

ATTACHMENT NO. 1

Power Purchase Agreement

Between

St. Anthony Hyrdo, LLC

And PacifiCorp

POWER PURCHASE AGREEMENT

BETWEEN

St. Anthony Hydro, LLC

[a new, on-system, non-fueled, non-levelized, 90%/110% performance band, Idaho
Qualifying Facility—10aMW/Month or less]

AND

PACIFICORP

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT is entered into between St. Anthony Hydro, LLC, an Idaho limited liability company (the “**Seller**”) and PacifiCorp, an Oregon corporation, acting in its merchant function capacity (“**PacifiCorp**”). Seller and PacifiCorp are referred to collectively as the “**Parties**” and individually as a “**Party**”.

RECITALS

A. Seller intends to recommission, own, operate and maintain a hydroelectric facility, including Seller’s Interconnection Facilities, for the generation of electric power located within PacifiCorp service territory in St. Anthony, in Fremont County, Idaho with an expected Facility Capacity Rating of 700-kilowatts (kW), as further described in **Exhibit A** and **Exhibit B** (“**Facility**”); and

B. Seller intends to operate the Facility as a Qualifying Facility; as such term is defined in this Agreement, and to sell Net Output to PacifiCorp in Idaho.

C. Seller estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is 3,210,000 kilowatt-hours (kWh) pursuant to the monthly Initial Year Delivery Schedule in Section 4.3 and in the delivery schedules in **Exhibit F-1** and **Exhibit F-2** hereto, which amount of energy PacifiCorp will include in its resource planning.

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

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

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

G. Seller has provided PacifiCorp with: (a) a motive force plan and associated certification from a Licensed Professional Engineer as described in Section 7 of this Agreement; and (b) an executed copy of **Exhibit I**, “Seller Authorization to Release Generation Data to PacifiCorp.”

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

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

1.1 “**Adjusted Scheduled Monthly Energy Delivery**” shall have the meaning set forth in Section 4.4.

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

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1.3 “**Billing Period**” means the time period between PacifiCorp's reading of its power purchase meter at the Facility and reasonable efforts will be made to cause the Billing Period to coincide with calendar months.

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

1.5 “**Capacity Factor**” means, for any given period of time, the Net Output (kWh) delivered divided by the product of the Facility Capacity Rating (kW) and the total hours in the given period of time.

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

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

1.6.2 PacifiCorp has received documentation that start-up testing of the Facility has been completed in accordance with **Exhibit E**.

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

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

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

1.6.6 Network Resource Designation and Transmission Service Request.

- (a) Seller has provided all data required by the Transmission Provider to enable the Facility to be designated as a network resource in accordance with the Tariff.
- (b) PacifiCorp has received confirmation from the Transmission Provider that the Facility has been designated as a network resource.
- (c) Seller has provided all data required for PacifiCorp to submit a transmission service request for the Facility pursuant to the Tariff.
- (d) PacifiCorp has received confirmation from the Transmission Provider that the transmission service request has been granted in sufficient capacity to meet or exceed the Maximum Facility Delivery Rate and the Seller has paid all costs associated with any requirements of the transmission service request.

1.7 **“Commercial Operation Date”** means the date, as designated by PacifiCorp pursuant to Section 2.3, that the Facility first achieves Commercial Operation.

1.8 **“Commission”** means the Idaho Public Utilities Commission.

1.9 **“Conforming Energy”** means all Net Energy except Non-Conforming Energy subject to any adjustments to the Energy Delivery Schedule in Section 4.4.

1.10 **“Conforming Energy Purchase Price”** means the applicable price for Conforming Energy and capacity (if any), specified in Section 5.1.

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

1.12 **“Delay Liquidated Damages”, “Delay Daily Minimum”, “Delay Period”, “Delay Price”** and **“Delay Volume”** are defined in Section 2.4 of this Agreement. **“Delay Security”** is defined in Section 10.1.1 of this Agreement.

1.13 **“Effective Date”** is defined in Section 2.1 of this Agreement.

1.14 **“Energy Delivery Schedule”** is defined in Section 4.3 of this Agreement.

1.15 **“Environmental Attributes”** means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United

Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere. Environmental Attributes do not include (i) PTCs, ITCs, the Cash Grant, any Tax Credits, or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

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

1.17 “**Expiration Date**” is defined in Section 2.1 of this Agreement.

1.18 “**Facility**” is defined in Recital A of this Agreement.

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

1.20 “**Force Majeure**” has the meaning set forth in Section 14.1.

1.21 “**Forced Outage**” means an outage that requires removal of one or more generating units from service, another outage state or a reserve shutdown state before the end of the next weekend. Maintenance Outages and Planned Outages are not Forced Outages.

1.22 “**Generator Interconnection Agreement**” or “**GIA**” means the generator interconnection agreement entered into separately between Seller and the Transmission Provider, providing for the construction, operation, and maintenance of the Interconnection Facilities required to accommodate deliveries of Seller’s Net Output.

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

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

1.25 “**Green Tags Price Component**” means \$5.00 per MWh; provided that if after the Effective Date a liquid market for Green Tags emerges in a form and location that PacifiCorp determines reasonably states the market value of the Green Tags delivered hereunder, PacifiCorp

may in its discretion replace such \$5.00 per MWh with such designated market price reports for Green Tags, effective as of the time specified by PacifiCorp.

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

1.27 **"Green Tag Transfer Period"** shall have the meaning set forth in Section 4.5.

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

1.29 **"Inadvertent Energy"** means: (1) energy delivered in excess of the Maximum Monthly Purchase Obligation; and (2) energy delivered to the Point of Delivery at a rate exceeding the Maximum Facility Delivery Rate. Inadvertent Energy is not included in Net Output.

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

1.31 **"Initial Year Energy Delivery Schedule"** shall have the meaning set forth in Section 4.3.

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

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

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

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

1.36 **“Material Adverse Change”** shall occur when Seller, in the reasonable opinion of PacifiCorp, has experienced a material adverse change in ability to fulfill its obligations under this Agreement. A downgrade of Seller’s long-term credit rating (corporate or long-term senior unsecured debt rating) below 'Baa3' from Moody's Investors Services ("Moody's") or below 'BBB-' from Standard & Poor's Ratings Group ("S&P") or the cessation of S&P or Moody's rating of Seller shall constitute a Material Adverse Change.

1.37 **“Maximum Curtailed Facility Delivery Rate”** means the maximum instantaneous rate (kW) at which the Facility is capable of delivering Net Output at the Point of Delivery during a Qualifying Curtailment.

1.38 **“Maximum Facility Delivery Rate”** means the maximum instantaneous rate (kW) at which the Facility is capable of delivering Net Output at the Point of Delivery, as specified in Exhibit A. The Maximum Facility Delivery Rate may not exceed the Maximum GIA Delivery Rate.

