Seller intends to produce and deliver to the Point of Delivery as specified pursuant to this Appendix.

“Initial Year Monthly Net Energy Targets” – This term shall have the meaning given to it in Section 3 below.

3. **Monthly Net Energy Targets.** Seller shall provide the Buyer with the monthly Net Energy Targets for the Initial Year within thirty (30) days after the Initial Date (the “Initial Year Monthly Net Energy Targets”). If the Seller does not provide the Initial Year Monthly Net Energy Targets as specified, thirty percent (30%) of the Facility’s nameplate rating multiplied by the hours for each month will be used to establish each month’s Net Energy Target for the Initial Year (subject to adjustment under Section 5 of this Appendix).

4. **Ongoing Monthly Net Energy Targets** – Beginning at the end of the ninth (9<sup>th</sup>) month following the Initial Date and every three (3) months thereafter, the Seller shall provide Buyer with a minimum of three additional calendar months of Net Energy Targets. This information will be provided to Buyer by written notice in accordance with Article 28, no later than the fifth (5<sup>th</sup>) day following the end of the previous month. If the Seller does not provide the Ongoing Monthly Net Energy Targets in a timely manner, Buyer will use the monthly production (actual or, if actual numbers are not available, calculated as contemplated in Section 9.3) for the same three (3) months period in the preceding year.

5. **Seller’s Adjustment of Net Energy Target(s)** – Except as provided herein, beginning with the end of the third (3<sup>rd</sup>) month after the Initial Date and at the end of every third month thereafter, the Seller may not revise the immediate next three (3) months of previously provided Net Energy Targets. Notwithstanding the foregoing, by written notice given to Buyer in accordance with Article 28, no later than 5:00 PM of the fifth (5<sup>th</sup>) day following the end of the previous month, the Seller may revise all other previously-provided Net Energy Targets. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change with respect to the immediate next three months of previously provided Net Energy Targets.

6. **Credits to Net Energy Target** – Buyer shall adjust the applicable month’s Net Energy Target to reflect the same reduction as has occurred in the actual Net Energy deliveries if Net Energy deliveries by the Seller to the Buyer are reduced as a result of:

(a) *Force majeure* affecting the Seller, Buyer, or Interconnection Provider;

(b) Seller's declaration and Buyer's acceptance of a Suspension of Energy Deliveries;

(c) Curtailment of the Seller's Net Energy deliveries other than for Seller's default; or

(d) Buyer's default under this Agreement.

7. **Seller Declared Suspension of Energy Deliveries** – If the Seller's Facility experiences a forced outage due to equipment failure which is not caused by an event of *force majeure* as defined within the Agreement or by Seller's failure to maintain the Facility in accordance with Good Utility Practices, and the magnitude of the forced outage has the potential of reducing the Seller's Net Energy to be less than ninety percent (90%) of the Net Energy Target for a given calendar month, Seller may, after giving notice as described below, temporarily suspend all deliveries of Net Energy to Buyer from the Facility or from individual generation unit(s) within the Facility impacted by the forced outage for a period of not less than forty-eight (48) hours to correct the forced outage condition ("Declared Suspension of Energy Deliveries"). The Seller's Declared Suspension of Energy Deliveries will begin at the start of the next full hour following the Seller's telephone notification as described below and will continue for the time as specified (not less than forty-eight (48) hours) in the written notification provided by the Seller. In the month(s) in which the Declared Suspension of Energy occurred, the Net Energy that would have been delivered but for the Declared Suspension shall be calculated in the manner contemplated in Section 9.3.

