

# **WHOLESALE RENEWABLE POWER PURCHASE AGREEMENT**

Between

Portland General Electric Company

And

[*Seller*]

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**Exhibits**

<b>Exhibit A</b>	<b>Notices</b>
<b>Exhibit B</b>	<b>Fixed Price</b>
<b>Exhibit C</b>	<b>Intentionally Left Blank</b>
<b>Exhibit D</b>	<b>Facility Description</b>
<b>Exhibit E</b>	<b>Facility Documents</b>
<b>Exhibit F</b>	<b>Site</b>
<b>Exhibit G</b>	<b>Start-Up Testing</b>
<b>Exhibit H</b>	<b>Intentionally Left Blank</b>
<b>Exhibit I</b>	<b>Examples</b>

- Exhibit J      Long-Term Transmission Plan**
- Exhibit K      Litigation**
- Exhibit L      Forecast Methodology**
- Exhibit M      Optimal Conditions/Nameplate Capacity**
- Exhibit N      Operational Hours and Mechanical Availability Methodology**

This WHOLESale RENEWABLE POWER PURCHASE AGREEMENT (“Agreement”) is entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and between [Seller], a [State] [Entity Type] (“Seller”), and Portland General Electric Company, an Oregon corporation (“PGE”). PGE and Seller are also referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions.**

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

1.1.1 “AAA Procedures” has the meaning set forth in Section 18.2.

1.1.2 “Affiliate” means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.1.3 “Agreement” means this Wholesale Renewable Power Purchase Agreement entered into between Seller and PGE and all incorporated appendices, exhibits, schedules and attachments to this Agreement, as the same may be amended by the Parties from time to time.

1.1.4 “Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, energy imbalance services, regulation and frequency response services, reactive supply services, voltage control services, inadvertent energy flow services, operating spinning reserve services, and operating supplemental reserve services.

1.1.5 “Balancing Authority Area” means an electric power system or combination of electric power systems under the control of an operator who acts to (i) match, at all times, the power output of the electric generators within the electric power system(s) and the capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s), (ii) maintain scheduled interchange with other control areas, within the limits of Prudent Electric Industry Practice, (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Prudent Electric Utility Practice, and (iv) provide sufficient generating capacity to maintain operating reserves in accordance with Prudent Electric Industry Practice.

1.1.6 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or

commenced against it is not dismissed after one hundred and eighty (180) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.1.7 “Bundled REC” means a REC that, subject to the terms and conditions of this Agreement, is generated by the Facility and delivered simultaneously and directly to PGE together with the equivalent quantity of Energy generated by the Facility as a single bundled Product, as represented by the lesser of the final e-Tag or the actual Facility Output on an hourly basis.

1.1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the notice or payment or delivery is to be received.

1.1.9 “Capacity Attributes” means any current or future attribute, as may be currently defined or otherwise defined in the future, including but not limited to a characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce or curtail energy, including any attribute counted towards any current or future resource adequacy or reserve requirements. Capacity Attributes are measured in MW. Notwithstanding any other provision of this Agreement, “Capacity Attributes” do not include: (i) any PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Facility, or (ii) any state, federal, local, or private cash payments or grants relating in any way to the Facility or the electric power output of the Facility.

1.1.10 “Claiming Party” has the meaning set forth in Section 4.2.

1.1.11 “Commercial Operation” means that not less than the Nameplate Capacity is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the Transmission System, all of which shall be Seller’s responsibility to receive or obtain. Without limiting Seller’s other obligations under this Agreement, Commercial Operation occurs when all of the following events (a) have occurred, and (b) remain simultaneously true and accurate as of the time at which Seller gives PGE notice that Commercial Operation has occurred:

(i) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that the Nameplate Capacity of the Facility is able to generate electric power reliably in amounts and quality expected by this Agreement and in accordance with all other terms and conditions hereof;

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



(iii) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that, in accordance with the Interconnection Agreement, all required Interconnection Facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the applicable Transmission System in conformance with the Interconnection Agreement and is able to deliver energy at no less than the Nameplate Capacity.

(iv) PGE has received confirmation from the Transmission Provider(s) that (a) the Facility has successfully achieved interconnected operations, and (b) Seller has paid all amounts due under the interconnection agreement, including, but not limited to required network upgrades.

(v) PGE has received confirmation from Seller and the applicable Transmission Provider(s) that Seller has obtained for the Facility transmission service in accordance with Section 3.8, sufficient to enable Energy to be transmitted from the Facility and delivered to the Delivery Point.

(vi) PGE has received (1) a certificate addressed to PGE from an authorized officer of Seller stating that Seller has obtained or entered into all Facility Documents, and (2) copies of any Facility Documents requested by PGE; provided, however, that Seller may redact or omit confidential or commercial terms from non-public Facility Documents.

(vii) PGE has received an opinion from a Licensed Professional Engineer, or an attorney, licensed to practice in the state in which the Site is situated stating that Seller has all Permits and all other rights and agreements required to operate the Facility as contemplated by this Agreement in accordance with Law.

(viii) PGE shall have received all Performance Assurance required by this Agreement.

Seller shall provide written notice to PGE stating when Seller believes that the Facility has achieved Commercial Operation accompanied by the certificates described above. PGE shall have ten (10) days after receipt of Seller's notice either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PGE reasonably believes has not been satisfied. If, within such ten (10) day period, PGE does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PGE notifies Seller within such ten (10) day period that PGE reasonably believes the Facility has not achieved Commercial Operation, the Commercial Operation Date shall not occur until Seller has addressed the concerns stated in PGE's notice to the mutual satisfaction of both Parties.

1.1.12 "Commercial Operation Date" means the date on which the Facility achieves Commercial Operation.

1.1.13 “Contract Termination Damages” has the meaning set forth in Section 3.1.12.

1.1.14 “Contract Year” means the period of consecutive twelve (12) months, commencing on January 1<sup>st</sup> and continuing through December 31<sup>st</sup> of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and continue through December 31<sup>st</sup> of such year and the last Contract Year shall continue through the day prior to the anniversary of the Commercial Operation Date.

1.1.15 “Control Area Services” are those services required by the Transmission Provider or balancing authority as a condition of interconnection, including, but not limited to, generation imbalance, variable energy resource balancing service and any EIM costs associated with interconnection. Control Area Services do not include Ancillary Service costs associated with the Transmission Provider’s provision of firm transmission service.

1.1.16 “Costs” means, with respect to a Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys’ fees and expenses incurred by a Party in connection with enforcing its rights under this Agreement. Costs shall not include any expenses incurred by such Party in either entering into or terminating any arrangement pursuant to which it has hedged its obligations.

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

1.1.18 “Credit Requirements” means a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of (a) BBB or greater from S&P, or (b) Baa2 or greater from Moody’s, and if such ratings are split, the lower of the two ratings must be at least BBB or Baa2 from S&P or Moody’s, respectively.

1.1.19 “Critical Milestone” has the meaning set forth in Section 3.1.9.

1.1.20 “Daily” means any 24-Hour period commencing at 00:00:00 Hours.

1.1.21 “Delay Damages” for any given day are equal to (a) \$100 per MW of Nameplate Capacity per day beginning on the first day after the Scheduled Commercial Operation Date through the 30<sup>th</sup> day after the Scheduled Commercial Operation Date, (b) \$200 per MW of Nameplate Capacity per day beginning on the 31<sup>st</sup> day after the Scheduled Commercial Operation Date through the 60<sup>th</sup> day after the Scheduled Commercial Operation Date, and (c) \$300 per MW of Nameplate Capacity per day beginning on the

61<sup>st</sup> day after the Scheduled Operation Date through the actual Commercial Operation Date or the Guaranteed Commercial Operation Date, whichever occurs first.

1.1.22 “Delivered Energy Quantity” means the sum of the Energy delivered to PGE by or on behalf of Seller to the Delivery Point each hour during the Delivery Period as represented on the final e-Tag. The Delivered Energy Quantity shall not exceed Net Available Capacity in any given hour.

1.1.23 “Delivery Period” has the meaning set forth in Section 2.3.

1.1.24 “Delivery Period Security” has the meaning set forth in Section 9.2.1.

1.1.25 “Delivery Point” means PGE’s scheduling point [BPAT.PGE point of delivery on the BPA side of the BPA-PGE interface or PGE BA].

1.1.26 “Dispute” has the meaning set forth in 18.1.

1.1.27 “Early Termination Date” has the meaning set forth in Section 5.2.1.

1.1.28 “Effective Date” has the meaning set forth in the first paragraph of this Agreement.

1.1.29 “EIM” means the western Energy Imbalance Market, of which PGE is a participating entity.

1.1.30 “Emissions Reduction Credit” is any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under the Clean Power Plan promulgated by the Environmental Protection Agency under the Clean Air Act.

1.1.31 “Energy” means all electric energy, expressed in MWh, generated by the Facility.

1.1.32 “Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise arising as a result of the generation of electricity from the Facility, regardless of whether or not (i) such environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative or regulatory program, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Term. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat

in the atmosphere; and (3) the reporting rights to these avoided emissions, such as the carbon content of the Energy generated by the Facility and REC Reporting Rights. Environmental Attributes do not include (i) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (ii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

1.1.33 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.1.34 “EWG” means an “exempt wholesale generator,” as defined under Public Utility Holding Company Act of 1935.

1.1.35 “Event of Default” has the meaning set forth in Section 5.1.

1.1.36 “Excess Energy” means Delivered Energy Quantity in excess of [110%] of the Guaranteed Output Threshold.

1.1.37 “Expected Output” means the generation profile associated with a 50% probability of exceedance.

1.1.38 “Facility” means the [*describe renewable energy technology*] facility more fully described in Exhibit D, and includes all generators, equipment, devices and associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of Product to PGE in accordance with this Agreement (including the Interconnection Facilities).

1.1.39 “Facility Documents” means the Permits and other written authorizations, rights and agreements now or hereafter necessary for (i) construction, ownership, operation, and maintenance of the Facility in accordance with Prudent Electric Industry Practices, and (ii) transmission of Energy from the Facility to the Balancing Authority Area (including documents with respect to Balancing Authority Area services). Facility Documents include the Permits and other written authorizations, rights and agreements listed in Exhibit E; provided, however, that nothing set forth in Exhibit E limits the obligations of Seller to obtain all Facility Documents required to enable Seller to perform its obligations under this Agreement in accordance with its terms.

1.1.40 “Facility Meter” means the metering equipment designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Interconnection Agreement.

1.1.41 “Facility Output” means all electric energy, produced by the Facility, less station service (parasitic power and electrical losses), if any, all as measured at the Facility Meter.

1.1.42 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.1.43 “FIN 46” has the meaning set forth in Section 19.11.

1.1.44 “Fixed Price” means [\_\_\_\_\_](\$/MWh).

1.1.45 “Forecasting Agent” shall have the meaning set forth in Section 3.8.3.

1.1.46 “Force Majeure” is defined in Section 4.1.

1.1.47 “Gains” means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.48 “Generation Forecast” shall have the meaning given to that term in Section 3.4.1.

1.1.49 “Governmental Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof; provided, however, that “Governmental Authority” shall not in any event include either Party.

1.1.50 “Governmental Charges” means any charges or costs that are assessed or levied by any entity, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product contemplated by this Agreement, or any component of the Product, either directly or indirectly.

1.1.51 “Guaranteed Commercial Operation Date” means the date that is 120 days after the Scheduled Commercial Operation Date.

1.1.52 “Guaranteed Output Threshold” means 90% of the monthly Expected Output of the Facility.

1.1.53 “Imbalance Energy” means Energy, measured in MWh, that (i) was not generated by the Facility but is delivered to PGE as a result of Ancillary Services provided by a Balancing Authority Area or Transmission Provider, or other entity, as applicable, and (ii) is generated by the Facility in excess of Facility Output and delivered to a balancing authority or Transmission Provider or other entity, as applicable.

1.1.54 “Indemnitee” has the meaning set forth in Section 12.2.

1.1.55 “Indemnitor” has the meaning set forth in Section 12.2.

1.1.56 “Indemnity Claims” means all third party claims or actions, threatened or filed, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether resulting from a settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.1.57 “Interconnection Agreement” means the generator interconnection agreement between Seller and *[identify applicable Transmission Provider]* *[if already executed: dated [\_\_\_\_, 20\_\_].]*

1.1.58 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), or (b) the maximum rate permitted by applicable law. Notwithstanding the foregoing, in no case shall the Interest Rate be less than zero (0).

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

1.1.60 “ITCs” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

1.1.61 “Law” means any act, statute, law, regulation, permit (including applicable Permits), ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Governmental Authority with jurisdiction over Seller, PGE, the Site, the Facility, or the performance of the obligations under the Agreement, and includes any of the same as they may be amended or imposed from time to time.

