

**ATTACHMENT 5
TOLLING SERVICE AGREEMENT
CONTRACT**

Issue Date - *December 2, 2009*

Responses due - *March 1, 2010*

**ALL SOURCE RFP
TOLLING AGREEMENT**

dated as of [_____], 2008,

BETWEEN

**[*Bidder #*],
as Seller,**

AND

**PACIFICORP,
as Buyer**

[_____ **Project]**

[_____, [*State*]]

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EXHIBITS:

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Exhibit S	Dispatch Notice
Exhibit T	Credit Matrix [<i>Note to bidders: Credit Matrix attached as Appendix to All Source RFP</i>]
<u>Exhibit U</u>	<u>Form of Lender Consent</u>

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE AND ABSOLUTE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS WORKING DRAFT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

TOLLING AGREEMENT

THIS TOLLING AGREEMENT dated as of [_____], 2008 (this "**Agreement**"), is made and entered into between [_____], a [*describe entity*] ("**Seller**"), and PacifiCorp, an Oregon corporation, acting in its merchant function capacity ("**Buyer**"). Seller and Buyer are referred to collectively as the "**Parties**" and individually as a "**Party**."

RECITALS

A. Seller intends to develop, construct, own, operate and maintain a [Bidder to insert a description of the resource] [*consisting of* [_____ **MW** – *Insert further description*] for the generation of electric energy located in [township/range], [_____] County, [State], whose initial Facility Capacity shall be [**Insert Capacity**] MW (as more fully described in **Exhibit A**, the "**Facility**").

B. Seller responded to a Request for Proposals – 2008 All Source RFP which was issued by Buyer in _____ 2009. Buyer's objective in issuing the RFP was to fulfill, through a competitive bid process, a portion of its supply-side resource need as contemplated in Buyer's 2007 Integrated Resource Plan.

C. Buyer's selection of Seller was based upon a competitive bid and was, in part, based upon Seller's representations and warranties, Seller's schedule achieving the Guaranteed Commercial Operation Date (initially capitalized terms not defined in these Recitals are defined in Section 1 below), and the guaranteed performance of the Facility, all as set forth herein. Such matters were a material inducement for the selection of Seller, and Seller's failure to perform in accordance with the terms and conditions or Seller's failure to meet its representations and warranties and schedules for delivery of Net Energy shall cause material damage to Buyer.

D. Seller will make available and sell to Buyer, and Buyer will receive and purchase from Seller, Contract Capacity and Net Energy associated with such Contract Capacity pursuant to the terms and conditions of this Agreement. Seller acknowledges that Buyer will include such Contract Capacity in Buyer's resource planning.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

SECTION 1

DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, defined terms used in this Agreement (as indicated by initial capitalization, except as otherwise provided in this Section 1.1) shall have the following meanings:

“**AAA**” has the meaning set forth in Section 15.2.

“**Affiliate**” means, with respect to any entity, each entity that directly or indirectly, controls or is controlled by or is under common control with such designated entity. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

“**Alternate Representative**” has the meaning set forth in Section 6.4.2.

“**Ambient Facility Capacity**” means the Contract Capacity determined from the correction algorithms set forth in **Exhibit M**, based upon the Facility Capacity and the ambient conditions in effect in each hour.

“**Ancillary Services**” means those services and energy from time to time now or hereafter available that are necessary to support the Contract Capacity and transmission of energy from resources to loads while maintaining reliable operation of the System in accordance with Prudent Electrical Practices. Such services and energy include regulation reserve, spinning reserve, non-spinning reserve, voltage support, black start Capacity, and reactive power.

“**As-built Supplement**” shall be a supplement to **Exhibit A** that describes the Facility as actually built and shall include all such information as may reasonably be requested by Buyer.

“**Authorized Representative**” has the meaning set forth in Section 6.4.2

“**Availability Notice**” has the meaning set forth in Section 6.5.1.1.

“**Baseload Capacity**” means the Capacity of the Facility achieved when operating at the Reference Conditions with all items of Major Equipment operating at full load, but without duct firing.

“**Baseload Fuel Supply Requirement**” means, with respect to any Day, the product of the applicable Baseload Heat Rate multiplied by the quantity of Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Baseload Capacity component of the Contract Capacity.

“**Baseload Heat Rate**” has the meaning set forth in Section 6.5.3.8.

“**Business Day**” means any day on which banks in Portland, Oregon are not authorized or required by Requirements of Law to be closed, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Oregon.

“**Btu’s**” means British Thermal Units.

“**Buyer**” has the meaning set forth in the Preamble.

“**CAF_h**” has the meaning set forth in Section 5.1.2.

“**CAF_m**” has the meaning set forth in Section 5.1.2.

“**Capacity**” means the output potential a machine or system can produce under specified conditions as generally expressed in kW or MW.

“**Capacity Payment**” means the Monthly Capacity Payments and the Minimum Monthly Capacity Payments payable in accordance with Section 5.1.

“**Capacity Payment Rate**” means, as of the Commercial Operation Date, \$[?]/kW/month.

“**Capacity Payment Shortfall**” has the meaning set forth in Section 5.1.4.

“**Capacity Rights**” means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, including any accounting construct counted towards any current or future resource adequacy or reserve requirements, associated with the Capacity of the Facility or the Facility’s capability and ability to produce energy, but excluding any of the foregoing attributable to any expansion of the Facility occurring after the Commercial Operation Date, unless the output associated therewith is purchased by Buyer.

“**Carry-Over Letter of Credit**” has the meaning set forth in Section 5.1.4.

“**Cash Escrow**” means an escrow account established by Buyer in a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, whose long-term senior unsecured debt is rated at least “A” by S&P and “A2” by Moody’s, and with assets (net of reserves) of at least \$10,000,000,000.. Cash deposited to the escrow account shall earn interest at the rate applicable to money market deposits at the

banking institution from time to time, and the interest shall be retained in the escrow account as additional security for Seller's performance under this Agreement.

“**CC**” has the meaning set forth in Section 5.1.2.

“**Collateral**” has the meaning set forth in Section 7.5

“**Combustion Turbine**” or “**CT**” means any one of the combustion turbines comprising the Facility.

“**Commercial Operation Date**” means the date on which the Facility is fully operational, reliable and each condition set forth in Section 2.2.6 is continuously satisfied.

“**Contract Capacity**” means [X] MW of Capacity from the Facility, comprised of [X] MW of Baseload Capacity and [X] MW of Peakload Capacity.

“**Contract Year**” means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours 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 last Day of the Term.

“**CPR**” has the meaning set forth in Section 5.1.2.

“**CPS**” has the meaning set forth in Section 5.1.2.

“**Credit Matrix**” means the credit matrix attached hereto as **Exhibit T**.

“**Credit Rating**” means, as of any date, the then applicable senior, unsecured, long-term debt or corporate credit rating of a Person published by either Moody's or S&P.

“**Credit Support**” means, prior to the Commercial Operation Date, the amounts, if any, and subject to Section 7.1, shown on the Credit Matrix.

“**Credit Support Security**” means a guaranty, Letter of Credit or Cash Escrow provided pursuant to Section 7.1.

“**CT Start**” means the process of rotating any of the Facility's Combustion Turbine rotors by means of such Combustion Turbine's starting motor and subsequently introducing and igniting Fuel in the Combustion Turbine's combustor and increasing the rotating speed of the unit's rotor sufficiently that the starting motor can be disengaged, also referred to herein as the Start-Up of a Combustion Turbine.

“**Daily Delay Damages**” for each Day shall be the positive number (and if not a positive number, zero) equal to the sum for all hours of the Day of the product for each hour of the Day of (1) the Dow JonesTM SP15 Firm On-peak Index (or if on a Sunday or a NERC holiday, the 24-hour firm index) for such Day, expressed in \$/MWh, *multiplied by* (2) the applicable hourly scalar set forth in **Exhibit D** for the hours ending 0700 – 2200 Pacific Prevailing Time, seven (7) days a week, including NERC holidays (each such hour, an “**On-Peak Hour**”) during such Day,

multiplied by (3) the loss factor of 1.112, plus (4) the basis of \$13/MWh for each On-Peak Hour or portion thereof during such Day, minus (5) for On-Peak Hours, the market price at the Fuel Delivery Point of the Fuel that would have been required to generate the Net Energy attributable to the Contract Capacity during such On-Peak Hour in such Day using the Guaranteed Heat Rate, minus (6) one twenty-fourth of the Capacity Payments that would have been made with respect to such Day, if no Capacity Payments have been paid with respect to such Day. The market price of Fuel at the Fuel Delivery Point will be determined by Buyer using any commercially reasonable method. If the ICETM SP15 Firm On-peak Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak energy at South of Path 15 for the applicable periods.

“**Day**” means the 24-hour period beginning at midnight Pacific Prevailing Time on a day and ending at midnight Pacific Prevailing Time on the next succeeding day.

“**Dispatch,**” “**Dispatched,**” and “**Dispatching**” means the scheduling and control by the Buyer of Net Energy, through submittal of schedules pursuant to the Dispatch Procedures and other provisions of this Agreement.

“**Dispatch Procedures**” means the procedures under which Buyer is entitled to Dispatch the Facility, as set forth in **Exhibit P**.

“**Dollar**” or “**\$**” means the lawful currency of the United States of America.

“**Effective Date**” has the meaning set forth in Section 2.1.

“**Electrical Interconnection Facilities**” means all the facilities installed by Seller for the purpose of interconnecting the Facility to the Electricity Delivery Point, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment, as set forth in **Exhibit B**.

“**Electricity Delivery Point**” means the physical point(s) for Seller’s delivery, and Buyer’s receipt, of Net Energy at which the Facility is connected with the Transmission Provider’s transmission system, as specified in the Interconnection Agreement and in **Exhibit B**. *[Note to Bidders: If energy is to be delivered to a transmission provider other than the Transmission Provider and wheeled to the Electricity Delivery Point, the Electricity Delivery Point will be at a point of interconnection with the Transmission Provider’s transmission system where the resource can be integrated as a Network Resource.]*

“**Electric Metering Equipment**” has the meaning set forth in Section 8.1.

“**Environmental Law**” means any federal, state or local law including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements having the force and effect of law relating to (i) the discharge or disposal of any substance into the air, soil or water, including pollutants, water pollutants or process waste water, (ii) storage, emissions transportation or disposal of any Regulated Material, (iii) the

environment or hazardous substances, all as amended from time to time, (iv) land use requirements pertaining to Regulated Materials, including laws requiring environmental impact studies or other similar evaluations, and (v) environmental issues pertaining to the development, construction, operation or maintenance of the Facility.

“**Event of Default**” has the meaning set forth in Section 10.1.

“**EWG**” means an “exempt wholesale generator,” as defined under the Public Utility Holding Company Act of 1935, as amended from time to time.

“**Example**” means an example set forth in **Exhibit G**. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.

“**Excused Outage**” has the meaning set forth in Section 5.1.2.

“**Facility**” shall have the meaning given to that term in **Recital A**.

“**Facility Capacity**” means the maximum Capacity of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

“**FERC**” means the Federal Energy Regulatory Commission.

“**FIN 46**” has the meaning set forth in Section 6.13.

“**Force Majeure**” has the meaning set forth in Section 13.1.

“**Forced Outage**” means NERC Event Types U1, U2 and U3, as set forth in **Exhibit H**.

“**Fuel**” means natural gas meeting the specifications set forth in **Exhibit O**.

“**Fuel Delivery Point**” means the point at which Fuel is delivered from [_____] to the Facility, as specified in **Exhibit O**.

“**Fuel Metering Point**” means the delivery point specified in **Exhibit O**.

“**Fuel Supply Requirement**” means, for any Day, the sum, without duplication, of (i) the Start-Up Fuel Quantity for each Start-Up that occurs during such Day and (ii) the Operating Fuel Quantity for such Day.

“**Fuel Transporter**” means the pipeline company selected by Buyer to transport the Fuel to the Facility.

“**Governmental Authority**” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township and county, and any entity 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.

“Guaranteed Commercial Operation Date” means *[Bidder to insert]*.

“Guaranteed Heat Rate” has the meaning assigned to such term in **Exhibit R**.

“Guaranteed Ramp Rate” has the meaning set forth in **Exhibit R**.

“Guaranteed Start-Up Time” has the meaning set forth in **Exhibit R**.

“Heat Rate” means the number of Btu’s used to produce one MW of energy measured at the Electricity Delivery Point.

“Interconnection Agreement” means the agreement to be entered into separately between Seller and Transmission Provider providing for the construction and operation of the Electrical Interconnection Facilities.

“Lender” means any individual or entity or successor in interest thereof lending money or extending credit (including any financing lease or credit derivative arrangement) to Seller (i) for the construction, term or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (iv) for the purchase of the Facility and related rights from Seller. As used herein, “Lender” includes a Tax Investor (as defined in the Lender Consent).