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

1.40 **“Maximum Monthly Purchase Obligation”** means the maximum amount of energy PacifiCorp is obligated to purchase under this Agreement in a calendar month. In accordance with Commission orders, the Maximum Monthly Purchase Obligation for a given month, in kWh, shall not exceed 10,000 kW multiplied by the total number of hours in that month and prorated for any partial month.

1.41 **“Nameplate Capacity Rating”** means the maximum instantaneous generating capacity of any qualifying small power or cogeneration generating unit supplying all or part of the

energy sold by the Facility, expressed in MW or kW, when operated consistent with the manufacturer's recommended power factor and operating parameters, as set forth in a notice from Seller to PacifiCorp delivered before the Commercial Operation Date and, if applicable, updated in the As-built Supplement.

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

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

1.44 **"Net Output"** means all energy and capacity (if any) produced by the Facility, less station use and less transformation and transmission losses and other adjustments, if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery, less any station use not provided by the Facility. Net Output does not include Inadvertent Energy.

1.45 **"Net Replacement Power Costs"** is defined in Section 11.4 of this Agreement.

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

1.47 **"Network Service Provider"** means PacifiCorp Transmission or a successor, including any regional transmission organization (RTO), as a provider of network service to PacifiCorp under the Tariff.

1.48 **"Non-Conforming Energy"** means for any Billing Period subject to any adjustments to the Energy Delivery Schedule in Section 4.4: (1) that portion, if any, of Net Energy delivered subsequently to the initial 110% of the Scheduled Monthly Energy Delivery for that Billing Period; or (2) all Net Energy delivered when Net Energy delivered is less than 90% of the Scheduled Monthly Energy Delivery for that Billing Period; and (3) all Net Output produced by the Facility prior to the Commercial Operation Date.

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

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

1.51 **"On-Peak Hours"** means hours from 7:00 a.m. to 11:00 p.m. Mountain Prevailing Time (MPT), Monday through Saturday, excluding Western Electricity Coordinating Council (WECC) and North American Electric Reliability Corporation (NERC) holidays.

1.52 **"Output"** means all energy produced by the Facility.

1.53 **"PacifiCorp"** is defined in the first paragraph of this Agreement, and excludes PacifiCorp Transmission or a successor, including any Regional Transmission Organization.

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

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

1.56 **“Point of Delivery”** means the high side of the generation step-up transformer(s) located at the point of interconnection between the Facility and the System, as specified in the Generator Interconnection Agreement and in **Exhibit B**.

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

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

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

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

1.61 **“Qualifying Curtailment”** means, to the extent not caused by Seller’s negligent, reckless, or willful actions, a period in a given calendar month during which delivery of Net Output is curtailed or interrupted pursuant to Section 6.3, and only applicable to adjustment of the Energy Delivery Schedule as described in Section 4.4.

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

1.63 **“Replacement Period”**, **“Replacement Price”** and **“Replacement Volume”** shall have the meanings set forth in Section 11.4 of this Agreement.

1.64 **“Required Facility Documents”** means all deeds, titles, leases, licenses, permits, authorizations, and agreements demonstrating that Seller controls the necessary property rights, (e.g. site lease), rights to motive force, and government authorizations to construct, operate, and maintain the Facility, including without limitation those set forth in **Exhibit C**.

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

1.66 **“Scheduled Commercial Operation Date”** means the date by which Seller shall achieve Commercial Operation, as specified in Section 2.2.6.

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

1.68 **“Subsequent Energy Delivery Schedule”** is defined in Section 4.3.2 of this Agreement.

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

1.70 **“Tariff”** means the PacifiCorp Transmission FERC Electric Tariff Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time, or the comparable tariff of a successor Transmission Provider.

1.71 **“Transmission Provider”** means PacifiCorp Transmission or a successor, including any Regional Transmission Organization.

1.72 **“WREGIS”** means the Western Renewable Energy Generation Information System

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

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

SECTION 2: TERM, MILESTONES, COMMERCIAL OPERATION DATE

2.1 This Agreement shall become effective after the occurrence of all of the following events: (1) execution by both Parties; (2) approval by the Commission; and, (3) closing of Seller’s purchase of the St. Anthony hydro Project from PacifiCorp as such closing is described in the purchase and sale agreement for the St. Anthony hydro project to be entered into as mutually agreed between Seller and PacifiCorp; *provided*, however, this Agreement shall not become effective until the Commission has determined, pursuant to a final and non-appealable order, that the prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the costs incurred by PacifiCorp for purchases of capacity and energy from Seller are

legitimate expenses, all of which the Commission will allow PacifiCorp to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses.

Unless earlier terminated as provided herein, the Agreement shall remain in effect for a term of 20 years from the Effective Date or until midnight (24:00 MPT) on November 30, 2033, whichever is sooner ("**Expiration Date**").

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

2.2.1 Seller shall provide evidence it has signed a purchase agreement for the Facility and Premise with PacifiCorp on mutually acceptable terms no later than January 31, 2013. Nothing in this Agreement obligates Seller or PacifiCorp to enter into a purchase agreement for the Facility or Premise.

2.2.2 In the event PacifiCorp and Seller enter into a purchase agreement for the Facility and Premise, Seller shall close on the purchase (as the closing will be defined in the purchase agreement) of the Facility and Premise no later than December 31, 2013.

2.2.3 By the date five business days after the Effective Date, Seller shall provide Delay Security required under Section 10.1.1, as applicable.

2.2.4 At least ten business days prior to delivery of any energy from the Facility to PacifiCorp, Seller shall provide PacifiCorp with an executed Generator Interconnection Agreement, a QF FERC certification or self-certification, and a FERC hydroelectric license for the Facility. If Seller determines that a FERC certification or self certification or a FERC hydroelectric license is not required for the Facility, the Seller shall provide to PacifiCorp (at Seller's sole cost) an opinion from an attorney identifying which document(s) identified in this section are not required for the Facility and explaining the legal basis for the document(s) not being required. The attorney providing the opinion shall be licensed and in good standing in the state of Idaho, shall be familiar with QF and FERC statutes and regulations and shall not have a financial interest, or other nexus or association with Seller or the Facility.

2.2.5 Prior to Commercial Operation, Seller shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp.

2.2.6 One hundred and eighty, (180) days after the Effective Date of this Agreement, Seller shall achieve Commercial Operation ("**Scheduled Commercial Operation Date**").

2.3 Establishing Commercial Operation. To achieve Commercial Operation, Seller must provide, subject to PacifiCorp's written approval which will not be unreasonably withheld, written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation accompanied by the information described in Section 1.6. PacifiCorp's approval, if given, shall designate the Commercial Operation Date. In no event will delay in

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achieving the Scheduled Commercial Operation Date postpone the Expiration Date specified in Section 2.1.