1.1.62 “Letter(s) of Credit” means one or more irrevocable, transferable, standby letters of credit issued by a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders’ equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P, in a form and substance reasonably acceptable to PGE. The costs of a Letter of Credit shall be borne by Seller.

1.1.63 “Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to be a major U.S. commercial bank or a U.S. branch office of a major foreign

commercial bank with such bank having shareholders' equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody's or A+ from S&P; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall be within fifteen (15) Business Days of expiration or termination, or shall fail or cease to be in full force and effect at any time during the Term, in any such case without replacement; (v) the issuer of such Letter of Credit shall become Bankrupt; or (vi) a Merger Event occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned in accordance with the terms of this Agreement.

1.1.64 "Licensed Professional Engineer" means a Person proposed by Seller and acceptable to PGE in its reasonable judgment who (a) to the extent mandated by Law is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Law specific to such state, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Seller or its members or Affiliates, other than with the prior written consent of PGE, services previously or currently being rendered to Seller or its members or Affiliates, and (d) 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 seller of any equipment installed in the Facility.

1.1.65 "Long-Term Firm Point-To-Point Service" has the meaning provided for it in the Transmission Provider's Open Access Transmission Tariff that is posted on OASIS.

1.1.66 "Losses" means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.67 "Market Index Settlement Prices" means the production-weighted sum of the Market Index Price for each hour during the delivery month. Exhibit I sets forth an accurate and indicative example of a Market Index Settlement Price calculation under certain stated assumptions.

1.1.68 "Market Price Index" means the EIM real-time pre-dispatch nodal price for the Delivery Point. In the event PGE is participating in an organized market other than EIM, then the Market Price Index will mean the Locational Marginal Price associated with the Pricing Node or Aggregate Pricing Node for the Delivery Point within such organized market.

1.1.69 “Material Adverse Change” means (i) with respect to PGE, PGE shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody’s or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, (ii) with respect to Seller, Seller shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody’s or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, if rated by both services. If Seller is rated by only one service, a Material Adverse Change shall occur if the rating falls below the pertinent level specified above or if such rating is withdrawn or terminated on a voluntary basis by the rating agency.

1.1.70 “Maximum Annual Volume” means the maximum annual amount Energy that PGE is required to purchase from Seller under this Agreement, equal to [\_\_\_] MWh for each Contract Year during the Delivery Period, prorated for any partial Contract Year during the Delivery Period.

1.1.71 “Merger Event” means, with respect to a Party or an Affiliate of a Party that such Party or Affiliate consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity, and (i) the resulting, surviving or transferee entity fails, at the time of such consolidation, amalgamation, merger or transfer, to assume each and all of the obligations of such Party or Affiliate under this Agreement or under any Letter of Credit or other Performance Assurance, either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, or (ii) the benefits of any Letter of Credit or other Performance Assurance or credit support provided pursuant to this Agreement fail, at any time following such consolidation, amalgamation, merger or transfer, to extend to the performance by such Party or such resulting, surviving or transferee entity of its obligations under this Agreement, or (iii) the Credit Rating (from any of S&P or Moody’s) of the resulting, surviving or transferee entity is not equal to or higher than that of such Party or Affiliate immediately prior to such consolidation, amalgamation, merger, or transfer.

1.1.72 “Milestone” and “Milestones” have the meaning assigned to those terms in Section 3.1.9(a)(i).

1.1.73 “Month” means a calendar month commencing at hour ending 01:00:00 PPT on the first day of such month through hour ending 24:00:00 PPT on the last day of such month.

1.1.74 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.1.75 “MW” means megawatt.

1.1.76 “MWh” means megawatt hour.

1.1.77 “Nameplate Capacity” means [\_\_\_] *[solar: MW<sub>DC</sub>.] [other resources: MW<sub>AC</sub>]*, which is the full (maximum) gross power capability of the Facility’s electric power production equipment under optimal conditions designated by the manufacturer and described on Exhibit M. **[Note to bidders: the optimal conditions based on manufacturer designation and the equipment used by the Facility to be agreed upon and included in Exhibit M]**



1.1.78 “Negative Price Event” shall have the meaning given to that term in Section 3.4.4.

1.1.79 “NERC” means the North American Electric Reliability Corporation.

1.1.80 “Net Available Capacity” means the full (maximum) net Energy the Facility is capable of delivering to the interconnecting Balancing Authority Area continuously for at least sixty (60) minutes; which is equivalent to the Nameplate Capacity Rating of the Facility’s generating unit less station service (parasitic power and electrical losses) and inverter limitations, expressed in MW<sub>AC</sub>.

1.1.81 “Non-Defaulting Party” has the meaning set forth in Section 5.2.1.

1.1.82 “Off-Peak” shall mean all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, PPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, PPT, on Sundays and NERC designated holidays.

1.1.83 “On-Peak” shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, excluding NERC designated holidays.

1.1.84 “Oregon Renewable Portfolio Standard” means the renewable portfolio standard contemplated by ORS Chapter 469A, and its implementing regulations, in each case as amended from time to time.

1.1.85 “Party” or “Parties” are defined in the preamble of this Agreement.

1.1.86 “Performance Assurance” means collateral in the form of cash or Letter(s) of Credit from a Qualified Institution.

1.1.87 “Permits” shall mean permits, licenses, approvals, consents, orders, registrations, privileges, franchises, memberships, certificates, entitlements variances, waivers, certificates of occupancy and other authorizations issued by any Governmental Authorities, and any siting, zoning and land use approvals required under Law in connection with the development, construction, operation, occupancy, use and/or maintenance of the Site or Facility, including those specified in Exhibit E, and all amendments, modifications, supplements, general conditions and addenda thereto.

1.1.88 “Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

1.1.89 “PGE Representatives” has the meaning set forth in Section 3.10.

1.1.90 “PPT” means Pacific Prevailing Time (i.e., prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone).

1.1.91 “Pre-COD Security” has the meaning set forth in Section 9.1.1.

1.1.92 “Pre-Scheduled Energy” has the meaning set forth in Section 3.8.4(a).

1.1.93 “Product” means Energy scheduled, delivered and sold by Seller and received and purchased by PGE pursuant to this Agreement, together with all associated Environmental Attributes (including Bundled RECs) and Capacity Attributes.

1.1.94 “Prudent Electric Industry Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the Western Interconnection that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Facility’s equipment sellers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the Western Interconnection, during the relevant period, as described in the immediately preceding sentence.

1.1.95 “PURPA” means the Public Utility Regulatory Policies Act of 1978.

1.1.96 “QF” means “Qualifying Facility,” as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.1.97 “PTCs” means production tax credits under Section 45 of the Internal Revenue Code, as such law may be amended or superseded.

1.1.98 “Qualified Institution” means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders’ equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody’s, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the Facility located.

1.1.99 “Qualifying Replacement RECs” means environmental attributes (including renewable energy credits and renewable energy credit reporting rights) that are delivered to PGE bundled with energy produced simultaneously by a generating source that (A) is an Oregon Renewable Portfolio Standard eligible renewable energy resource, (B) produces environmental attributes (including renewable energy credits and renewable energy credit reporting rights) of the same type and quality as Environmental Attributes (including Bundled RECs and REC Reporting Rights), (C) is located in [Oregon or Washington], and (D) achieves commercial operation after the Commercial Operation Date.

1.1.100 “Qualifying Replacement REC Price” means the price for Qualifying Replacement RECs as determined by taking the lower of two dealer quotes representing a live offer to sell Qualifying Replacement RECs for the entire quantity of Bundled RECs that are being replaced and subtracting the value of the energy component of such quantity (as specified in the applicable dealer quotes) of such Qualifying Replacement RECs.

1.1.101 “REC” means the Environmental Attributes and the REC Reporting Rights associated with Facility Output, however commercially transferred or traded under any or other product names, such as “green tags,” “Green-e Certified,” or otherwise. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes made available by the generation of one MWh of Facility Output, as represented by the lesser of the final e-Tag or the actual metered Facility Output on an hourly basis. All RECs delivered to PGE under this Agreement must comply with the Oregon Renewable Portfolio Standard.

1.1.102 “REC Reporting Rights” are the right of a buyer to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at such buyer's discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

1.1.103 “Regulatory Event” has the meaning given to that term in Section 19.6.

1.1.104 “Reliability Entity” may include, without limitation, NERC, WECC, the Balancing Authority, Transmission Provider, regional transmission organization, independent system operator, reliability coordinator or any other entity that has, or that may have in the future, (i) responsibility over the reliability of the bulk power system and (ii) by virtue of such responsibility the legal authority to affect the operations of the Facility or delivery of the Product.

1.1.105 “Remedial Action Scheme” means an automatic protection system designed to detect abnormal or predetermined system conditions, and take corrective actions other than or in addition to the isolation of faulted components to maintain system reliability. Such action may include changes in demand, generation (MW and Mvar), or system configuration to maintain system stability, acceptable voltage, or power flows.

1.1.106 “S&P” means the Standard & Poor’s, a division of McGraw-Hill Companies, Inc., or any successor thereto.

1.1.107 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Product not accepted by PGE in breach of PGE’s obligations under this Agreement, deducting from such proceeds any (i) Costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party

purchasers. “Costs” shall not include any negative price amounts for the Product, penalties, ratcheted demand or similar charges. In no event shall the Sales Price be less than zero dollars (\$0.00).

1.1.108 “Schedule,” “Scheduled” or “Scheduling” means the actions of Seller, PGE, a Transmission Provider and all other impacted entities, or their representatives, of notifying, requesting, and confirming/implementing the quantity and type of Product, transmission arrangements, and timing of delivery, subject to the prevailing Western EIM, NAESB, WECC and NERC scheduling requirements.

1.1.109 “Scheduled Commercial Operation Date” means [\_\_\_\_, 20\_\_].

1.1.110 “Scheduling Agent” has the meaning set forth in Section 3.8.3.

1.1.111 “Seller” is defined in the Preamble of this Agreement.

1.1.112 “Settlement Amount” means, with respect to this Agreement and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in USD, which such Party incurs as a result of the termination and liquidation of this Agreement pursuant to Article 5. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount shall not include consequential, punitive, exemplary or indirect or business interruption damages.

1.1.113 “Settlement Period” has the meaning set forth in Section 5.2.2.

1.1.114 “Settlement Energy” has the meaning set forth in Section 5.2.2.

1.1.115 “Short-Term Firm Point-To-Point Service” has the meaning provided for it in the Transmission Provider’s Open Access Transmission Tariff that is posted on OASIS.

1.1.116 “Site” means the real property on which the Facility is or will be located, as more fully described on Exhibit F.

1.1.117 “Start-Up Testing” means the start-up tests for the Facility as set forth in Exhibit G.

1.1.118 “Taxes” means all taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, including but not limited to ad valorem, consumption, excise, franchise, gross receipts (including any [State Name] business and occupation tax and [State Name] public utility tax and any successor tax thereto), import, export, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto.

1.1.119 “Term” means the period of time referenced in Section 2.1.

1.1.120 “Test Energy” means electric energy generated by the Facility during periods before the Commercial Operation Date, and all RECs, Environmental Attributes and Capacity Attributes associated with such electric energy.

1.1.121 “Termination Payment” has the meaning set forth in Section 5.3.

1.1.122 “Transmission Provider(s)” means any entity (including any FERC-authorized regional transmission organization) transmitting Energy on behalf of Seller to and at the Delivery Point; or on behalf of PGE at and from the Delivery Point.

1.1.123 “Transmission Services” means any and all services (including but not limited to Ancillary Services and control area services) required for the transmission and delivery of Energy to the Delivery Point or at and from the Delivery Point.

1.1.124 “Transmission System(s)” means the transmission system(s) of the Transmission Provider(s) to be used by Seller for the purpose of transmitting Energy to and at, the Delivery Point; or by PGE for the purpose of transmitting Energy at and from, the Delivery Point.

1.1.125 “Transmission Upgrade Cost Cap’ has the meaning set forth in Section 3.8.1.

1.1.126 “USD” means United States Dollars.

1.1.127 “WECC” means the Western Electricity Coordinating Council or any successor thereto.

1.1.128 “Western Interconnection” means the network of subsystems of generators, transmission lines, transformers, switching stations, and substations owned or operated by members of the WECC, to the extent located in the continental United States.

1.1.129 “WREGIS” means the Western Renewable Energy Generation Information System.

## 1.2 Rules of Interpretation.

Unless the context otherwise requires:

1.2.1 Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

1.2.2 Subject to ARTICLE 15, any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

1.2.3 Any reference in this Agreement to any Section, Exhibit or Appendix means and refers to the Section contained in, or Exhibit or Appendix attached to, this Agreement.

1.2.4 A reference to writing includes typewriting, printing, lithography, photography, email and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

1.2.5 Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

1.2.6 A reference to a Party to this Agreement includes that Party's successors and permitted assigns.

1.2.7 Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

1.2.8 References in this Agreement to "or" shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or").

1.2.9 If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next Business Day.

### 1.3 Technical Meanings.

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in this Agreement in accordance with such recognized meanings.