“Lender Consent” means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of **Exhibit U**.

“Letter of Credit” means an irrevocable standby letter of credit in form and substance acceptable to Buyer in its discretion, naming Buyer as the party entitled to demand payment and present draw requests thereunder, which letter of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having assets (net of reserves) of at least \$10,000,000,000 and a Credit Rating of:

- (a) “A2” or higher from Moody’s; and
- (b) “A” or higher from S&P;

(2) on the terms provided in the letter of credit, permits Buyer to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits Buyer to draw upon a U.S. branch;

(4) permits Buyer to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;

(5) permits Buyer to draw the entire amount available thereunder if such letter of credit is not increased, replaced or replenished as and when provided in Section 7;

(6) is transferable by Buyer to any party to which Buyer may assign this Agreement under Section 17.7; and

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

“Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state in which the Facility is located, (ii) has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (iii) has no economic relationship, association, or nexus with Seller, (iv) 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, (v) is engaged by Seller on terms reasonably acceptable to Buyer, (vi) has its fees paid for by Seller, and (vii) is licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with Seller.

“MAAF” has the meaning set forth in Section 5.1.2.

“Maintenance Outage” means NERC Event Type MO, as set forth in **Exhibit H**.

“Major Equipment” has the meaning set forth in **Exhibit I**.

“Major Maintenance Cycle” means, with respect to each item of Major Equipment, the period of time specified therefor in **Exhibit I**.

“Mediation Notice” has the meaning set forth in Section 15.2.1.

“Minimum Monthly Capacity Payment” has the meaning set forth in Section 5.1.3.

“Monthly Capacity Payment” has the meaning set forth in Section 5.1.2.

“Moody’s” shall mean Moody’s Investor Services, Inc.

“MW” means megawatt.

“MWh” means megawatt hour.

“**NERC**” means the North American Electric Reliability Council.

“**Net Energy**” means, for any period, the energy output of the Facility delivered to Buyer at the Electricity Delivery Point pursuant to Buyer’s Dispatch of the Facility of a quantity in MWh not to exceed that associated with Contract Capacity, as measured pursuant to Section 8, less station use and less transformation and transmission losses to the Electricity Delivery Point.

“**Network Resource**” means a generation resource which has been fully integrated into the System.

“**Notifying Party**” has the meaning set forth in Section 8.2.

“**Operating Fuel Quantity**” means, with respect to any hour, the sum of (i) any Baseload Fuel Supply Requirements, (ii) any Peakload Fuel Supply Requirement, and (iii) any Simple Cycle Fuel Requirements.

“**Operating Procedures**” are set out in **Exhibit K**.

“**Pacific Prevailing Time**” means Pacific Standard Time or Pacific Daylight Time, as applicable on the Day in question.

“**Party**” has the meaning set forth in the Preamble.

“**Peakload Capacity**” means incremental Capacity, in excess of the Baseload Capacity, which is generated by the Facility utilizing duct firing.

“**Peakload Fuel Supply Requirement**” means with respect to any Day, the product of the applicable Peakload Heat Rate multiplied by the quantity Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Peakload Capacity component of the Contract Capacity.

“**Peakload Heat Rate**” has the meaning set forth in Section 6.5.3.8.

“**Permits**” means all permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the development, construction, ownership, operation and maintenance of the Facility, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Person**” means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.

“**Planned Outage**” means NERC Event Type PO, as set forth on **Exhibit H**.

“**Pledge Interest**” has the meaning set forth in Section 7.2.2.

“**Potential Event of Default**” means an event which, but for the passing of time or the giving of notice or both, would constitute an Event of Default.

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

“**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 Citibank, N.A. If a Citibank, N.A. 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.

“**Protective Apparatus**” means such equipment and apparatus, including protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facility from the System consistent with Prudent Electrical Practices.

“**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 for gas fired, combined cycle electric generation facilities, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, would have been expected to accomplish the desired result in a cost efficient manner consistent with good business practices, reliability criteria, safety considerations and expediency. 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.

“**Reference Conditions**” means the following conditions: standard ambient air pressure at the Premises of [?]; ambient temperature, dry bulb, of [?] degrees Fahrenheit; and relative humidity of [?] percent ([?]%).

“**Regulated Materials**” means any substance, material, or waste which is now or hereafter becomes listed, defined, or regulated in any manner by any United States federal, state or local law and includes any oil, petroleum, petroleum products and polychlorinated biphenyls.

“**Remaining Capacity**” means all the Capacity of the Facility in excess of the Contract Capacity.

“**Replacement Price**” means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Electricity Delivery Point a replacement for any energy that Seller is required to deliver under this Agreement, plus (i) costs reasonably incurred by Buyer in purchasing such replacement energy, and (ii) additional transmission charges, if any, reasonably incurred by Buyer in causing replacement energy to be delivered to the Electricity Delivery Point. If Buyer elects not to make such a purchase, the Replacement Price shall be the market price at the Electricity Delivery Point for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by Buyer in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

“**Reporting Month**” has the meaning set forth in Section 6.9.1.

“**Requested Net Energy**” means, for any period, the Net Energy of the Facility that has been scheduled by Buyer for delivery in accordance with the Dispatch Procedures and other terms of this Agreement.

“**Required Facility Documents**” means all Permits and agreements now or hereafter necessary for the development, construction, ownership, operation and maintenance of the Facility including the documents (i) to which Seller and Buyer are a party evidencing the Security Interests and (ii) those set forth in **Exhibit C**.

“**Requirements of Law**” means collectively, as to Seller and [*if Seller is not the ultimate parent, any ultimate parent entity*], Seller’s organizational or governing documents and any federal, state, county or municipal, law, treaty, ordinance, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator, or a court or other Governmental Authority, in each case, now or hereafter applicable to or binding upon this Agreement, the Facility, Seller or [*if Seller is not the ultimate parent, any parent entity*] to which any of their respective properties are subject (including those pertaining to electrical, building, zoning, environmental and occupational health and safety).

“**RTO**” means any person, other than Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

“**S&P**” shall mean Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“**Schedule**” or “**Scheduled**” means the acts of Buyer and Seller pursuant to Section 6.5 setting forth a schedule requesting and accepting the delivery of energy by Seller to Buyer on and after the Commercial Operation Date.

“**Scheduling Constraints**” means the limitations of the Facility’s Capacity arising as a result of the need to observe the physical ramp rates of the Major Equipment and maintain minimum run times, minimum down times, minimum dispatch levels of Net Energy and Capacity per CT, and maximum levels of Net Energy and Capacity, to be generated by any item of Major Equipment, in compliance with the warranty requirements relating to each item of Major Equipment, the operating and maintenance standards recommended by the Facility’s equipment suppliers, and Prudent Electrical Practice, as set forth on **Exhibit Q**.

“**Scheduling Fees**” means fees assessed by any person to schedule the delivery of the energy.

“**Security Interests**” has the meaning set forth in Section 7.2.1.

“**Seller**” has the meaning set forth in the Preamble.

“**Senior Lenders**” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of such construction financing.

“**Simple Cycle**” means operation of a Combustion Turbine without capturing the waste heat from the Combustion Turbine in the associated heat recovery steam generator and,

therefore, without producing additional Net Energy from the steam turbine utilizing steam produced by such heat recovery steam generator. When one or more CTs are operated in Simple Cycle mode, the Facility will produce less Capacity and less Net Energy, while consuming Fuel at a higher heat rate, than when the Facility is operated in combined cycle mode to produce Baseload Capacity. The ramp rates applicable to each CT, as set forth in **Exhibit R**, are faster in Simple Cycle mode than in combined cycle mode.

“Simple Cycle Fuel Supply Requirement” means with respect to any Day, the product of the applicable Simple Cycle Heat Rate multiplied by the quantity of Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Facility while dispatched in Simple Cycle mode.

“Simple Cycle Heat Rate” has the meaning set forth in Section 6.5.3.8.

“Solvency” or **“Solvent”** has the meaning set forth in Section 3.2.12.

“Standard Heat Rate” means the actual Heat Rate of the Facility at varying levels of the Net Energy and varying ambient conditions.

“Start-Up” means a firing of one or more of the items constituting Major Equipment when such item or items of Major Equipment is not being operated, including any firing required to perform a CT Start. The period of a Start-Up of any item of Major Equipment begins at the commencement of such firing and ends when such item of Major Equipment obtains and produces on a continuous basis the desired quantity of Net Energy.

“Start-Up Fuel Quantity” means, with respect to any Start-Up(s) initiated to supply Net Energy and Ancillary Services to Buyer, the quantity of Fuel actually required by each CT Start.

“Start-Up Testing” means the tests set in **Exhibit E**.

“System” means the electric transmission sub-station and 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 complete the Facility, all as set forth in the Interconnection Agreement.

“Tariff” means Buyer’s FERC Electric Tariff Fourth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

“Term” has the meaning set forth in Section 2.1.

“Transmission Provider” means [*PacifiCorp, an Oregon corporation, acting in its transmission function capacity.*] [*Note to Bidders: If the Facility is interconnected to another system, identify the appropriate Transmission Provider.*] Seller acknowledges that Buyer, as Buyer under this Agreement, has no responsibility for or control over such Transmission Provider.

“**Unexcused Outage**” has the meaning set forth in Section 5.1.2.

“**Unplanned Outage**” means NERC Event Type U, as set forth on **Exhibit H**.

“**Variable Energy Payment**” means the payment to be made by Buyer to Seller pursuant to Section 5.3 and as specified in **Exhibit F**.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular shall include the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits of this Agreement; (c) all references to a particular entity or an electricity market price index shall include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (e) all accounting terms not specifically defined in this Agreement shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement shall be deemed to include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine shall include the feminine and neuter and vice versa; (h) the word “including” shall be construed in its broadest sense to mean “without limitation” or “but not limited to” and (i) the word “or” is not necessarily exclusive.

1.2.2 Terms Not to Be Construed for or Against Either Party. Each term of this Agreement shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term of this Agreement shall be construed against a Party on the ground that the Party is the author of that provision.

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

1.2.4 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Transmission Provider’s transmission function offers transmission service on its System in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the separate Interconnection Agreement.

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

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

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

SECTION 2

TERM; COMMENCEMENT OF OPERATION

2.1 Term. This Agreement shall become effective when it is signed and delivered by both Parties (the "**Effective Date**") and, unless earlier terminated as provided in this Agreement, shall remain in effect until the [?] anniversary of the Commercial Operation Date (the "**Term**").

2.2 Milestones. Time is of the essence of this Agreement, and Seller's ability to meet certain milestones before the Commercial Operation Date and to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones unless waived or extended by Buyer in its sole and absolute discretion:

2.2.1 By [date], Seller shall demonstrate to Buyer's reasonable satisfaction that Seller has made all arrangements and obtained all means for transporting Fuel in quantities sufficient to operate the Facility at the Facility Capacity and shall assign all such transportation rights to Buyer for the Term;

2.2.2 By [date], Seller shall obtain and provide to Buyer copies of all Required Facility Documents necessary for construction of the Facility;

2.2.3 By [date], Seller shall provide to Buyer evidence acceptable to Buyer that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);

2.2.4 By [date], Seller shall provide Buyer with an As-built Supplement acceptable to Buyer;

2.2.5 By [date], Seller shall begin deliveries of Net Energy for purposes of initiating Start-Up Testing; and

2.2.6 By the Guaranteed Commercial Operation Date, the Commercial Operation Date shall have occurred. This shall require that all of the following conditions shall have been satisfied or waived by Buyer in its sole and absolute discretion:

(1) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility is able to generate energy reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

(2) Start-Up Testing of the Facility shall have been completed;

(3) After Buyer has received notice of the completion of Start-Up Testing, Buyer shall have endorsed a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility has operated for testing purposes under this Agreement uninterrupted for a period of ten (10) consecutive days at a rate of at least the Facility Capacity based upon any sixty (60) minute period for the entire testing period. Seller must provide five (5) Business Days' written notice to Buyer before the start of the Start-Up Testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive ten (10) day testing period and Seller shall provide Buyer forty-eight (48) hour written notice before the start of such testing period;

(4) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that, in accordance with the Interconnection Agreement, all required Electrical Interconnection Facilities have been constructed, all required interconnection tests have been completed, the Facility is physically interconnected with the System and the Facility Capacity is a Network Resource;

(5) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that Seller has obtained all Required Facility Documents for the construction and operation of the Facility and, if requested by Buyer in writing, Seller shall have provided copies of any or all such requested Required Facility Documents, together with (i) the certificates of insurance coverage or insurance policies required by Section 12.1, and (ii) copies of all Required Facility Documents which Seller is responsible to obtain or are required for the construction and operation of the Facility;

(6) Buyer shall have issued a written certificate to Seller certifying that Buyer has received all Facility drawings, plans, specifications, policies, and other documents required by this Agreement;

(7) Buyer shall have received a certificate addressed to Buyer from Seller's primary construction contractor certifying that the Facility has been turned over to Seller for permanent operation and maintenance and that the primary construction

contractor owes no further construction-related obligations to Seller (other than punch list items); and

(8) Buyer shall have received a certificate addressed to Buyer from an office of Seller and acceptable to Buyer certifying that no Event of Default by Seller or Potential Event of Default by Seller exists under this Agreement.