2.4 Delay Liquidated Damages. Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be liable to pay PacifiCorp delay damages for the number of days (“**Delay Period**”) the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, until the earlier of occurrence of the Commercial Operation Date or the termination of this Agreement (“**Delay Liquidated Damages**”). Billings and payments for Delay Liquidated Damages shall be made in accordance with Section 10.1.

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

Where:

“**Delay Daily Minimum**” equals (a) for the first 90 calendar days following the Scheduled Commercial Operation Date: one-ninetieth (1/90th) of forty-five dollars (\$45) multiplied by the Maximum Facility Delivery Rate with the Maximum Facility Delivery Rate being measured in kW; (b) after the 90th calendar day following the Scheduled Commercial Operation Date: \$0.

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

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

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

SECTION 3: REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

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

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

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

3.2.6 The Facility shall for the term of this Agreement be a QF. At any time PacifiCorp has reason to believe during the term of this Agreement that Seller's status as a QF is in question, PacifiCorp may require Seller, at Seller's cost, to provide PacifiCorp with a written legal opinion from an attorney in good standing in the state of Idaho and who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

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3.2.7 All information about the Facility set forth in Exhibit A and Exhibit B has been verified by Seller and is true and accurate.

3.2.8 Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.

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

3.2.10 Seller is not in default under the Generator Interconnection Agreement or any other agreement between the Parties related to this Agreement, the Generator Interconnection Agreement, or the Facility, and is current on all of its financial obligations under such agreements.

3.2.11 Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.

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

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

3.2.14 Seller's leases, licenses or other grants of rights in real property required for the operation of the Facility have terms through the Expiration Date of this Agreement and Seller is not in material breach of any terms of such leases or other rights in real property for the Facility or Premise.

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

SECTION 4: DELIVERY OF ENERGY AND CAPACITY

4.1 Delivery and Acceptance of Net Output. Unless otherwise provided herein, PacifiCorp will purchase and Seller will sell all Net Output from the Facility.

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

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

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

<u>Month</u>	<u>Energy Delivery (kWh)</u>
<u>November 2013 – October 2014</u>	
January	256,700
February	250,100
March	324,200
April	308,700
May	297,000
June	272,400
July	223,900
August	235,400
September	234,700
October	266,200
November	297,900
December	242,900

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

4.3.2 Beginning at the end of the ninth full calendar month of Commercial Operation, and at the end of every third month thereafter, Seller shall supplement the Energy Delivery Schedule with three additional months of forward estimates (which shall be appended to this Agreement as **Exhibit D**) ("**Subsequent Energy Delivery**

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Schedule”), such that the Energy Delivery Schedule will provide at least three months of scheduled energy estimates at all times. Seller shall provide Subsequent Energy Delivery Schedules no later than 5:00 p.m. of the fifth business day after such ninth month and each subsequent third month. If Seller does not provide a Subsequent Energy Delivery Schedule by the above deadline, scheduled energy for the omitted period shall equal the amounts scheduled by Seller for the same three-month period during the previous year.

4.3.3 Upon and after the Commercial Operation Date, Seller may no longer revise the Energy Delivery Schedule for the first six full calendar months of Commercial Operation. After 5:00 p.m. MPT of the fifth business day following the end of the third full calendar month of Commercial Operation and the end of each third calendar month thereafter, Seller may no longer revise the Energy Delivery Schedule for the six calendar months immediately following such third month. Subject to the foregoing restrictions in this Section 4.3.3, Seller may revise the Energy Delivery Schedule for any unrestricted month by providing written notice to PacifiCorp. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

4.4 Adjustment of Energy Delivery Schedule. In the event of a Qualifying Curtailment, the Scheduled Monthly Energy Delivery will be adjusted, *pro rata*, (“**Adjusted Scheduled Monthly Energy Delivery**”) for that month to determine Conforming Energy and Non-Conforming Energy. The Adjusted Scheduled Monthly Energy Delivery shall be calculated as follows:

$$SMED(adj) = SMED * \left(1 - \sum_{i=1}^n \left(\frac{Hc_i}{Ht} * \frac{DRm - DRc_i}{DRm} \right) \right)$$

Where:

<i>SMED</i>	=	Scheduled Monthly Energy Delivery for the month in which the Qualifying Curtailment occurs
<i>SMED(adj)</i>	=	Adjusted Scheduled Monthly Energy Delivery for the month in which the Qualifying Curtailment occurs
<i>Hc_i</i>	=	the duration in hours of the Qualifying Curtailment (<i>i</i>)
<i>Ht</i>	=	total hours in the month in which Qualifying Curtailment occurs
<i>DRc_i</i>	=	the Maximum Curtailed Facility Delivery Rate during the Qualifying Curtailment (<i>i</i>)
<i>DRm</i>	=	the Maximum Facility Delivery Rate
<i>i</i>	=	a Qualifying Curtailment
<i>n</i>	=	the number of Qualifying curtailments in the month

Where Qualifying Curtailments overlap, each distinct period of overlap shall be calculated as a separate Qualifying Curtailment such that no hour within a calendar month may figure into more than one Qualifying Curtailment.

4.5 Transfer of Title to Green Tags; Documentation of Green Tags Transfers. From the Effective Date until midnight (24:00 MPT), December 31 of the tenth (10th) full year after the Commercial Operation Date ("Green Tag Transfer Period") title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the Output at the Facility that gives rise to such Green Tags. Commencing at 0:00 MPT, January 1 of the eleventh (11th) year following the Commercial Operation Date through and including the Expiration Date, Seller shall have title to the Green Tags immediately upon the generation of the Output at the Facility that gives rise to such Green Tags. Seller shall be obligated, at its cost and expense, after the date title to the Green Tags is transferred to Seller to request and effectuate the transfer any and all registrations or other filings necessary to cause such Green Tags to be titled in favor of Seller. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the 10th day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale in the form attached as Exhibit 4.5 for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program. For the period the Seller has title to the Green Tags, Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller shall, at its sole expense for the period it has title the Green Tags, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of WREGIS Certificates to PacifiCorp, and transfer such WREGIS Certificates to PacifiCorp, in accordance with WREGIS reporting protocols and WREGIS Operating Rules. During the period Seller has title to the Green Tags, Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in the form such agreement exists at the time Seller obtains title to the Green Tags or elect to act as its own WREGIS-defined Qualified Reporting Entity. PacifiCorp shall be entitled to a refund of the Green Tag Price Component of Green Tags associated with any Output for which WREGIS Certificates are not delivered, and shall not transfer the affected Green Tags back to Seller. Seller shall promptly give PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp. Without limiting the generality of PacifiCorp's ownership of the Green Tag Reporting Rights, PacifiCorp may report under such program that such Environmental Attributes purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers. Seller shall at its expense cause the Facility to maintain its registration in good standing with the Center for Resource Solution's Green-e program throughout the Term. Seller shall reasonably cooperate in any registration by PacifiCorp of the Facility in the renewable portfolio standard or equivalent program in all such further states and

programs in which PacifiCorp may wish to register or maintained registered the Facility by providing copies of all such information as PacifiCorp reasonably requires for such registration.