## **ARTICLE 2 CONTRACT TERM; DELIVERY PERIOD; PRICE; SALE OF FACILITY**

### 2.1 Term; [Conditions Precedent].

2.1.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue through the [15th] anniversary of the Commercial Operation Date (the "Term"), unless earlier terminated in accordance with its terms; provided, however, that (a) such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination, and (b) the terms and conditions of this Agreement and any other documents executed and delivered under this Agreement shall continue to govern with respect to obligations arising before termination until such obligations are fully discharged.

2.1.2 PGE's Conditions Precedent. PGE's obligations under this Agreement are subject to the following conditions precedent, each of which may be waived by PGE in its sole discretion:

- (a) [Project Specific Conditions: TBD]; and
- (b) All authorizations, approvals and consents of all Persons, including PGE's Board of Directors, that are required in connection with the execution, delivery, and performance of this Agreement have been received by PGE; and
- (c) Acknowledgement of the final shortlist and all other required regulatory approvals have been made and obtained.

If these conditions precedent have not been satisfied or waived by PGE on or before [\_\_\_\_\_, 20\_\_], either Party shall have the right to terminate this Agreement by giving five (5) Business Days' prior notice of termination to the other Party. Neither Party shall have any liability for such a termination.

2.1.3 Seller's Conditions Precedent. Seller's obligations under this Agreement are subject to the following conditions precedent, each of which may be waived by Seller in its sole discretion: ***[Note to bidders: conditions precedent, if any, to Seller's obligations under the PPA should be set out here]***

If these conditions precedent have not been satisfied or waived by Seller on or before [\_\_\_\_\_, 20\_\_], either Party shall have the right to terminate this Agreement by giving five (5) Business Days' prior notice of termination to the other Party. Neither Party shall have any liability for such a termination.

2.2 Test Energy. Seller shall use its best efforts to schedule and deliver Facility Test Energy to its Transmission Provider, to a third-party or to an organized market (to the extent PGE has consented to Seller participating in such organized market pursuant to Section 3.14) via its Transmission Provider's system. Seller shall be entitled to any and all compensation received from its Transmission Provider or any third-party or organized market for such Test Energy. Notwithstanding the forgoing, in the event that it is necessary for Seller to schedule and deliver Facility Test Energy to PGE in order to complete Start-Up Testing, Seller shall be entitled to do so pursuant to the Scheduling Procedure set forth in Section 3.8 (to the extent applicable). In such case, the Parties shall coordinate in good faith to schedule deliveries of Test Energy to PGE that minimizes the burden to each of the Parties, and PGE shall receive the Test Energy. The price for such Test Energy received by PGE shall be zero dollars (\$0.00) and Seller shall pay any costs or additional expenses that are required for PGE to receive the Test Energy, including but not limited to reimbursement for negative pricing and procurement of any necessary capacity costs or reserves.

2.3 Delivery Period; Price and Adjustments.

2.3.1 Delivery Period. Starting on [***for a completed Facility:*** \_\_\_\_\_[Date]] [***for a Facility under development:*** the Commercial Operation

Date], Seller shall Schedule all of the Facility Output to PGE at the Delivery Point and shall continue such deliveries for the remainder of the Term (the “Delivery Period”).

2.3.2 Price. For each calendar month during the Delivery Period, and except as otherwise provided herein, PGE shall pay Seller the sum of the following:

(a) lesser of (i) hourly Delivered Energy Quantity, or (ii) hourly Facility Output, each up to [110%] of the Guaranteed Output Threshold, multiplied by the Fixed Price; plus

(b) hourly Excess Energy multiplied by the lesser of (i) [93%] of the Market Index Price, or (ii) [75%] of the Fixed Price; plus

(c) for each hour that the Market Index Price is negative, the hourly Delivered Energy Quantity multiplied by [107%] of the Market Index Price.

An indicative example illustrating the determination of payment due under this Section 2.3.2 is set forth in Exhibit I.

2.4 Notice of Sale of Facility. If Seller or an Affiliate of Seller desire to sell the Facility during the Term, either by a sale of the Facility’s assets or by a direct or indirect transfer of the membership interest(s) in Seller, Seller shall first, before it or its Affiliate enters into any substantive discussions with other parties, notify PGE of its desire to sell the Facility. PGE agrees to notify Seller if it is interested in acquiring the Facility within twenty (20) days following receipt of Seller’s notice. If PGE so notifies Seller, the Parties shall engage in exclusive good faith negotiations to reach agreement with respect to such a transaction for a period of ninety (90) days thereafter. If during this period the Parties execute a letter of intent, or other document similarly confirming the Parties’ intent to enter into a transaction for the purchase and sale of the Facility, then such exclusive negotiation period shall be automatically extended for an additional ninety (90) day period, during which time the Parties may execute a purchase and sale agreement for the Facility. Any purchase and sale agreement executed within the time frame stated in this Section 2.4 shall remain subject to regulatory approval beyond such time frame, as applicable. Seller may pursue any transaction for the sale of the Facility with one or more third parties at any time and from time to time and shall have no obligation to PGE under this Section 2.4 following an occurrence of any of the following: (i) PGE expressly declines interest in acquiring the Facility after receipt of Seller’s notice provided pursuant to the first sentence of this Section 2.4, (ii) PGE fails to respond to Seller’s notice pursuant to the first sentence of this Section 2.4, within twenty (20) days after receipt thereof; (iii) PGE and Seller fail to execute a letter of intent or other similar document with respect to the sale of the Facility within ninety (90) days after PGE’s receipt of notice from Seller provided pursuant to the first sentence of this Section 2.4; or (iv) PGE and Seller fail to execute a purchase and sale agreement for the Facility within one hundred eighty (180) days after PGE’s receipt of notice from Seller provided pursuant to the first sentence of this Section 2.4; provided, however, that with respect to clause (iv), if Seller rejects a firm price delivered by PGE in the course of such negotiations, any sale of the Facility to a third party during the subsequent two (2)-year period must be at a price higher than such rejected price or Seller shall be required to



re-engage in negotiations with PGE as otherwise set forth in this Section 2.4 for the sale of the Facility.

2.5 [Option to Purchase/Option to Extend Term]

***[Note to bidders: if a Bidder wishes to propose an end of Term or during Term option for PGE to purchase the Facility, or an option for PGE to extend the Term of the PPA, it should include its proposal here in its mark up of the Agreement.]***

**ARTICLE 3  
FACILITY DEVELOPMENT, CONSTRUCTION AND OPERATION**

3.1 Development and Construction of Facility. ***[Note to bidders: Section 3.1 will be “intentionally omitted” for a Facility that has already been built.]***

3.1.1 Facility Documents. Seller shall provide PGE with the documents listed below. To the extent they are available on the Effective Date, such documents have been attached to this Agreement as Exhibit E. With respect to any of the listed Facility Documents that become available or are reasonably required to be modified after the Effective Date, Seller shall provide such documents to PGE within ten (10) days after receiving them. Seller may not materially modify such documents or amend Exhibit E after the Effective Date without PGE’s prior written consent, which PGE may not unreasonably withhold, condition or delay.

- (a) Seller’s proposed Level 1 schedule, including significant Facility activities, milestones and deliverables.
- (b) A list of permits and approvals required for the construction and operation of the Facility.
- (c) Facility layout drawings, including all major equipment and balance of plant equipment.
- (d) An electrical single-line diagram for the Facility.
- (e) 12x24 net energy profile and, if available, 8760 net energy production estimate.

3.1.2 Oregon House Bill 2021 Compliant Labor. Project labor must fully comply with the requirements of Oregon House Bill 2021, as applicable . The labor group that constructs and maintains the Facility must have policies in place that are designed to limit or prevent workplace harassment and discrimination. Additionally, such labor group must have policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and Black, Indigenous and People of Color, with an aspirational goal of having at least fifteen percent (15%) of the total work hours performed by individuals from those communities.

3.1.3 Permitting. Seller shall obtain all Permits necessary to construct, own and operate the Facility in accordance with this Agreement.

3.1.4 Financing. Seller shall obtain any and all financing necessary to construct and operate the Facility during the Term on a schedule consistent with the requirements of this Agreement.

3.1.5 Facility Design. Seller shall be responsible for designing and building the Facility in compliance with all Permits and according to Prudent Electric Industry Practice with respect to project design, engineering and selection and installation of equipment to be used at or installed in the Facility. At PGE's request, Seller shall provide PGE with copies of the site plan for the Facility and descriptions, for the project design of the Facility. Any review by PGE of the design, construction, operation or maintenance of the Facility is solely for PGE's information, and PGE shall have no responsibility to Seller or any third party in connection with such review. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability of the Facility.

3.1.6 Construction and Testing; Interconnection. Seller shall, at its cost, construct and test the Facility and obtain all necessary transmission and interconnection rights, all in compliance with the Permits, the Interconnection Agreement, any other agreements with any Transmission Provider, and Prudent Electric Industry Practice.

3.1.7 Monthly Reports. After the Effective Date, Seller shall provide PGE with monthly written reports regarding Seller's progress in completing the construction, testing and interconnection of the Facility and shall, at PGE's request, meet with PGE's representatives to discuss such progress. The monthly report shall include the following: (a) description of the progress toward meeting the Milestones, (b) identifies any missed Milestones, including the cause for the delay, and (c) detailed description of Seller's corrective actions to achieve the missed Milestones.

3.1.8 Equipment Supply. Not later than [\_\_\_\_] Seller shall provide PGE with written evidence of Seller's commitment from the parties identified on Exhibit E for the supply of all of the equipment required to construct and interconnect the Facility in a timeframe that reasonably would allow Seller to achieve the Commercial Operation Date of the Facility on or before the Scheduled Commercial Operation Date.

3.1.9 Milestones.

(a) Seller shall design, construct, own, operate, repair, and maintain the Facility in accordance and consistent with the Facility Documents and Prudent Electric Industry Practice so as to ensure the continuous ability of the Facility to meet Seller's obligations to PGE under this Agreement. Seller shall exercise its best efforts, consistent with Prudent Electric Industry Practice, to complete development of the Facility in accordance with the dates for each Milestones set forth in this Section 3.1.9 (each, a "Milestone" and collectively "Milestones"). If Seller fails to meet a Milestone in any material respect by the date on which this

Section 3.1.9 requires such Milestone to be achieved, Seller shall deliver to PGE the following no more than ten (10) Business Days after receiving notice from PGE: (i) further information concerning the status of Facility development; (ii) a written report containing Seller's analysis of the reasons behind the failure to meet the original Milestone(s), including a description of the remedial actions that Seller agrees to undertake to complete the Facility by the Commercial Operation Date; and (iii) further assurances that the Facility will be completed consistent with the terms of this Agreement.

(i) Site Control. Seller shall demonstrate site control as of the Effective Date of this Agreement by ownership or lease of real property sufficient to enable Seller to finance, construct and operate the Facility, with any such lease having a term equal to or greater than the Term of this Agreement.

(ii) Pre-COD Security. On or before the 30th day following the Effective Date, Seller shall post the Pre-COD Security in the amount described in Section 9.1;

(iii) Interconnection Agreement. On or before the ninetieth (90<sup>th</sup>) day after the Effective Date, Seller shall provide to PGE a fully executed copy of the Interconnection Agreement confirming that the Facility will receive [Network Resource Interconnection Service] [Energy Resource Interconnection Service];

(iv) Permits. On or before the [\_\_] day after the Effective Date, Seller shall provide to PGE copies of all Permits in final, nonappealable form;

(v) Transmission Service Agreements. At least three hundred sixty five (365) days prior to Commercial Operation Date, Seller shall present PGE with copies of the transmission service agreement(s) contemplated by Section 1.1.11(v) and Section 3.8.1 (together with associated service tables).

(vi) [***For biomass facilities:*** Within thirty (30) days after the Effective Date, Seller shall have executed a delivered fixed-price fuel supply contract, that is acceptable to PGE (such acceptance not to be unreasonably withheld), for a term equal to or greater than the Term of this Agreement for the supply and delivery of not less than seventy-five percent (75%) of the maximum annual fuel requirements for the Facility, with an annual escalation rate not to exceed one and nine tenths percent (1.9%) per year.

(vii) [***For biomass facilities:*** No later than sixty (60) days prior to the Commercial Operation Date, Seller shall have executed a delivered fixed-price fuel supply contract, that is acceptable to PGE (such acceptance

not to be unreasonably withheld), for a term equal to or greater than the Term of this Agreement for the supply and delivery of not less than one hundred percent (100%) of the maximum annual fuel requirements for the Facility, with an annual escalation rate not to exceed one and nine tenths percent (1.9%) per year.]