2.3 Daily Delay Damages. Seller shall cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date but no earlier than [**? months**] prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date does not occur on or before the Guaranteed Commercial Operation Date, to compensate Buyer for the failure to provide Contract Capacity from the Facility, Seller shall pay Buyer delay damages equal to the Daily Delay Damages times Contract Capacity for each Day or portion of a Day until that Day that the Commercial Operation Date occurs from and after the Guaranteed Commercial Operation Date. Each Party agrees and acknowledges that (a) the damages that Buyer would incur for the failure to provide energy from the Facility due to delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages mechanism is an appropriate approximation of such damages. This Section 2.3 shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and any such damages shall be determined in accordance with Section 10.7. In addition, this Section 2.3 shall not limit the damages payable to Buyer for matters resulting from delay in achieving the Commercial Operation Date other than the failure to provide energy from the Facility.

2.4 Damages Invoicing. By the tenth (10th) day following the end of the calendar month of the Guaranteed Commercial Operation Date, and continuing on the tenth (10th) day following the end of any calendar month during which Daily Delay Damages are incurred, Buyer shall deliver to Seller a proper invoice showing Buyer's computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.5 Buyer's Right to Monitor. During the design, procurement, construction, installation, start up and testing of the Facility, Seller shall permit Buyer and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the development, design, construction and installation of the Facility. Between the date on which this Agreement is executed and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) day of each calendar month, provide Buyer with a brief monthly status report for the preceding month.

(b) Monitor the development, design, engineering, procurement, construction and installation of the Facility and the performance of the contractor(s) constructing the Facility.

(c) Review and monitor the contractors' performance and achievement of (i) all initial performance tests and other tests required under the Facility construction contracts that must be performed in order to achieve the Commercial Operation Date and (ii) all tests contemplated by the warranty agreement(s) between the Seller and manufacturer of the Facility's CTs and any other Major Equipment. Buyer reserves the right to require additional performance tests of the Facility's CTs in the event that Seller elects not to have such CTs or other Major Equipment covered by warranty agreements acceptable to Buyer. Seller shall provide Buyer with at least five (5) Business Days' prior notice of each such test.

(d) Witness initial performance tests and other tests and review the results thereof.

(e) Perform such examinations, inspections, and quality surveillance as, in Buyer's reasonable judgment, are appropriate and advisable to determine that all Major Equipment comprising the Facility has been properly commissioned and that the Facility has achieved the Commercial Operation Date.

The Parties acknowledge and agree that Buyer is under no obligation to perform any of the monitoring rights under this Section 2.5. Any information or knowledge obtained by Buyer in the exercise of its rights under this Section 2.5 shall not prevent Buyer from subsequently asserting that Seller failed to perform its obligations under this Agreement or failed to satisfy any of its conditions in Section 2, nor shall the exercise by Buyer of such rights be used as evidence that Seller performed its obligations under this Agreement or satisfied its conditions in Section 2 or that Buyer gave any consent to Seller's action in meeting its obligations under Section 2. Buyer's right to indemnification, payments for damages or other remedy in this Agreement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Commercial Operation Date, including with respect to the accuracy or inaccuracy of any representation or warranty, or compliance with any covenant or obligation hereunder. Buyer shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.5, which representatives shall have authority to act for Buyer in all technical matters under this Section 2.5. However, Buyer's representatives, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Agreement. Buyer's initial representatives for purposes of this Section 2.5 and their contact information are listed in **Exhibit N**. Buyer may, by written notice to Seller, change its representatives or the contact information for such representatives.

SECTION 3

REPRESENTATIONS AND WARRANTIES

3.1 Buyer's Representations and Warranties. Buyer represents, covenants, and warrants to Seller that:

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

3.1.2 Authority. Buyer 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 Corporate Actions. Buyer 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 No Contravention. 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 Buyer or any valid order of any court, or any regulatory agency or other body having authority to which Buyer is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Buyer, enforceable against Buyer 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's Representations and Warranties. Seller represents, covenants, and warrants to Buyer that:

3.2.1 Organization. Seller is a [*insert legal entity*] duly [*organized*] and validly existing under the laws of [_____].

3.2.2 Authority. Seller (i) has the requisite power and authority to enter into this Agreement and to perform, including all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and is duly qualified as [_____] in Utah; and (iii) is in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.3 Actions. Seller has taken all [*insert appropriate legal entity*] actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

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

3.2.4.1 contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or [*if Seller is not the ultimate parent, Seller's ultimate parent*];

3.2.4.2 require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are (i) set forth in **Exhibit C** or (ii) required in connection with the construction and/or operation of the Facility and expected to be obtained in due course;

3.2.4.3 result in a breach of or constitute a default under any provision of any security issued by [*ultimate parent of Seller*] or any of its Affiliates or any material agreement, instrument or undertaking to which either [*ultimate parent of Seller*] or any of its Affiliates is a party or by which [*ultimate parent of Seller*]'s or any of its Affiliates' property is bound; or

3.2.4.4 require Seller to be licensed under the Utah Construction Trades Licensing Act.

3.2.5 Valid and Enforceable Agreement. 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 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against either Seller, its parent(s), or any Affiliate with respect to this Agreement and the transactions contemplated hereby and thereby.

3.2.7 Accuracy of Information. To the knowledge of Seller, no exhibit, contract, report or document furnished by Seller to Buyer in connection with this Agreement, or the negotiation or execution of this Agreement contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.8 Required Facility Documents. All Required Facility Documents are set forth in **Exhibit C** attached hereto. To Seller's knowledge, no unusual or burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. The representation made in this Section 3.2.8 shall be deemed to be given throughout the entire Term.

3.2.9 Taxes. Seller has filed or caused to be filed all tax returns which were required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property including the Premises, and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, and no tax liens have been filed and no

claims are being asserted with respect to any such taxes, fees or other charges, except where such taxes, fees or other charges are being contested in good faith by Seller through appropriate proceedings with adequate reserves set aside in the event of an adverse determination.

3.2.10 Seller's Intent. Seller intends:

3.2.10.1 To construct and operate the Facility in accordance with Prudent Electrical Practices, and in accordance with, and subject to the terms of this Agreement;

3.2.10.2 To supply the Contract Capacity and Net Energy of the Facility throughout the Term of this Agreement in accordance with the provisions of this Agreement; and

3.2.10.3 *[if Seller will be a single purpose vehicle, that its sole business shall be the ownership and operation of the Facility.]*

3.2.11 No Collusion. Neither Seller nor any of its representatives has entered into any form of collusive arrangement with any person or entity which directly or indirectly has to any extent lessened competition between Seller and any other person or entity for the supply of Capacity and energy sought by Buyer.

3.2.12 Solvency. Seller, its parent(s) and their Affiliates are Solvent. As used herein, “**Solvent**” and “**Solvency**” means with respect to any person or entity on any date of determination, that on such date (a) the book value of the property of such person or entity is greater than the total amount of book liabilities, including contingent liabilities that are probable and estimable, of such person or entity, (b) such person or entity is able to pay its debts as they become absolute and matured, taking into account the possibility of refinancing such obligations and selling assets, (c) such person or entity does not intend to, and does not believe that it will, incur debts or liabilities beyond such person’s or entity’s ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets and (d) such person or entity is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such person’s or entity’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that are probable and estimable in the light of all the facts and circumstances existing at such time, and that can reasonably be expected to become an actual or matured liability.

3.3 Notice. If at any time during the Term, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties made by it in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with notice in accordance with Section 17.12 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 3 shall be given as soon as practicable after the occurrence of each such event.

SECTION 4

SALE AND PURCHASE OBLIGATIONS

4.1 Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services.

4.1.1 Subject to the terms and conditions of this Agreement, on and after the Commercial Operation Date and for the balance of the Term, Seller shall make available to Buyer from the Facility the Contract Capacity and the Capacity Rights, and all Net Energy and Ancillary Services associated with such Contract Capacity that is Scheduled by Buyer for delivery in accordance with the Dispatch Procedures and Section 6.5.2.

4.1.2 Subject to Section 5.1, Buyer shall purchase the Contract Capacity of the Facility and pay a monthly Capacity Payment to Seller.

4.1.3 Seller shall provide Ancillary Services and Capacity Rights to Buyer without additional charge or expense.

4.1.4 Buyer shall be under no obligation to purchase any Capacity under this Agreement other than Contract Capacity.

4.1.5 For each quantity of Net Energy that Buyer has Scheduled for delivery in any hour from the Facility, Buyer shall deliver the requisite Fuel Supply Requirement to Seller during such hour, comprised of any applicable Startup Fuel Quantity and the applicable Operating Fuel Quantity. As more fully described in Section 6.5.3, the Operating Fuel Quantity shall include: (i) the sum of the Baseload Fuel Supply Requirement for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or Ancillary Services utilizing part or all of the Baseload Capacity of Buyer's Contract Capacity, (ii) the sum of the Peakload Fuel Supply Requirements for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or Ancillary Services utilizing part or all of the Peakload Capacity of Buyer's Contract Capacity, and (iii) the Simple Cycle Fuel Supply Requirement for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or equivalent quantity of Ancillary Services to be delivered from the Facility in Simple Cycle mode utilizing part of Buyer's Contract Capacity.

4.1.6 For each quantity of Ancillary Services that Buyer has Scheduled for delivery in any hour from the Facility that requires Seller to consume Fuel in the Facility, Buyer shall deliver a quantity of Fuel to Seller equal to the Fuel Supply Requirement applicable to an equivalent quantity of Net Energy. Seller and Buyer shall specify in the Operating Procedures the means by which Seller and Buyer

shall determine the precise quantity of the Fuel Supply Requirement applicable to various types of Ancillary Services that Buyer may Schedule from time to time under this Agreement.

4.1.7 In addition to Buyer providing the applicable Fuel Supply Requirement to Seller, Buyer shall also pay the amounts specified in Section 5, and Seller shall then provide to Buyer without additional charge or expense all Net Energy and Ancillary Services that have been Scheduled by Buyer.

4.1.8 Seller shall provide to Buyer from the Facility the Contract Capacity, and associated quantities of Net Energy or Ancillary Services as Scheduled by Buyer in accordance with this Agreement. Subject to Section 4.3, the Contract Capacity, and the Net Energy and Ancillary Services associated with such Contract Capacity, shall be made available exclusively to Buyer and Seller shall be free to sell the Remaining Capacity of the Facility, and the Net Energy and Ancillary Services associated with such Remaining Capacity, to any third party. Subject to Section 6.3.1, Seller shall have absolute discretion over the operation of the Facility to generate the quantities of Capacity, Net Energy and Ancillary Services to be delivered to Buyer in compliance with the provisions of this Agreement. In addition, Seller shall have absolute discretion over the use of the Remaining Capacity in sales to any third party(s).

4.2 Deliveries; Title and Risk of Loss. All Net Energy and Ancillary Services that have been, at Buyer's option, Scheduled by Buyer shall be delivered by Seller to Buyer at the Electricity Delivery Point. Seller shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Net Energy or Ancillary Services delivered hereunder up to the Electricity Delivery Point; and Buyer shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, such Net Energy or Ancillary Services from the Electricity Delivery Point. Seller warrants and agrees that it will transfer and deliver Contract Capacity, Capacity Rights, Ancillary Services and Net Energy to Buyer free and clear of all liens or other encumbrances and rights of third parties. Title to and risk of loss of all Net Energy or Ancillary Services shall transfer from Seller to Buyer upon delivery to Buyer at the Electricity Delivery Point. Buyer shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Fuel delivered hereunder up to the Fuel Delivery Point; and Seller shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, such Fuel at and from the Fuel Delivery Point. Buyer warrants that it will deliver Fuel to Seller free and clear of all liens or other encumbrances. Title to and risk of loss of all Fuel shall transfer from Buyer to Seller upon delivery to the Fuel Delivery Point.

4.3 Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity.

4.3.1 Seller shall exclusively make available to Buyer the Contract Capacity of the Facility, and Seller shall deliver to Buyer, and Buyer shall receive, the quantities of Net Energy and Ancillary Services that were Scheduled by Buyer from such Contract Capacity in accordance with this Agreement. Seller retains absolute discretion as to which items of the Major Equipment of the Facility are

operated to generate and deliver (i) the quantities of Net Energy and Ancillary Services to be delivered to Buyer from the Contract Capacity and (ii) the quantities of Net Energy and Ancillary Services to be delivered to any third party purchaser from the Remaining Capacity.