SECTION 5: PURCHASE PRICES

5.1 Energy Purchase Price. Except as provided in Sections 5.3, PacifiCorp will pay Seller non-levelized, Conforming Energy or Non-Conforming Energy Purchase Prices for Net Output and Green Tags (for the period described in Section 4.5) adjusted for the month and On-Peak Hours or Off-Peak Hours using the following formulae:

$$\text{Conforming Energy Purchase Price} = AR_{ce} * MPM$$

$$\text{Non-Conforming Energy Purchase Price} = \text{Minimum of } [AR_{ce} * MPM; \text{Mid-C-85}]$$

Where

AR_{ce} = Conforming Energy annual rate from Table 1, below, for the year of the Net Output.

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

Mid-C-85 = 85% of weighted average of the average Index Price for the month, or portion of month, of Net Output.

Example calculations are provided in Exhibit G.

Table 1: Conforming Energy Annual Rates

Year	Conforming Energy Annual Rate (AR_{ce}) \$/MWh
2013	54.46
2014	56.13
2015	57.92
2016	59.85
2017	61.91
2018	64.20
2019	66.47
2020	68.80
2021	71.30
2022	73.95
2023	76.59
2024	79.40
2025	82.39
2026	85.37
2027	88.54
2028	91.90
2029	95.36
2030	98.93

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2031	102.74
2032	106.68
2033	110.79

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

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

5.2 Payment.

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

For Conforming Energy delivered to the Point of Delivery:

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

For Non-Conforming Energy¹ delivered to the Point of Delivery:

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

Where:

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

Example calculations are provided in **Exhibit H**.

¹ See definition of "Non-Conforming Energy".

5.3 Inadvertent Energy. PacifiCorp may accept Inadvertent Energy at its sole discretion, but will not purchase or pay for Inadvertent Energy.

SECTION 6: OPERATION AND CONTROL

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

6.2 Safe Operation. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generator Interconnection Agreement, Prudent Electrical Practices and in accordance with the Requirements of Law and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.3 Energy Acceptance; Curtailment. PacifiCorp shall not be obligated to purchase, receive, pay for, or pay any damages associated with Net Output (or associated Production Tax Credits or Environmental Attributes, if any) if such Net Output (or associated Production Tax Credits or Environmental Attributes) is not delivered to the System or Point of Delivery due to any of the following: (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generator Interconnection Agreement, (b) the Transmission Provider or Network Service Provider directs a general curtailment, reduction, or redispatch of generation in the area (which would include the Net Output) for any reason, even if such curtailment or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in order to meet its obligations to the Transmission Provider or Network Service Provider to operate within system limitations, (c) the Facility's Net Output is not received because the Facility is not fully integrated or synchronized with the System, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output

6.4 Seller shall reasonably determine the MWh amount of Net Output curtailed pursuant to Section 6.3 after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a curtailment described in this Section 6.3 and to perform and confirm the calculations described in Section 4.4.

6.4.1 Upon termination of each curtailment, each Party having knowledge of the curtailment shall transmit to the other Party, within ten (10) business days, a written statement documenting the cause of curtailment, the time curtailment commenced, the amount of curtailment during each hour of the curtailment period, and the time curtailment ended.

6.4.2 At the end of each Billing Period, Seller shall calculate the curtailed energy, including the Maximum Curtailed Facility Delivery Rate, for each curtailment during that Billing Period and transmit a summary statement of such calculation to PacifiCorp prior to the end of the next month. Seller shall attest to the accuracy of its calculation of curtailed energy.

6.5 PacifiCorp as Merchant. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission or any successor Transmission Provider and that interaction between PacifiCorp and PacifiCorp Transmission are at arms' length pursuant to the Tariff and FERC Order No. 888 and related regulation.

6.6 Scheduling Net Output. At least ninety (90) days before the first day of each calendar quarter, Seller shall provide PacifiCorp with written notice of the Facility's planned Net Output generation schedule ("Schedule") for that calendar quarter. At least ten (10) days before the beginning of each month, Seller shall notify PacifiCorp in writing of any changes or updates to the Schedule for that month. At or before 0730 MPT on the day before a given day of delivery, Seller shall notify PacifiCorp's generation coordinator desk, by telephoning 503-813-6090 or sending a facsimile to 503-813-6265, of any changes to the Schedule for the delivery day. Seller shall notify PacifiCorp's generation coordinator desk no later than two hours following the commencement of an event of Force Majeure, unscheduled outage or unscheduled derate, of the expected duration of any such event. The Schedule made pursuant to this Section 6.5 is independent of and does not alter the Energy Delivery Schedule.

6.7 Delivery Exceeding the Maximum GIA Delivery Rate. Seller shall not deliver energy from the Facility to the Point of Delivery at a rate that exceeds the Maximum GIA Delivery Rate. Seller's failure to limit such deliveries to the Maximum GIA Delivery Rate shall be a breach of a material obligation subject to 11.1.8.

6.8 Outages.

6.8.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during any portion of the months of December, January, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above. Seller shall, in **Exhibit D**, provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not

schedule more than one hundred fifty (150) hours of Planned Outages for each calendar year. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval may be withheld by PacifiCorp in its sole discretion.

6.8.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) business days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then existing conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp. Seller shall take all reasonable measures and use best efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: June 15 through June 30, July, August, and September 1 through September 15. Seller shall include in such notice of a proposed Maintenance Outage the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller may provide notices under this Section 6.8.2 orally. Seller shall confirm any such oral notification in writing as soon as practicable. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with PacifiCorp's request to modify the schedule for a Maintenance Outage if such modification has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity of the Facility during such Maintenance Outage and any changes in the Maintenance Outage completion date and time. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

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

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

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

6.10 Increase to the Maximum Facility Delivery Rate. Seller may, in accordance with this Section 6.10 and upon written approval by PacifiCorp, increase the Maximum Facility Delivery Rate, unless, after such increase, under normal or average design conditions the Net Output would exceed the Maximum Monthly Purchase Obligation in any given month. PacifiCorp approval of such increase is conditioned on the Public Utility Regulatory Policies Act (16 U.S.C. 824a-3) and other applicable law requiring PacifiCorp to purchase the incremental Net Output. If Seller increases the Maximum Facility Delivery Rate, PacifiCorp will continue to pay for base Net Output at the rate(s) prescribed by Section 5 of this Agreement, and PacifiCorp will pay for incremental Net Output resulting from the increase to the Maximum Facility Delivery Rate at the rate(s) prescribed by the Commission at the time of PacifiCorp's approval, if granted, of the increase in the Maximum Facility Delivery Rate. PacifiCorp shall specify in its approval, if granted, a reasonable means of distinguishing such base Net Output from such incremental Net Output.

