

Section 21.2 Transfer Tax.

Developer shall be responsible for any sales, use, value added, gross receipts, excise, registration, stamp duty, transfer or other similar Taxes or governmental fees (including any interest or penalties related thereto) that may be payable in connection with the development, design, engineering, construction and commissioning and transfer to PacifiCorp of the Project, including the Facility and the Work (the “Transfer Tax”). Developer shall prepare and file all Tax Returns for any Transfer Tax and shall remit the Transfer Tax shown as due on each such Tax Return. PacifiCorp and Developer shall, upon request, use their commercially reasonable efforts to obtain any certificate or other document from any Governmental Authority or any other person that may be necessary to mitigate, reduce or eliminate any Transfer Tax.

Section 21.3 Allocation.

Within sixty (60) days after the Closing Date, PacifiCorp shall prepare and provide to Developer an allocation of the Purchase Price and any liabilities properly included for U.S. federal income Tax purposes among the assets of the Project (the “Purchase Price Allocation”). If Developer does not provide any comments within ten (10) days after its receipt of the Purchase Price Allocation from PacifiCorp, the Purchase Price Allocation will be final. If Developer proposes to PacifiCorp in writing any changes to such Purchase Price Allocation within ten (10) days after its receipt of the Purchase Price Allocation, PacifiCorp shall consider in good faith any such comments and shall provide to Developer a final Purchase Price Allocation within ten (10) days after its receipt of Developer’s comments. PacifiCorp and Developer shall file all Tax Returns in a manner consistent with the Purchase Price Allocation as finally determined, and PacifiCorp and Developer shall not take any position on any Tax Return, in any audit, administrative, or judicial proceeding, or otherwise that is inconsistent with the Purchase Price Allocation except as otherwise required applicable Law. If any adjustment is required to be made to the Purchase Price Allocation as a result of the payment of additional Purchase Price or otherwise, this Section 21.3 shall govern the rights and obligations of PacifiCorp and Developer with respect to such revised Purchase Price Allocation.

Section 21.4 Tax Incentives.

(a) Neither Developer nor any Affiliate of Developer will engage in any action or fail to take any action that would jeopardize the receipt by PacifiCorp or any of its Affiliates of any Renewable Energy Incentive, or the eligibility of the Project (or any property in the Project) for any other Tax benefit or incentive made available by a Governmental Authority.

(b) Developer shall cause all property (including all PTC Facilities) in the Project to be placed in service within the meaning of Section 45 of the Code no later than the end of the fourth calendar year after the date on which construction began.

Section 21.5 Cooperation.

PacifiCorp and Developer shall cooperate fully, as and to the extent reasonably requested, in connection with the filing of Tax Returns and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon request) the provision of records and information that are reasonably relevant to the filing of such Tax Returns and any such audit, litigation

or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

Section 21.6 Survival.

The representations, warranties and covenants set forth in Section 4.8, Section 4.14, and this ARTICLE 21 shall remain in effect until ninety (90) days after the expiration of the applicable statute of limitations (giving effect to any extensions or waivers thereof) relating to the Tax or Tax Return in question.

Section 21.7 Coordination with General Indemnification.

The provisions of this ARTICLE 21 shall govern the indemnification rights and obligations of PacifiCorp, Developer and their Affiliates with respect to Tax matters in the event of any conflict between the provisions of ARTICLE 26 and this ARTICLE 21.

**ARTICLE 22
ENVIRONMENTAL MATTERS**

Section 22.1 General.

Not less than ninety (90) days prior to the Closing, Developer shall prepare and submit to PacifiCorp materials management and emergency response procedures in accordance with Environmental Law covering any Regulated Materials Developer expects to be used in the completion and testing of the Work, which procedures shall be satisfactory to PacifiCorp. Developer shall comply, and shall cause all other Developer Parties to comply, at all times with the PacifiCorp-approved materials management and emergency response procedures, all Environmental Laws and all Permits applicable to the Work and the Site. No Regulated Materials shall be Released on the Site.

Section 22.2 Release On-Site.

Developer shall immediately notify PacifiCorp of any Release of Regulated Materials at the Site by the Developer Parties or otherwise. In addition, Developer shall immediately notify any applicable Governmental Authorities of any Release that is reportable to Governmental Authorities under applicable Environmental Laws and take such emergency measures as are prudent and necessary to protect the environment consistent with the PacifiCorp-approved materials management and emergency response procedures and applicable Law. Developer shall take all appropriate steps consistent with the PacifiCorp-approved materials management and emergency response procedures and applicable Law for immediate containment of any such Release and Remediation of the affected area.