4.3.2 During any Excused Outage or Unexcused Outage of the Facility, as defined in Section 5.1.2, which causes a partial outage of the Facility, but not a complete shutdown of the Facility, Buyer's right to the Contract Capacity shall not be affected by any reduction in the Facility Capacity, and to the extent there is a reduction of Facility Capacity, Seller shall make available to Buyer all of such reduced Facility Capacity up to the Contract Capacity. Subject to the foregoing, Seller shall, at all times, have the right to make available for sale to any third party purchasing any of the Remaining Capacity no more than the actual available Capacity of the Facility less the Contract Capacity.

4.3.3 At any time that the Contract Capacity is available, Buyer may elect to Schedule any of the quantities of Net Energy, and equivalent quantities of Ancillary Services, specified in the range of dispatchable quantities of Net Energy on **Exhibit Q** and the quantity of Fuel required to be provided by Buyer with respect to each such Scheduled quantity of Net Energy, or equivalent quantity of Ancillary Services, shall be determined by the Baseload Heat Rates, Peakload Heat Rates, and Simple Cycle Heat Rates, corresponding to such Scheduled quantity of Net Energy, or equivalent quantity of Ancillary Services, as set forth on such **Exhibit Q**.

4.4 Curtailement Due to Failure to Comply with Interconnection Agreement. Buyer shall not be obligated to purchase Contract Capacity or receive or pay for Net Energy to the extent generation or transmission curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement. Nothing in this Section 4.4 shall relieve Seller of its duty to comply with the Interconnection Agreement and Net Energy curtailed as provided under this Section 4.4 shall not be deemed to be an Excused Outage, or credited toward the achievement of Net Energy, as the case may be.

4.5 Sale of Test Energy. During the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and accept, all energy produced by the Facility during such period (the "**Test Energy**") as if it were Net Energy. Seller shall provide the necessary Fuel, and Buyer shall pay Seller the price specified in Section 5.3, for such Test Energy.

SECTION 5

PAYMENTS; COSTS

5.1 Capacity Payments. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall, subject to Section 5.1.4, pay to Seller in arrears a Capacity Payment equal to the greater of (i) the Monthly Capacity Payment as determined in Section 5.1.2, or (ii) the Minimum Monthly Capacity Payment as determined in Section 5.1.3.

5.1.1 All Capacity Payments shall be billed on a calendar month basis. In the event that Commercial Operation Date does not occur at the start of a calendar month, the first month's Capacity Payment shall be prorated to reflect the actual number of days of Commercial Operation in such month.

5.1.2 Monthly Capacity Payment. The “**Monthly Capacity Payment**” shall be computed based upon the following formula:

Monthly Capacity Payment = $(CC \times 1000 \times CPR \times MAAF) - CPS$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate;

CPS = Capacity Payment Shortfall, if any, from any prior month; and

MAAF = Availability Adjustment Factor for that month, computed as follows:

a. If $CAF_m = [\text{Bidder to insert } \%]$, $MAAF = 1$

b. If $CAF_m < [\text{Bidder to insert } \%]$, $MAAF = 1 - 2 \times ([\text{Bidder to insert}] - CAF_m)$

Provided, however, MAAF cannot be less than zero (0).

CAF_m = Average Capacity Availability Factor for a month shall equal the sum of the hourly Capacity Availability Factors (“ CAF_h ”) determined for each hour of such month, divided by the total number of hours in such month; and

CAF_h = $(AD + DD) / AFCE$

Provided, however, CAF_h cannot be more than one (1).

where:

“**AD**” (Actual Deliveries) means, for any hour, the actual quantity of energy generated by the Facility and delivered by Seller to Buyer at the Electricity Delivery Point;

“**DD**” (Deemed Deliveries) means, for any hour, (i) a quantity of energy equal to the amount of energy that could have been generated by that portion of the Ambient Facility Capacity that was set forth in the Availability Notice (a) that was not dispatched by Buyer in such hour, (b) that was not generated and delivered due to a Potential Event of Default or an Event of Default by Buyer, or (c) that was not operated to generate and deliver Net Energy or Ancillary Services to Buyer due to any failure by Buyer, including any failure of Buyer to deliver Fuel to the Facility to the extent Seller's operations are affected by such complete and/or partial failure to

deliver Fuel; (ii) any amount of energy that was not available from the Facility for dispatch and receipt by Buyer, during the relevant hour, due to any outage or derating that meets the requirements for Scheduled Maintenance established in **Exhibit I**; and (iii) any amount of energy that was not available from the Facility for Dispatch and receipt by Buyer, during the relevant hour, due to any Force Majeure event. The unavailability of Capacity for any of the reasons set forth in clauses (i)(c), (ii) or (iii) shall be considered an “**Excused Outage**.” To the extent that the Capacity of the Facility, up to the Contract Capacity, is unavailable to Buyer for any reason other than an Excused Outage shall be considered an “**Unexcused Outage**.”

“**AFCE**” (Ambient Facility Capacity Energy) means the quantity of energy that could be produced from the Ambient Facility Capacity during such hour.

5.1.3 Minimum Monthly Capacity Payment. During any month, the “**Minimum Monthly Capacity Payment**” shall equal the amount determined by the following formula:

Minimum Monthly Capacity Payment = CC × 1000 × CPR × [?%], where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate; and

% = [?].

5.1.4 Carry-Over Provisions. With respect to any month in which the calculated Monthly Capacity Payment is less than the Minimum Monthly Capacity Payment, the difference between the two payment amounts shall be set forth in a separate account (the amount in such account is referred to herein as the “**Capacity Payment Shortfall**”). The Capacity Payment Shortfall shall be increased by interest at the Prime Rate divided by 365 on the maximum amount of the Capacity Payment Shortfall on that day and shall be recovered by Buyer as a credit against the otherwise applicable Monthly Capacity Payment owed to Seller in any following month and by drawing on the Carry-Over-Letter of Credit as provided below. That portion of any Capacity Payment Shortfall which is not recovered in any month shall be carried over to each subsequent month thereafter until recovered by Buyer in full from Seller. If the Capacity Payment Shortfall exceeds \$[?], then Seller shall provide a Letter of Credit for the benefit of Buyer, in form reasonably acceptable to Buyer, with a face amount equal to the full amount of the Capacity Payment Shortfall amounts (“**Carry-Over Letter of Credit**”). The amount of such Carry-Over Letter of Credit shall be adjusted thereafter, at the end of each month, to equal the then-outstanding Capacity Payment Shortfall. At the end of each Contract Year, Buyer shall be entitled to draw down against the Carry-Over Letter of Credit for the amount the Capacity Payment Shortfall that has not been recovered as of that date.

5.2 Energy Payment. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall pay to Seller in arrears a Variable Energy Payment as set forth in **Exhibit F** for Net Energy.

5.3 Test Energy. For the period between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver Net Energy to Buyer at the Electricity Delivery Point as Test Energy. Buyer shall pay Seller for Test Energy delivered at the Electricity Delivery Point, an amount per MWh equal to eighty-five percent (85%) of the settled price for the applicable hour in the daily (i) firm on-peak, (ii) firm-off peak or (iii) 24-hour firm (on Sundays and NERC holidays) Dow JonesTM SP15 Electricity Price Index; *provided, however*, that the amount to be paid by Buyer for such Test Energy shall in no event exceed seventy-five percent (75%) of the price per MWh specified on **Exhibit M** for the first Contract Year. If the Dow JonesTM SP15 Electricity Price Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak, firm off-peak or 24-hour firm energy at South of Path 15 for the applicable periods.

5.4 Costs and Charges. Seller shall be responsible for all costs or charges imposed in connection with the delivery of Net Energy at the Electricity Delivery Point, including transmission costs and charges. Without limiting the generality of the foregoing, except to the extent otherwise provided in the Interconnection Agreement, Seller shall bear all costs associated with the modifications to Transmission Provider's interconnection facilities or electric system (including system upgrades) caused by or related to (a) the interconnection of the Facility with Transmission Provider's system, (b) any increase in Capacity of the Facility, and (c) any increase of delivery of energy from the Facility.

5.5 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself.

SECTION 6

OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to **Exhibit A** of this Agreement when it has been reviewed and approved by Buyer. Buyer shall not unreasonably withhold, condition or delay its approval of the As-built Supplement.

6.2 Measurement and Quality of Net Energy. All Net Energy shall be measured at the Electricity Delivery Point and shall meet all requirements in the Interconnection Agreement and the specifications set forth in **Exhibit Q**. Seller shall instruct the Transmission Provider in writing that Buyer is entitled to receive, directly from Transmission Provider, any and all data

associated with the Facility and/or the production of Net Energy that the Transmission Provider has in its possession.

6.3 Standard of Facility Operation

6.3.1 General.

6.3.1.1 At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility and the Electrical Interconnection Facilities in accordance with (i) the standards, criteria and formal guidelines of FERC, NERC, any RTO, and any successors to the functions thereof; (ii) the Required Facility Documents; (iii) the Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements of this Agreement; and (vi) Prudent Electrical Practice. During the Term, Seller shall be the sole owner of the Electrical Interconnection Facilities. Seller shall defend, indemnify and hold Buyer harmless from and against any requirements to comply with FERC Open Access requirements respecting the Electrical Interconnection Facilities caused by Seller's act or omission. Seller acknowledges that it shall have no claims under this Agreement against Buyer, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by Buyer, acting in its transmission function capacity, in connection with the Interconnection Agreement or otherwise.

6.3.1.2 Without limiting the generality of Section 6.3.1.1, Seller shall:

6.3.1.2.1 At all times, employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating such managing, operating and maintenance with Buyer. Seller shall ensure that prior to or on the first Day Seller delivers energy to the Electricity Delivery Point such qualified and trained personnel are available to Buyer at all times, twenty-four (24) hours per Day during the Term.

6.3.1.2.2 Operate and maintain the Facility with due regard for the safety, security and reliability of the System and Buyer's customers and in compliance with the general specifications contained in **Exhibit I**.

6.3.1.2.3 Comply with operating and maintenance standards recommended by the Facility's equipment suppliers.

6.3.1.2.4 Coordinate the Facility's relaying and protection to conform with Prudent Electrical Practice.

6.3.1.2.5 Furnish and install, at Seller's sole expense, a manually operable disconnecting device that can be locked by Buyer in the open position and visually checked to be in the open position, so as to be able to electrically isolate the Facility from the System. This device(s) shall be installed at a location at or near the Electricity Delivery Point.

6.3.1.2.6 Have the Facility's protective relays calibrated and operationally checked, at least annually by a person qualified to perform such service and provide Buyer with a written confirmation of the calibration.

6.3.1.2.7 Operate the Facility in such a manner so as not to have an adverse effect on Buyer's voltage level or voltage waveform.

6.3.1.2.8 Operate the Facility in a manner and consistent with the Operating Procedures so as to permit Buyer to dispatch individual items of Major Equipment required to generate energy Scheduled by Buyer.

6.3.2 Interconnection. Pursuant to the Interconnection Agreement, Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Facility Capacity at the Electricity Delivery Point, including the costs of any System upgrades beyond the Electricity Delivery Point necessary to interconnect the Facility with System and to allow the delivery of energy to the Electricity Delivery Point.

6.3.3 Coordination with System. Pursuant to the Interconnection Agreement, Seller shall be responsible for the coordination and synchronization of the Facility's equipment with the System, and shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Seller's improper coordination or synchronization of such equipment with the System.

6.4 Operating Procedures and Compliance.

6.4.1 Without limiting the generality of Section 6.2, during the Term, the Parties shall observe the Operating Procedures.

6.4.2 In the Operating Procedures, each Party has designated an authorized representative (an "**Authorized Representative**") and an alternate representative (an "**Alternate Representative**") to act in the Authorized Representative's absence. A Party's appointment of an Authorized Representative and Alternate Representative shall remain in full force and effect until the Party delivers written notice of substitution to the other Party. The Authorized Representatives and Alternate Representatives shall be managers well-experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement.

6.4.3 Operational Compliance.

6.4.3.1 Required Facility Documents. Seller shall maintain in full force and effect and available for inspection by Buyer during the Term all Required Facility Documents now or hereafter required.

6.4.3.2 Hazardous Substances. Seller shall operate the Facility in compliance with all Environmental Laws and permits, licenses, rules or orders promulgated, issued or otherwise required by a Governmental Authority having jurisdiction or enforcement power over any Environmental Law and Seller. Seller shall immediately notify Buyer if Seller or any Affiliate of Seller receives or obtains any actual knowledge of or actual notice of any past, present or future actions or plans which may interfere with or prevent compliance or continued compliance with Environmental Laws, affect the construction or operation of the Facility, or may give rise to any material liability under any Environmental Laws or to any common law or legal liability or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation under Environmental Laws.

6.4.4 Taxes. Seller shall pay when due or reimburse Buyer for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the sale of Net Energy to Buyer under this Agreement regardless of whether such taxes are payable by Buyer or Seller under Requirements of Law.