6.11 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide PacifiCorp and its authorized agents, employees and inspectors ("PacifiCorp Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, and (c) for other reasonable purposes at the reasonable request of PacifiCorp.

SECTION 7: MOTIVE FORCE

Prior to the execution of this Agreement, Seller provided to PacifiCorp a motive force plan attached hereto as **Exhibit F-1**, demonstrating to PacifiCorp's reasonable satisfaction: (1) the feasibility that Facility Net Energy will equal the Energy Delivery Schedule in **Exhibit D** for the duration of this Agreement; and (2) the likelihood that the Facility, under average design conditions, will generate at no more than 10 aMW in any calendar month, together with a certification from a Licensed Professional Engineer attached hereto as **Exhibit F-2**, certifying to PacifiCorp that the Facility can reasonably be expected to perform as predicted in the motive force plan for the duration of this Agreement. The motive force plan included, or was accompanied by, all Required Facility Documents relating to Seller's right to use the motive force as reasonably determined by PacifiCorp, which accompanying documents, if any, are attached hereto as part of **Exhibit F-1**.

SECTION 8: METERING

8.1 Metering Adjustment. Metering will be performed at the location and in the manner specified in **Exhibit B** and the Generator Interconnection Agreement. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount

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of power flowing into the System at the Point of Delivery.² The loss adjustment shall be a reduction of 2% of the kWh energy production recorded on the Facility output meter until actually measured and calibrated at the meter by PacifiCorp Transmission and documented in a signed letter to Seller from PacifiCorp's QF Contracts Administrator.

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

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

- (a) instantaneous MW output at the Point of Delivery;
- (b) Net Output; and
- (c) the Facility's total instantaneous generation capacity.

8.4 Monthly Reports and Logs and Other Information.

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

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

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

² If station service is supplied via separate facilities, PacifiCorp will deduct station service from the metered facility output to calculate Net Output.

8.4.4 At any time from the Effective Date, one (1) year's advance notice of the termination or expiration of any agreement pursuant to which the Facility or any equipment relating thereto is upon the Facility site; provided that the foregoing does not authorize any early termination of any land lease or other rights in real property associated with the Facility or Premise.

8.4.5 As soon as it is known to Seller, Seller shall disclose to PacifiCorp, the extent of any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises. PacifiCorp shall have no responsibility or liability for any Environmental Contamination at the Facility or Premise. Seller indemnifies and holds PacifiCorp harmless for any liability, costs or expenses associated with Environmental Contamination at or on the Facility or Premise.

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

SECTION 9: BILLINGS, COMPUTATIONS AND PAYMENTS

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

9.2 Corrections. PacifiCorp shall have up to thirty-six (36) months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Inadvertent Energy, calibration error, or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to correct the error in a reasonable time.

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

9.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Except as provided in Section 9.2, any such notice of dispute shall be provided within two (2) years of the date of the invoice in which the error first occurred. Failure to provide such notice in the time provided in this Section shall act as a waiver of the claim and the billing shall be final. If any amount disputed by such Party is determined to be due to the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days after such determination or resolution, along with interest in accordance with Section 9.3.

SECTION 10: SECURITY

10.1 Delay Security:

10.1.1 Duty to Post Security. By the date provided in Section 2.2.1, Seller shall post a Letter of Credit, cash or a parental guaranty, each in a form and from an entity acceptable to PacifiCorp, in the amount of \$45,111 as calculated pursuant to Section 10.1.2 ("**Delay Security**"). To the extent PacifiCorp receives payment from the Delay Security, Seller shall, within fifteen (15) calendar days, restore the Delay Security as if no such deduction had occurred.

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

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

Such amount shall be fixed upon execution of this Agreement.

10.1.3 Right to Draw on Security. PacifiCorp shall have the right to draw on the Delay Security to collect Delay Liquidated Damages. Commencing on or about the first of each month, PacifiCorp will invoice Seller for Delay Liquidated Damages incurred, if any, during the preceding month. If insufficient Delay Security is available, Seller shall pay PacifiCorp for invoiced Delay Liquidated Damages no later than five business days after receiving such invoice. The Parties will make billings and payments for Delay Liquidated Damages in accordance with Section 9.

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

10.1.5 Default. Seller's failure to post and maintain Delay Security in accordance with Section 10.1 will constitute an event of default, unless cured in accordance with Section 11.1.1 of this Agreement.

SECTION 11: DEFAULTS AND REMEDIES

11.1 The following events shall constitute defaults under this Agreement:

11.1.1 Non-Payment. A Party's failure to make a payment when due under this Agreement, or post and maintain security in conformance with the requirements of Section 10, or maintain insurance in conformance with the requirements of Section 13 of this Agreement, if the failure is not cured within ten (10) business days after the non-defaulting Party gives the defaulting Party a notice of the default.

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

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

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

11.1.5 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, within fifteen (15) business days from the date of such request.

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

11.1.7 Non-Delivery. Unless excused by an event of Force Majeure, Seller's failure to deliver any Net Energy to the Point of Delivery for three consecutive calendar months, if the failure is not cured within thirty (30) calendar days after PacifiCorp gives Seller notice of the default.

11.1.8 A Party otherwise fails to perform any material obligation (including but not limited to failure by Seller to meet any deadline set forth in Section 2.2) imposed upon that Party by this Agreement if the failure is not cured within thirty (30) calendar days after the non-defaulting Party gives the defaulting Party notice of the default;

provided, however, that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional ninety (90) calendar days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2 In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default. If the default has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

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

11.4 If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp for the energy and associated capacity that Seller was scheduled to provide for a period of twelve (12) months ("**Replacement Period**") from the date of termination plus the estimated administrative cost to acquire the replacement power ("**Net Replacement Power Costs**"). Net Replacement Power Costs equals the sum of: the Replacement Price times the Replacement Volume, for each day of the Replacement Period, plus the estimated administrative cost to the utility to acquire replacement power.

Where:

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

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

Amounts owed by Seller pursuant to this Section shall be due within five (5) business days after an invoice from PacifiCorp for the same. The Parties agree that the damages PacifiCorp would incur due to termination resulting from Seller's default would be difficult or impossible to predict with certainty, and that the damages in this Section 11.4 are an appropriate approximation of such damages.