Section 22.3 Release Off-Site.

In the event of a Release by any Developer Party of a Regulated Material off the Site but related to the Work which is reportable to Governmental Authorities under applicable Environmental Laws, Developer shall be responsible for notifying all applicable federal, state and local Governmental Authorities in accordance with applicable Law or for causing such notification to occur by the party responsible for such action. Developer shall take all appropriate steps consistent with the PacifiCorp-

approved materials management and emergency response procedures and applicable Law for immediate containment of any such Release and Remediation of the affected area.

Section 22.4 Liability.

Unless a Release referred to in Section 22.2 and Section 22.3 is caused by an act or omission of PacifiCorp or a representative of PacifiCorp, Developer shall be responsible for all Liabilities with respect to such Release and the Remediation of the affected area and the indemnification provisions set forth in Section 26.1 shall apply.

Section 22.5 Pre-existing Regulated Materials.

(a) Developer shall develop a contingency plan to address the presence of Regulated Materials in soils or groundwater that Developer may encounter during construction of the Project. The purpose of the contingency plan is to avoid any delays in construction of the Project by planning in advance how to respond to unexpected pre-existing environmental conditions that could impact the Project Schedule or the Guaranteed Substantial Completion Date. The contingency plan shall, at a minimum, provide for:

(i) a staging area for soil containing Regulated Materials so that construction of the Project can continue without delays. Such soils (that must be removed for construction purposes) can be placed in the staging area while testing and subsequent disposal decisions are made;

(ii) the handling of any groundwater containing Regulated Materials that might be extracted, including the prospective procurement of a [STATE; AGENCY] Permit in the event the contingency plan calls for such extracted water being discharged into an area that is subject to Clean Water Act jurisdiction; and

(iii) the final disposal of all Regulated Materials and associated soil and groundwater encountered on the Site.

(b) Developer shall be responsible for implementing any recommendations relating to pre-existing Regulated Materials contained in any environmental surveys or reports.

Section 22.6 Notice.

Developer shall immediately notify PacifiCorp of the occurrence of any event that would or could reasonably be expected to result in any violation or noncompliance or potential violation or noncompliance of any Environmental Law relating to the Work, the Facility, or the Site, or otherwise constitutes a Material Adverse Change under this Agreement.

ARTICLE 23 WARRANTIES OF WORK

Section 23.1 Warranties.

(a) Developer warrants (the "Warranty"), for the duration of the applicable Warranty Period, as follows:

(i) that the Facility and all Equipment and Materials and other Work furnished by Developer, Contractor or any Subcontractor, including installation, but excluding the wind turbines to which the wind turbine warranty in Appendix E applies (provided, that Work related to wind turbine installation shall not be excluded) shall: (A) be free from improper workmanship and Defects in design, engineering, construction, fabrication, workmanship, materials and operations, (B) be new and unused (except for use as part of the Facility); (C) be of good quality, undamaged and in good condition; and (D) conform to the applicable requirements of this Agreement and the other Project Documents, including the Scope of Work and Technical Specification, in effect as of the Substantial Completion Date;

(ii) that the procurement, design, engineering and construction services included as part of the Work (including for the avoidance of doubt, Work related to installation of the wind turbines) shall be performed with Developer's, Contractor's and Subcontractor's best skill and judgment, in a good and workmanlike manner, and conform to and be designed, engineered and constructed in accordance with the terms and conditions of the Project Documents, including the Scope of Work and Technical Specification, Prudent Industry Practice, applicable Laws, and the Developer Permits, in each case, in effect as of the Substantial Completion Date, and conform with, and be designed and engineered according to professional standards and skill, expertise and diligence of design professionals regularly involved in wind power projects similar to the Project, and contain the Equipment, Materials and supplies described in the Scope of Work;

(iii) that the completed Work shall perform its intended functions as a complete, integrated wind energy generation operating system as explicitly described or implied in the Project Documents;

(iv) that none of the Work, the Facility, the Equipment, the Materials, the final plans and the design, engineering and other services rendered by Seller, Contractor or any Subcontractor hereunder, nor the use or ownership thereof by PacifiCorp in accordance with the licenses granted hereunder, infringes, violates or constitutes a misappropriation of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks; and

(v) the individual warranties set forth in Appendix E, other than the wind turbine warranty.