(viii) Delivery Period Security. By the Commercial Operation Date, Seller shall provide Delivery Period Security required under Section 9.2;

(ix) Commercial Operation Date. Seller shall cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date;

provided, however, that the date for achieving each Milestone (other than the dates for posting Pre-COD Security and Delivery Security) shall be extended on a day for day basis for any delay due solely to (i) PGE's delay in taking, or failure to take, any action required of it hereunder in breach of this Agreement, or (ii) an event of Force Majeure.

(b) When Seller achieves a Milestone, Seller shall provide to PGE documentation reasonably satisfactory to PGE demonstrating completion of the Milestone. Seller shall provide such documentation to PGE within thirty (30) days of such completion but not later than the date specified above for such Milestone. PGE shall acknowledge receipt of the documentation provided under this Section 3.1.9 and shall provide Seller with written acceptance or denial of each Milestone within fifteen (15) Business Days of receipt of the documentation.

(c) Seller shall notify PGE promptly (and in any event within ten (10) Business Days) after Seller becomes aware of information that leads to a reasonable conclusion that a Milestone will not be met. Seller shall convene a meeting with PGE to discuss the situation not later than fifteen (15) Business Days after becoming aware of this information.

(d) If any Milestone (other than a Critical Milestone identified in Section 3.1.9(e)) is not completed on or before the deadline specified for that Milestone in this Section 3.1.9, Seller shall (i) inform PGE of a revised projected date for the achievement of the Milestone, (ii) inform PGE of any impact on the timing of the Commercial Operation Date and on each other Milestone, and (iii) provide PGE with a written report containing Seller's analysis of the reasons behind the failure to meet the original Milestone deadline and describing the remedial actions that the Seller agrees to undertake to ensure the achievement of the Commercial Operation Date by the Scheduled Commercial Operation Date and in any event no later than the Guaranteed Commercial Operation Date. If (1) Seller fails to submit such a report and remedial action plan within thirty (30) days after a Milestone deadline is missed, or (2) Seller timely submits the required report and remedial action plan but thereafter fails to implement the remedial action plan with

diligence, or (3) PGE reasonably concludes based on the report and proposed remedial action plan that the Facility is unlikely to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, a Seller Event of Default shall be deemed to have occurred.

(e) The Milestones described in Sections 3.1.9(a)(i), 3.1.9(a)(v), and 3.1.9(a)(ix) are “Critical Milestones” that are separately addressed in Section 5.1 (Events of Default) and Section 3.1.12 (failure to achieve the Guaranteed Commercial Operation Date).

3.1.10 Notice of Commercial Operation. Seller shall notify PGE not less than five (5) Business Days in advance of the anticipated date of Commercial Operation and shall confirm to PGE in writing when Commercial Operation has been achieved.

3.1.11 Delay Damages. If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay Delay Damages to PGE from and after the Scheduled Commercial Operation Date up to, but not including, the earlier date to occur of (a) the Facility achieves Commercial Operation, or (b) the Guaranteed Commercial Operation Date.

3.1.12 Contract Termination Damages. If Seller does not achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, PGE shall have the right to terminate this Agreement upon ten (10) Days notice to Seller, and Seller shall pay to PGE, as liquidated damages, Contract Termination Damages equal to \$200 per kW of Nameplate Capacity (the “Contract Termination Damages”) in addition to all Delay Damages paid or payable pursuant to Section 3.1.11.

3.1.13 Damages Invoicing. By the tenth (10<sup>th</sup>) day following the end of the calendar month in which Delay Damages begin to accrue, as applicable, and continuing on the tenth (10<sup>th</sup>) day of each calendar month during the period in which Delay Damages accrue (and the following months, if applicable), PGE shall deliver to Seller an invoice showing PGE’s computation of such damages and any amount due PGE in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice and subject to Section 7.2 and Section 7.3, Seller shall pay to PGE, by wire transfer of immediately available funds to an account specified in writing by PGE 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.

3.1.14 PGE’s Exclusive Remedies. PGE’s exclusive remedies for the Facility’s failure to achieve Commercial Operation by the Scheduled Commercial Operation Date or by the Guaranteed Commercial Operation Date, as applicable, shall be (i) the payment by Seller of Delay Damages and, if applicable, Contract Termination Damages, as provided in Sections 3.1.11 and Section 3.1.12, (ii) the right of first offer set forth in Section 3.1.15, and/or (iii) the exercise of step in rights under 9.4.

3.1.15 Right of First Offer.

(a) If PGE terminates this Agreement under Section 3.1.12 or this Agreement is otherwise terminated before the Commercial Operation Date, neither Seller nor Seller's Affiliates may sell, market or deliver any quantity of the Product associated with or attributable to the Facility to a party other than PGE for a period of two (2) years following the termination date of this Agreement, unless before selling, marketing or delivering such Product, or entering into an agreement to sell, market or deliver such Product, Seller or Seller's Affiliates provide PGE with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price), and PGE fails to accept such offer within forty-five (45) days of PGE's receipt thereof.

(b) Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site so long as the limitations contained in this Section 3.1.15 apply, unless the transferee agrees to be bound by the terms set forth in this Section 3.1.15 pursuant to a written agreement approved by PGE.

(c) Seller shall indemnify and hold PGE harmless from all benefits lost and other damages sustained by PGE as a result of any breach by Seller of its covenants contained within this Section 3.1.15.

3.1.16 Tax Credits. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive PTCs, ITCs or other tax credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. Seller's obligations under this Agreement shall be effective regardless of whether the sale of Facility Output from the Facility, or the Facility itself, is eligible for, or receives, PTCs, ITCs or other tax credits during the Term.

## 3.2 Facility Operations.

3.2.1 Commitment. Seller hereby commits one hundred percent (100%) of the Facility Output to PGE as provided under this Agreement.

3.2.2 Site Control. At all times during the Term, Seller shall control the Site through ownership or lease and shall provide PGE with prompt notice of any change in control of the Site.

3.2.3 Operation and Maintenance. Seller shall operate and maintain the Facility, the Facility Meter and that portion of the Interconnection Facilities and related equipment and systems owned by Seller in accordance with Prudent Electric Industry Practice in a manner that is reasonably likely to: (i) maximize the Facility Output, and (ii) result in an expected useful life for such facilities of not less than thirty (30) years.

3.2.4 Facility Meter Inspection and Correction. PGE shall have the right to periodically inspect, test, repair and replace the Facility Meter, without PGE assuming any obligations under the Interconnection Agreement. If any of the inspections or tests disclose an error exceeding 0.5 percent, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which

the Facility Meter rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the Facility Meter shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PGE arising out of such inaccuracy of metering equipment.

3.2.5 Inspection and Records. During the Term, Seller shall inspect, maintain and repair the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Electric Industry Practice and shall keep records with respect to inspections, maintenance and repairs thereto consistent with Seller's reasonable business judgment. The records of such activities shall be available for inspection by PGE during Seller's regular business hours upon reasonable notice.

3.2.6 Scheduled Maintenance. Seller shall notify PGE, on or before September 1 preceding the Commercial Operation Date and on or before September 1 of each subsequent calendar year, of the Facility's scheduled maintenance for the next calendar year and shall use commercially reasonable efforts to plan scheduled maintenance to maximize the productive output of the Facility. Seller shall not schedule maintenance that reduces the energy generating capability of the Facility by more than ten percent (10%) during the months of June through September, unless (i) such maintenance is required to avoid material damage to the Facility, (ii) necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, or (iii) such outage is required in accordance with Prudent Electrical Practices, or (iv) the Parties have agreed otherwise in writing. Seller's scheduled maintenance shall not exceed 200 hours per Contract Year. .

3.2.7 Oregon Renewable Portfolio Standard. Seller shall ensure the Facility obtains Oregon RPS Certification within ninety (90) days after the Commercial Operation Date and shall maintain such certification during the Delivery Period.

3.3 Intentionally Left Blank.

3.4 Energy Delivery. Seller shall schedule and deliver Energy to PGE at the Delivery Point, commencing on the Commercial Operation Date and continuing through the end of the Delivery Period, subject to the terms and conditions herein.

3.4.1 Seller shall provide PGE with (i) a rolling generation forecast, updated hourly, for the next fourteen (14) days, (ii) a rolling generation forecast for five (5) minute and fifteen (15) minute intervals, updated every five (5) and fifteen (15) minutes respectively, for the next 24 hours, and (iii) an updated hourly generation forecast ninety (90) minutes prior to each delivery hour for the balance of the delivery day ("Generation Forecast"). Each Generation Forecast shall be performed by the Forecasting Agent. The Forecasting Agent shall utilize methodology consistent that the requirements set forth in Exhibit L. At PGE's request, (a) Seller shall provide PGE with all reasonably requested

information required to facilitate the Parties' compliance with Reliability Entity requirements, and (b) Seller will cause the Forecasting Agent to provide PGE with an Application Program Interface from which PGE can access raw forecasting files. The Forecasting Agent and PGE shall have real time access to information and forecasts concerning the Facility's availability status.

3.4.2 Seller shall schedule the Product in accordance with Section 3.8.4 for delivery to PGE at the Delivery Point in the amount of Energy expected to be generated by the Facility consistent with the Generation Forecast. Seller's Energy delivery Schedule may not intentionally exceed the Generation Forecast in any hour. Seller and PGE agree that the intent of this Section 3.4.2 is for Seller to schedule and deliver Energy resembling actual production for each hour.

3.4.3 Seller shall provide PGE with a real-time ICCP and EIDE communications link to the Facility metered output.

3.4.4 If Seller or its agent reasonably anticipates that Market Index Prices will be less than zero, and Seller expects to receive little or no net payment for its output ("Negative Price Event"), Seller shall have the right, but not the obligation, to suspend part or all of its deliveries, via a reduction in Facility Output, for the anticipated duration of the Negative Price Event. In the event the Market Index Price is less than zero during the Negative Price Event, Seller's obligation to deliver Facility Output shall be reduced by one (1) MWh and Seller's Guaranteed Output Threshold shall be reduced by one (1) MWh.

3.5 Environmental Attributes Delivery. Unless excused by Force Majeure, Seller shall convey to PGE all Environmental Attributes, including Bundled RECs, associated with all Facility Output. Seller represents and warrants that Seller will hold good title, free and clear of any liens or encumbrances, to all Environmental Attributes from the Facility, including all Bundled RECs, conveyed to PGE.

3.5.1 Title to RECs transferred by Seller to PGE pursuant to this Agreement shall be settled through WREGIS.

3.5.2 Unless otherwise specified herein or by written notification by PGE, for each month of the Delivery Period after the Commercial Operation Date, Seller shall deliver and convey the Bundled RECs associated with the Facility Output delivered to PGE within ten (10) Business Days after the end of the month in which the WREGIS certificates for such Bundled RECs are created. Seller shall be responsible for attaching, in accordance with all current WREGIS operating rules, all available and applicable NERC e-tags pertaining to the corresponding Bundled REC before such Bundled REC is transferred to PGE in WREGIS.

3.6 Carbon Emissions. Seller is responsible for and shall pay for all future costs, if any, whether incurred by Seller or PGE, resulting from any carbon emissions generated by or associated with the Delivered Energy Quantity delivered by Seller to the Delivery Point in accordance with this Agreement. Additionally, Seller is responsible for and shall pay for all costs, if any, whether incurred by Seller or PGE, resulting from any carbon emissions generated by or associated with



the Imbalance Energy delivered to the Delivery Point. Seller may provide PGE with carbon emissions offsets that are reasonably satisfactory to PGE in lieu of a monetary settlement. Within ten (10) Business Days after PGE's request, Seller shall provide PGE with the carbon emissions data for the Product that is delivered during the Delivery Period.

3.7 PGE's Purchase Obligations. PGE shall purchase and receive the Energy delivered by Seller to the Delivery Point in an amount not to exceed the Net Available Capacity for each hour during the Delivery Period in accordance with and subject to the terms of this Agreement. PGE shall pay Seller the applicable price for all Energy delivered to the Delivery Point as set forth in Article 6. PGE shall be responsible for any costs or charges imposed on or associated with the Energy or its receipt, provided such costs or charges are imposed at or on PGE's side of the Delivery Point and not the result of Seller's actions, except any EIM charges resulting from Seller's scheduling adjustments described in Sections 3.4.7 and 3.9.4(c).

