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IDAHO PUBLIC  
UTILITIES COMMISSION

**JASON B. WILLIAMS**  
Corporate Counsel  
[jwilliams@idahopower.com](mailto:jwilliams@idahopower.com)

April 11, 2012

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Re: Case No. IPC-E-12-02  
*IN THE MATTER OF THE PETITION OF HOKU MATERIALS, INC., FOR  
REPARATION AND REFORMATION OF ITS AMENDED SPECIAL  
CONTRACT WITH IDAHO POWER COMPANY*

Dear Ms. Jewell:

On March 15, 2012, the Idaho Public Utilities Commission ("Commission") issued Order No. 32486 which approved a settlement stipulation ("Settlement Stipulation") between Idaho Power Company ("Idaho Power") and Hoku Materials, Inc. ("Hoku") in the above-captioned proceeding. As part of Order No. 32486, the Commission required that Idaho Power and Hoku revise the existing amended special contract to incorporate the terms and conditions of the Settlement Stipulation within 30 days of the date Order No. 32486 was issued. Enclosed please find a copy of the Second Amended and Restated Electric Service Agreement Between Idaho Power and Hoku. In addition, Idaho Power is simultaneously submitting a tariff advice updating Schedule 32.

Please contact me if you have any questions related to this matter.

Very truly yours,



Jason B. Williams

JBW:csb  
Enclosures  
cc: Service List

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of April 2012 I served a true and correct copy of the within and foregoing LETTER TO JEAN JEWELL DATED APRIL 11, 2012, upon the following named parties by the method indicated below, and addressed to the following:

**Commission Staff**

Donald L. Howell, II  
Deputy Attorney General  
Idaho Public Utilities Commission  
472 West Washington (83702)  
P.O. Box 83720  
Boise, Idaho 83720-0074

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email Don.Howell@puc.idaho.gov

**Hoku Materials, Inc.**

Dean J. Miller  
McDEVITT & MILLER LLP  
420 East Bannock (83702)  
P.O. Box 2564  
Boise, Idaho 83701

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email joe@mcdevitt-miller.com  
heather@mcdevitt-miller.com

  
\_\_\_\_\_  
Jason B. Williams

SECOND AMENDED AND RESTATED ELECTRIC SERVICE AGREEMENT  
BETWEEN  
IDAHO POWER COMPANY  
AND  
HOKU MATERIALS, INC

THIS SECOND AMENDED AND RESTATED AGREEMENT FOR ELECTRIC SERVICE ("Agreement") is executed on this Nov 11, 2012 by HOKU MATERIALS, INC, a Delaware Corporation ("Hoku") and IDAHO POWER COMPANY, an Idaho Corporation ("Idaho Power"). In consideration of the mutual covenants hereinafter set forth, the parties hereby agree as follows:

SECTION 1 - SPECIAL CONTRACT

1.1 This Agreement is a Special Contract. This Agreement supersedes and replaces the Amended and Restated Electric Service Agreement Between Idaho Power Company and Hoku Materials, Inc., dated June 19, 2009.

SECTION 2 – DEFINITIONS

When used in this Agreement:

2.1. "Balancing Mechanism" shall mean the mechanism Idaho Power uses to track and accrue on a monthly basis the difference between: 1) the First Block minimum energy charges allocable to Idaho Power's Idaho jurisdictional customers excluding all first and second block demand charge that Hoku would have been required to pay under the Amended and Restated Electric Service Agreement dated June 19, 2009 charges; and 2) the Modified Minimum Billed Energy Charge, excluding first and second block demand charges, as required under this Agreement.

2.2. "Commission" shall mean the Idaho Public Utilities Commission or its successor agency.

2.3. "Construction Agreement" shall mean that certain Agreement for Construction of Hoku Electric Substation and Associated Facilities dated as of December 28, 2007, by and between Hoku and Idaho Power, as such may be amended from time to time.

2.4. "Contract Load Factor" shall mean 90 percent for purposes of establishing the energy blocks for monthly billing.