(b) The Warranty shall not extend to Defects or deficiencies to the extent resulting from: (i) operation by PacifiCorp's personnel in a manner inconsistent with or contrary to instructions contained in the operation and maintenance manuals provided by Developer pursuant to Section 15.5; (ii) repairs or alterations by PacifiCorp's personnel in a manner inconsistent with or contrary to instructions provided by Developer or as contained in the operation and maintenance manuals provided by Developer pursuant to Section 15.5; or (iii) normal wear and tear.

Section 23.2 Warranty Period.

Subject to the provisions in this ARTICLE 23, the Warranty: (a) in Section 23.1(a)(i), Section 23.1(a)(ii), Section 23.1(a)(iii) and Section 23.1(a)(iv) shall remain in full force and effect for a period beginning on the Substantial Completion Date and ending on the date twenty-four (24) months thereafter; and (b) in Section 23.1(a)(v), shall remain in full force and effect for the period of time beginning on the

Substantial Completion Date and ending on the date set forth in Appendix E (each period, a “Warranty Period”); provided, however, if ten percent (10%) or more of any type of component of the Project requires repair or replacement within the Warranty Period, then the Warranty for that type of component shall be automatically extended for all such components of that type for an additional two (2) years from the date of the failure that caused the percentage of failures to reach ten percent (10%). Notwithstanding the foregoing, with the exception of the wind turbine warranty set forth in Appendix E, in no event shall any Warranty (including for the avoidance of doubt, any wind turbine pad mounted transformer warranty, high voltage switch gear warranty, step-up transformer warranty or SCADA monitoring system and security system warranty set forth in Appendix E, if applicable) terminate less than twenty-four (24) months following the Substantial Completion Date.

Section 23.3 Repair of Defects.

If PacifiCorp or Developer discovers that the Work, or any portion thereof, fails to meet the Warranty, then it shall notify the other Party of such failure within a reasonable time after discovery, along with the reasonable basis therefore. Upon receipt of such notice, or promptly upon Developer’s own discovery thereof, Developer shall (a) cure such failure in accordance with the Warranty and (b) perform such tests as PacifiCorp may reasonably require demonstrating the cure of such failure. Developer shall coordinate repairing, replacing or re-performing any of the Work with PacifiCorp so as to minimize any adverse effects on the operation of the Project.

Section 23.4 Warranty Period Extension.

(a) Extension for Corrected Work. Any Work re-performed and any part of the Site that is reworked, repaired or replaced in satisfaction of Developer’s obligations in connection with the Warranty will be re-warranted by Developer pursuant to the same Warranty set forth in this ARTICLE 23, and Developer will have the same obligations in relation thereto as set forth in this ARTICLE 23 for a period equal to eighteen (18) months from the date such re-performance, rework, repair or replacement is completed.

(b) Extension for Total Shutdown. If, during the Warranty Period, the Facility is shut down (other than for the purpose of scheduled or routine maintenance) and such shutdown is caused by a defect or failure covered by the Warranty, then the Warranty Period will be extended by a period equal to the duration of the shutdown required to repair such defect or failure.

Section 23.5 Contractor and Subcontractor Warranties.

Developer will procure from Contractor and each Subcontractor warranties with respect to services, Equipment, Materials and Work provided by such entity for a period of no less than twenty-four (24) months after the Substantial Completion Date and for a further twenty-four (24) months after any warranty repair with respect to the subject of the repair. Developer shall obtain and maintain all such warranties in full force and effect.

Section 23.6 Delay in Remediating Defects.

If any such Defect or damage is not remedied by Developer within a reasonable time or requires prompt remediation as a result of an emergency situation existing at the Site, then PacifiCorp may proceed to do the Work or have others perform such Work at Developer’s risk and expense provided that it does so in a reasonable manner and notifies Developer of PacifiCorp’s intention so to do.

Developer reserves the right to investigate and determine the eligibility for such Work to classify as part of a warranty claim. All costs incurred by or on behalf of PacifiCorp in connection with such Work shall be deducted from the Contract Price or be paid by Developer to PacifiCorp within thirty (30) days.

Section 23.7 Removal of Defective Work.