6.4.5 Fines and Penalties.

6.4.5.1 Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with any provision of this Agreement, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings with (i) adequate reserves set aside, or (ii) if requested by Buyer, the posting of adequate security, in the event of an adverse determination.

6.4.5.2 Subject to Section 6.4.4, if fines, penalties, or legal costs are assessed against Buyer by any Governmental Authority due to noncompliance by Seller with any Requirements of Law, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer.

6.4.5.3 Seller shall reimburse Buyer for all fees, damages, or penalties imposed by any Governmental Authority, other person or to other utilities for violations to the extent caused by a Potential Event of Default or an Event of Default by Seller or a failure of performance by Seller under this Agreement.

6.5 Scheduling Procedures.

6.5.1 Availability Notices and Updates.

6.5.1.1 By 5:00 A.M. Pacific Prevailing Time on the Business Day immediately preceding the next three (3) Days on which energy is to be delivered by Seller to Buyer, Seller shall provide Buyer with an hourly forecast of the Capacity of the Facility expected to be available to Buyer, up to the Contract Capacity, and for each hour of the next three (3) Days (as set forth in the form of **Exhibit L**, an “**Availability Notice**”); *provided, however*, that an Availability Notice provided on a Day before any non-Business Day shall include forecasts for each Day to and including the next Business Day. Delivery of an Availability Notice by Seller to Buyer with respect to any item of Major Equipment declared Available shall be deemed a declaration that all Ancillary Services capable of being provided from such Major Equipment are available for the Days for which such Availability Notice shall be effective. Seller shall promptly update Availability Notices any time information becomes available indicating a change in the forecast of generation of energy from the then current forecast; and in any event within 15 minutes of each time it becomes aware of a change (favorable or unfavorable) in the availability, or projected availability, of the Facility or electric transmission capacity, *provided* that such changes to the daily Availability Notices may be delivered by telephone within the fifteen (15) minute initial period and then later confirmed in writing within the hour. To the extent commercially reasonable, the parties shall cooperate to implement and use automatic forecast updates.

6.5.1.2 Availability Notices shall specify any known limitations on the availability of electric transmission capacity made known to Seller that may affect the ability of the Facility to generate and deliver Scheduled Energy to the Electricity Delivery Point. Seller will also provide Buyer with a monthly Availability Notice six Business Days before the commencement of each such month, and a weekly Availability Notice on each Friday for the next week. Availability Notices identifying reductions in availability will include a short description of the nature of the problem, steps taken or being taken to resolve it and Seller’s estimate of the time by which a reduction in availability will be resolved. Availability Notices identifying projected restorations of Capacity availability will specify the time and extent that such restoration is projected to occur, and Seller will issue a further notice after restoration of availability is complete. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the ability to generate Facility Capacity for the following Day and will promptly update Seller’s notice to the extent of any material changes in this information.

6.5.1.3 Availability Notices will be used by and relied upon by Buyer to establish and adjust electric transmission schedules. If Seller has provided notice to Buyer of a reduction in availability affecting transmission

schedules, then prior to increasing Facility generation for delivery to Buyer as a result of restored availability, Seller will provide Buyer timely notice so as to enable Buyer sufficient time to reestablish its transmission schedules. The failure by Seller to provide revised Availability Notices is not a breach of this Agreement, but rather places Seller at risk for electric imbalance penalties or charges incurred by Buyer due to its lack of notice; *provided, however*, the failure to provide such notices more than [?] times a Contract Year shall constitute the failure to perform a material obligation hereunder that is not capable of being cured.

6.5.2 Dispatch Notice.

6.5.2.1 No later than 5:00 P.M. Pacific Prevailing Time on each Business Day, Buyer shall deliver to Seller a statement (which may be communicated by fax, e-mail or other electronic medium or a recorded telephone line) setting forth the estimated quantity of Net Energy to be Scheduled during each hour of the immediately following Day(s) at the Electricity Delivery Point. These estimates shall not be binding upon Buyer and Buyer may subsequently revise its estimates. The foregoing estimates by Buyer shall not be construed to permit Seller to limit the availability of the Facility such that Buyer is restricted from Dispatching Contract Capacity unless the Facility Capacity is physically unavailable due to Force Majeure, Planned Outage or Unplanned Outage, as the case may be. Buyer's written statement may request the delivery of energy to be Scheduled during any or all hours of any Day.

6.5.2.2 Each Dispatch Notice submitted by Buyer shall specify (i) the quantities of Net Energy or Ancillary Services being Scheduled from the Baseload Capacity component of the Contract Capacity, (ii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Peakload Capacity component of the Contract Capacity, and (iii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Facility in Simple Cycle mode. In order to be included on any Dispatch Notice, each quantity of Net Energy, and each equivalent quantity of Ancillary Services, being Scheduled by Buyer from the Baseload Capacity component of the Contract Capacity, or from the Peakload Capacity component of the Contract Capacity, or in Simple Cycle mode, must be shown as a dispatchable quantity on **Exhibit P**. Any amount not shown on **Exhibit P**, but which falls between listed numbers on **Exhibit P** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit P**, including applicable heat rates. An example of a hypothetical Dispatch Notice is attached hereto as **Exhibit S**.

6.5.2.3 Seller shall be obligated to accept a request for Net Energy that has been provided to Seller in accordance with the requirements of Sections 6.5.2.1 and 6.5.2.2 except to the extent (i) such request exceeds the Contract Capacity or the Scheduling Constraints or (ii) Seller declares that the Facility is

not available as a result of a previously declared Planned Outage, a Forced Outage, or an event of Force Majeure. Seller shall promptly notify Buyer if Seller determines that it will not accept a Schedule submitted by Buyer for any of the foregoing reasons.

6.5.2.4 Buyer shall pay or reimburse Seller for all Scheduling Fees charged by any third parties, if any, associated with the Scheduling of Net Energy or Ancillary Services generated by the Facility for delivery to Buyer hereunder or, if applicable, any fees charged by an independent third party for providing Ancillary Services required to deliver Net Energy or Ancillary Services generated by the Facility to Buyer.

6.5.2.5 From time to time during the Term, Buyer may designate a third party to Schedule quantities of Net Energy on behalf of Buyer in accordance with any Requirements of Law. Buyer may also wish to change the designated entity acting in such capacity from time to time. Accordingly, upon request of Buyer, Seller shall make such arrangements in accordance with the Requirements of Law at Buyer's cost as may be reasonably necessary to facilitate the re-designation of the Person who may Schedule quantities of Net Energy on Buyer's behalf.

6.5.2.6 As shown in the Scheduling Constraints set forth for the Facility in **Exhibit Q**, the ramp rates applicable to the various items of Major Equipment comprising the Facility are faster for the Facility operating in Simple Cycle mode than in combined cycle mode. To the extent that Buyer elects to Schedule the delivery of Net Energy, and any equivalent quantity of Ancillary Services, from the Facility in Simple Cycle mode the Scheduling Constraints applicable to Simple Cycle mode shall be applicable to such Scheduling by Buyer. For any Scheduling by Buyer of Net Energy or Ancillary Services from the Baseload Capacity component or the Peakload Capacity component of the Contract Capacity, the Scheduling Constraints applicable to combined cycle mode shall be applicable to such Scheduling by Buyer.

6.5.2.7 Buyer may Dispatch energy and Ancillary Services on a real time basis, subject to the Operating Procedures. Seller shall be obligated to accept a request for a change to the applicable schedule for energy and Ancillary Services.

6.5.3 Fuel Arrangements.

6.5.3.1 Seller shall be responsible for providing for the construction, operation and maintenance of, at its sole cost and expense, all Fuel delivery, [long term coal contracts] and interconnection facilities, transport or rail specified in **Exhibit N**.

6.5.3.2 Commencing as of the Commercial Operation Date, Buyer shall at all times arrange, procure, supply, nominate, balance and deliver to Seller

at the Fuel Delivery, and Seller will accept from Buyer (except as otherwise excused herein) at the Fuel Delivery Point, all of the Fuel Supply Requirement described herein for the quantity of Net Energy and Ancillary Services that Buyer has Scheduled in accordance with the amounts specified in this Section 6.5.3, less the amounts of such Scheduled Net Energy and Ancillary Services which Seller is not obligated to deliver to Buyer, e.g., due to the unavailability of Capacity. Seller shall notify Buyer from time to time of any expected material deviation of the Standard Heat Rate of the Facility from the Guaranteed Heat Rate so that Buyer is able to nominate its Fuel to match the requirements of the Facility.

6.5.3.3 All Fuel required to be delivered under this Agreement shall be delivered by Buyer to the Fuel Delivery Point at no cost to Seller. Subject to Section 6.5.3.1, Buyer shall have the right to supply Fuel utilizing any or all of the Fuel Delivery Points as specified in **Exhibit N**, and shall have the right to change the quantities nominated and received from each pipeline on a daily basis, or more frequently, to the extent permitted by the Fuel Transporter, railroad etc so long as such changes do not disrupt Seller's operations.

6.5.3.4 On and after the Commercial Operation Date, and subject to Section 6.5.3.6, Buyer shall be responsible for the cost of Fuel and all other costs associated with the supply and transportation of all Fuel necessary to generate the Requested Net Energy as Dispatched pursuant to Section 6.5.2.

6.5.3.5 Seller shall pay for and deliver the Fuel required during Start-Up Testing to reach the minimum load of the Facility.

6.5.3.6 Imbalances associated with Fuel transportation and any balancing penalties or costs resulting from failure to accept delivery of the confirmed quantity of Fuel shall be the responsibility of Buyer. Payment for any balancing penalties or costs shall be in accordance with the procedures of Section 9. [This may be different depending on fuel source]

6.5.3.7 All Fuel to be supplied by Buyer shall be measured at the Fuel Metering Point set forth in **Exhibit N**, and shall meet the specifications set forth in **Exhibit N**.

6.5.3.8 The Fuel Supply Requirement applicable to any hour, which Buyer shall be obligated to deliver to Seller at the Fuel Delivery Points, shall consist of the Operating Fuel Quantity and any applicable Start-Up Fuel Quantity for such hour, which shall be determined as follows:

(i) The Operating Fuel Quantity for any hour may include Baseload Fuel Supply Requirement, Peakload Fuel Supply Requirement, and Simple Cycle Fuel Supply Requirement.

(ii) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Baseload Capacity

component of the Contract Capacity, Buyer shall deliver a quantity of Fuel equal to the Baseload Fuel Supply Requirement, which shall be equal to such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Baseload Heat Rate. The “**Baseload Heat Rate**” applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Baseload Capacity component of the Contract Capacity are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

(iii) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Peakload Capacity component of the Contract Capacity, Buyer shall deliver a quantity of Fuel equal to the Peakload Fuel Supply Requirement, which shall equal such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Peakload Heat Rate. The “**Peakload Heat Rate**” applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Peakload Capacity component of the Contract Capacity are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

(iv) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Facility in Simple Cycle mode, Buyer shall deliver a quantity of Fuel equal to the Simple Cycle Fuel Supply Requirement, which shall be equal to such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Simple Cycle Heat Rate. The “**Simple Cycle Heat Rate**” applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Facility in the Simple Cycle mode are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

6.5.3.9 Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel for the Facility with the operation of the Facility (x) by providing the other Party such information as the first Party shall reasonably request relating to the supply and transportation of the Fuel to the Facility (on both an historical and estimated future basis) and (y) by maintaining personnel available at all times to address scheduling of Fuel supply and transportation.

6.6 Outages.

6.6.1 Planned Outages. No Planned Outage may be scheduled to occur during any portion of the time period commencing on May 15 and concluding on September 15.

6.6.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage at least five (5) days before the outage begins (or such shorter period to which Buyer 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 Buyer; *provided, however*, that, unless Buyer otherwise consents, such consent not to be unreasonably withheld, no Maintenance Outage may be scheduled between the hour ending 0700 through the hour ending 2200, Monday through Saturday, during the time period commencing on May 15 and concluding on September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of Capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as Seller determines that the Maintenance Outage is necessary. Buyer 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 any request to modify the schedule for a Maintenance Outage. Seller shall notify Buyer of any subsequent changes in Capacity available to Buyer or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts in accordance with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.6.3 Forced Outages. Seller shall promptly provide to Buyer an oral report of any Forced Outage of the Facility. This report shall include the amount of the Capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such Capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than five percent (5%) of the Facility Capacity being unavailable, the oral report shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts in accordance with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.6.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than five percent (5%) of the Facility Capacity.