2.5. "Deferral Period" shall be the time period beginning January 1, 2012 and continuing through June 30, 2013.

2.6. "Embedded Date" shall mean December 1, 2013.

2.7. "Embedded Rate" shall mean the Second Block Contract Demand and Second Block Energy rates detailed in Idaho Power's then-effective Schedule 32.

2.8. "Excess Demand" shall mean the average kilowatts supplied during the coincident 15-consecutive-minute period of maximum use each day, adjusted for Power Factor, which exceeds the Total Contract Demand.

2.9. "Excess Energy" shall mean any kilowatt-hours of energy supplied to the Hoku Facility during the monthly billing period as measured by the metering equipment located at the Points of Delivery that exceeds the sum of the First Block Energy and the Second Block Energy.

2.10. "First Block Contract Demand" shall mean the monthly number of kilowatts Idaho Power has agreed to make available to the Hoku Facility in accordance with the Scheduled Contract Demand in Section 6.

2.11. "First Block Energy" shall mean the kilowatt-hours determined by multiplying the First Block Contract Demand by the number of hours in the billing period multiplied by the Contract Load Factor.

2.12. "Hoku Facility" shall mean the Hoku Polysilicon Production complex located on One Hoku Way, Pocatello, Idaho.

2.13. "Interconnection Facilities" shall mean all facilities which are reasonably required by Prudent Electrical Practices and the National Electric Safety Code to interconnect and deliver electrical power and energy to the Hoku Facility, including, but not limited to, transmission facilities, substation facilities and metering equipment.

2.14. "Minimum Billed Energy" shall mean the number of kilowatt-hours determined by multiplying 50% of the Total Contract Demand for the billing month by the number of hours in the billing month at the Contract Load Factor.

2.15. "Modified Minimum Billed Energy Charge" shall mean Eight-Hundred Thousand Dollars (\$800,000).

2.16. "Points of Delivery" shall mean the locations specified in paragraph 5.2 where the electrical facilities owned by Hoku are interconnected to the electrical facilities owned by Idaho Power and where power and energy are delivered by Idaho Power for the purpose of providing electrical service for the operations of the Hoku Facility.

2.17. "Power Factor" shall mean the percentage obtained by dividing the maximum demand recorded in kW by the corresponding kilovolt-ampere (kVa) demand established by Hoku.

2.18. "Prudent Electrical Practices" shall mean those practices, methods and equipment that are commonly and ordinarily used in electrical engineering and utility operation to operate electrical equipment and deliver electric power and energy with safety, dependability, efficiency and economy.

2.19. "Schedule 32" shall mean the Hoku tariff schedule of rates and charges or its successor schedules.

2.20. "Scheduled Contract Demand" is defined in Section 6.1.1 below.

2.21. "Second Block Contract Demand" shall mean 25,000 kilowatts.

2.22. "Second Block Energy" shall mean the total kilowatt-hours supplied to the Hoku Facility during the monthly billing period as measured by the metering equipment located at the Points of Delivery less the First Block Energy, but no

greater than 25,000 kilowatts multiplied by the number of hours in the billing period multiplied by the Contract Load Factor.

2.23. "Termination Date" shall be 12:01 a.m. Mountain Time on December 1, 2014.

2.24. "Total Contract Demand" shall mean the sum of the First Block Contract Demand and the Second Block Contract Demand as specified in Section 6, and as such may be modified pursuant to Section 6.2 below.

2.25. "Transformer Losses" shall mean energy losses resulting when a transformer changes the voltage level of alternating current electricity. Transformer losses will be accounted for in the initial metering installation.

### SECTION 3 - TERM OF AGREEMENT

3.1 This Agreement shall become effective as provided in paragraph 15.1 and remain in effect through the Termination Date subject to the provisions of this Agreement.