Developer may, with the consent of PacifiCorp, remove from the Site any part of the Work which is Defective or damaged, if the nature of the Defect or damage is such that repairs cannot be expeditiously carried out on the Site.

Section 23.8 Further Tests.

If repairs or replacements are of such a character as may affect the operation of the Facility or any part thereof, PacifiCorp may, within one (1) month after such repair or replacement, give to Developer notice requiring further testing to be conducted, in which case such tests shall be carried out at Developer's cost and as provided in ARTICLE 18.

Section 23.9 Developer to Diagnose.

Developer shall, if required by PacifiCorp's Representative in writing and under the direction of PacifiCorp's Representative, diagnose the cause of any Defect. Unless such Defect or its cause shall be one which Developer would otherwise be responsible for repairing, the costs incurred by Developer in diagnosing such Defect shall, subject to this ARTICLE 23, be borne by PacifiCorp and added to the Contract Price.

Section 23.10 Latent Defects.

(a) Developer's liability for Latent Defects shall remain in full force and effect during all phases of the Work for a period beginning on the Substantial Completion Date and ending five (5) years thereafter (the "Latent Defects Liability Period").

(b) If any Latent Defect shall appear in any part of the Work during the Latent Defects Liability Period, such Latent Defect shall be repaired by Developer with all possible speed and at Developer's sole cost and expense, provided that the Latent Defect existed and would not have been disclosed by a reasonable examination conducted in accordance with Prudent Industry Practice prior to the expiration of the Defects Liability Period.

(c) Developer agrees that any examination of the Work undertaken by PacifiCorp at a relevant time shall, in respect of that part of the Work examined, constitute a reasonable examination conducted in accordance with Prudent Industry Practice within the meaning of this Article.

(d) During the Latent Defects Liability Period, in the event Developer's OEM issues any notice, including Technical Information Letters, service bulletins or similar notices recommending replacement or repair of one or more parts of the Equipment and such repair or replacement is necessary for continued safe operation of the Equipment or is issued to address a defect in material, or workmanship (each a "Latent Defect"), Developer shall repair or replace the affected parts in accordance with and subject to all the terms of the Warranty provided that PacifiCorp shall make the affected Work reasonably available for performance of the repairs or modifications and Developer shall cooperate with PacifiCorp in scheduling such modifications or repairs in order to avoid disruption to PacifiCorp's operations.

Section 23.11 Significant Defects.

Developer warrants and guarantees to PacifiCorp that there will be no Significant Defects. In the event that a Significant Defect occurs, Developer shall cure or otherwise make good the Significant Defect.

Section 23.12 Assignment of Warranties.

On or before the date that is twenty four (24) months following the Substantial Completion Date, Developer shall enter into a partial assignment agreement, in form and substance acceptable to PacifiCorp, pursuant to which Developer shall assign to PacifiCorp all of Developer's rights with respect to the warranties set forth in Appendix E and such other existing Contractor and Subcontractor warranties as exist with respect to Section 23.5 (the "Other Warranty Assignment"), provided on and as a condition precedent to the Substantial Completion Date, Developer shall enter into a partial assignment agreement, in form and substance acceptable to PacifiCorp, pursuant to which Developer shall assign to PacifiCorp all of Developer's rights with respect to the turbine warranties set forth in Appendix E (the "Turbine Warranty Assignment").

Section 23.13 Wind Turbine Warranty Obligations.

PacifiCorp's exclusive remedy with respect to the wind turbine warranty obligations shall be against the wind turbine supplier under the wind turbine warranty so assigned.

ARTICLE 24 LIQUIDATED DAMAGES

Section 24.1 General.

The Parties agree that it is difficult or impossible to determine with precision the amount of damages that would be incurred by PacifiCorp as a result of Developer's failure to timely achieve the Substantial Completion Date by the Guaranteed Substantial Completion Date or meet the Performance Guarantees, if applicable. Accordingly, the Parties expressly agree that if Developer fails to timely achieve the Substantial Completion Date by the Guaranteed Substantial Completion Date or meet the Performance Guarantees, if applicable, any sums which would be payable under this ARTICLE 24 because of such failures are liquidated damages and not a penalty, and are fair and reasonable and any such sums represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failures. Notwithstanding anything to the contrary herein: (a) provisions of this Agreement providing for liquidated damages only relate to damages arising out of Developer's performance under this Agreement, and do not limit damages payable to PacifiCorp related to or arising from the termination of this Agreement, by PacifiCorp or otherwise; and (b) in no event are liquidated damages PacifiCorp's exclusive remedy for any breach or failure to perform by Developer.