11.5 Recoupment of Damages.

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

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

SECTION 12: INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

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

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

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

12.3 No Warranty. Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by

PacifiCorp and PacifiCorp makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

12.4 CONSEQUENTIAL DAMAGES. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

SECTION 13: INSURANCE

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section 13. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder upon the Effective Date and on each annual anniversary of the Effective Date or as otherwise requested by PacifiCorp. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A" by the A.M. Best Company the insurance coverage specified in Exhibit 1 to this Agreement.

SECTION 14: FORCE MAJEURE

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

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14.1.1 the non-performing Party, shall, within five (5) days after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence, including the start date of the Force Majeure, the cause of Force Majeure, whether the Facility remains partially operational and the expected end date of the Force Majeure;

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

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

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

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

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

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six (6) months after the occurrence of the event of Force Majeure.

SECTION 15: SEVERAL OBLIGATIONS

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

SECTION 16: CHOICE OF LAW

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

SECTION 17: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid,

GENERAL CONDITIONS

illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

SECTION 18: WAIVER

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

SECTION 19: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

PacifiCorp's compliance with the terms of this Agreement is conditioned on Seller's submission to PacifiCorp prior to the Commercial Operation Date and Seller's maintenance thereafter of copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility.

SECTION 20: SUCCESSORS AND ASSIGNS

20.1 This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto. This Agreement may be assigned by either Party upon 30 business days (or longer if reasonably required) prior written notice and opportunity to object by the other Party; provided that:

20.1.1 Any entity with which PacifiCorp may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of PacifiCorp's rights, obligations, and interests under this Agreement.

20.1.2 Either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement, provided that Seller promptly notifies the PacifiCorp of any such assignment.

20.1.3 Seller shall have the right to assign this Agreement, without the consent of the PacifiCorp, for collateral security purposes to aid in providing financing for the Facility, provided that the Seller will promptly notify PacifiCorp of any such assignment.

20.1.4 Any attempted assignment that violates this article is void and ineffective. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the assignor. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

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SECTION 21: ENTIRE AGREEMENT

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

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

SECTION 22: JURY TRIAL WAIVER

TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

SECTION 23: NOTICES

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

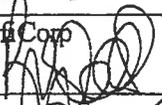
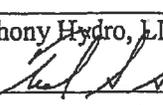
Notices	PacifiCorp	Seller
All Notices	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	St. Anthony Hydro, LLC Attn: Ted Sorenson 5203 South 11 th East Idaho Falls, ID 83404 Phone: (208) 522-8069 Facsimile:(208) 522-8223 Federal Tax ID No: 46-0913806 Duns:
All Invoices:	Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as above)
Scheduling:	Attn: Resource Planning, Suite 600	(same as above)

GENERAL CONDITIONS

Notices	PacifiCorp	Seller
	Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
Payments:	Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as above)
Wire Transfer:	Bank One N.A. To be provided in separate letter from PacifiCorp to Seller	Confidential information to be provided separately
Credit and Collections:	Attn: Credit Manager, Suite 700 Phone: (503) 813 - 5684 Facsimile: (503) 813-5609	(same as above)
With Additional Notices of an Event of Default or Potential Event of Default:	Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-6761	(same as above)

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

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

PacifiCorp By:  Name: <u>Bruce Griswold</u> Title: <u>Director Short Term Origination</u> Date: <u>December 20, 2012</u>	St. Anthony Hydro, LLC (Seller) By:  Name: <u>Tad S. Sorenson</u> Title: <u>Manager</u> Date: <u>December 13, 2012</u>
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GENERAL CONDITIONS

EXHIBIT 1: INSURANCE

1.1 Certificates. Prior to connection of the Facility to the System, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) evidencing Seller's compliance with the insurance requirements hereunder. In the event of a claim or legal action involving any of these insurance policies, if requested by PacifiCorp, Seller shall furnish a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, to PacifiCorp.

1.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies, or reinsurance companies, rated not lower than "A-/VII" by the A.M. Best's Key Rating Guide the insurance coverage specified below:

1.2.1 Commercial General Liability. Seller shall obtain and maintain commercial general liability insurance, written on an occurrence basis, to including but not limited to premises and operations, and contractual liability, with a minimum single limit of \$1,000,000 per occurrence to protect against and from loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

1.2.2 Property Insurance. Coverage shall be provided in an amount at least equal to 100% of the replacement value of the Facility against "all risks" of direct physical loss or damage, including coverage for earth movement, earthquake, flood, and boiler and machinery. The Property policy may contain separate sub-limits and deductibles consistent with current insurance industry utility practices for similar property, and subject to normal and customary policy exclusions, terms and conditions.

1.2.3 Workers' Compensation. Seller shall comply with all applicable Workers' Compensation laws and shall include Employers' liability insuring bodily injury with limits of not less than \$500,000. Proof of coverage shall be furnished as stated above in 1.1 Certificates.

1.2.4 Business Automobile Liability. Seller shall maintain business automobile liability insurance with a minimum single limit of \$1,000,000 each accident for bodily injury and property damage including sudden and accidental pollution liability, with respect to Seller's vehicles whether owned, hired or non-owned, assigned to or used in connection with Seller's performance of this Agreement.

1.2.5 Excess / Umbrella Liability. Seller shall maintain excess / umbrella liability insurance with a single limit of at least \$2,000,000 per occurrence in excess of the limits of insurance provided above under commercial general liability, employers' liability and business automobile liability.

1.3 The Commercial General Liability and the Excess Umbrella Liability policy required herein shall include the following provisions, (i) naming PacifiCorp, its parent, divisions, directors, officers, employees and agents as additional insureds, (ii) cross liability or severability of interest or separation of insureds clause so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues

another insured, and (iii) such insurance is primary insurance with respect to the interests of PacifiCorp and hat any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder.

1.4 All policies required by this Agreement shall include provisions, (i) that such policies shall include waivers of subrogation, unless prohibited by applicable law the insurer will have no right of recovery or subrogation against PacifiCorp, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, agents, directors, officers, employees servants, and insurers; and (ii) that in the event of cancelation or reduction in minimum required limits of these required insurance policies, Seller shall immediately notify PacifiCorp of such action. Seller will provide proof of reinstated or replaced insurance prior to the date of cancellation. If the failure cannot be reasonably cured, PacifiCorp may purchase the appropriate coverage and offset the insurance cost against Seller's payments under this Agreement.