3.2 Service under this Agreement will commence December 1, 2009.

### SECTION 4 - TERMINATION

4.1 Notice of Termination: After the Embedded Date, either party to this Agreement shall have the right to terminate this Agreement by delivering written notice of termination to the other party. The effective date of termination will be specified in the termination notice, but such effective date cannot be earlier than 12 months after the date of the delivery of the notice of termination. If both parties give notice of termination, the earliest effective date will prevail. If the effective date of a termination occurs before the new Special Contract is effective between the Parties, then the applicable energy and demand rates shall be the Embedded Rate.

### SECTION 5 - SERVICES TO BE PROVIDED

5.1 Supply Obligation: In accordance with Prudent Electrical Practices and the provisions of this Agreement, Idaho Power will furnish Hoku's total requirements for electric power and energy at the Hoku Facility. Hoku will not resell any portion of the power and energy furnished under this Agreement.

5.2 Points of Delivery: Electric power and energy shall be delivered by Idaho Power at each point generally described as the load side terminals of the substation transformer 13.8 kilovolt disconnect switches at the Hoku Facility.

5.3 Adjustment for Transformer Losses: Metering on the load side of the substation transformers will be adjusted for Transformer Losses.

5.4 Description of Electric Service: Idaho Power shall supply three-phase, 60 hz alternating current at nominal 13,800 volts, with a maximum steady state variation of plus or minus five percent (5%) under normal system conditions. Consistent with Prudent Electrical Practices, Idaho Power will operate within the capability of its existing system to minimize voltage level fluctuations, the normal frequency variation to be within plus or minus 0.05 hz on a 60 hz base.

5.5 Available Capacity: Idaho Power will make power available to Hoku in an amount equal to the kilowatts of Total Contract Demand shown in Section 6.1.1.

5.6 Request for Proposals: During the initial term of the agreement, at Hoku's request, Idaho Power will use commercially reasonable efforts to obtain proposals to supply power to meet Hoku's summer loads not served by Idaho Power. Idaho Power will customize such supply request to match Hoku's requirements. These additional purchases are subject to Idaho Power's ability to deliver the power to Hoku and Hoku's acceptance of the price and terms of the proposals. Hoku is responsible for the full costs of these purchases and any associated transmission and ancillary service expense to transport such purchases to the Hoku Facility.

5.7 Release of First Block Energy: With adequate notice and the written consent of Idaho Power, Hoku may request a release of all or part of its First Block Energy purchase commitment in return for credit on its First Block Energy Charge. The value of the credit will be determined by mutual agreement and will take into consideration the timing of the notice and Idaho Power's ability to manage any supply commitments made on Hoku's behalf.

**SECTION 6 - CONTRACT DEMAND**

6.1 Contract Demand Provisions prior to the Embedded Date: The following provisions apply during the period of time from December 1, 2009 to the Embedded Date, while Hoku is changing its load at the Hoku Facility.

6.1.1 Scheduled Contract Demand: Except as otherwise provided for in Section 6A – DEFERRAL PERIOD PAYMENTS, Hoku agrees to contract for, and Idaho Power agrees to provide power made available to the Hoku Facility in the following amounts expressed in kilowatts (the "Scheduled Contract Demand"):

| Time Period                  | First Block Contract Demand | Second Block Contract Demand | Total Contract Demand |
|------------------------------|-----------------------------|------------------------------|-----------------------|
| 12/1/2009 – 12/31/2009 ..... | 1,000                       | 25,000                       | 26,000                |
| 1/1/2010 – 1/31/2010 .....   | 8,000                       | 25,000                       | 33,000                |
| 2/1/2010 – 2/28/2010 .....   | 17,000                      | 25,000                       | 42,000                |
| 3/1/2010 – 4/30/2010 .....   | 19,000                      | 25,000                       | 44,000                |
| 5/1/2010 – 6/15/2010 .....   | 32,000                      | 25,000                       | 57,000                |
| 6/16/2010 – 8/15/2010 .....  | 18,000                      | 25,000                       | 43,000                |
| 8/16/2010 – 9/15/2010 .....  | 42,000                      | 25,000                       | 67,000                |
| 9/16/2010 – 12/31/2010 ..... | 57,000                      | 25,000                       | 82,000                |
| 1/1/2011 – 6/15/2011 .....   | 57,000                      | 25,000                       | 82,000                |
| 6/16/2011 – 8/15/2011 .....  | 18,000                      | 25,000                       | 43,000                |
| 8/16/2011 – 9/15/2011 .....  | 42,000                      | 25,000                       | 67,000                |