Section 24.2 Liquidated Damages for Delay in Substantial Completion.

If the Project fails to achieve the Substantial Completion Date on or prior to close of business on the Substantial Completion Guaranteed Date, then Developer shall pay to PacifiCorp liquidated damages for each day until the Project achieves the Substantial Completion Date, in an amount equal to [_____ (\$_____)] per day for the first thirty-one (31) days following the Substantial

Completion Guaranteed Date and [_____ (\$_____)] per day thereafter (collectively, the “Delay Liquidated Damages”).

Section 24.3 Liquidated Damages for Performance Guarantees.

If PacifiCorp elects for Developer to perform the Performance Tests and the Project fails to achieve the Performance Guaranty by the Guaranteed Substantial Completion Date, then Developer shall pay to PacifiCorp liquidated damages in an amount and on such terms and conditions as are set forth in Appendix AA (collectively, the “Performance Liquidated Damages”).

Section 24.4 Calculations and Payments of Liquidated Damages.

(a) All amounts payable as liquidated damages under this ARTICLE 24 shall be made by Developer to PacifiCorp as follows: (i) in the case of Delay Liquidated Damages, thirty (30) days after the final day of each month during which liquidated damages became payable pursuant to Section 24.3; and (ii) in the case of Performance Liquidated Damages, if applicable, thirty (30) days after PacifiCorp’s receipt of the Final Performance Test Report or as otherwise provided in Appendix AA. PacifiCorp shall have the right to audit Developer’s calculations of all liquidated damages. Developer shall itemize such calculations and such calculations shall include such supporting documentation as PacifiCorp may reasonably request and shall be in sufficient detail to permit PacifiCorp to verify each calculation. PacifiCorp shall notify Developer, as soon as reasonably possible, of any portion of the calculations with which PacifiCorp disagrees.

(b) Liquidated damages shall bear interest at the Late Payment Rate, compounded daily from the date such amount was due, but not to exceed the maximum rate of interest permitted by applicable Law.

**ARTICLE 25
LIMITATION OF LIABILITY**

Section 25.1 Duty to Mitigate.

In all cases, but subject to any right or remedy which the Party may have under or by virtue of this Agreement, the Party establishing or alleging a breach or default of this Agreement or a right to recover damages or to be indemnified in accordance with this Agreement shall be under a duty to take all commercially reasonable actions necessary to mitigate any loss which has occurred.

Section 25.2 Limitation of Liability.

SUBJECT TO THE OBLIGATION OF DEVELOPER TO PAY LIQUIDATED DAMAGES TO PACIFICORP UNDER THIS AGREEMENT AND OTHERWISE AS PROVIDED IN SECTION 2.9 AND SECTION 25.3, NEITHER DEVELOPER NOR PACIFICORP SHALL BE LIABLE TO THE OTHER BY WAY OF INDEMNITY OR BY REASON OF ANY BREACH OR DEFAULT OF THIS AGREEMENT OR ANY STATUTORY DUTY OR TORT (INCLUDING NEGLIGENCE BUT EXCLUDING ANY DAMAGES PAYABLE TO A THIRD PARTY CAUSED BY A TRESPASS OR NUISANCE FOR WHICH DEVELOPER IS RESPONSIBLE PURSUANT TO THIS AGREEMENT) FOR ANY LOSS OF PROFIT OR INCOME, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF

CONTRACTS OR FOR ANY INDIRECT OR CONSEQUENTIAL, MULTIPLE, PUNITIVE OR EXEMPLARY DAMAGES THAT MAY BE SUFFERED BY THE OTHER.

Section 25.3 Enforceability of Liquidated Damages.

The Parties explicitly agree and intend that the provisions of ARTICLE 24 shall be fully enforceable by any court exercising jurisdiction over any dispute between the Parties arising under this Agreement. Each Party hereby irrevocably waives any defenses available to it under law or equity relating to the enforceability of the liquidated damages provisions set forth in ARTICLE 24.

Section 25.4 Limitations on Liabilities.