8. **Seller's Notification of a Declared Suspension of Energy Deliveries** – If the Seller desires to initiate a Declared Suspension of Energy Deliveries as provided in this Appendix, the Seller will notify the Designated Dispatch Facility by telephone. The beginning hour of the Declared Suspension of Energy Deliveries will be at the earliest the next full hour after making telephone contact with Buyer. The Seller will, within twenty-four (24) hours after the telephone contact, provide Buyer a written notice in accordance with Article 28 that will contain the beginning hour and duration of the Declared Suspension of Energy Deliveries and a description of the conditions that caused the Seller to initiate a Declared Suspension of Energy Deliveries. Buyer will review the documentation provided by the Seller to determine Buyer's acceptance of the described forced outage as qualifying for a Declared Suspension of Energy Deliveries as specified in this Appendix. Buyer's acceptance of the Seller's forced outage as an acceptable forced outage will be based upon the clear documentation provided by the Seller that the forced outage is not due do an event of *force majeure* or by Seller's failure to maintain the Facility in accordance with Good Utility Practices.

**APPENDIX F**

**TO**

**POWER PURCHASE SALES AGREEMENT**

**BETWEEN**

**TELOCASET WIND POWER PARTNERS, LLC**

**AND**

**IDAHO POWER COMPANY**

**LIQUIDATED DAMAGES CAPS<sup>1</sup>**

Contract Year	Net Energy Shortfall Damages (\$/MWh)	Net Energy Shortfall Damages Cap (\$)
1	\$ 0.00	N/A
2	\$ 0.00	N/A
3	\$ 0.00	N/A
4	\$ 25.00	\$500,000
5	25.75	515,000
6	26.52	530,450
7	27.32	546,364
8	28.14	562,755
9	28.98	579,638
10	29.85	597,027
11	30.75	614,938
12	31.67	633,386
13	32.62	652,388
14	33.60	671,960
15	34.61	692,119
16	35.65	712,883
17	36.72	734,269
18	37.82	756,297
19	38.95	778,986
20	40.12	802,356

<sup>1</sup> The damage amounts listed in the table refer to the Contract Year in which damages, if any, are to be paid. For example, if Seller is required to pay Buyer Net Shortfall Damages as a result of not meeting its Delivery Obligations for Contract Year 3, the amount to be paid should be \$25.75/MWh. Except as expressly provided in Section 6.5.3 for transitional periods, the damage cap is \$250,000 per Contract Year when the provisions of Appendix E have been implemented.

**APPENDIX G**  
**TO**  
**POWER PURCHASE SALES AGREEMENT**  
**BETWEEN**  
**TELOCASET WIND POWER PARTNERS, LLC**  
**AND**  
**IDAHO POWER COMPANY**

**ANALYSIS AND EXAMPLES**  
**OF**  
**ANNUAL ENERGY DELIVERY GUARANTEE**

*The examples set forth in this Appendix are for the purposes of illustration only and do not constitute a representation, warranty or covenant concerning matters assumed for purposes of each example.*

Key:

DO = Delivery Obligation  
GO = Guaranteed Output  
LDV = Liquidated Damages Value  
NESD = Net Energy Shortfall Damages  
SE = Shortfall Energy  
TAFE = Total Annual Facility Energy  
TUP = True-Up Period  
TUS = True-Up Shortfall  
x = Year at Issue.  
x+1 = Next year after year at issue.  
x+2 = Second year after year at issue.  
Y = Year

**\* ANNUAL ENERGY DELIVERY GUARANTEE ANALYSIS \***

**A. Analysis of whether Seller has met GO for Y<sub>x</sub>:**

1. If TAFE for Y<sub>x</sub> is  $\geq$  GO for Y<sub>x</sub>, then Seller shall be deemed to have met its energy delivery obligation for Y<sub>x</sub>, and analysis ends.

2. If TAFE for  $Y_x$  is  $<$  GO for  $Y_x$ , then Seller shall be in jeopardy of failing its energy delivery obligation for  $Y_x$  and analysis continues to determine whether Seller may be subject to NESD.

**B. Calculate SE( $Y_x$ ):**

1.  $GO - TAFE(Y_x) = SE(Y_x)$ .