|                                     |               |               |               |
|-------------------------------------|---------------|---------------|---------------|
| <b>9/16/2011 – 12/31/2011 .....</b> | <b>57,000</b> | <b>25,000</b> | <b>82,000</b> |
| <b>1/1/2012 – 6/15/2012 .....</b>   | <b>57,000</b> | <b>25,000</b> | <b>82,000</b> |
| <b>6/16/2012 – 8/15/2012 .....</b>  | <b>18,000</b> | <b>25,000</b> | <b>43,000</b> |
| <b>8/16/2012 – 9/15/2012 .....</b>  | <b>42,000</b> | <b>25,000</b> | <b>67,000</b> |
| <b>9/16/2012 – 12/31/2012 .....</b> | <b>57,000</b> | <b>25,000</b> | <b>82,000</b> |
| <b>1/1/2013 – 12/1/2013 .....</b>   | <b>57,000</b> | <b>25,000</b> | <b>82,000</b> |

6.2 Contract Demand Provisions after Initial Expansion: After the Embedded Date, Hoku has the option to increase or decrease its Total Contract Demand level as follows:

6.2.1 Increases to Total Contract Demand: Under the terms of this Agreement, Hoku may increase the Total Contract Demand above 82,000 kilowatts by increasing the First Block Contract Demand in increments of 1,000 to 10,000 kilowatts per year up to a Total Contract Demand of 175,000 kilowatts. Hoku will notify Idaho Power in writing of the additional capacity requirements at least one year in advance. The new Total Contract Demand will be in effect for a minimum of one year. Increases to Total Contract Demand are subject to the availability of adequate capacity in Idaho Power's facilities to provide the requested service.

6.2.2 Decreases to Total Contract Demand: After the Embedded Date, Hoku may decrease the Total Contract Demand by reducing the First Block Contract Demand in decrements of 1,000 kilowatts. Total Contract Demand may not be decreased below 25,000 kilowatts. Hoku will notify Idaho Power in writing of the decrease in capacity requirements at least one year in advance. The new Total Contract Demand will be in effect for a minimum of one year.

6.3 Excess Demand: Prior to the Embedded Date, and subject to Section 6.2.1 above, the availability of power in excess of the Total Contract Demand is not guaranteed, and if the average kilowatts supplied at the Hoku Facility during the 15-consecutive-minute period of maximum use each day, adjusted for power factor, exceeds the Total Contract Demand, Idaho Power may curtail service to the Hoku Facility. Idaho Power reserves the right to install, at any time, at Hoku's expense, any device necessary to protect Idaho Power's system from damage which may be caused by the taking of Excess Demand. Hoku will be responsible for any damages to Idaho Power's system or damages to third parties resulting from the taking of Excess Demand. Hoku agrees to use its best reasonable efforts to monitor its electric loads and to advise Idaho Power as soon as possible of the potential for Excess Demand at the Hoku Facility. Excess Demand will be subject to the Daily Excess Demand Charge and the Monthly Excess Demand Charge specified in Schedule 32.