6.7 Schedule Coordination. If, as a result of this Agreement, Buyer is deemed by an RTO to be financially responsible for Seller's performance under the Interconnection Agreement, due to Seller's lack of a "scheduling coordinator" or other RTO recognized standing or otherwise, then (a) Seller shall use commercially reasonable and diligent efforts to acquire such RTO recognized standing such that Buyer is no longer responsible for Seller's performance under the Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

6.8 Electronic Communications.

6.8.1 Telemetry. Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Interconnection Agreement and to Buyer on a real-time basis and will operate such equipment when requested by Buyer to indicate:

6.8.1.1 instantaneous MW output at the Electricity Delivery Point;

6.8.1.2 Net Energy; and

6.8.1.3 Facility Capacity.

Seller shall also transmit to Buyer any other data from the Facility that Seller receives on a real time basis. Seller shall provide such real time data to Buyer on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals).

6.8.2 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.9 Reports and Records.

6.9.1 Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term (each, a "**Reporting Month**"), Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility's output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's Computer Monitoring System; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical data for the Facility).

6.9.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term beginning as of the

Commercial Operation Date. Seller shall provide Buyer with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.93 Other Information to Be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

6.9.3.1 Upon the request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

6.9.3.2 A detailed report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance; and

6.9.3.3 A detailed report describing the facts, circumstances and events that caused and arose out of, or related to, any Forced Outage, failed Start-Up or other item of Major Equipment being taken off-line or tripping for any reason other than in connection with a Planned Outage.

6.9.4 Information to Any Governmental Authority. Seller shall, promptly upon written request from Buyer, provide Buyer with all data which is collected by Seller related to the Facility reasonably required for reports to and information requests from any Governmental Authority. Along with said information, Seller shall provide to Buyer copies of all submittals to any Governmental Authority directed by Buyer and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity. After the sending or filing any statement, application, and report or any document with any Governmental Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to Buyer with a copy of the same.

6.9.5 Information to Any Intervenor. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any state or federal agency intervenor or any other party achieving intervenor status in any Buyer rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.9.6 Environmental Information. Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Required Facility Documents.

6.9.7 Information Relating to Facility Performance. Seller shall provide Buyer monthly operational reports in a form and substance acceptable to Buyer and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data requested by Buyer with respect to the performance of the Facility and delivery of energy therefrom.

6.9.8 Audited Financial Statements. Seller shall provide Buyer within ninety (90) days after the end of each calendar year, its audited financial statements together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles by an accounting firm of nationally recognized standing in the electric power industry reasonably acceptable to Buyer.

6.9.9 Notice of Default. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement.

6.9.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same.

6.9.11 Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller and the Facility as Buyer may, from time to time, reasonably request.

6.10 Access Rights. Upon reasonable prior notice and subject to the safety rules and regulations of Seller, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any required Capacity tests necessary to determine the amount of Capacity associated with the Facility, (c) in connection with the operation and maintenance of the Electrical Interconnection Facilities for the Facility, (d) to provide tours of the Facility to customers and other guests of Buyer (not more than twelve (12) times per year), (e) for purposes of implementing Section 9.5, and (f) for other reasonable purposes at the reasonable request of Buyer.

6.11 EWG. Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell energy under this Agreement within ten (10) days of filing such application(s). During the Term, Seller shall either (i) maintain its EWG status and its authority to sell power under this Agreement or (ii) otherwise cause Seller to be exempt from federal and state regulations as an electric utility.

6.12 Facility Images. Buyer shall be free to use any and all images from or of the Facility for promotional purposes. Upon Buyer's request and at Buyer's expense, Seller shall install equipment as Buyer may request, including without limitation video and or web-based imaging equipment. Buyer shall use its discretion with respect to how images from or of the Facility are presented by Buyer, including without limitation associating images of the Facility with Buyer's corporate logo but not the corporate logo of Seller.

6.13 Financial and Accounting Information. If Buyer or one of its Affiliates determines that, under the Financial Accounting Standards Board's revised Interpretation No. 46, Consolidation of Variable Interest Entities ("**FIN 46**"), it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under FIN 46. If Buyer or one of its affiliates determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest and/or present the disclosures required by FIN 46.

SECTION 7

SECURITY AND CREDIT SUPPORT

7.1 Credit Support. At any time during the Term, Seller may have to post Credit Support Security in the amounts outlined on the Credit Matrix based upon its' Credit Rating or that of the entity providing credit assurances as Credit Support Security on behalf of the Seller, and the size of the project. If Seller has a published Credit Rating from each of S&P and Moody's, the lower rating will be used to determine the level of Credit Support in the Credit Matrix. If Seller, or the entity providing credit assurances as Credit Support Security on behalf of the Seller, has no published Credit Rating, an equivalent Credit Rating will be determined by Buyer through the application of Buyer's proprietary credit scoring model developed in conjunction with a third party, and the amount of Credit Support for Seller (as shown on the Credit Matrix) will be based upon this equivalent Credit Rating. If the required Credit Support is greater than zero dollars (\$0.00), upon the request of Buyer, Seller shall provide the Credit Support in the form of: (x) a guaranty, in form and substance acceptable to Buyer in its sole discretion from a Person acceptable to Buyer in its sole discretion, (y) a Letter of Credit, or (z) a Cash Escrow. Buyer shall be required to post Credit Support Security according to the schedule outlined in Attachment 21 to the All Source RFP; however at the time the milestone set forth in Section 2.2.3 has been met, Buyer shall be required to post Credit Support Security in the amount of 100% of the required Credit Support.

7.2 Subordinated Security Interests.

7.2.1 Security Interests. Concurrently with the execution of this Agreement and simultaneously with the acquisition by Seller after the Effective Date of any real property in connection with the Facility (including land and water or rights thereto), Seller shall execute, file and record such agreements, documents,

instruments, deeds of trust and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on the Facility, the Premises and all other assets necessary or in Buyer's opinion desirable for the development, construction, ownership, operation or maintenance of the Facility as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (collectively the "**Security Interests**"). The Security Interests shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.2 Pledge of Ownership Interests. [*Note to bidders: This section is applicable only if Seller is a special purpose entity.*] Concurrently with the execution of this Agreement, Seller's equity holders shall execute and file such agreements, documents, instruments, and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on all ownership interests in Seller as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (the "**Pledge Interest**"). The Pledge Interest shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.3 Maintenance of Security Interests. Seller shall execute and file and record (or cause to be executed and filed and recorded) such Uniform Commercial Code financing statements and deeds of trust and shall take such further action and execute such further instruments and other writings as shall be required by Buyer to confirm and continue the validity, priority, and perfection of the Security Interests [and the Pledge Interest]. The granting of the Security Interests [and the Pledge Interest] shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of the Term.

7.2.4 Transfer of Required Facility Documents. The Security Interests shall provide that if Buyer acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to Section 7.2.1, Seller shall take all steps necessary to transfer all Required Facility Documents necessary to operate the Facility to Buyer, and shall diligently prosecute and cooperate in such transfers.

7.3 Quarterly Financial Statements. If requested by Buyer, Seller shall within thirty (30) days provide Buyer with copies of its most recent quarterly financial statements, together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles.

7.4 Security is Not a Limit on Seller's Liability. The Credit Support and Security Interests contemplated by this Section 7: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy for

Seller's failure to perform in accordance with this Agreement. To the extent that Buyer draws on the Credit Support, Seller shall within five (5) Business Days reinstate the security to the full amount required by this Section 7.

7.5 Escrow Account. With respect to any Cash Escrow established pursuant to this Section 7 as Credit Support, Seller hereby grants Buyer a security interest in the escrow account and all moneys and other amounts in the account to secure payment and performance of Seller's obligations under this Agreement. Buyer shall have, and Seller agrees to take all further action required or reasonably requested by Buyer to ensure that Buyer has, all rights of a secured party under Article 9 of the Uniform Commercial Code and applicable law with respect to the escrow account and all moneys and other amounts in the escrow account. The escrow agreement shall be in form and substance acceptable to Buyer in its discretion and shall contain the following language: "Escrow Agent acknowledges that Seller has granted Buyer a security interest in the amounts held by Escrow Agent in the [*describe escrow accounts and all moneys and other amounts in the account*] (collectively, the "**Collateral**"). Escrow Agent acknowledges that it (a) has received and holds possession of the Collateral for the benefit of Buyer and not as the agent of or on behalf of Seller and (b) shall continue to hold possession of the Collateral for Buyer's benefit until Escrow Agent receives notice in an authenticated record from Buyer that Buyer's security interest in the Collateral has been terminated. Escrow Agent acknowledges that it has no rights in and to the Collateral other than its right to receive payment of its fees and expenses pursuant to the Escrow Agreement."

7.6 Senior Lender Protective Provisions. PacifiCorp agrees to enter into a consent to collateral assignment in substantially the form of the Lender Consent for the benefit of the Senior Lenders, and to reasonably cooperate with the reasonable requests of such Senior Lenders in conjunction with any financing of the Facility; *provided, however*, that except as provided in the form of the Lender Consent, in no event shall PacifiCorp be required to agree to any modification hereof; and provided further, however, that if and to the extent any Lenders request (a) changes to the form of the Lender Consent (or otherwise attempt to negotiate the form of consent), (b) any additional documents or assurances, or (c) any legal opinion from PacifiCorp with regard hereto, then Seller shall reimburse PacifiCorp for its reasonable out-of-pocket costs in making any such changes or providing any such additional documents or legal opinion, with such costs to be paid to PacifiCorp at the closing of the financing as a condition to the effectiveness of PacifiCorp's consents, documents and opinions.

SECTION 8

METERING

8.1 Net Energy. Meter equipment shall be installed, owned, operated, maintained and tested in accordance with the terms of the Interconnection Agreement and shall automatically account for line losses between such meter equipment and the Electricity Delivery Point (collectively, the "**Electric Metering Equipment**"). The Electric Metering Equipment shall be capable of metering Net Energy delivered at the Electricity Delivery Point on a continuous real time basis.

8.1.1 Seller Electric Metering. Seller shall be responsible for the maintenance, testing and calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and Protective Apparatus, including any transmission equipment and related facilities, necessary to interconnect the Facility at the Electricity Delivery Point. Such installation shall be completed, and the delivery of such data shall be commenced, as promptly as possible but in no event later than one month prior to the commencement of Net Energy deliveries. Seller shall bear all costs and expenses of installing, maintaining and testing all Electric Metering Equipment.

8.1.2 Fuel Meters. Fuel delivered by Buyer to Seller shall be metered at the Fuel Delivery Point by the meters owned by the respective interstate pipelines delivering such Fuel to each of the Fuel delivery points identified in **Exhibit O** (the “**Fuel Metering Point(s)**”).

8.1.3 Check Meters. Buyer may at its option and expense install and operate one or more check meters to check Seller’s meters. Such check meters shall be for check purposes and shall not be used in the measurement of Net Energy or Ancillary Services for the purposes of this Agreement. The check meters shall be subject at all reasonable times to inspection and examination by the Seller or its designee. The installation and operation thereof shall, however, be done entirely by Buyer at no cost or expense to Seller. The Seller shall grant to Buyer, at no cost or expense, the right to install such check meters at the Electricity Delivery Point and the right to access such check meters at reasonable times as requested by Buyer if such check meters are located on the Premises.

8.1.4 Change in Measurement Method. If, at any time during the Term a new method or technique is developed with respect to electricity measurement, or the determination of the factors used in electricity measurement, such new method or technique may be substituted for the method set forth in this Section 8.1 when in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

8.1.5 Industry Standards. All Electric Metering Equipment, whether owned by the Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of the Seller in accordance with Prudent Electrical Practices.

8.1.6 Access. Each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment. The records from such Electric Metering Equipment shall be the property of the Seller, but upon reasonable advance notice, the Seller shall make available to Buyer all data, records and charts relating to the Electric Metering Equipment, together with calculations therefrom, for inspection and verification.

8.1.7 Installations. Any installations of Electric Metering Equipment required pursuant to this Agreement shall be scheduled by the Seller; provided,

however, that no installation which shall or could affect deliveries of Net Energy shall be made without the prior written consent of Buyer, which shall not be unreasonably withheld. Any installations of check meters by Buyer shall be scheduled by Buyer; provided, however that the installation shall not unreasonably interfere with the operation and maintenance of the Facility by the Seller.

8.1.8 Estimates. During the period after the Effective Date and prior to the installation and commencement of operation of the meters contemplated by this Section 8.1.8, the Net Energy generated and delivered shall be estimated in good faith by the Seller and the Parties shall prepare and submit invoices on the basis of such estimates. Any such invoice shall be adjusted retroactively based on the performance of the Facility during the three month period immediately following the installation of such meters.

8.1.9 Inspection. Seller, at its sole cost and expense, shall inspect and calibrate, or cause to be inspected and calibrated, all Electric Metering Equipment periodically, but not less frequently than annually. When any test, in the case of Electric Metering Equipment, shall show a measurement error of more than one-quarter percent (1/4%), correction shall be made for the period during which the measurement instruments were in error, first, by using the registration of Buyer's check meter, if installed and registering accurately; if no check meter is installed and registering accurately, or if the period cannot be ascertained, correction shall be made for one-half (1/2) of the period elapsed since the last date of test; and the measuring instrument shall be adjusted immediately to measure accurately.