### 3.8 Transmission and Scheduling of Energy.

3.8.1 Transmission Capability to PGE's Sink Point. Within sixty (60) Business Days after the Effective Date, PGE will submit a request to designate the Facility as a Network Resource, as defined in Section 1.59 of PGE's Open Access Transmission Tariff (OATT), following the procedures set forth in Section 30 of PGE's OATT and any associated business practices, up to the amount of Net Available Capacity subject to Long-Term Firm Point-To-Point Service required under Section 3.8.2 ("NR Cap"). Seller shall be responsible for performing all actions necessary for PGE to designate the Facility as a Network Resource up to the NR Cap. Such actions may include, but are not limited to, reimbursing PGE for any necessary studies, funding of any necessary transmission upgrades, additions to or upgrades of Facility equipment, sharing of technical or operational data. If the costs of such actions is reasonably projected to exceed [\$\_\_\_\_\_] (the "Transmission Upgrade Cost Cap"), Seller may terminate this Agreement by providing notice to PGE; provided, however, that such termination shall be void if, within thirty (30) days after PGE receives notice of termination, PGE agrees in its sole discretion to bear costs in excess of the Transmission Upgrade Cost Cap. Once the Facility is successfully designated as a Network Resource up to the NR Cap, PGE will arrange, be responsible for, and make available transmission service from the Delivery Point to the designated sink point. If PGE, as a Transmission Provider, determines that due to insufficient transfer capability, consistent with PGE's OATT requirements, the requested Network Resource designation for the NR Cap cannot be achieved, regardless of any proposed upgrades, by the Guaranteed Commercial Operation Date for the Net Available Capacity then PGE may terminate this Agreement by providing notice to Seller.

3.8.2 Firm Transmission Service Agreement. No later than [\_\_] days after Effective Date, Seller shall deliver to PGE copies of transmission service agreements with associated service tables between Seller and its Transmission Provider for transmission service between the Facility's point of interconnection and the Delivery Point for the entire Delivery Period in the form of either: i) a fully executed copies of Cluster Study Agreements for Long-Term Firm Point-To-Point Service for a minimum of eighty percent (80%) of the Net Available Capacity, or ii) a fully executed copy of a Long-Term Firm Point-To-Point Service Transmission Service Agreement for a minimum of eighty percent

(80%) of the Net Available Capacity, in each case commencing no later than the Commercial Operation Date. Seller may not satisfy the requirements of this Section 3.8.2 by acquiring transmission rights currently held by a third party, or its affiliates, engaged in the development of a Qualifying Facility if such party or its affiliates has contractual obligations to PGE for the delivery of energy under PGE's Tariff Schedule 201, unless it can be reasonably determined that the transmission rights are in excess of such third party's contractual obligations to PGE. During the Delivery Period, Seller may reserve and procure Short-Term Firm Transmission Service from the Transmission Provider for up to twenty percent (20%) of the Net Available Capacity. Seller is required to utilize firm transmission service for one hundred percent (100%) of the Net Available Capacity. In the event Seller fails to comply with the transmission requirements in this Section 3.8.2, and attempts to Schedule energy utilizing non-firm transmission, the following shall occur: (a) PGE may reject the e-tag for such Energy and Seller shall be responsible for any costs or penalties imposed by a Reliability Entity that are related to such rejected delivery; (b) in the event PGE does not reject the e-tag for such Energy, the price for such Energy shall be adjusted to the lesser of (i) [93%] of the Market Index Price and (ii) [75%] of Fixed Price (which such price adjustment shall be additive to any other price adjustments that may be applicable to such Energy delivery; (c) in the event PGE does not reject the e-tag for such Energy, PGE shall not be required to reimburse Seller for Control Area Service costs and Seller shall provide an updated Generation Forecast to the Transmission Provider, excluding such Energy. Any curtailment of conditional firm transmission or non-firm transmission does not constitute a Force Majeure.

Seller shall pay for and maintain the transmission service set forth in this Section 3.8.2 for delivery of Energy from the Facility's point of interconnection to the Delivery Point during the entire Delivery Period, commencing on the Commercial Operation Date. Seller is responsible for making all arrangements and for paying all transmission costs for delivery of the Energy to the Delivery Point, including but not limited to all Ancillary Services and EIM costs required by the Transmission Provider(s) to deliver Energy to the Delivery Point. Seller shall procure and PGE will reimburse Seller for all Control Area Services, except for Persistent Deviation Penalties and Intentional Deviation Penalties, provided by an entity that is mutually agreed upon by the Parties that may be required by the Transmission Provider or balancing authority as a condition of interconnection. Seller's Long-Term Firm Point-To-Point Transmission Service Agreements shall have a term of no less than five (5) years and must have reservation priority for the Delivery Period. A copy of Seller's long-term transmission plan, as of the Effective Date, is attached to this Agreement as Exhibit J. Within five (5) days of execution of any new or replacement Transmission Service Agreement(s), Seller shall provide PGE with a copy of Seller's transmission agreement and generation interconnection agreements, and the Parties shall amend Exhibit J to include copies of such agreements.

3.8.3 Seller to Designate Forecasting and Scheduling Agents. At least thirty (30) days before it begins to Schedule Test Energy under this Agreement, Seller shall engage at its expense a third-party Scheduling Agent (the "Scheduling Agent") and a third-party forecasting agent (the "Forecasting Agent"), subject in each case to PGE's prior approval. The Scheduling Agent shall perform Seller's pre-scheduling and Scheduling

obligations under this Section 3.8.3 based exclusively on forecasts supplied by the Forecasting Agent.

3.8.4 Scheduling Procedure. Seller shall comply with the following “Scheduling Procedure” during the Delivery Period:

(a) “Pre-Scheduled Energy” means Product scheduled under the following conditions for each day during the Delivery Period:

(i) Seller shall communicate to PGE’s Pre-schedule Desk, as directed by PGE, the Facility’s Generation Forecast to be delivered at the Delivery Point for the Pre-Scheduling Day(s) by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day for each day during the Delivery Period;

(ii) [*for off-system projects*: Seller shall schedule the Energy by submitting a NERC e-Tag (“e-Tags”) prior to 1:00 p.m. PPT of the applicable WECC Pre-Scheduling Day for all hours of the applicable delivery day(s)]; [*for on-system projects*: Seller shall communicate to PGE’s real time desk via API, or as otherwise directed by PGE, Energy deliveries consistent with the Generation Forecast no later than ninety (90) minutes prior to the flow hour] and

(iii) [*for off-system projects*: Seller shall schedule the Energy with e-Tags as “firm energy” according to prevailing WECC Pre-scheduling provisions and protocols and the terms of this Agreement. Seller shall schedule the Facility as the identified e-Tag source. Seller may not net or otherwise combine schedules from resources other than the Facility, except as necessary for Ancillary Services, subject to the terms of this Agreement.] [*for on-system projects*: Seller and PGE agree that the intent of these scheduling procedures is for Seller to schedule and deliver Energy that resembles actual generation from the Facility for each hour.]

(b) Seller shall not schedule any Energy to be delivered to PGE pursuant to this Agreement using a Dynamic or Pseudo-Tie e-Tag as such terms are defined and used by NERC.

(c) Seller may make adjustments to the Pre-Scheduled Energy scheduled from the Facility each hour in Real-Time (“Real-time Adjustments”). If Seller elects to make Real-time Adjustments, Seller will:

(i) communicate to PGE’s Real-time Desk, as directed by PGE, its intent to adjust the Pre-Scheduled Energy no later than seventy-five (75) minutes prior to the flow hour; and

(ii) submit and receive approval of e-Tag adjustment no later than seventy-five (75) minutes prior to the flow hour. Seller will make all NERC e-Tag adjustments. Seller’s e-tag shall match the adjustment

communicated to PGE pursuant to Section 3.8.4(c)(i). Seller shall be responsible for any costs, charges, or fees associated with deviations to the e-tag after seventy-five (75) minutes prior to the flow hour.

(d) In the event that the regional market design, Balancing Authority, Area, Reliability Entity or Regulatory Entity (e.g. PGE Transmission, BPA Transmission, WECC, NERC, RC West, FERC) causes PGE's scheduling practices to change after the Effective Date, PGE shall have the right but not the obligation to update the Scheduling Procedure by giving thirty (30) days prior written notice to Seller of such update. Seller shall not unreasonably withhold agreement to proposed changes to these Scheduling Procedures.

3.8.5 Authorized Scheduling Representatives. Each Party shall designate by notice to the other Party its authorized representatives responsible for Scheduling. The initial authorized representatives responsible for Scheduling are set forth on Exhibit A.

3.8.6 Maximum Delivery Amounts. Seller shall sell and deliver, and PGE shall buy and receive, the Delivered Energy Quantity delivered pursuant to this Agreement, up to the Net Available Capacity. If Seller, after the Effective Date, increases (i) the Facility's ability to deliver Facility Output, (ii) Nameplate Capacity, or (iii) Net Available Capacity through any means, including but not limited to replacement or modification of equipment or related infrastructure, such increased output or capacity shall not be considered Delivered Energy Quantity. PGE and Seller may by mutual agreement separately contract for such increased output or capacity under such terms and conditions that the Parties may agree to. For the avoidance of doubt, nothing in this Agreement shall be construed to obligate PGE to purchase such increased output or capacity.

3.8.7 Title to Energy. Title to Energy shall pass to PGE at the Delivery Point.

3.8.8 Reliability Entity Curtailment. PGE shall not be liable to Seller if curtailment of Scheduled or unscheduled Energy is due to the action of a Reliability Entity and such action shall not be considered a Force Majeure or a Buyer Curtailment under Section 3.8.10. Seller shall pay PGE the replacement cost for such Energy. The replacement cost during a Reliability Entity curtailment shall be the greater of zero or the amount calculated as: ((Market Index Price – Fixed Price) multiplied by curtailed Energy based on the Facility's potential generation for periods of the Reliability Entity curtailment. The Forecasting Agent shall calculate the potential generation during periods of the Reliability Entity curtailment.

3.8.9 Buyer Curtailment. PGE shall have the right to curtail deliveries of scheduled Energy, up to 400 hours each Contract Year (or prorata amount for any partial Contract Year) without compensation to Seller. The Guaranteed Output Threshold will be reduced by the number of MWhs subject to such a curtailment by PGE.

3.8.10 Approval for Seller to Join Organized Markets. During the Term of this Agreement, Seller shall not register as a participating resource in any energy imbalance

market, independent system operator market or other organized market without prior written consent from PGE, which consent may be granted in PGE's sole discretion.

3.9 Measurement and Transfer of RECs. Bundled RECs shall be deemed sold and delivered to PGE under this Agreement as they are produced and measured by the Facility Meter. Title to such Bundled RECs shall pass to PGE when generated. PGE shall own or be entitled to claim all Bundled RECs during the Term (including any value in the ownership, use or allocation of Bundled RECs created by legislation or regulation after the Effective Date). The Facility Meter shall serve as the record source for purposes of calculating, certifying, and auditing Bundled RECs. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility. Seller shall cause delivery and transfer of the Bundled RECs to PGE's WREGIS account to be perfected in accordance with WREGIS rules. Seller shall hold the Bundled RECs in trust for PGE until such delivery and transfer is perfected. Each Party shall take such steps and further actions as may be required by WREGIS or applicable Law in order to effect and confirm the sale and delivery of the Bundled RECs to PGE for all purposes.

3.10 Access. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Law relating to workplace health and safety, Seller shall provide PGE and its authorized agents, employees and inspectors ("PGE Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) to provide tours of the Facility to customers and other guests of PGE (not more than twelve (12) times per year), (d) for purposes of implementing Section 17.2 (Audit Rights), and (e) for other reasonable purposes at the reasonable request of PGE. PGE shall release Seller against and from any and all Liabilities resulting from actions or omissions by any of the PGE Representatives in connection with their access to the Facility, except to the extent that such damages are caused by the intentional or negligent act or omission of Seller.

3.11 Facility Remedial Action Scheme. To the extent the Facility is not otherwise subject to Seller's Transmission Provider's Remedial Action Scheme, PGE shall have the right to utilize the Facility for PGE's Transmission Provider's Remedial Action Scheme. Before the Commercial Operation Date, Seller shall at its expense make necessary arrangements, including installing any required equipment and entering into any applicable agreements, to enable the Facility to participate in a Remedial Action Scheme for PGE's benefit.

## **ARTICLE 4 FORCE MAJEURE**

### 4.1 Definition.

"Force Majeure" means any event or circumstance, or combination of events or circumstances, that meets all of the following criteria:

- (a) arises after the Effective Date,
- (b) was not caused by and is unforeseeable and beyond the reasonable control of the Party claiming the Force Majeure Event,

(c) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event, and

(d) either (i) as with respect to PGE as the impacted Party, has an impact which will actually, demonstrably and adversely affect PGE's ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement or (ii) as with respect to Seller as the impacted Party, has an impact which will actually, demonstrably and adversely affect Seller's ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement.