6.4 Proration: Billings during months that contain a change in the Scheduled Contract Demand will be prorated.

#### SECTION 6A – DEFERRAL PERIOD PAYMENTS

6A.1 During the Deferral Period and so long as Hoku's monthly Total Contract Demand does not exceed 20,000 kilowatts, Hoku shall pay Idaho Power the Modified Minimum Billed Energy Charge which shall be first allocated to Idaho Power's First Block Demand and Second Block Demand charges, which shall be applied in accordance with Section 6.1.1. above, Section 8 below and Schedule 32, and the

remaining amount of the Modified Minimum Billed Energy Charge shall be allocated as First Block Energy charges. In addition to the Modified Minimum Billed Energy Charge, Hoku shall pay to Idaho Power the applicable Conservation Program Funding Charge ("Rider") charge as applied to the Modified Minimum Energy Charge. Further, Hoku shall pay to Idaho Power any applicable franchise fees assessed by the City of Pocatello, Idaho which shall be assessed to First Block Demand and Second Block Demand charges and against the actual amount of energy consumed by Hoku with such energy being billed at the applicable First Block Energy or Second Block Energy rates.

6A.2 Hoku agrees to cap at 20,000 kilowatts its monthly Total Contract Demand during the Deferral Period. Hoku may increase this monthly cap provided that (1) it first provides Idaho Power with a firm, 12-month forward-looking ramp-up schedule at least 6-months in advance of any increase in monthly energy consumption more than 20,000 kilowatts; and (2) Idaho Power must receive from Hoku any additional required deposits at least thirty (30) prior to Idaho Power providing such additional energy and capacity. Hoku understands and agrees that failure to comply with the ramp-up schedule and/or any additional deposit requirements described herein relieves Idaho Power of the obligation to provide Hoku with the additional requested energy. In addition, Hoku shall provide Idaho Power at least thirty (30) days prior written notice of when Hoku's monthly energy consumption is expected to exceed 10,000 kilowatts for twelve (12) consecutive months.

6A.3 In the event Hoku uses more than 20,000 kilowatts of energy in any given month during the Deferral Period, Hoku shall be obligated to pay, for the month in which Hoku's Total Contract Demand exceeded 20,000 kilowatt and for each remaining month of the term of this Agreement until the Termination Date, the higher of either the Minimum Billed Energy charge or for the amount of energy actually consumed and billed pursuant to Sections 6.1 and 8 and Schedule 32.

6A.4 During the Deferral Period, Idaho Power shall track the Balancing Mechanism that starts at zero and which shall not exceed a cap of \$16.5 million. All amounts allocated to the Balancing Mechanism shall accrue interest at six percent (6%). During the Deferral Period, no monthly adjustment to the Balancing Mechanism will occur if Hoku's monthly payment for services (excluding the First Block Demand and Second Block Demand charge components) equals or exceeds the First Block Energy charge portion of the Minimum Billed Energy charge. Beginning with its January 2014 invoices for services rendered for December 2013, Idaho Power shall charge Hoku, in addition to the then-applicable monthly demand and energy charges, an amount equal to the amortization of the total Balancing Mechanism balance over twelve (12) months plus six percent (6%) interest. One-hundred percent (100%) of the payments made by Hoku to pay down the Balancing Mechanism shall be allocated to Idaho Power's Idaho jurisdictional customers via Idaho Power's Power Cost Adjustment ("PCA") mechanism. The Parties expressly understand and agree that the amounts tracked by the Balancing Mechanism do not represent a liability or obligation of Idaho Power to its customers until such final, non-refundable amounts are received by Idaho Power from Hoku and applied as described herein.

6A.5 In consideration for Idaho Power granting Hoku the Deferral Period, Hoku shall pay to Idaho Power, in addition to any other amounts payable under this Agreement, an amount equal to Three-Million Eight-Hundred Thousand Dollars (\$3,800,000.00) ("Up-Front Payment") as follows: a) Idaho Power has immediately applied \$2 million of the existing \$4 million deposit previously paid by Hoku to the Up-Front Payment as of the effective date of Order No. 32486; and b) Hoku shall pay to

Idaho Power as part of and in addition to its monthly invoice for services provided under this Agreement an amount equal to One-Hundred Thousand Dollars (\$100,000.00) per month for a period of eighteen (18) months beginning with the invoice issued in February 2012 for services provided in January 2012. Idaho Power shall record the \$3.8 million Up-Front Payment to the same account as the Second Block Energy charge.