**C. Analysis of whether Seller is liable for NESD:**

1. Compare TAFE during TUP to DO during TUP:

a. Calculate TAFE for TUP ( $TAFE_{TUP}$ ):

$$(TAFE_{TUP}) = TAFE(Y_x) + TAFE(Y_{x+1}) + TAFE(Y_{x+2})$$

b. Calculate delivery obligation for TUP ( $DO_{TUP}$ ):

$$(DO_{TUP}) = GO(Y_x) + GO(Y_{x+1}) + GO(Y_{x+2})$$

c. If ( $TAFE_{TUP}$ ) is  $\geq$  ( $DO_{TUP}$ ) then Seller shall be deemed to have met its energy delivery obligation for  $Y_x$ , and analysis ends.

d. If ( $TAFE_{TUP}$ ) is  $<$  ( $DO_{TUP}$ ) then Seller shall be deemed to have failed its energy delivery obligation for  $Y_x$  and analysis continues to determine the amount of NESD that Seller must compensate Buyer.

**D. Calculate Seller's liable for NESD:**

1. Calculate liability for NESD:

$$GO - TAFE(Y_x) = SE(Y_x)$$

$$(DO_{TUP}) - (TAFE_{TUP}) = TUS_{TUP}$$

2. Determine lesser of  $SE(Y_x)$  and  $TUS_{TUP}$

If  $SE(Y_x) \geq TUS_{TUP}$ , use  $SE(Y_x)$  for damage calculation.

If  $SE(Y_x) < TUS_{TUP}$ , use  $TUS_{TUP}$  for damage calculation.

3. Calculate amount of NESD for  $Y_x$ , or NESD( $Y_x$ ):

$$NESD(Y_x) = [\text{the lesser of } SE(Y_x) \text{ or } TUS_{TUP}] \times LDV$$

**E. Limitations**

1. The LDV is \$25.00/MWh beginning for  $Y_2$ <sup>1</sup>. The LDV will be escalated at a rate of three percent (3%) annually thereafter.

<sup>1</sup> See Appendix F for damage values.

2. NESD shall be capped at \$500,000 for any given year starting with Contract Year 4. Thereafter, the NESD cap will be escalated at a rate of three (3%) annually thereafter.

3. The aggregate amount of NESD is subject to a PPA term cap of \$15,000,000 for NESD and Delay Damages.

4. Seller may not use any TAFE amounts more than once in any Annual Energy Delivery Guarantee Analysis during the Term of this Agreement. For example, if Seller uses some TAFE amounts to reduce (or eliminate) Seller's liability for a NESD amount payable during a particular True-Up Period, those same TAFE amounts cannot be reused for purposes of determining whether Seller has met its Delivery Obligation during another True-Up Period.

5. During any Contract Year where the provisions of Appendix E are implemented and the provisions concerning Seller's Guaranteed Output and the Annual Energy Delivery Guarantee Analysis in this Appendix G are in effect, the aggregate amount of an Aggregate Price Adjustment under this Agreement in any Contract Year when combined with any Net Energy Shortfall Damages owed in the same Contract Year shall not exceed \$500,000 per Contract Year.

\* \* \*

**\* EXAMPLES OF ANNUAL ENERGY DELIVERY GUARANTEE ANALYSIS \***

**Scenario #1 Assumptions:**

GO = 196,000 MWh  
LDV = \$25.00/MWh  
TAFE(Y<sub>x</sub>) = 200,000 MWh  
TAFE(Y<sub>x+1</sub>) = 600,000 MWh  
TAFE(Y<sub>x+2</sub>) = 600,000 MWh

**Scenario #1 Analysis:**

- (i) Is TAFE for Y<sub>x</sub> is  $\geq$  GO for Y<sub>x</sub>?  
Yes, 200,000 MWh is  $\geq$  196,000 MWh.
- (ii) Seller shall be deemed to have met its energy delivery obligation for Y<sub>x</sub>, and analysis ends pursuant to Paragraph A.1 above.