Provided they meet all of the criteria described above, Force Majeure Events may include the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, civil disturbances, riots, war and military invasion, physical damage to the Facility caused by third parties who are not subcontractors or representatives, employees or agents of the impacted Party; acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes, and actions of a Governmental Authority (other than in respect of or in relation to or resulting from Seller's non-compliance with Laws). Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the work completed by a subcontractor of Seller on the Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or subcontractor; (ii) cost or shortages of labor or manpower; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Governmental Authorities; (vii) any weather conditions which are not defined above as Force Majeure Events; (viii) actions of a Governmental Authority in respect of or in relation to or resulting from Seller's compliance or non-compliance with Laws; (ix) any failure by Seller to obtain and maintain any Permit it is required to obtain or maintain hereunder; (x) any other act, omission, delay, default or failure (financial or otherwise) of a subcontractor of Seller or other personnel of Seller; (xi) loss of PGE's markets; (xii) PGE's inability economically to use or resell the Product purchased under this Agreement; (xiii) the loss or failure of Seller's fuel supply or equipment; (xiv) either Party's inability to pay when due any amounts owed under this Agreement; or (xv) Seller's ability to sell the Product at a price greater than the Fixed Price. Seller may not raise a claim of Force Majeure with respect to the unavailability of Energy or Bundled RECs from the Facility based on any of the following: (i) routine or scheduled maintenance of the Facility; (ii) any unscheduled outage undertaken to address normal wear and tear of the Facility during the Term; (iii) any outage caused by Seller's failure to design, construct, operate or maintain the Facility consistent with Prudent Electric Industry Practice; (iv) changes in climactic conditions; (v) environmental obstructions caused by events or circumstances that may impact the Facility's generation output but without causing a Facility outage (e.g., forest fire or volcanic eruption located outside of the Facility

site); (vi) financial inability to perform; (vii) changes in cost or availability of materials, equipment, or services; or (ix) strikes or labor disturbances involving the employees of Seller or any of its subcontractors unless such strike or labor disturbance has a national impact making it impossible for Seller to perform its obligations with respect to the Facility.

#### 4.2 Occurrence and Notice.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of this Agreement specify otherwise, the Claiming Party shall be excused from the performance of its obligations related thereto. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform its obligations to the Claiming Party that correspond to the obligations of the Claiming Party that are excused by Force Majeure.

4.3 Obligations. No Party shall be relieved by operation of this Article 4 of any liability to pay for Products delivered hereunder or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Force Majeure.

4.4 Right to Terminate. If a Force Majeure event prevents a Party from performing its material obligations under this Agreement for a period exceeding 180 consecutive days before the Commercial Operation Date or, after the Commercial Operation Date, for a period exceeding 240 consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the Force Majeure event, with respect to its obligations under this Agreement, may terminate this Agreement by giving ten (10) days' prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to periods following the effective date of such termination, except for the right of first offer set forth in Section 3.1.15 and as otherwise expressly provided in this Agreement; 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.

## **ARTICLE 5 EVENTS OF DEFAULT; REMEDIES**

#### 5.1 Events of Default.

An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

5.1.1 in the case of the Seller, the occurrence of a Material Adverse Change with respect to Seller; provided, such Material Adverse Change shall not be considered an Event of Default if Seller establishes, delivers to PGE and maintains for so long as the Material Adverse Change is continuing, Performance Assurance in an amount equivalent to the Termination Payment as determined under Section 5.3;

5.1.2 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;

5.1.3 any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if such inaccuracy is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of default;

5.1.4 if a Party fails to deliver or receive Product as required by this Agreement, and such failure occurs for (i) more than five (5) consecutive Days, or (ii) ten (10) Days out of any Contract Year (it being the intent of the Parties that other failures to deliver or receive Product in any Contract Year will be governed by Article 6);

5.1.5 such Party becomes Bankrupt;

5.1.6 the occurrence of a Merger Event with respect to such Party that is not cured within ten (10) Business Days of notice by the other Party;

5.1.7 in the case of Seller, Seller's failure to establish, maintain, extend or increase Performance Assurance when required pursuant to this Agreement;

5.1.8 commencing on the Commercial Operation Date, Seller's failure to deliver [*for wind resources*: seventy-five percent (75%)] of the annual sum of the Guaranteed Output Threshold to PGE during two (2) out of three (3) Contract Years during the Delivery Period] [*for non-wind resources*: fifty percent (50%) of the annual sum of the Guaranteed Output Threshold to PGE during any Contract Year during the Delivery Period] ;

5.1.9 beginning with the first full calendar year following the Contract Year in which the Commercial Operation Date has occurred, Seller's failure to maintain a minimum Mechanical Availability Percentage for the Facility of [ninety-seven percent (97%)] for any two (2) out of three (3) Contract Years on a rolling basis. The Mechanical Available Percentage of the Facility shall be determined by Seller by dividing the total Operational Hours for such calendar year [*non-solar resources*: by the total number of hours in the calendar year] [*solar resources*: by the total number of daylight hours in the calendar year.] On or before January 31<sup>st</sup> of each year, Seller shall provide PGE written documentation, which shall be subject to audit by PGE, to verify or otherwise substantiate Seller's calculation of the Mechanical Available Percentage of the Facility for the prior calendar year. The operational hours for the Facility shall be the hours that the Facility is potentially capable of producing power at Nameplate Capacity regardless of actual weather conditions or season, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the point of interconnection with the Transmission Provider. The methodology for calculating Operational Hours and the resulting Mechanical Availability Percentage is set forth in Exhibit N [*Note to bidders: the Parties would agree to a more detailed methodology consistent with this Section 6.1.9 and attached it as Exhibit N*];



5.1.10 in the case of Seller, the occurrence of a Letter of Credit Default;

5.1.11 in the case of Seller, Seller Schedules Energy for delivery utilizing non-firm transmission service that fails to comply with Section 3.8.2 for [200] or more hours during any Contract Year (or a prorata number of hours for any partial Contract Year);

5.1.12 in the case of Seller, the occurrence of an Event of Default under Section 3.1.9(d);

5.1.13 the failure to perform any material covenant or obligation set forth in this Agreement for which an exclusive remedy is not provided in this Agreement and which is not addressed in any other Event of Default, if the failure is not cured within thirty (30) days after the Non-Defaulting Party gives the Defaulting Party notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a sixty (60) day cure period, the Defaulting Party will have such additional time (not exceeding an additional thirty (30) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the Defaulting Party provides the Non-Defaulting Party a remediation plan, the Non-Defaulting party approves such remediation plan, and the Defaulting Party promptly commences and diligently pursues the remediation plan.

## 5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

5.2.1 Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred at any time during the Term and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (“Early Termination Date”) on which to liquidate, terminate, and accelerate all amounts owing between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement, and (iii) suspend performance. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, its Gains or Losses and Costs resulting from the termination of this Agreement as of the Early Termination Date. The Non-Defaulting Party shall calculate the Termination Payment payable hereunder in accordance with Section 5.2.2 below.

5.2.2 Calculation of Settlement Amounts. The Gains or Losses resulting from the termination of this Agreement shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of this Agreement. The Gains or Losses shall be calculated for a period equal to the remaining Term (“Settlement Period”). The quantity of Energy in each month of the Settlement Period shall be equal to the Expected Output for such month (“Settlement Energy”). The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other

relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. However, it is expressly agreed that (a) a Party shall not be required to enter into a replacement agreement in order to determine the Termination Payment and (b) a Party's Gains, Losses or Costs will in no event include any penalties, ratcheted demand or similar charges.

5.3 Termination Payment. The "Termination Payment" shall equal the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, including a Settlement Amount (if any), less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

5.4 Notice of Payment of Termination Payment. As soon as practicable after calculating the Termination Payment, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment is due from the Defaulting Party, the Termination Payment shall be made by the Defaulting Party within two (2) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Article 5 until the earlier of (i) the date the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed, or (ii) 180 days after the Early Termination Date.

5.5 Disputes with Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall pay the non-disputed amount of the Termination Payment as provided in Section 5.4 and transfer, within two (2) Business Days, Performance Assurance to the Non-Defaulting Party in an amount equal to the disputed amount of the Termination Payment.

5.6 Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which the Non-

Defaulting Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single Scheduled Product unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

5.8 Post-Termination PURPA Status. If this Agreement is terminated because of a default by Seller, and Seller has subsequently remedied the default after such termination, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Site, on whose behalf Seller acts herein as agent, may thereafter require or seek to require PGE to make any purchases from the Facility or any electric generation facility constructed on the Site under PURPA, or any other Law, under terms and conditions different from those set forth in this Agreement (including rates higher than those set forth in this Agreement) for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PGE to do so. On or before the Effective Date, the Parties shall execute and record, in the appropriate real property records of the counties in which the Facility or Site is situated, and any federal agency as applicable, a memorandum in form acceptable to PGE to provide constructive notice to third parties of Seller's agreements under this Section 5.8. In no event will PGE be required to make any purchases from the Facility or any electric generation facility constructed on the Site in the event the default that caused the termination is still in effect.

## **ARTICLE 6 REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

6.1 Seller Failure to Deliver Facility Output Energy. If Seller fails to deliver Facility Output as required by this Agreement or the associated Environmental Attributes, including Bundled RECs, and such failure is not excused by Force Majeure, or by PGE's breach of this Agreement, Seller shall owe PGE an amount as calculated below:

6.1.1 Seller shall owe PGE an amount for such deficiency equal to the positive difference (if any) of the applicable Market Index Settlement Price minus the Fixed Price multiplied by the positive difference (if any) of the Facility Output Seller failed to deliver for the applicable monthly On-Peak and Off-peak period minus the Delivered Energy Quantity delivered during that monthly On-Peak and Off-peak period; and

6.1.2 Seller shall owe PGE any penalties or fines imposed by a Reliability Entity as a result of Seller's failure to deliver; and

6.1.3 Seller shall owe PGE an amount for such deficiency should the replacement energy procured by PGE as a result of Seller's failure to deliver the Facility

Output results in incremental Carbon Emissions costs to PGE, consistent with Section 3.6; and

6.1.4 Seller shall owe PGE an amount for such deficiency should the replacement energy procured by PGE as a result of Seller's failure to deliver the Facility Output results in incremental ancillary services and transmission costs; and

6.1.5 Seller shall be obligated to settle any shortfall in the delivery of Environmental Attributes (including Bundled RECs) as follows:

(a) Seller shall, within 120 days after the end of the shortfall month, deliver an equivalent amount of Qualifying Replacement RECs that are generated in the same calendar year; or

(b) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs under Section 6.1.5(a) and PGE elects in its sole discretion to purchase Qualifying Replacement RECs, Seller shall owe PGE the price that PGE actually pays for Qualifying Replacement RECs; or

(c) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs under Section 6.1.5(a) and PGE does not elect, in its sole discretion, to purchase replacement bundled RECs under subpart (b), Seller shall owe PGE the Qualifying Replacement REC Price identified by PGE multiplied by the number of Bundled RECs Seller failed to deliver. PGE shall use commercially reasonable efforts to mitigate the amount owed by Seller under this Section 6.1.5(c).

6.1.6 Any amount owed by the Seller to PGE under this Section 6.1 shall be netted against PGE's payment obligation for the month pursuant to Section 6.5 below.

6.1.7 An example illustrating the calculation of amounts due to PGE under this Section 6.1 under certain stated assumptions is set forth in Exhibit I.

6.2 PGE's Failure to Accept. If PGE fails to accept Energy that is scheduled in accordance with Section 3.8, and Seller is ready willing and able to deliver Energy to the Delivery Point, and such failure is not excused by a reliability or transmission constraint, Force Majeure or by Seller's failure to perform, then PGE shall owe Seller an amount for such deficiency equal to the positive difference between the applicable purchase price as set forth in Section 7.1 for the amount of Energy PGE fails to accept minus the Sales Price associated with the amount of Energy PGE fails to accept. Any such amount owed by PGE to Seller shall be added to the calculation of PGE's payment obligation for the month pursuant to Section 7.1. For each MWh of Energy not accepted by PGE pursuant to this Section 6.2, Seller's obligation to deliver the Guaranteed Output Threshold shall be reduced by one (1) MWh. An example illustrating the calculation of amounts due to Seller under this Section 6.2 under certain stated assumptions is set forth in Exhibit I.

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

6.4 Acknowledgement of the Parties.

The Parties stipulate that the payment obligations set forth in this Article 6 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and waive the right to contest such payments as an unreasonable penalty. If either Party fails to pay undisputed amounts in accordance with this Article 6 when due, the other Party shall have the right to: (i) suspend performance until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate. With respect to the amount of such damages only, the remedy set forth in this Article 6 shall be the sole and exclusive remedy of the Parties for the failure of Seller to sell and deliver, and PGE to purchase and receive the Product and all other damages and remedies are hereby waived. Disagreements with respect to the calculation of damages pursuant to this Article 6 may be submitted by either Party for resolution in accordance with ARTICLE 18 and with applicable Law.

6.5 Survival. The provisions of this Article 6 shall survive the expiration or termination of this Agreement for any reason.

## **ARTICLE 7 PAYMENT AND NETTING**

7.1 Billing Period. Unless otherwise specifically agreed upon by the Parties, the Month shall be the standard period for all payments under this Agreement (other than for Seller or PGE failure under Sections 6.1 and 6.2 respectively and for termination under Section 5.4). On or before the tenth (10th) day of each Month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month.