#### SECTION 7 - FACILITIES FOR DELIVERY TO HOKU FACILITY

7.1 Additional Facilities: The parties acknowledge that they have separately entered into the Construction Agreement, pursuant to which Hoku has paid Idaho Power to construct the Interconnection Facilities necessary to provide the Total Contract Demand under this Agreement. Idaho Power represents and warrants to Hoku that none of the charges set forth in Schedule 32 include any cost reimbursement or adjustment that has already been paid by Hoku pursuant to the Construction Agreement, and that such Interconnection Facilities are sufficient to supply the Scheduled Contract Demand. To the extent that additional transmission and/or substation Interconnection Facilities are required to provide additional service pursuant to Section 6.2.1 above, special arrangements will be made in a separate Agreement between Hoku and Idaho Power.

7.2 Operation and Maintenance: Idaho Power will operate and maintain Interconnection Facilities necessary to provide service to the Hoku Facility. Such Interconnection Facilities include Interconnection Facilities paid for by Hoku, including those paid for by Hoku pursuant to the Construction Agreement. Idaho Power shall operate and maintain such Interconnection Facilities in accordance with Prudent Electrical Practices.

#### SECTION 8 - CHARGES TO BE PAID BY HOKU TO IDAHO POWER

8.1 Rates and Charges: The rates and charges for electrical power, energy and other services provided by Idaho Power to the Hoku Facility are identified by component in Schedule 32. The total amount to be paid by Hoku for electric service to the Hoku Facility will be the sum of the components identified on Schedule 32.

8.2 Power Factor: When the Hoku Facility's Power Factor is less than 95 percent during the 15-consecutive-minute period of maximum use for the monthly billing period, Idaho Power will determine the Total Billing Demand by multiplying the metered demand in kilowatts by 0.95 and dividing that product by the Power Factor.

8.3 Billing and Metering Provisions: Idaho Power will install and maintain suitable metering equipment for each Point of Delivery so that coincident demand and energy consumption can be determined for the billing period.

8.4 First Block Contract Demand Charge: The First Block Contract Demand Charge is fixed and is not subject to change through the Embedded Date. After the Embedded Date, the Contract Demand Charge is subject to change and revision by order of the Commission. After the Embedded Date, Idaho Power will advocate for Commission acceptance of the ratemaking treatment for the Special Contract described in Section 3.2 above.

8.5 First Block Energy Charge: The First Block Energy Charge and Excess Energy Charge are fixed and are not subject to change through the Embedded Date. After the Embedded Date, the First Block Energy and First Block Contract

Demand charges shall be modified to equal the then-current Second Block Contract Demand and Second Block Energy charges. ..

8.6 **Second Block Charges:** The Second Block Contract Demand Charge and the Second Block Energy Charge will increase or decrease uniformly with any base rate change authorized by the Commission that is applicable to Idaho Power's Tariff Schedule 32 through the Termination Date. After the Embedded Date and except as otherwise provided for herein, the Second Block Contract Demand Charge and the Second Block Energy Charge are subject to change and revision by order of the Commission.

8.7 **Power Cost Adjustment:** The PCA rate as defined under Idaho Power's Tariff Schedule 55 will be applied to the Second Block Energy only. The PCA rate will not apply to the First Block Energy or to Excess Energy until after the Embedded Date. After the Embedded Date, any PCA rate adjustments will apply to the First Block Energy, Second Block Energy and Excess Energy components.

8.8 **Conservation Program Funding Charge:** Except as otherwise provided for in Section 6A – DEFERRAL PERIOD PAYMENTS, the Rider as specified in Idaho Power's Tariff Schedule 91 for Schedule 32 will be applied to the sum of the First Block Demand and Energy Charges, Second Block Demand and Energy Charges, Excess Demand Charges, and Excess Energy Charges.

8.9 **Minimum Energy Charges:** Except as otherwise provided for in Section 6A – DEFERRAL PERIOD PAYMENTS, each month Hoku will be billed for the actual metered kilowatt-hours of energy, but no less than the Minimum Billed Energy amount defined in Section 2.14.