1.5 If Commercial General Liability insurance coverage is provided on a "claims-made" basis, coverage shall be maintained by Seller for a period of two (2) years after completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

EXHIBIT A: DESCRIPTION OF SELLER'S FACILITY

[Completed by Seller]

Seller's Facility consists of one (1) generator manufactured by General Electric More specifically, the generator at the Facility is described as:

A. Manufacturer's Nameplate Data:

Type (synchronous or inductive): Synchronous

Model: 6

Number of Phases: 3

Rated Output (kW): 700 **Rated Output (kVA):** 700

Rated Voltage (line to line):

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

Maximum kW Output: 700 kW **Maximum kVA Output:** 700 kVA

Minimum kW Output: 50 kW

Facility Capacity Rating: 700 kW at 2,300 volts

Maximum Facility Delivery Rate: 700 kW at 2,300v

Maximum GIA Delivery Rate: 700 kW instantaneous

Describe (1) any differences between the maximum output of the generator(s) and their Nameplate Capacity Rating(s) and (2) any differences between the Facility Capacity Rating, the Maximum Facility Delivery Rate, and the Maximum GIA Delivery Rate:

Station service requirements, and other loads served by the Facility, if any, are described as follows: Station service is estimated to be less than 3 KW

Location of the Facility: The Facility is located in Fremont County, Idaho. The location is more particularly described as follows:

43° 57'52.5" N

111° 41'120.3" W

Power factor requirements:

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

EXHIBIT B

POINT OF DELIVERY / PARTIES' INTERCONNECTION FACILITIES

[diagram and description provided by Seller]

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.
 1. The point of metering is on the low side to the transformer located on Circuit 11 adjacent to the St. Anthony Substation. The point of delivery is on the high side of the same transformer interconnected to the St. Anthony Substation
 2. The one-line diagram is attached

EXHIBIT C
REQUIRED FACILITY DOCUMENTS

Qualifying Facility No. _____
Generator Interconnection Agreement: _____
FERC Hydro Facility License:
Water Rights: A01-00280
Proof of Insurance
Evidence showing agreement for retail electric service

Permits required to operate the Facility:

Seller has indicated no other state or county permits are required. This information shall be confirmed by Seller prior to Commercial Operation.

EXHIBIT D
SUBSEQUENT ENERGY DELIVERY SCHEDULE

St. Anthony Hydro		800 kW Nameplate Capacity	
Base Estimates	Scheduled Monthly Energy Delivery (kWh)	Ave kW/mo	Monthly NET Capacity Factor
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
TOTAL:			

Planned Outages. Seller will provide a Planned Outage schedule annually not to exceed 150 hours per year.

EXHIBIT E

START-UP TESTING

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

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

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

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

EXHIBIT F-1 Motive Force Plan

St. Anthony Hydro-- Historic Generation (MWhr)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1966	376	373	402	407	360	281	261	294	112	288	383	242	3,779
1967	366	375	414	359	385	381	378	348	330	397	406	340	4,485
1968	317	317	434	384	412	379	265	364	322	164	349	388	4,090
1969	435	390	435	426	390	378	345	324	358	427	399	406	4,713
1970	331	382	411	392	398	398	299	280	400	421	400	327	4,472
1971	443	330	389	395	386	399	321	343	416	429	426	365	4,442
1972	412	326	382	358	394	391	338	370	407	434	333	284	4,322
1973	248	298	329	310	326	248	220	275	339	377	368	161	2,754
1974	299	362	426	407	361	354	313	336	329	377	368	380	4,312
1975	361	184	238	238	396	333	232	264	329	377	368	380	2,008
1976													
1977			71	194	205	138	172	216	195	272	6	27	1,496
1978	534	279	303	294	165	257	169	189	269	305	316	190	3,270
1979	0	42	218	233	231	214	175	66	267	156	57	293	1,418
1980	235	172	254	214	316	302	63	193	35	231	301	274	2,520
1981	332	245	278	273	305	246	100	93	166	180	258	162	1,934
1982	0	64	242	257	245	215	175	136	249	276	144	183	2,443
1983	180	217	278	296	325	219	194	244	166	-3	144	183	2,443
1984	83	235	297	305	264	239	246	280	249	276	268	67	2,809
1985	-1	-3	252	111	282	173	100	93	161	333	274	121	1,914
1986	189	216	294	296	312	249	147	128	213	260	285	63	2,652
1987	149	242	241	305	300	126	137	149	128	165	329	198	2,469
1988	192	153	337	303	317	132	68	104	147	117	294	107	2,271
1989	219	59	269	288	248	247	91	133	155	240	265	264	2,478
1990	289	270	390	288	322	266	162	198	61	234	358	160	2,710
1991	64	167	311	285	0	117	160	119	114	131	145	231	1,844
1992	208	267	276	311	149	173	222	131	118	140	139	145	2,279
1993	118	189	270	311	183	248	128	154	154	56	302	335	1,983
1994	357	318	339	351	329	231	256	270	106	214	214	357	2,771
1995							347	344	361	408	392	357	2,209
1996	364	194			239	342	275	322	338	399	414	396	3,283
1997	380	358	400	375	295	311	348	399	412	263	221	341	4,103
1998	401	356	381	362	325	319	320	304	312	425	449	379	4,333
1999	386	343	406	371	334	310	295	283	102	213	237	212	3,492
2000	229	230	252	139	232	345	247	33	179	351	335	330	2,902
2001	280	302	362	330	368	293	143			225	382	48	2,733
Average:	256.7	250.1	324.2	308.7	297.0	272.4	223.9	235.4	234.7	266.2	297.9	242.9	3,210.0
1966-2001,													Yearly Average
Excluding 1976													1966-2001,
													Excluding 1976

Minimum
Average
Max

1,496 Mwh
3,210 Mwh
4,713 Mwh

PacifiCorp PPA



EXHIBIT F-2
ENGINEER'S CERTIFICATE
OF
MOTIVE FORCE PLAN

See attached letter.

 **Schuess & Associates**
ENGINEERING • PLANNING • LAND SURVEYING

7103 SOUTH 45TH WEST, IDAHO FALLS, ID 83402
OFFICE: (208) 522-1244 • FAX: (208) 522-9232

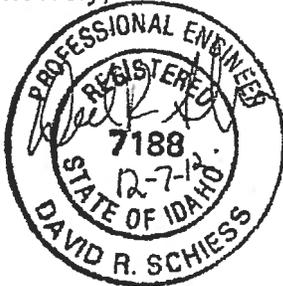
December 7, 2012

PacifiCorp
825 NE Multnomah St
Portland, OR 97232

Subject: Project No. 12171 St. Anthony Hydro LLC

I have reviewed the Motive Force Plan, design calculations, inspected the existing plant for the St. Anthony Hydro LLC hydroelectric generation project. My assessment is that the proposed 700 KW hydroelectric project is likely capable of providing the estimated average, maximum and minimum net output for the term of this Agreement. This assessment is based on average conditions that are foreseeable during the contract period.

Sincerely,



David R Schuess, MS, PE

EXHIBIT G
SAMPLE ENERGY PURCHASE PRICE CALCULATIONS

The following are samples of calculations of energy purchase prices using the formula and tables in Section 5.1.