7.2 Timeliness of Payment. Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each Month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the

basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the Month during which performance of this Agreement occurred, the right to payment for such performance is waived.

7.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by one Party to the other Party during the monthly billing period under this Agreement, including any related damages calculated pursuant to ARTICLE 5 (unless one of the Parties elects to accelerate payment of such amounts as permitted by Section 5.2.1), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

7.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article 5, interest, and payments or credits, that Party shall pay such sum in full when due.

## **ARTICLE 8 LIMITATIONS**

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

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

8.3 Direct Damages. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

8.4 No Consequential Damages. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

8.5 Causes Disregarded. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS AGREEMENT ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

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

## **ARTICLE 9 CREDIT AND COLLATERAL REQUIREMENTS**

### 9.1 Pre-COD Security.

9.1.1 Amount of Pre-COD Security. On or before the date specified in Section 3.1.9(a)(i), Seller shall post and maintain Performance Assurance in favor of PGE, equal in each case to \$200 per kW of Nameplate Capacity (the “Pre-COD Security”).

9.1.2 Use of Pre-COD Security to Pay Delay Damages. If the Commercial Operation Date occurs after the Expected Commercial Operation Date and Seller has failed to pay any Delay Damages when due under Section 3.1.13, PGE shall be entitled to and shall draw upon the Pre-COD Security an amount equal to the Delay Damages until such time as the Pre-COD Security is exhausted. PGE shall also be entitled to draw upon the Pre-COD Security for Contract Termination Damages.

9.1.3 Termination of Pre-COD Security. Seller shall no longer be required to maintain the Pre-COD Security (or the remaining balance thereof) after the Commercial Operation Date, if at such time no damages are owed to PGE under this Agreement. PGE shall release the Pre-COD Security to Seller upon PGE’s receipt of the Delivery Period Security under Section 9.2. However, as of the Commercial Operation Date, Seller may elect to apply the Pre-COD Security toward the Delivery Period Security required by Section 9.2, including by the automatic continuation (as opposed to the replacement) thereof.

### 9.2 Delivery Period Security.

9.2.1 Duty to Post Delivery Period Security. Beginning on the Commercial Operation Date, at any time during the Term when Seller does not satisfy the

Credit Requirements, Seller shall post and maintain Performance Assurance in favor of PGE as provided in this Section 9.2 (the “Delivery Period Security”).

9.2.2 Amount of Delivery Period Security. The amount of the Delivery Period Security required by Section 9.2.1 shall be \$100/kw of Nameplate Capacity.

9.2.3 Replenishment of Delivery Period Security. Within five (5) Business Days following any draw by PGE on the Delivery Period Security, Seller shall replenish the amount drawn such that the Delivery Period Security is restored in the full amount.

9.3 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance, Seller hereby grants to PGE a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PGE, and Seller agrees to take such action as PGE reasonably requires in order to perfect PGE’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

9.4 Step-In Rights.

9.4.1 Notice. At any time after the Facility has achieved Commercial Operation, and if at such time PGE has the right to terminate this Agreement due to an Event of Default, then prior to and in lieu of exercising the termination right related to such Event of Default, PGE shall have the right, but not the obligation, to assume control of and operate the Facility as agent for Seller under the terms and conditions set forth herein (“Step-In Rights”). If PGE contemplates exercising its Step-In Rights under this Section 9.4, PGE shall give Seller at least ten (10) Days’ advance notice thereof.

9.4.2 Books and Records. After notice is given and during the relevant notice period, Seller shall collect and have available at a convenient central location at the Facility and shall make available to PGE, at PGE’s request, all documents, contracts,



books, manuals, reports, records, plans, tools, equipment, inventories and supplies necessary or convenient to construct, operate and maintain the Facility in accordance with Prudent Electric Industry Practice.

9.4.3 Application of Proceeds. During any period that PGE is in control of and operating the Facility pursuant to exercise of its Step-In Rights, PGE shall perform and comply with all of the obligations of Seller under this Agreement and shall apply the Fixed Price that Seller would otherwise be entitled to receive hereunder in respect of the sale of Product and any other revenues of the Facility received by PGE from any source attributable to the Facility operation as follows:

- (a) first, to reimburse PGE for any and all out-of-pocket expenses reasonably incurred by PGE in taking possession of and operating the Facility, including PGE's personnel time and expenses, such operation to be subject to the operating budget and any operating agreement if such agreements are applicable;
- (b) second, to pay any unpaid amounts owed to PGE under this Agreement;
- (c) third, to satisfy any payments due and owing to any Lenders, arising after PGE's exercise of its Step-In Rights, and
- (d) fourth, to Seller.

9.4.4 Title and Possession. During any period that PGE is in control of and operating the Facility pursuant to the exercise of its Step-In Rights, Seller shall retain legal title to and ownership of the Facility and PGE shall assume possession, operation and control solely as agent for Seller, provided that PGE shall operate the Facility in conformance with Prudent Electric Industry Practice (including operation and maintenance of the Facility in accordance with manufacturer's recommendations), the provisions and covenants set forth herein and in the Interconnection Agreement between Seller and the Transmission Provider, all leases, subleases, rights-of-way, easements and rights of ingress and egress used in connection with the Facility and Law (including all material permits, consents, licenses, approvals or authorizations from any Governmental Authority pertaining to the Facility). PGE's exercise of its Step-In Rights shall not be deemed an assumption by PGE of any liability of, or attributable to, Seller; provided, however, during the time PGE is operating the Facility, PGE shall indemnify and hold Seller harmless for any third party claims against Seller arising out of PGE's negligence or willful misconduct.

9.4.5 Seller's Resumption of Operations. If PGE is in control of the Facility pursuant to the exercise of its Step-In Rights, Seller may resume operation and PGE shall relinquish its right to control and operate the Facility under this Section 9.4 at such time as Seller has demonstrated to PGE's reasonable satisfaction that it possesses the resources to perform its duties under this Agreement.

9.4.6 PGE's Return of Control. If at any time after exercising its Step-In Rights and taking control of and operating the Facility, PGE elects to return control and operation to Seller, PGE shall give Seller thirty (30) Business Days' advance notice of the

date that PGE intends to return such control to Seller. Upon receipt of such notice, Seller shall take all actions necessary or appropriate to resume control and operation of the Facility on such date in accordance with the terms of this Agreement.

9.4.7 Purpose. PGE and Seller agree that (i) the Step-In Rights are intended solely to provide further assurance that the terms of this Agreement will be achieved, and accordingly that the purpose of the Step-In Rights is the same as the purpose of this Agreement; (ii) there is no separate or additional consideration for the Step-In Rights; and (iii) Seller's obligations in respect of the Step-In Rights are inextricably interrelated to PGE's obligations under the terms of this Agreement.

9.6 Holding Performance Assurance.

PGE will be entitled to hold Performance Assurance in the form of cash provided that the following conditions are satisfied: (i) PGE is not a Defaulting Party and a Material Adverse Change has not occurred and is continuing with respect to PGE and (ii) Performance Assurance is held only in a jurisdiction within the United States.

9.7 Interest Rate on Cash Collateral.

Performance Assurance in the form of cash shall bear interest at the Interest Rate on Cash Collateral and shall be paid to the Seller on the third Business Day of each Month. "Interest Rate on Cash Collateral" means the lesser of (i) the maximum amount allowed by applicable Law and (ii) the Federal Funds Rate for the holding period. The "Federal Funds Rate" means the effective Federal Funds Rate as published daily by the Federal Reserve Bank H.15 Statistical Release website for each day of the holding period. Such interest shall be calculated on the basis of the actual number of days elapsed over a year of 360 days.

9.8 Performance Assurance is Not a Limit on Seller's Liability.

The Performance Assurance contemplated by this ARTICLE 9: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be PGE's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that PGE draws on any Pre-COD Security or Delivery Period Security, Seller shall replenish or reinstate the Pre-COD Security or Delivery Period Security to the full amount then required under this ARTICLE 9.

9.9 Waiver.

This Agreement sets forth the entire agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including this ARTICLE 9, neither Party:

- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 9 of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

## **ARTICLE 10 GOVERNMENTAL CHARGES**

### 10.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

### 10.2 Non-Sale Related Governmental Charges and Taxes.

Seller shall pay or cause to be paid all charges or taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product arising prior to the Delivery Point. PGE shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than those related to the sale of the Product, which are the responsibility of Seller). In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are PGE’s responsibility hereunder, PGE shall promptly reimburse Seller for such Governmental Charges. If PGE is required by Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, PGE may invoice Seller for the amount of any such Governmental Charges or, in its sole discretion, deduct the amount of any such Governmental Charges from the sums due to Seller under ARTICLE 7 of this Agreement. Nothing in this Agreement shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law.

### 10.3 Sale-related Governmental Charges and Taxes.

In addition to all other payments required under this Agreement, Seller shall be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes imposed or levied by any federal, state or local governmental agency on the Product sold and delivered hereunder (including any taxes imposed or levied with respect to the transmission of such energy) up to the delivery of such Product to the Delivery Point.

### 10.4 Indemnification.

Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority with respect to the Product sold, delivered and received hereunder that are the responsibility of such Party pursuant to this ARTICLE 10.

**ARTICLE 11**  
**RATES AND TERMS BINDING;**  
**FERC STANDARD OF REVIEW**

11.1 Mobile-Sierra Doctrine.

11.1.1 Standard of Review. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, proposed by a Party (to the extent that any waiver in subsection 11.2 below is unenforceable or ineffective as to such Party), or FERC acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 527 (2010).

11.1.2 Waiver of FERC Rights. In addition, and notwithstanding Section 11.1.1, to the fullest extent permitted by applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable Law or market conditions that may occur. If it were to be determined that applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection Section 11.1.1 shall not apply, provided that, consistent with Section 11.1.1, neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in Section 11.1.1.

**ARTICLE 12**  
**REPRESENTATIONS AND WARRANTIES; INDEMNITY**

12.1 Representations and Warranties.

On the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

12.1.1 it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

12.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

12.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

12.1.4 this Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject only to any Equitable Defenses;

12.1.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

12.1.6 there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

12.1.7 no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

12.1.8 it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

12.1.9 it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement;

12.1.10 the material economic terms of this Agreement were subject to individual negotiation by the Parties;

12.1.11 it is an “eligible contract participant” within the meaning of the Commodity Exchange Act.

## 12.2 Indemnity.

To the fullest extent permitted by Law, each Party (the “Indemnitor”) hereby indemnifies and agrees to defend and hold harmless the other Party (the “Indemnitee”) from and against any Indemnity Claims caused by, resulting from, relating to or arising out of any act or incident involving or related to the Product and occurring at any time when such Product is under the Indemnitor’s possession and control; provided, however, that the Indemnitor shall not have

any obligation to indemnify the Indemnitee from or against any Indemnity Claims caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee.

### 12.3 Additional Representations and Warranties of Seller.

On the Effective Date and throughout the Term, Seller hereby further represents and warrants to PGE that:

12.3.1 Seller has the right to sell the Product to PGE free and clear of liens of encumbrances;

12.3.2 Seller has title to the Product sold under this Agreement free and clear of liens and encumbrances;

12.3.3 Seller is authorized to sell power at market-based rates pursuant to FERC Dockets Number ER [\_\_\_\_\_];

12.3.4 The Facility is either an EWG or a QF;

12.3.5 Seller has obtained, or will obtain as and when required by this Agreement, all Permits and all other rights and agreements required to construct, own, operate and maintain the Facility, and they will be in full force and effect for the Term;

12.3.6 All leases of real property and other real property rights and agreements required for the operation of the Facility or the performance of any obligations of Seller under this Agreement have been obtained and are owned by Seller, free and clear of liens and encumbrances;

12.3.7 Except as disclosed on Exhibit E, neither Seller nor any Affiliate of Seller has entered into any document, arrangement, understanding, promise or agreement or the like with any Person concerning, with respect to the Facility, (i) remediation or mitigation of environmental impacts, (ii) endangered species, (iii) migratory birds (including eagles), (iv) wildlife and species of conservation concern (state and federal), (v) environmentally, culturally or historically sensitive property or resources, (vi) a military facility, or (vii) national security. In addition, neither Seller nor any Affiliate of Seller has entered into any agreement where public disclosure of the agreement or the subject matter of the agreement could reasonably be expected to negatively affect the Facility's reputation.

12.3.8 Except as disclosed in Exhibit K, there is no litigation, legal action or administrative action pending with respect to the Facility nor, to Seller's knowledge, is any such litigation, legal action or administrative action threatened.

12.3.9 Seller has at all times been fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated in any communication concerning Facility Output, the Facility or the Bundled RECs.

12.4 No Other Representations or Warranties. Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter of this Agreement.

### **ARTICLE 13 INSURANCE**

13.1 Insurance. During the Term, Seller shall secure and continuously carry the following insurance coverage:

13.1.1 Commercial general liability insurance with a minimum combined single limit of \$1,000,000 per occurrence and in the annual aggregate, with coverage for bodily injury, personal injury and broad form property damage, contractual liability, products and completed operations.