**Scenario #2 Assumptions:**

GO = 196,000 MWh  
LDV = \$25.00/MWh  
TAFE(Y<sub>x</sub>) = 100,000 MWh  
TAFE(Y<sub>x+1</sub>) = 400,000 MWh  
TAFE(Y<sub>x+2</sub>) = 600,000 MWh

**Scenario #2 Analysis:**

- (i) Is TAFE for Y<sub>x</sub> is  $\geq$  GO for Y<sub>x</sub>?  
No, 100,000 MWh is  $<$  196,000 MWh.
- (ii) Seller shall be in jeopardy of failing its energy delivery obligation for Y<sub>x</sub> and analysis continues to determine whether Seller may be subject to NESD.
- (iii) Calculate SE(Y<sub>x</sub>):  $GO - TAFE(Y_x) = SE(Y_x)$ .  
196,000 MWh - 100,000 MWh = 96,000 MWh of SE for (Y<sub>x</sub>)  
If Y<sub>x</sub> at issue is a year prior to Y<sub>18</sub>, Seller may use TUP in an attempt to meet its energy delivery obligation for Y<sub>x</sub>.
- (iv) Compare TAFE during TUP to DO during TUP:  
a)  $(TAFE_{TUP}) = TAFE(Y_x) + TAFE(Y_{x+1}) + TAFE(Y_{x+2})$   
 $(TAFE_{TUP}) = 100,000 \text{ MWh} + 400,000 \text{ MWh} + 600,000 \text{ MWh}$   
 $(TAFE_{TUP}) = 1,100,000 \text{ MWh}$

For purposes of determining the TAFE<sub>(TUP)</sub> for a particular TUP, Seller may not use any TAFE amounts more than once to reduce its NESD liability during the Term of this Agreement.

- b)  $(DO_{TUP}) = GO(Y_x) + GO(Y_{x+1}) + GO(Y_{x+2})$ .  
 $(DO_{TUP}) = 196,000 \text{ MWh} + 196,000 \text{ MWh} + 196,000 \text{ MWh}$   
 $(DO_{TUP}) = 588,000 \text{ MWh}$
- c)  $(TAFE_{TUP})$  of 1,100,000 MWh is  $\geq$   $(DO_{TUP})$  of 588,000 MWh thus Seller is deemed to have met its energy delivery obligation for Y<sub>x</sub>, and analysis ends pursuant to Section C.1.c.

### Scenario #3 Assumptions:

GO	= 196,000 MWh
LDV	= \$25.00 / MWh
TAFE(Y <sub>x</sub> )	= 120,000 MWh
TAFE(Y <sub>x+1</sub> )	= 200,000 MWh
TAFE(Y <sub>x+2</sub> )	= 200,000 MWh

### Scenario #3 Analysis:

- (i) Is TAFE for Y<sub>x</sub> is  $\geq$  GO for Y<sub>x</sub>?  
No, 120,000 MWh is  $<$  196,000 MWh.
- (ii) Seller shall be in jeopardy of failing its energy delivery obligation for Y<sub>x</sub> and analysis continues to determine whether Seller may be subject to NESD.
- (iii) Calculate SE(Y<sub>x</sub>):  $GO - TAFE(Y_x) = SE(Y_x)$ .  
196,000 MWh - 120,000 MWh = 76,000 MWh of SE for (Y<sub>x</sub>)  
If Y<sub>x</sub> at issue is a year prior to Y<sub>18</sub>, Seller may use TUP in an attempt to meet its energy delivery obligation for Y<sub>x</sub>.

- (iv) Compare TAFE during TUP to DO during TUP:
- a)  $(TAFE_{TUP}) = TAFE(Y_x) + TAFE(Y_{x+1}) + TAFE(Y_{x+2})$   
 $(TAFE_{TUP}) = 120,000 \text{ MWh} + 200,000 \text{ MWh} + 200,000 \text{ MWh}$   
 $(TAFE_{TUP}) = 520,000 \text{ MWh}$

For purposes of determining the TAFE<sub>(TUP)</sub> for a particular TUP, Seller may not use any TAFE amounts more than once to reduce its NESD liability during the Term of this Agreement.