Notwithstanding any other provision of this Agreement to the contrary, the cumulative maximum liability of a Party to the other Party under this Agreement shall not exceed one hundred percent (100%) of the sum of the Contract Price and the Purchase Price. The foregoing limitation of liability shall not apply with respect to (a) Developer's indemnification obligations in Section 21.1 and (b) claims made by, damages incurred by, or amounts payable to third parties pursuant to an indemnity given hereunder or claims arising out of such Party's fraud, willful misconduct or gross negligence. To the extent any provision of this Agreement establishes a lower limit of liability of a Party with respect to a particular component or type of liability, such lower limit of liability shall control with respect to the relevant component or type of liability. Notwithstanding anything herein to the contrary, no liabilities of Developer to PacifiCorp that are covered by insurance carried by Developer pursuant to ARTICLE 27 (except deductibles paid by Developer) shall count towards Developer's cumulative maximum liability to PacifiCorp pursuant to this Agreement.

**ARTICLE 26
INDEMNIFICATION**

Section 26.1 Indemnification for Third Party Claims.

(a) Developer shall defend, indemnify and hold harmless PacifiCorp and the other PacifiCorp Indemnified Parties from and against all third party Claims and Liabilities for injury, including death, and property damage caused by, arising out of, or in connection with the performance by any Project Party of the Project Documents to the extent any of such Claims or Liabilities were caused by breach of any representation, warranty or obligation under this Agreement or any Project Document by or the negligence, gross negligence or willful misconduct of any Developer Parties.

(b) PacifiCorp shall defend, indemnify and hold harmless Developer and its directors, officers, employees and agents, from and against all third party Claims and Liabilities for injury, including death, and property damage caused by, arising out of, or in connection with the performance by PacifiCorp of the Project Documents to which it is a Party to the extent any of such Claims or Liabilities were caused by the breach of any representation, warranty or obligation under this Agreement or any other Project Document to which it is a party by or the negligence, gross negligence or willful misconduct of PacifiCorp, its employees or agents.

(c) Either Party seeking indemnification under this Agreement (the "Indemnified Party") shall give notice to the Party required to provide indemnification hereunder (the "Indemnifying Party") promptly after the Indemnified Party has actual knowledge of any Claim as to which indemnity may be

sought hereunder, and the Indemnified Party shall permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of any Claim resulting therefrom; provided that:

(i) counsel for the Indemnifying Party who shall conduct the defense of such Claim shall be reasonably satisfactory to the Indemnified Party;

(ii) the Indemnified Party may participate in such defense at its own expense, except the Indemnifying Party shall reimburse the Indemnified Party for its participation in such defense to the extent that the Indemnifying Party requests the Indemnified Party to participate in its own defense; and

(iii) the omission by the Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent that such omission results in a failure of actual notice to the Indemnifying Party and the Indemnifying Party is damaged as a result of such failure to give notice.

Notwithstanding the foregoing, the Indemnifying Party may not settle any Claim related to the indemnity being provided hereunder without the consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed.

(d) With regard to any Claim or Liability which is the result of the joint or concurrent fault or negligence of Developer and PacifiCorp, the Parties agree to jointly defend any Claim with respect thereto that is based on such joint or concurrent fault or negligence of PacifiCorp and Developer. Any Claim of contribution or indemnification between PacifiCorp and Developer relating to such Claims shall be resolved on the basis of the percentage of fault or negligence and the Parties agree to reserve the determination of such percentage until after resolution of such Claim. Such pro rata share shall be based upon a final judicial determination of the Parties' comparative fault or negligence or, in the absence of such determination, by mutual agreement of the Parties.

(e) Nothing in this Section 26.1 is intended to allow any Indemnified Party to be indemnified from and against any third party Claims and Liabilities caused by, arising out of, or in connection with the performance of this Agreement or any other Project Document to the extent any of such Claims or Liabilities were caused by, arose out of, or were in any way incidental to or in connection with its own breach of any representation, warranty or obligation under this Agreement or any other Project Document to which it is a party or its negligence, gross negligence or willful misconduct.

Section 26.2 Title Indemnity and Liens.

(a) Developer shall promptly pay or cause to be paid when due all obligations for labor and material in connection with the Work. Developer shall discharge at once, or bond with a bonding company or surety acceptable to PacifiCorp or otherwise secure against all Liens and attachments which are filed in connection with the Work.