13.1.2 Workers' compensation insurance to cover statutory limits of the worker's compensation laws and employers liability insurance with a minimum limit of \$1,000,000.

13.1.3 Business automobile liability insurance (including coverage for owned, non-owned, and hired automobiles) used in connection with the Facility in an amount not less than \$1,000,000 per accident for combined bodily injury, property damage or death. To the extent that the Seller does not own automobiles, coverage for non-owned and hired automobiles may be combined with commercial general liability.

13.1.4 Umbrella/excess insurance covering claims in excess of the underlying insurance described in Sections 13.1.1, 13.1.2 (employers liability only) and 13.1.3 with a \$5,000,000 minimum per occurrence and annual aggregate.

13.1.5 All-risk property insurance including boiler & machinery coverage insuring Seller's property at replacement cost value.

13.2 Seller to Provide Certificate of Insurance. All policies required, with the exception of workers' compensation employers liability and business automobile liability, shall include (i) endorsement(s) naming PGE as an additional insured but only to the extent of Indemnitee's indemnifications as stated in Section 13.1, and (ii) a cross-liability and severability of interest clause. Said policies shall also contain provisions that such insurance is primary insurance without right of contribution of any other insurance carried by or on behalf of PGE with respect to its interests as additional insured. A certificate of insurance showing that the above-required insurance is in full force and effect (on Accord or similar form) shall be furnished to PGE. All policies shall be placed with companies with a minimum A.M. Best rating of A- IX. Seller shall deliver copies of all certificates of insurance to PGE within thirty (30) days of the Effective Date.

13.3 Seller to Notify PGE of Loss of Coverage. Seller or Seller's insurers shall endeavor to provide PGE thirty (30) days notice (or ten (10) days in the case of cancellation due to non-payment of premiums) in the event of any material change to, cancellation or non-renewal of the required insurance.

**ARTICLE 14  
TITLE AND RISK OF LOSS**

Title and risk of loss related to the Product shall transfer from Seller to PGE at the Delivery Point, except that title to Bundled RECs shall transfer to PGE when generated and shall be measured at the Facility Meter. Seller represents and warrants that it will deliver all Product to PGE free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to the Delivery Point.

**ARTICLE 15  
ASSIGNMENT; BINDING EFFECT**

15.1 Assignment.

Neither Party may assign this Agreement or its rights hereunder to any entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any direct or indirect change in control of Seller (whether voluntary or by operation of law) will be deemed an assignment of this Agreement and will require prior written consent of PGE pursuant this Section 15.1. Seller shall pay Buyer's reasonable expenses incurred to provide consents, estoppels or other required documentation in connection with Seller's financing of the Facility.

15.2 Change in Control.

No direct or indirect change in the control of Seller may occur without PGE's prior written consent, not to be unreasonably withheld, conditioned or delayed.

15.3 Binding Effect.

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder shall relieve the assigning or transferring Party of any of its obligations under this Agreement.

**ARTICLE 16  
GOVERNING LAW**

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAW.



## **ARTICLE 17 RECORDS AND AUDIT**

### 17.1 Records.

Each Party shall keep proper books of records and account, in which full and correct entries shall be made of all dealings in relation to this Agreement in accordance with generally accepted accounting principles, consistently applied.

### 17.2 Audit Rights.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Product delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

## **ARTICLE 18 DISPUTE RESOLUTION**

### 18.1 Referral to Senior Management

In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement (“Dispute”), either Party may notify the other of the existence of the Dispute. Upon receipt of a notice of Dispute, the Parties’ representatives will first attempt to resolve the Dispute informally through negotiation and consultation. If they are unable to do so within ten (10) Business Days after the date on the notice of Dispute was given, then within a further three (3) Business Day period following an additional written request by either Party, (i) each Party shall appoint as its representative a senior officer, and (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

### 18.2 Mediation.

Any Dispute that is not resolved pursuant to Section 18.1 within thirty (30) days after the Dispute notice was given may be submitted for mediation by either Party before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation (“AAA Procedures”); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from each of the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the

Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as confidential. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by: (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, (c) two unexcused absences by either Party from the mediation sessions, or (d) failure to resolve the Dispute on or before the sixtieth (60<sup>th</sup>) day after the date on which the notice of Dispute was given (unless the Parties otherwise agree in writing to extend such date). The mediator will never participate in any claim or controversy covered by this Article as a witness, collateral contract, or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

### 18.3 Legal Action.

If the Parties are still unable to resolve their differences through mediation pursuant to Section 18.2 within sixty (60) days after the date on which notice of the Dispute was originally given, then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the State of Oregon located in the City of Portland or the courts of the United States of America for the District of Oregon having subject matter jurisdiction. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) irrevocably waives, to the fullest extent permitted by Law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by Law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Exhibit A, or at such other address of which the Parties have been notified. The dispute resolution process contemplated by this Agreement shall not prevent a Party from seeking temporary or preliminary equitable relief to prevent irreparable damage to that Party or to preserve the status quo pending resolution of a Dispute, and this Section 18.3 shall apply with respect to any application for such relief.

18.4 Waiver of Jury Trial. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

18.5 Attorneys' Fees. If either Party institutes any legal suit, action or proceeding against the other party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud and statutory claims, the prevailing party in the suit, action or proceeding will be entitled to receive, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action or proceeding, whether incurred before suit, during suit, or at the appellate level, including reasonable attorneys' fees and expenses, court costs and other legal expenses such as expert witness fees, and all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings.

18.6 Survival. The provisions set forth in this ARTICLE 18 shall survive the termination or expiration of this Agreement.

## **ARTICLE 19 GENERAL PROVISIONS**

### 19.1 Entire Agreement.

This Agreement (including the attached exhibits and schedules), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all transactions under this Agreement constitute the entire agreement between the Parties relating to the subject matter. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Any and all Exhibits referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

### 19.2 Joint Efforts.

This Agreement shall be considered for all purposes as prepared through the joint efforts of both Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

### 19.3 Amendments in Writing.

No amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

### 19.4 No Third Party Beneficiaries.

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement), it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

### 19.5 Non-Waiver.

No waiver by any Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

#### 19.6 Severability.

Any provision of this Agreement declared or rendered invalid, unlawful, or unenforceable by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties.

#### 19.7 Survival.

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect, after the expiration or termination for any reason of this Agreement, for the purpose of complying herewith.

#### 19.8 Bankruptcy Matters.

The Parties acknowledge and intend that this Agreement, the transactions contemplated in this Agreement, and any instruments that may be provided by either Party under this Agreement will each, and together, constitute one and the same “forward contract,” “forward agreement” and “master netting agreement” within the meaning of the Bankruptcy Code, and that PGE and Seller are “forward contract merchants” within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, or otherwise take any position to the effect that this Agreement, the transactions contemplated under this Agreement, and any instrument(s) that may be provided by either Party under this Agreement do not each, and together, constitute one and the same “forward contract,” “forward agreement” and “master netting agreement” within the meaning of the Bankruptcy Code, or that PGE and Seller are not “forward contract merchants” within the meaning of the Bankruptcy Code.

#### 19.9 Relationships of Parties.

The Parties shall not be deemed in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be deemed an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

#### 19.10 Headings.

The headings used for the Sections and Articles herein are for convenience and reference purposes only and shall not affect the meaning or interpretation of this Agreement.

#### 19.11 Consolidation of Variable Interest Entities.

If PGE or one of its Affiliates determines that, under Accounting Standards Codification 810 (“ASC 810”) Consolidation of Variable Interest Entities (“VIE’s”), formerly referred to as the Financial Accounting Standards Board’s revised Interpretation No. 46 (“FIN 46”), it may hold a controlling financial interest in Seller, but it lacks

the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon PGE's written request, sufficient financial and ownership information so that PGE or its Affiliate may assess whether a controlling financial interest in a VIE does exist under FIN 46. If PGE or its Affiliate determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide, upon PGE's written request, sufficient financial and other information to PGE or its Affiliates so that PGE may properly consolidate the entity in which it holds the controlling financial interest and present the required disclosures. PGE shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PGE's requests for information under this Section 19.11.

## **ARTICLE 20 CONFIDENTIALITY**

Neither Party shall disclose the terms or conditions of this Agreement to a third party except (i) as may become generally available to the public, (ii) as may be required or appropriate in response to any summons, subpoena, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, or accounting disclosure rule or standard, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party in making such disclosure, (iv) to an index publisher or rating agency who has executed a confidentiality agreement with such Party, (v) in order to comply with any applicable law, regulation, order, or directive, including an order or directive of the Oregon Public Utility Commission, or (vi) in connection with any court or regulatory proceeding, including a proceeding of the Oregon Public Utility Commission; provided, however, that in the case of a disclosure under paragraphs (ii), (v) or (vi), each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. Before Seller issues any news release or publicly distributed promotional material regarding the Facility that mentions the Facility or PGE, Seller shall first provide a copy thereof to PGE for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 21 NOTICES AND COUNTERPARTS**

### **21.1 Notices.**

21.1.1 All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit A. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, facsimile, e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, or facsimile), or other documentary form. Notice by facsimile shall (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day); provided that Scheduling and Dispatch notifications and notifications of changes in

availability of the Facility sent by facsimile shall be treated as received when confirmation of successful transmission is received. Notice by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice by e-mail shall be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, courier or facsimile. Notice by telephone shall be deemed to have been received at the time the call is received.

21.1.2 A Party may change its address by providing notice of the same in accordance with the provisions of Section 21.1.1.

21.2 Counterparts.

This Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Wholesale Renewable Energy Purchase and Sale Agreement to be duly executed as of the Effective Date. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

**PORTLAND GENERAL ELECTRIC  
COMPANY**

*[Seller]*

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**APPENDIX A**

**EXHIBIT A**

**Notices**

**Portland General Electric Company (“PGE”)**

**All Notices:**

Street: 121 SW Salmon Street  
City: Portland, Oregon 97204  
Attn: Power Contracts; 3WTCBR06  
Phone: (503) 464-\_\_\_\_  
Facsimile: (503) 464-2605  
Duns: 00-790-9054  
Federal Tax ID Number: 93-0256820

**Invoices:**

Attn: Accounts Payable  
Phone: (503) 464-7126  
Facsimile: 464-7006

**Scheduling:**

Attn: Manager Power Coordination  
Phone: (503) 464-7241  
Facsimile: (503) 464-2605

**Wire Transfer:**

BNK: United States National Bank of Oregon-  
Portland  
ABA: 123000220  
ACCT: #153600063512  
NAME: Portland General Electric Company

**Credit and Collections:**

Attn: Credit Manager  
Phone: (503) 464-\_\_\_\_  
Facsimile: (503) 464-2605

With additional Notices of an Event of Default to:

Attn: General Counsel  
Phone: (503) 464-7822  
Facsimile: (503) 464-2200

**Seller (“Seller” or “Name”)**

**All Notices:**

Street: \_\_\_\_\_  
City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Attn: Contract Administration  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**Invoices:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Scheduling:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Wire Transfer:**

BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Credit and Collections:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With additional Notices of an Event of Default to:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_



**EXHIBIT B**

**Fixed Price**

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**EXHIBIT C**

**Intentionally Left Blank**

**EXHIBIT D**  
**Facility Description**

**EXHIBIT E**  
**Facility Documents**

**EXHIBIT F**

**Site**

**EXHIBIT G**  
**Start-Up Testing**

**EXHIBIT H**  
**Intentionally Left Blank**

**APPENDIX A**

**EXHIBIT I**

**Examples**

*\*\*Exhibit provided for example purposes only and may not be representative of information included in final contract\*\**

**Market Index Settlement Price Example**

(A)	(B)	(C)	(D) = (C)*(B)/Production Total
<b>Hour</b>	<b>Production (MWh)</b>	<b>Market Index Price (\$/MWh)</b>	<b>Production-Weighted Market Index Price (\$/MWh)</b>
HE01			
HE02			
HE03			
HE04			
HE05			
HE06			
HE07			
HE08			
HE09			
HE10			
HE11			
HE12			
HE13			
HE14			
HE15			
HE16			
HE17			
HE18			



**APPENDIX A**

HE19			
HE20			
HE21			
HE22			
HE23			
HE24			
Production Total			
Market Index Settlement Price			



**APPENDIX A**

**Example Illustrating Determination of Amount Due to Seller under Section 6.2**

**EXHIBIT J**

**Long-Term Transmission Plan**

**APPENDIX A**

**EXHIBIT K**

**Litigation**

**APPENDIX A**

**EXHIBIT L**

**Forecast Methodology**

**APPENDIX A**

**EXHIBIT M**

**Optimal Conditions/Nameplate Capacity**

**APPENDIX A**

**EXHIBIT N**

**Operational Hours and Mechanical Availability Methodology**