- b)  $(DO_{TUP}) = GO(Y_x) + GO(Y_{x+1}) + GO(Y_{x+2})$   
 $(DO_{TUP}) = 196,000 \text{ MWh} + 196,000 \text{ MWh} + 196,000 \text{ MWh}$   
 $(DO_{TUP}) = 588,000 \text{ MWh}$
- c)  $(DO_{TUP})$  of 588,000 MWh is  $\geq$   $(TAFE_{TUP})$  of 520,000 MWh thus Seller is has failed to meet its energy delivery obligation for Y<sub>x</sub>, and analysis continues to determine the amount of NESD that Seller must compensate Buyer.
- (v) Calculate Seller's liable for NESD:
- a) Calculate liability for NESD:  
 $GO - TAFE(Y_x) = SE(Y_x)$   
196,000 MWh - 120,000 MWh = 76,000 MWh of SE for (Y<sub>x</sub>)  
 $(DO_{TUP}) - (TAFE_{TUP}) = TUS_{TUP}$   
588,000 MWh - 520,000 MWh = 68,000 MWh

- b) Determine lesser of SE(Y<sub>x</sub>) and TUS<sub>TUP</sub>  
 68,000 MWh of TUS<sub>TUP</sub> < 76,000 MWh of SE for (Y<sub>x</sub>)  
 Thus, use 68,000 MWh for calculation of NESD for Y<sub>x</sub>
- c) Calculate amount of NESD for Y<sub>x</sub> (NESD(Y<sub>x</sub>)):  
 NESD(Y<sub>x</sub>) = [ lesser of SE(Y<sub>x</sub>) or TUS<sub>TUP</sub> ] X LDV  
 NESD(Y<sub>x</sub>) = 68,000 MWh X \$25.00/MWh  
 NESD(Y<sub>x</sub>) = \$1,700,000

Pursuant to PPA, NESD(Y<sub>x</sub>) is capped at \$500,000 (plus three percent (3%) escalation if applicable) for Y<sub>x</sub> or, subject to the \$15,000,000 cap in aggregate damages during term of PPA.

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**Scenario #4 Assumptions:**

GO	= 196,000 MWh
LDV	= \$25.00 / MWh
TAFE(Y <sub>x</sub> )	= 120,000 MWh
TAFE(Y <sub>x+1</sub> )	= 200,000 MWh
TAFE(Y <sub>x+2</sub> )	= 200,000 MWh
TAFE(Y <sub>x</sub> ) used in prior TUP	= 20,000 MWh

**Scenario #4 Analysis:**

- (i) Is TAFE for Y<sub>x</sub> is  $\geq$  GO for Y<sub>x</sub> ?  
 No, 120,000 MWh is < 196,000 MWh.
- (ii) Seller shall be in jeopardy of failing its energy delivery obligation for Y<sub>x</sub> and analysis continues to determine whether Seller may be subject to NESD.
- (iii) Calculate SE(Y<sub>x</sub>): GO – TAFE(Y<sub>x</sub>) = SE(Y<sub>x</sub>).  
 196,000 MWh – 120,000 MWh = 76,000 MWh of SE for (Y<sub>x</sub>)  
 If Y<sub>x</sub> at issue is a year prior to Y<sub>18</sub>, Seller may use TUP in an attempt to meet its energy delivery obligation for Y<sub>x</sub>.
- (iv) Compare TAFE during TUP to DO during TUP:  
 a) (TAFE<sub>TUP</sub>) = TAFE(Y<sub>x</sub>) + TAFE(Y<sub>x+1</sub>) + TAFE(Y<sub>x+2</sub>)  
 (TAFE<sub>TUP</sub>) = 120,000 MWh + 200,000 MWh + 200,000 MWh  
 (TAFE<sub>TUP</sub>) = 520,000 MWh

For purposes of determining the TAFE<sub>(TUP)</sub> for a particular TUP, Seller may not use any TAFE amounts more than once to reduce its NESD liability during the Term of this Agreement. In this Scenario #4, Seller used 20,000 MWh in prior TUP. Redo (iv) accounting for prior use of 20,000 MWh.