(b) Developer shall keep the Work and the Site free and clear of and shall promptly release or cause the release of all Liens and Claims, including recorded notices, Claims for nonpayment and *lis pendens*, arising from the performance of any Work covered by this Agreement or any other Project Document by the Developer Parties and all laborers, materialmen, mechanics and other such persons. Developer shall have the right to contest any such Lien or Claim, provided that Developer first provide

to PacifiCorp financial assurances in amount, form and substance satisfactory to PacifiCorp and otherwise complies with applicable Law with respect to removal of such Lien or Claim.

(c) Developer shall indemnify, defend, and hold harmless all PacifiCorp Indemnified Parties from and against (i) all laborers', material men's and mechanics' Liens, or Claims made or filed upon the Work or the Site on account of any labor performed or labor, services, equipment, and materials furnished by the Developer Parties and all laborers, materialmen, mechanics, and other persons in connection with the Work and (ii) any defect in title upon any of Work, including the Equipment, Materials and the Facility, supplied pursuant to this Agreement.

(d) If any Lien or Claim arising out of this Agreement or any other Project Document is filed before or after Work is completed, Developer, within ten (10) days after receiving from PacifiCorp written notice of such Lien or Claim, shall obtain release or provide financial assurance satisfactory to PacifiCorp to protect PacifiCorp from or otherwise satisfy such Lien or Claim. If Developer fails to do so, PacifiCorp may take such steps and make such expenditures as in its discretion it deems advisable to obtain release of or otherwise satisfy any such Lien or Claim, and Developer shall upon demand reimburse PacifiCorp for all costs incurred and expenditures made by PacifiCorp in obtaining such release or satisfaction including administrative costs, attorneys' fees and other expenses or PacifiCorp shall have the right to deduct the amount of such costs from the amount payable to Developer.

(e) Developer's obligation to indemnify, defend and hold harmless PacifiCorp Indemnified Parties from Liens and Claims shall not in any way be rendered unenforceable, or altered, amended, eliminated or otherwise conditioned by any applicable Laws related to processing such Liens or Claims. PacifiCorp shall have no obligation to deliver a copy of any notice of Claim or right to a Lien to Developer or any other person or entity.

(f) Developer shall at its own expense defend any suit or proceeding based on any Claim for which Developer is responsible under this Section 26.2. PacifiCorp shall give Developer such assistance as Developer may reasonably require in the defense of such Claim, and PacifiCorp shall have the right to be represented therein by counsel of its own choosing at its own expense. If Developer fails to defend diligently any such Claim, PacifiCorp may, in its reasonable discretion, either defend or settle the Claim without the consent of Developer and without relieving Developer of the obligation to indemnify as provided herein. In such a case Developer's obligation to defend shall include reimbursement of PacifiCorp's reasonable legal fees and related costs incurred in defending or settling the Claim.

Section 26.3 Indemnity Period.

The Parties' obligation to indemnify one another consistent with the provisions of this ARTICLE 26 shall continue after the Substantial Completion Date as follows (collectively, the "Indemnity Period"):

(a) With respect to Claims and Liabilities brought by third parties against PacifiCorp Indemnified Parties, Developer's obligation to indemnify PacifiCorp Indemnified Parties pursuant to Section 26.1(a) shall continue for a period of five (5) years following the Substantial Completion Date.

(b) With respect to Claims and Liabilities brought by third parties against Developer and its directors, officers, employees and agents, PacifiCorp's obligation to indemnify pursuant to Section 26.1(b) shall continue for a period of five (5) years following the Substantial Completion Date.

(c) With respect to Claims and Liabilities relating to the title of the Site, the Project, the Facility or the Work, Developer's obligation to indemnify PacifiCorp pursuant to Section 26.2 shall continue indefinitely.

(d) With respect to any other Claims and Liabilities relating to the Site, the Project, the Facility or the Work, Developer's obligation to indemnify PacifiCorp pursuant to Section 26.2 shall continue for a period of five (5) years following the Substantial Completion Date.

ARTICLE 27 INSURANCE

Section 27.1 Contractor's and Subcontractors' Insurance Coverage.

Developer shall maintain and shall require and cause Contractor and all Subcontractors, while performing work on the Site, to provide, pay for and continuously maintain in full force and effect insurance coverage in accordance with the requirements of Appendix Q-1 and Appendix Q-3.