#### SECTION 9 - PAYMENT OF BILLS/SETTLEMENTS

9.1 **Billing Data:** Hoku shall pay Idaho Power for all services provided under this Agreement. Invoices for payment for electric services shall be prepared and submitted to Hoku monthly. All invoices or bills shall contain such data as may be reasonably required to substantiate the billing.

9.2 **Payment Procedure:** All bills or accounts for electric service owed by Hoku to Idaho Power hereunder shall be due and payable within fifteen (15) days following Hoku's receipt of a bill. Payment will be made by electronic transfer of funds. Idaho Power will provide Hoku with current ABA routing numbers and other necessary instructions to facilitate the electronic transfer of funds.

#### SECTION 10 - ACCESS TO PREMISES

10.1 During the term of this Agreement, and for a reasonable period following termination, Idaho Power shall have access to the Hoku Facility premises at all times for the purposes of reading meters, making installations, repairing and removing Interconnection Facilities and Idaho Power equipment and for other proper purposes hereunder.

### SECTION 11 - ASSIGNMENT

11.1 This Agreement shall be binding upon the heirs, legal and personal representatives, successors and assigns of the parties hereto.

### SECTION 12 - LIABILITY

12.1 Each party agrees to protect, defend, indemnify and hold harmless the other party, its officers, directors, and employees against and from any and all liability, suits, loss, damage, claims, actions, costs, and expenses of any nature, including court costs and attorney's fees, even if such suits or claims are completely groundless, as a result of injury to or death of any person or destruction, loss or damage to property arising in any way in connection with, or related to, this Agreement, but only to the extent such injury to or death of any person or destruction, loss or damage to property is not due to the negligence or other breach of legal duty of such other party; provided; however, that each party shall be solely responsible for claims of and payment to its employees for injuries occurring in connection with their employment or arising out of any workman's compensation law.

12.2 Limitation of Liability: Neither party shall, in any event, be liable to the other for any special, incidental, exemplary, punitive or consequential damages such as, but not limited to, lost profits, revenue or good will, or interest, whether such loss is based on contract, warranty, negligence, strict liability or otherwise.

### SECTION 13 - MODIFICATIONS OF CONTRACT

13.1 This Agreement may not be modified except by writing, duly signed by both parties hereto.

### SECTION 14 - COMMISSION JURISDICTION

14.1 This Agreement and the respective rights and obligations of the parties hereunder, shall be subject to (1) Idaho Power's General Rules and Regulations as now or hereafter in effect and on file with the Commission and (2) to the jurisdiction and regulatory authority of the Commission and the laws of the State of Idaho.

14.2 The terms, conditions, and rates set forth in this Agreement and Schedule 32 are subject to the continuing jurisdiction of the Commission. The rates under this Agreement are subject to change and revision by order of the Commission upon a finding, supported by substantial competent evidence, that such rate change or revision is just, fair, reasonable, sufficient, nonpreferential, and nondiscriminatory. It is the parties' intention by such provision that the rate making standards to be used in making any revisions or changes in rates, and the judicial review of any revisions or changes in rates, will be the same standards that are applicable to Idaho Power's intrastate tariff rates.

SECTION 15 - COMMISSION APPROVAL

15.1 This Agreement shall become effective upon the approval by the Commission of all terms and provisions hereof without change or condition.

IDAHO POWER COMPANY

BY

Gregory C. Said

ITS

VP - REGULATORY AFFAIRS

HOKU MATERIALS, INC.

BY \_\_\_\_\_

ITS \_\_\_\_\_

SECTION 15 - COMMISSION APPROVAL

15.1 This Agreement shall become effective upon the approval by the Commission of all terms and provisions hereof without change or condition.

**IDAHO POWER COMPANY**

BY \_\_\_\_\_

ITS \_\_\_\_\_

**HOKU MATERIALS, INC.**

BY  \_\_\_\_\_

ITS Chief Executive Officer \_\_\_\_\_