8.2 Records. The Parties shall, for five (5) years or such longer period as may be required by the applicable Governmental Authority, each keep and maintain accurate and detailed records relating to the Facility's hourly deliveries of Net Energy and Fuel consumption. Such records shall be made available for inspection by either Party or any Governmental Authority having jurisdiction with respect thereto during normal business hours upon reasonable notice. If either Party (the "**Notifying Party**") shall propose to discard any records theretofore required to be retained by this Section 8.2, it shall give notice to the other Party thereof and the other Party may within thirty (30) days elect to take possession of such records by notice to the Notifying Party, and in such case the Notifying Party shall promptly, and in any event, no later than five (5) days following receipt of such notice, deliver such records to the other Party at its expense. If the Party receiving a Notice pursuant to this Section 8.2 shall not respond within such thirty (30) days, the Notifying Party may discard such records without any further obligation hereunder. Upon written request by Buyer, Seller promptly shall request that the Transmission Provider provide in writing any and all meter or other data associated with the Facility and Net Energy directly to Buyer. Notwithstanding any other provision of this Agreement, Buyer shall have the right to provide such meter data to any RTO or generation tracking service.

8.3 Adjustment to Loss Factors. If Buyer or Seller has a reasonable basis for concluding that the Electric Metering Equipment is not accurately measuring losses between the Electric Metering Equipment and the Electricity Delivery Point, it may propose an adjustment to the Electric Metering Equipment by notice to the other Party. Such an adjustment shall be prospective only. The notice will include information explaining in reasonable detail why the loss factor appears to be incorrect. The other Party shall have thirty (30) days in which to approve or disapprove of the proposed adjustment, which approval may not be unreasonably withheld, conditioned or delayed. A proposed loss factor adjustment that is not disapproved by notice to Seller given within the thirty (30) day period shall be deemed approved. The Parties shall cooperate in causing PacifiCorp Transmission to make an appropriate adjustment to the Electric Metering Equipment pursuant to the Interconnection Agreement.

SECTION 9

BILLINGS, COMPUTATIONS AND PAYMENTS

9.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of the Variable Energy Payment, MAAF and the Capacity Payment for such month. If such invoice is delivered by Seller to Buyer, Buyer shall send to Seller payment for Seller's deliveries in respect thereof on or before the thirtieth (30th) day following the end of each month.

9.2 Offsets. Buyer may offset any payment due under this Agreement against amounts owing from Seller to Buyer pursuant to this Agreement, any other agreement between the Parties or otherwise.

9.3 Interest on Late Payments. Any amounts that are not paid when due under this Agreement shall bear interest at the Prime Rate plus two hundred (200) basis points from the date due until paid; provided, however, that this 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 or written demand made under this Agreement, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days of such determination or resolution, along with interest accrued at the rate determined under Section 9.3 from the date due until the date paid.

9.5 Audit Rights. Buyer, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the Seller's performance of its obligations hereunder. Upon request, Seller shall provide to Buyer statements evidencing the quantities of energy delivered at the Electricity Delivery Point. If any statement is found to be inaccurate, a corrected

statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the rate determined under Section 9.3 from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless Buyer questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 10

DEFAULTS AND REMEDIES

10.1 Defaults. The following events are defaults (each, an “**Event of Default**”) under this Agreement:

10.1.1 Events of Default by Either Party.

10.1.1.1 A Party’s failure to make a payment when due under this Agreement if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default, except as provided in Section 9.4.

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

10.1.1.3 A Party’s breach of a representation or warranty made by that Party in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.4 A Party otherwise fails to perform any material obligation imposed upon that Party by this Agreement if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided, however, that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional sixty (60) 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 sixty (60) 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.

10.1.2 Events of Default by Seller.

10.1.2.1 Seller’s failure to post or increase the Carry-Over Letter of Credit within ten (10) Business Days after the end of each month as may be required under Section 5.1.4.

10.1.2.2 Seller's failure to cause the Facility to achieve (a) an average of the applicable CAF_ms of at least [?%] in any three (3) consecutive quarters in a Contract Year or (b) achieve an average of the applicable CAF_ms of at least [?%] in three (3) out of any five (5) consecutive Contract Years.

10.1.2.3 Seller's failure to post and maintain Credit Support as required by Section 7 if the failure is not cured within five (5) days after Buyer gives Seller a notice of the default.

10.1.2.4 Seller's failure to achieve a milestone by the date set forth for the achievement of that milestone in Section 2.2 (other than the failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date) if the failure is not cured within thirty (30) days after Buyer gives Seller a notice of the default.

10.1.2.5 Seller's failure to cause the Facility to achieve the Commercial Operation Date on or before [___] days following the Guaranteed Commercial Operation Date. ***[note to bidders: insert number of days; this will be a material component of the evaluation of your bid; the nature of the resource will be considered. The lowest feasible numeral is encouraged.]***

10.1.2.6 Seller's failure to cure any default under any Required Facility Documents (including the Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

10.1.2.7 Seller's sale of energy from the Facility to a Party other than Buyer in breach of this Agreement if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of default.

10.1.2.8 The Facility is unavailable to provide energy for ninety (90) consecutive days or one hundred twenty (120) non-consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to end of the Term.

10.2 Termination and Remedies.

10.2.1 Upon the occurrence of, and during the continuation of, an Event of Default, the non-defaulting Party shall be entitled to all remedies available at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than ten (10) days before such termination date. Further, during the continuation of an Event of Default by Seller, and until it has recovered all damages incurred on account of such Event of Default by Seller, without exercising its termination right, Buyer may offset its damages against any payment due Seller.

10.2.2 In the event of a termination of this Agreement:

10.2.2.1 The Parties' respective obligations under this Agreement shall terminate (other than those obligations which expressly are to be performed after termination).

10.2.2.2 Each Party shall pay to the other all amounts due the other under this Agreement for all periods prior to termination subject to offset by the non-defaulting Party against damages incurred by such Party.

10.2.2.3 The amounts due pursuant to Section 10.2.2.2 shall be paid within thirty (30) days of the billing date for such charges plus interest thereon at the Prime Rate from the date of termination until the date paid.

10.2.2.4 The provisions of Sections 6.4.4, 6.9.4, 6.9.5, 8.2, 9.3, 9.4, 9.5, 10.7, 10.9, 11 and 14 shall survive the termination of this Agreement.

10.3 Specific Performance. Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of Seller under this Agreement. Seller agrees that in view of the nature of the bid procedure that caused Seller to be selected, and the importance of the Facility and the Buyer's requirement for Capacity and energy, specific performance (including temporary and preliminary relief) and injunctive and other equitable relief, including access to all records of Seller, are proper in the event of any actual or threatened breach of any material obligation by Seller under this Agreement, and that any liability limits contained in this Agreement shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations under this Agreement. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief or other equitable relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages or actual damage constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense.

10.4 Failure to Meet Availability. If an Event of Default by Seller described in Section 10.1.2.2 shall occur, Buyer shall have the right to enter the Facility and do all such things as Buyer may consider necessary or desirable to remedy such situation or to improve the availability of the Contract Capacity, including making any repairs to the Major Equipment or the Facility. Seller shall reimburse Buyer for and shall indemnify and hold harmless Buyer from and against all losses, costs, charges and expenses incurred by Buyer in connection with exercise of its rights under this Section 10.4 other than due to the gross negligence or willful misconduct of Buyer. In connection with the exercise of the rights under this Section 10.4, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.5 License to Operate Facility. During the occurrence and continuance of an Event of Default by Seller, Seller hereby irrevocably grants to Buyer the right, license, and authority to enter the Premises, operate the Facility, and to perform Seller's obligations under this Agreement for the Term of this Agreement. Notwithstanding the license granted to Buyer in this Section 10.5, so long as no Event of Default by Seller which would entitle Buyer to terminate this Agreement has occurred and is continuing, Buyer agrees that Seller may operate the Facility and provide the energy and Capacity in accordance with its obligations under this Agreement. Upon the occurrence of an Event of Default and the expiration of all applicable opportunities to cure, Buyer may, but shall not be obligated to, exercise its rights as licensee under this Section 10.5 in lieu of termination. Buyer's right to operate the Facility pursuant to the license granted in this Section 10.5 shall be effective for a period not to exceed 365 days from the date Buyer first exercises its license rights. During any period in which Buyer is operating the Facility pursuant to the license granted in this Section 10.5, Seller shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to operate and maintain the Facility. In connection with the exercise of the rights under this Section 10.5, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.6 Termination of Duty to Buy. If this Agreement is terminated because of Seller's default, Seller may not require Buyer to purchase energy from the Facility before the date on which the Term would have ended had this Agreement remained in effect. Seller hereby waives its rights to require Buyer to do so.

10.7 Net Replacement Power Costs. If this Agreement is terminated because of Seller's default, Seller shall pay Buyer the positive difference, if any, obtained by subtracting (a) the result of (1) the energy, stated in MWh, that Seller was obligated to provide to Buyer during the remainder of the Term, multiplied by (2) the price per MWh (i) specified in **Exhibit F** for the remaining Contract Years subtracted from (ii) the market price of such energy as determined in good faith by Buyer, from (b) the Replacement Price for any energy that Seller was obligated to provide during the remainder of the Term. Amounts owed by Seller pursuant to this Section 10.7 shall be due within five (5) Business Days after Buyer gives Seller notice of the amount due.

10.8 Credit Support Security. Buyer may apply the Credit Support Security at any time to reduce amounts due from Seller to Buyer under this Agreement which are not paid when due.

10.9 Cumulative Remedies. The rights and remedies provided to Buyer under this Agreement are cumulative and not exclusive of any rights or remedies which Buyer would otherwise have.

SECTION 11

INDEMNIFICATION AND LIABILITY

11.1 Indemnities.

11.1.1 Indemnity by Seller. Seller hereby releases, indemnifies and holds harmless Buyer, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, 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 Electricity Delivery Point, (b) the Fuel delivered by Buyer under this Agreement at and after the Fuel Delivery Point, (c) any facilities on Seller's side of the Electricity Delivery Point, (d) Seller's operation and/or maintenance of the Facility, or (e) arising from Seller's performance under this Agreement, including 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 Buyer, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Buyer, its directors, officers, employees, agents or representatives.

11.1.2 Indemnity by Buyer. Buyer hereby releases, indemnifies and holds harmless Seller, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement after the Electricity Delivery Point, and (b) the Fuel prior to delivery at the Fuel Delivery Point under this Agreement, including 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 or representatives.

11.2 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 Buyer as an independent public utility corporation or Seller as an independent individual or entity.

11.3 Consequential Damages. 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 12

INSURANCE

12.1 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 on **Exhibit J** during the periods specified on **Exhibit J**.

12.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified “true and correct” copy of the insurance policies, provisions and endorsements contemplated by **Exhibit J** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit J**). If any coverage is written on a “claims-made” basis, the certification accompanying the policy shall conspicuously state that the policy is “claims made.”

SECTION 13

FORCE MAJEURE

13.1 Definition of Force Majeure. As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means an event (a) is not reasonably anticipated as of the date of this Agreement, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party’s negligence or failure to act, and (d) could not be overcome by the affected Party’s use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; fire; explosion; civil disturbance; sabotage; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller’s ability to sell, or Buyer’s ability to purchase energy at a more advantageous price than is provided under this Agreement; (ii) economic hardship including lack of money; (iii) the imposition upon Seller of costs or taxes allocated to Seller under Sections 5 or 6; (iv) delay or failure by Seller to obtain any Required Facility Document, other than Permits which Seller is diligently and timely taking all reasonable steps to obtain; (v) strikes or labor disturbances occurring at the Facility, the Premises or any of Buyer’s or Seller’s facilities; (vi) changes in, or costs of compliance with, Environmental Laws enacted after the date of this Agreement; and (vii) the failure of the Transmission Provider, whether or not Transmission Provider is PacifiCorp acting in its regulated transmission function capacity, for any reason to transmit Contract Capacity or energy.

13.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

13.2.1 the Party affected by the Force Majeure, shall, within two (2) weeks after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

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

13.2.3 the affected Party shall use diligent efforts to remedy its inability to perform.

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

13.4 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding one hundred eighty (180) days, then Buyer may terminate this Agreement by giving ten (10) days' prior notice to Seller. Upon such termination, neither Party will have any liability to the other with respect to the period following the effective date of such termination; *provided, however*, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

SECTION 14

CONFIDENTIALITY

14.1 Confidential Business Information. The Parties' proposals and negotiations prior to the date hereof concerning this Agreement, the terms of this Agreement, and the actual charges billed to Buyer under this Agreement, constitute the "Confidential Business Information" of both Parties. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential.