Compare TAFE during TUP to DO during TUP:

- a)  $(TAFE_{TUP}) = [TAFE(Y_x) \text{ less } 20,000\text{MWh}] + TAFE(Y_{x+1}) + TAFE(Y_{x+2})$   
 $(TAFE_{TUP}) = [120,000 \text{ MWh} - 20,000\text{MWh}] + 200,000 \text{ MWh}$   
 $+ 200,000 \text{ MWh}$   
 $(TAFE_{TUP}) = 500,000 \text{ MWh}$
- b)  $(DO_{TUP}) = GO(Y_x) + GO(Y_{x+1}) + GO(Y_{x+2})$   
 $(DO_{TUP}) = 196,000 \text{ MWh} + 196,000 \text{ MWh} + 196,000 \text{ MWh}$   
 $(DO_{TUP}) = 588,000 \text{ MWh}$
- c)  $(DO_{TUP})$  of 588,000 MWh is  $\geq$   $(TAFE_{TUP})$  of 500,000 MWh thus Seller is has failed to meet its energy delivery obligation for  $Y_x$ , and analysis continues to determine the amount of NESD that Seller must compensate Buyer.

(v) Calculate Seller's liable for NESD:

- a) Calculate liability for NESD:  
 $GO - TAFE(Y_x) = SE(Y_x)$   
 $196,000 \text{ MWh} - 100,000 \text{ MWh} = 96,000 \text{ MWh of SE for } (Y_x)$   
 $(DO_{TUP}) - (TAFE_{TUP}) = TUS_{TUP}$   
 $588,000 \text{ MWh} - 500,000 \text{ MWh} = 88,000 \text{ MWh}$
- b) Determine lesser of  $SE(Y_x)$  and  $TUS_{TUP}$   
 $88,000 \text{ MWh of } TUS_{TUP} < 96,000 \text{ MWh of SE for } (Y_x)$   
 Thus, use 88,000 MWh for calculation of NESD for  $Y_x$
- c) Calculate amount of NESD for  $Y_x$  ( $NESD(Y_x)$ ):  
 $NESD(Y_x) = [ \text{lesser of } SE(Y_x) \text{ or } TUS_{TUP} ] \times LDV$   
 $NESD(Y_x) = 88,000 \text{ MWh} \times \$25.00/\text{MWh}$   
 $NESD(Y_x) = \$2,200,000$

Pursuant to PPA,  $NESD(Y_x)$  is capped at \$500,000 (plus three percent (3%) escalation if applicable) for  $Y_x$  or, subject to the \$15,000,000 cap in aggregate damages during term of PPA.

\* \* \*

**APPENDIX H**  
**TO**  
**POWER PURCHASE SALES AGREEMENT**  
**BETWEEN**  
**TELOCASET WIND POWER PARTNERS, LLC**  
**AND**  
**IDAHO POWER COMPANY**

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**APPENDIX I**  
**TO**  
**POWER PURCHASE SALES AGREEMENT**  
**BETWEEN**  
**TELOCASET WIND POWER PARTNERS, LLC**  
**AND**  
**IDAHO POWER COMPANY**

**TRANSFERRED ASSETS**

**APPENDIX J  
TO  
POWER PURCHASE SALES AGREEMENT  
BETWEEN  
TELOCASET WIND POWER PARTNERS, LLC  
AND  
IDAHO POWER COMPANY**

**CONDITIONS PRECEDENT TO ALTERNATIVE PRICING**

This Appendix J sets forth the conditions under which Buyer shall be able to elect to have the Post-Operation Date Alternative Pricing set forth in Appendix A be the effective Contract Price, or return to use of the Post Operation Date Pricing for the Contract Price as provided in paragraph 3 of this Appendix J.

1. Notice. Buyer shall provide a minimum of thirty (30) days written notice to Seller that it is electing to use the Post Operative Date Alternative Pricing pursuant to Section 5.4 of the Agreement. Buyer's notice shall be signed by an authorized representative of Buyer with authority to bind the Buyer and shall include (1) a statement by which Buyer expressly accepts and agrees to be bound by the terms and conditions set forth in Appendix J at paragraph 2, (2) a statement of the date that the Contract Price for Net Energy will begin being priced under the "Post Operation Date Alternative Pricing" set forth in Appendix A and the provisions of paragraph 2 of this Appendix J are effective, and (3) representations and warranties that Buyer has duly authorized the execution and delivery of the election notice, that the person signing the election notice on behalf of Buyer is authorized to execute and deliver the election notice on behalf of Buyer, and that the election notice and paragraph 2 of this Appendix J shall be binding and enforceable obligations of Buyer as of the effective date set forth in the election notice.