The calculation for the non-levelized purchase price during an On-Peak Hour in May of 2011 equals: \$60.24/MWh (the 2011 annual rate for Conforming Energy) multiplied by 92% (0.92) (the May On-Peak Hour multiplier), which equals \$55.42/MWh.

Table 2: Sample calculations for non-levelized Conforming Energy in 2011 [Purchase Price = annual rate * monthly on-peak/off-peak multiplier].

Month	Conforming Energy Annual Rate for 2011 (per MWh)	On-Peak Hour Multiplier	Calculated Purchase Price for 2011 On-Peak Conforming Energy (per MWh)	Off-Peak Hour Multiplier	Calculated Purchase Price for 2011 Off-Peak Conforming Energy (per MWh)
January	\$60.24	103%	\$62.05	94%	\$56.63
February	\$60.24	105%	\$63.25	97%	\$58.43
March	\$60.24	95%	\$57.23	80%	\$48.19
April	\$60.24	95%	\$57.23	76%	\$45.78
May	\$60.24	92%	\$55.42	63%	\$37.95
June	\$60.24	94%	\$56.63	65%	\$39.16
July	\$60.24	121%	\$72.89	92%	\$55.42
August	\$60.24	121%	\$72.89	106%	\$63.85
September	\$60.24	109%	\$65.66	99%	\$59.64
October	\$60.24	115%	\$69.28	105%	\$63.25
November	\$60.24	110%	\$66.26	96%	\$57.83
December	\$60.24	129%	\$77.71	120%	\$72.29

EXHIBIT H
SAMPLE CONFORMING ENERGY CALCULATIONS

The following are sample calculations for determining On-Peak and Off-Peak Conforming Energy and Non-Conforming Energy for purposes of the payment formulae in Section 5.2 for a given month. These examples assume that the Net Energy is delivered after the Commercial Operation Date and that no Inadvertent Energy is delivered.

Step 1: Determine the 90%/110% performance target.

$SMED-90$ (kWh) = 90% * $SMED$ (kWh) ($SMED$ is the Scheduled Monthly Energy Delivery after any adjustments pursuant to Section 4.4.)

$SMED-110$ (kWh) = 110% * $SMED$ (kWh)

Step 2: Determine which portion of Net Energy for the month is Conforming Energy and which is Non-Conforming Energy in relation to the 90%/110% performance targets.

If total Net Energy < $SMED-90$, all Net Energy is Non-Conforming Energy

If total Net Energy \geq $SMED-90$ and \leq $SMED-110$, all Net Energy is Conforming Energy

If total Net Energy > $SMED-110$,

(a) Determine the point in time during the month at which Net Energy reached $SMED-110$ ($Time-110$);

(b) All Net Energy delivered before $Time-110$ is Conforming Energy;

(c) All Net Energy delivered after $Time-110$ is Non-Conforming Energy.

Step 3: Determine the On-Peak and Off-Peak amounts for the Conforming Energy and Non-Conforming Energy values by whether the meter reading indicates that the energy was delivered during On-Peak or Off-Peak Hours. These amounts are the $CEnergy_{On-Peak}$, $CEnergy_{Off-Peak}$, $NCEnergy_{On-Peak}$, and $NCEnergy_{Off-Peak}$ values for the formulae in Section 5.2.

Example Month: The following is an example calculation for a month given the following values:

$SMED = 200,000$ kWh

Net Energy = 250,000 kWh

Example Step 1: Determine the 90%/110% performance target.

$SMED-90$ (kWh) = 90% * 200,000 kWh ($SMED$) = 180,000 kWh

$SMED-110$ (kWh) = 110% * 200,000 kWh ($SMED$) = 220,000 kWh

Example Step 2: Determine which Net Energy is Conforming Energy and which is Non-Conforming Energy in relation to the 90%/110% performance targets.

Because 250,000 kW (Net Energy) > 220,000 kWh (*SMED-110*),

- (a) Assume that the meter shows that accumulated Net Energy for the month reached 220,000 kWh (*SMED-110*) at 1 p.m. on the 25th (*Time-110*);
- (b) All Net Energy delivered before 1 p.m. on the 25th (*Time-110*) is Conforming Energy;
- (c) All Net Energy delivered after 1 p.m. on the 25th (*Time-110*) is Non-Conforming Energy

Example Step 3: Determine the On-Peak and Off-Peak amounts for the Conforming Energy and Non-Conforming Energy values by whether the meter reading indicates that the energy was delivered during On-Peak or Off-Peak Hours. For this example, actual meter readings for On-Peak and Off-Peak Hours are made up. (Note: where Net Energy > *SMED-110*, $CEnergy_{On-Peak} + CEnergy_{Off-Peak} = SMED-110$.)

On-Peak Conforming Energy (kWh) = metered Net Energy delivered before *Time-110* during On-Peak Hours = 150,000 kWh = $CEnergy_{On-Peak}$

Off-Peak Conforming Energy (kWh) = metered Net Energy delivered before *Time-110* during Off-Peak Hours = 70,000 kWh = $CEnergy_{Off-Peak}$

On-Peak Non-Conforming Energy (kWh) = metered Net Energy delivered after *Time-110* during On-Peak Hours = 20,000 kWh = $NCEnergy_{On-Peak}$

Off-Peak Non-Conforming Energy (kWh) = metered Net Energy delivered after *Time-110* during Off-Peak Hours = 10,000 kWh = $NCEnergy_{Off-Peak}$

EXHIBIT I

Seller Authorization to Release Generation Data to PacifiCorp

See attached letter

Seller Authorization to Release Generation Data to PacifiCorp

[Interconnection Customer Letterhead]

*St Anthony Hydro LLC
5203 South Hill East
Idaho Falls, Idaho 83404*

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

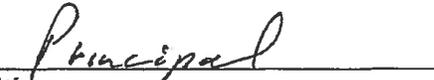
RE: St. Anthony Hydro LLC Interconnection Request

Dear Sir:

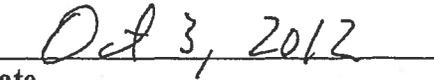
St. Anthony Hydro, LLC hereby voluntarily authorizes PacifiCorp's Transmission business unit to share St. Anthony Hydro, LLC 's generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial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



Name



Title



Date

EXHIBIT 4.5

GREEN TAG ATTESTATION AND BILL OF SALE

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

Facility name and location: _____ Fuel Type: _____

Capacity (MW): _____ Operational Date: _____

Energy Admin. ID no.: _____

Dates	MWh generated
_____	_____

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

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

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

Seller's Contact Person: [_____]

WITNESS MY HAND,

a _____ limited liability company

By _____

Its _____

Date: _____

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