14.2 Duty to Maintain Confidentiality. Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this Agreement and for no other purpose. Each Party agrees not to disclose Confidential Business Information to any other person (other than its affiliates, counsel, consultants, lenders, prospective lenders, buyers, prospective buyers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party, provided that either Party may disclose Confidential Business Information, if such disclosure is required by law, required in order for Buyer to receive regulatory recovery of expenses related to the Agreement or pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by law or by a court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

14.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 14 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

14.4 News Releases and Publicity. Before issuing any news release or promotional material regarding the Facility, Seller shall contact Buyer for language that credits Buyer as purchasing the Net Energy and shall use such language in such news releases and promotional material.

SECTION 15

DISAGREEMENTS

15.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 15.2 below. All negotiations pursuant to this clause are confidential.

15.2 Mediation. If the dispute is not resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association (the “AAA”), as amended and effective on July 1, 2003 (the “**Mediation Procedures**”), notwithstanding any Dollar amounts or Dollar limitations contained therein.

15.2.1 The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“**Mediation Notice**”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.

15.2.2 The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

15.2.3 The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable member from the panel of retired

judges at AAA as a mediator. If the parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA's Arbitration Administrator shall send a list and resumes of three (3) available mediators to the parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both parties have failed to respond to the AAA's Arbitration Administrator within five (5) days of receiving the list or because one or both parties have failed to strike a name from the list or because both parties strike the same name, the AAA's Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 15.2.3, and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

15.2.4 The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 15.2.7.

15.2.5 The mediator's fees and expenses, shall be borne equally by the Parties. Each Party shall bear its own expenses incurred in connection with such mediation; provided, however, that if any dispute hereunder is not fully resolved as a result of such mediation, the prevailing party shall be awarded its reasonable attorney fees in any subsequent dispute resolution proceedings.

15.2.6 All verbal and written communications between the parties and issued or prepared in connection with this Section 15.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any arbitration or other proceedings for the resolution of the dispute.

15.2.7 The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days from the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation. The mediation shall follow and be governed by the laws of the State of Oregon.

15.2.8 All deadlines specified in this Section 15.2 may be extended by mutual agreement.

15.3 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the United States District Court for the District of Oregon, Portland Division. By execution and delivery of this Agreement, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum), (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth in this Agreement, and (e) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by law.

15.4 Settlement Discussions. The Parties agree that no statements of position or offers of settlement made in the course of the dispute process described in this Section will be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

15.5 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

15.6 Equitable Remedies. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive or other equitable relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages constitute an adequate remedy for the

breach of such obligation, and Seller hereby conclusively waives such defense. Seller shall at all times during the Term, own, lease, control, hold in its own name or be signatory to all Required Facility Documents (as the case may be) relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

SECTION 16

GUARANTEED PERFORMANCE PARAMETERS

16.1 Guaranteed Heat Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Heat Rate in accordance with the provisions of **Exhibit R**.

16.2 Guaranteed Start-Up Time. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Start-Up Time in accordance with the provisions of **Exhibit R**.

16.3 Guaranteed Ramp Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Ramp Rate in accordance with the provisions of **Exhibit R**.

SECTION 17

MISCELLANEOUS

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

17.2 Choice of Law. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

17.3 Partial Invalidity. The Parties do not intend to violate any Requirements of Law governing the subject matter of this Agreement. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any Requirements of Law or public policy, all other terms of the Agreement shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under Requirements of Law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the equities contemplated by this Agreement in all material respects.

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

17.5 Governmental Jurisdiction and Authorizations. This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. Buyer's duty to comply with this Agreement is conditioned on Seller's submission to Buyer before the Commercial Operation Date and maintaining thereafter copies of all Required Facility Documents.

17.6 Restriction on Assignments. Except as expressly provided in Section 17.7, neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

17.7 Permitted Assignments. The Buyer may assign its rights, delegate its duties or otherwise transfer its interests hereunder, in whole or in part to another entity having a long-term credit rating assigned thereto by a "nationally recognized statistical rating organization" (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934) that equals or exceeds the Buyer's long term credit rating as of the date of such assignment.

17.8 Entire Agreement. This Agreement (including all attached Exhibits, which are incorporated by this reference) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

17.9 Amendments. This Agreement shall not be altered or amended except by an instrument in writing specifically identifying the provisions to be amended and executed by authorized representatives of both parties.

17.10 No Third Party Beneficiaries. Notwithstanding anything to the contrary herein, this Agreement does not confer any rights upon any person other than the parties and their respective successors and permitted assigns. There are no third party beneficiaries of this Agreement.

17.11 Agents and Subcontractors. This Agreement may be performed by Buyer through the use of agents and subcontractors (but such use shall not relieve Buyer of any obligation hereunder).

17.12 Notices. All notices, requests, statements or payments shall be (a) made to the addresses set forth below, (b) in writing, and (c) delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To Seller:

with a copy to: _____

To Buyer: PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Sr. Vice President, Commercial & Trading

with copies to: PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: Director of Contract Administration, Commercial & Trading

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

17.13 Mobile-Sierra. The rates for service specified in this Agreement shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes to this Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to bind FERC, third parties and themselves to a public interest standard of review, the Parties hereby incorporate such language herein by reference.

17.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which is an original and all of which taken together constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

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

[SELLER],
as Seller

By: _____

Name: _____

Title: _____

PACIFICORP,
as Buyer

By: _____

Name: _____

Title:

EXHIBIT U

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 200__, is entered into by and among PacifiCorp, an Oregon corporation, acting in its merchant function capacity (together with its permitted successors and assigns, “PacifiCorp”), _____, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

RECITALS

A. Borrower intends to develop, construct, install, test, own, operate and use an approximately ___ MW electric generating facility located _____, known as the _____ Generation Project (the “Project”).

B. In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [**Financing Agreement,**] dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

C. Borrower anticipates that, prior to the completion of construction of the Project, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Project. *[if applicable]*

D. PacifiCorp and Borrower have entered into that certain Tolling Agreement, dated as of _____ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Contract”).

E. Pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the Contract to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT. PacifiCorp acknowledges the assignment referred to in Recital E above, consents to an assignment of the Contract pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the Contract, subject to applicable notice and cure periods provided in the Contract. Upon receipt of notice from Administrative Agent, PacifiCorp agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the Contract and this Consent. Upon receipt of Administrative Agent's written instructions, PacifiCorp agrees to make directly to Administrative Agent all payments to be made by PacifiCorp to Borrower under the Contract from and after PacifiCorp's receipt of such instructions, and Borrower consents to any such action.

(B) PacifiCorp will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the Contract, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the Contract and in accordance with subparagraph 1(C) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Contract, except as provided in the Contract, or (iii) amend or modify the Contract in any manner materially adverse to the interest of the Lenders in the Contract as collateral security under the Security Agreement.

(C) PacifiCorp agrees to deliver duplicates or copies of all notices of default delivered by PacifiCorp under or pursuant to the Contract to Administrative Agent in accordance with the notice provisions of this Consent. PacifiCorp may deliver any such notices concurrently with delivery of the notice to Borrower under the Contract. Administrative Agent shall have: (a) the same period of time to cure the breach or default that Borrower is entitled to under the Contract if such default is the failure to pay amounts to PacifiCorp which are due and payable by Borrower under the Contract, except that if PacifiCorp does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the Contract, then as to Administrative Agent, the applicable cure period under the Contract shall begin on the date on which the notice is given to Administrative Agent, or (b) ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to PacifiCorp, so long as Administrative Agent continues to perform any monetary obligations under the Contract, Section 11.1.2(c) of the Contract is not being breached, and all other obligations under the Contract are performed by Borrower or Administrative Agent or its designee(s) or assignee(s). If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designee(s) or assignee(s) declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designee(s) or assignee(s) will be allowed a reasonable period to complete such proceedings. PacifiCorp consents to the transfer of Borrower's interest under the Contract to the Lenders or Administrative Agent or their designee(s) or assignee(s) or

any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, PacifiCorp shall recognize the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or other purchaser or grantee as the applicable party under the Contract (provided that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee assume the obligations of Borrower under the Contract, including, without limitation, satisfaction and compliance with all requirements of Sections 8.1 and 8.2 of the Contract, and provided further that PacifiCorp's subordinated lien rights with respect to the Project are preserved in the event of any transfer of Borrower's interest under the Contract).

(D) Notwithstanding subparagraph 1(C) above, in the event that the Contract is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the Contract is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designee(s) or assignee(s) as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, PacifiCorp and the Lenders or Administrative Agent or their designee(s) or assignee(s) will enter into a new contract. Such new contract shall be on the same terms and conditions as the original Contract for the remaining term of the original Contract before giving effect to such termination, and shall require the Lenders or Administrative Agent or their designee(s) or assignee(s) to cure any payment defaults then existing under the original Contract.

(E) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) elect to perform Borrower's obligations under the Contract as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of PacifiCorp against Administrative Agent, Lenders or their designee(s) and assignee(s) shall be limited to such parties' interests in the Project, the credit support required under Section 7 of the Contract, and recourse against the assets of any party or entity that assumes the Contract or that enters into such new contract.

(F) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) succeed to Borrower's interest under the Contract, Administrative Agent, the Lenders or their designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Contract, except any performance defaults of Borrower itself which by their nature are not susceptible of being cured. Administrative Agent, the Lenders and their designee(s) or assignee(s) shall have the right to assign all or a pro rata interest in the Contract or the new contract entered into pursuant to subparagraph 1(d) above to a person or entity to whom Borrower's interest in the Project is transferred, provided such transferee assumes the obligations of Borrower under the Contract. Upon such assignment, Administrative Agent and the Lenders and their designee(s) or assignee(s) (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

SECTION 2. REPRESENTATIONS AND WARRANTIES [PacifiCorp shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent]

PacifiCorp, acting in its merchant function capacity (and therefore specifically excluding the knowledge of PacifiCorp, acting in its transmission function capacity (“PacifiCorp Transmission”), as to any of the matters stated below, and without imputation to PacifiCorp of any knowledge whatsoever relating to the PacifiCorp Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the Contract, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(B) the execution, delivery and performance of this Consent and the Contract have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(C) each of this Consent and the Contract is in full force and effect;

(D) each of this Consent and the Contract has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited as set forth in Section 3.1.5 of the Contract;

(E) there is no litigation, arbitration, investigation or other proceeding pending for which PacifiCorp has received service of process or, to PacifiCorp’s actual knowledge, threatened, against PacifiCorp relating solely to this Consent or the Contract and the transactions contemplated hereby and thereby;

(F) the execution, delivery and performance by it of this Consent and the Contract, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(G) neither PacifiCorp nor, to PacifiCorp’s actual knowledge, any other party to the Contract, is in default of any of its obligations thereunder;

(H) to the best of PacifiCorp's actual knowledge, (i) no Force Majeure Event exists under, and as defined in, the Contract and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either PacifiCorp or Borrower to terminate or suspend its obligations under the Contract; and

(I) the Contract and the documents and instruments contemplated therein and this Consent are the only agreements between Borrower and PacifiCorp with respect to the Project, and all conditions precedent to effectiveness under the Contract have been satisfied or waived. *[Reference to subordinated lien documents per Section 7.3 of the Contract to be inserted.]*

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

SECTION 3. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to PacifiCorp: [_____ [_____ [_____ Telephone No.: [_____ Telecopy No.: [_____ Attn: [_____
--

<p>If to Administrative Agent:</p> <p>[_____]</p> <p>[_____]</p> <p>[_____]</p> <p>Telephone No.: [_____]</p> <p>Telecopy No.: [_____]</p> <p>Attn: [_____]</p>
<p>If to Borrower:</p> <p>[_____]</p> <p>[_____]</p> <p>[_____]</p> <p>Telephone No.: [_____]</p> <p>Telecopy No.: [_____]</p> <p>Attn: [_____]</p>

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from PacifiCorp by providing written notice to PacifiCorp of Tax Investor's address for notices. PacifiCorp's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW.

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). PacifiCorp agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to PacifiCorp with respect to its interest in the Contract to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of PacifiCorp hereunder. Any purported assignment or transfer of the Contract not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 5. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY. In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER. Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the Contract, PacifiCorp may perform as set forth herein and that neither the execution of this Consent, the performance by PacifiCorp of any of the obligations of PacifiCorp hereunder, the exercise of any of the rights of PacifiCorp hereunder, or the acceptance by PacifiCorp of performance of the Contract by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the Contract, (2) constitute a consent by PacifiCorp to, or impute knowledge to PacifiCorp of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by PacifiCorp of any of its rights under the Contract. Borrower and Administrative Agent acknowledge hereby for the benefit of PacifiCorp that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the Contract. Borrower shall have no rights against PacifiCorp on account of this Consent.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

PacifiCorp,
an Oregon corporation

By: _____
Name: _____
Title: _____

_____,
a _____

By: _____
Name: _____
Title: _____

_____,
as Administrative Agent for the Lenders

By: _____
Name: _____
Title: _____