2. Terms and Conditions. Buyer agrees to the following terms and conditions:

2.1 Timing. The date upon which the Contract Price for Net Energy will begin being priced under the Post-Operation Date Alternative Pricing set forth in Appendix A and the provisions of paragraph 2 of this Appendix J are to be effective must be the first day of a month.

2.2 Curtailement. The provisions at Section 9.2 shall be replaced with the following language:

*9.2 Payment for Certain Curtailments. If delivery of Net Energy is curtailed as a result of (a) congestion on the transmission system (the Parties agree that congestion does not mean the pro rata curtailment of all firm schedules across the*

*restricted transmission path, unless the pro rata curtailment is the result of an Interconnection Failure or Emergency that falls within the scope of Section 9.2(b)), or (b) either an Interconnection Failure or Emergency that is caused by or results from an act or omission of Interconnection Provider or Buyer, which act or omission is not required as a result of a Seller default or by force majeure:*

*9.2.1 the Parties shall use commercially reasonable efforts to determine the quantity of Net Energy that, based on the wind data, would have been produced by the Facility during the Curtailment Period (the "Deemed Delivered Net Energy")*; and

*9.2.2 Buyer shall pay to Seller a sum equal to:*

*9.2.2.1 all amounts that Seller would have received from Buyer under this Agreement had the Deemed Delivered Net Energy been produced at the Facility and delivered to the Point of Delivery during the Curtailment Period; plus*

*9.2.2.2 the Tax Benefits associated with such Deemed Delivered Net Energy.*

*If the Facility is curtailed for a reason other than as provided in Section 9.2(a) or (b), the Parties shall cooperate in good faith to develop a commercially reasonable protocol to enable the Facility to void curtailment in those circumstances. Deemed Delivered Net Energy shall in any case be used for the purposes of calculating Lost Output. On or before the fifth (5th) Business Day of any calendar month following a month in which a curtailment occurred, Buyer shall provide Seller with notice stating the cause of the curtailment.*

2.3 Non-operational Provisions. In addition to the replacement language for Section 9.2 (as outlined in paragraph 2.1 of this Appendix J), during the period in which the Alternative Contract Price is effective, the following sections of the Agreement will not be operational:

2.3.1 Section 1.42 ("Market Price of Energy")

2.3.2 Section 1.65 ("Transaction Costs")

3. Return to Post-Operation Date Pricing. At any time during the Term of the Agreement when the Post-Operation Date Alternative Pricing is the effective Contract Price,

Buyer shall provide a minimum of thirty (30) days written notice to Seller that it is electing to return to the use of the Post-Operative Date Pricing. Buyer's notice under this paragraph 3 shall be signed by an authorized representative of Buyer with authority to bind the Buyer and shall include (1) a statement by which Buyer expressly accepts and agrees to be bound by Sections 9.2, 1.42 (Market Price of Energy) and 1.65 (Transaction Costs) of the original Agreement in lieu of paragraph 2 of this Appendix J, (2) a statement of the date that the Contract Price for Net Energy will resume being priced under the "Post Operation Date Pricing" set forth in Appendix A (which date must be the first day of a calendar month), and (3) representations and warranties that Buyer has duly authorized the execution and delivery of the election notice, that the person signing the election notice on behalf of Buyer is authorized to execute and deliver the election notice on behalf of Buyer, and that the election notice and the resulting return to Post-Operative Date Pricing and Sections 9.2, 1.42 (Market Price of Energy) and 1.65 (Transaction Costs), shall be binding and enforceable obligations of Buyer as of the effective date set forth in the election notice.