Section 27.2 PacifiCorp's Insurance.

PacifiCorp shall during the term of this Agreement maintain in full force and effect insurance coverage in accordance with the requirements of Appendix Q-2 and Appendix Q-3.

Section 27.3 Developer's Cooperation with PacifiCorp.

Developer agrees to provide such assistance and documentation as PacifiCorp may request in connection with Claims PacifiCorp may make under its insurance policies purchased in connection with the Project for damage or events that occur after the Effective Date and prior to the expiration of the applicable Warranty Period.

ARTICLE 28 FORCE MAJEURE

Section 28.1 Effect of Force Majeure.

Neither Party shall be in default or in breach of its obligations under this Agreement or otherwise be liable to the other Party for any delay or failure in the performance of any of its obligations under this Agreement if and to the extent such delay or failure is a result of Force Majeure arising after the Effective Date. The protections afforded under this Section 28.1 to a Party shall be of no greater scope and no longer duration, than is required by the Force Majeure. Notwithstanding anything to the contrary contained in this Section 28.1, no Force Majeure shall relieve, suspend or otherwise excuse any Party from performing any obligation to make any payment owed to another Party or to indemnify, defend or hold harmless another Party pursuant to this Agreement. In no event may Developer claim a Force Majeure for economic reasons or for changes in Developer's costs or the costs of Contractor or Subcontractors, including commodity price changes, changes in labor markets, increased cost of labor or transportation, or due to changes in scope due to changes in engineering, design or applied engineering not requested by PacifiCorp.

Section 28.2 Notice of Occurrence.

If either Party considers that any event of Force Majeure has occurred which may affect performance of its obligations under this Agreement, it shall promptly notify the other Party thereof stating the full particulars, including the obligations that are affected thereby, the estimated period during which performance may be delayed or prevented, and the particulars of the program to be implemented

to resume normal performance hereunder. If a force majeure under any of the Project Documents occurs with respect to Contractor or any Subcontractor, then Developer shall promptly provide notice thereof to PacifiCorp describing: (i) the obligations of Contractor or Subcontractor that are affected; (ii) the estimated period during which performance may be delayed or prevented; and (iii) the particulars of the program to be implemented by Contractor or Subcontractor in order to resume normal performance thereunder, provided that in no event shall Developer be relieved of any of its obligations under this Agreement as a result thereof unless such force majeure qualifies as an event of Force Majeure under this Agreement.

Section 28.3 Performance to Continue.

Upon the occurrence of any event of Force Majeure, the affected Party shall use reasonable efforts to mitigate the effects of Force Majeure, resume normal performance of this Agreement within the shortest time practicable and continue to perform its obligations under this Agreement insofar as they are not affected by the Force Majeure.

Section 28.4 Termination in Consequence of Force Majeure.

If an event of Force Majeure continues for a period of forty-five (45) days in the aggregate that materially affects the ability of Developer to perform the Work, and as a result thereof there is a corresponding delay in the schedule for performance of the Work and the Guaranteed Substantial Completion Date of at least forty-five (45) days, then, notwithstanding that Developer may by reason thereof have been granted an extension of the schedule for performance of the Work and the Guaranteed Substantial Completion Date, by Change Order, PacifiCorp shall be entitled to terminate this Agreement upon thirty (30) days advance written notice to Developer. If at the expiration of such thirty (30)-day period such Force Majeure shall still continue, this Agreement shall automatically terminate without any further action on the part of either Party and the provisions of Section 30.3(a) shall apply.

Section 28.5 Risk of Loss.

Prior to termination of this Agreement, nothing in this ARTICLE 28 shall change the allocation to Developer of the risk of loss or damage prior to the Substantial Completion Date, and any Change Order resulting from a Force Majeure shall take into account such allocation of the risk of loss or damage.

ARTICLE 29 DEFAULT

Section 29.1 Developer Default.

Developer shall be in default (a “Developer Default”) hereunder if:

- (a) Developer fails to pay PacifiCorp any undisputed amount due PacifiCorp under this Agreement, and such failure continues for fifteen (15) Business Days after Developer receives notice thereof from PacifiCorp;
- (b) Developer fails to deliver and maintain Credit Support as required by ARTICLE 6, and such failure continues for five (5) days after Developer receives notice thereof from PacifiCorp;

(c) Developer fails to achieve the Substantial Completion Date by the Guaranteed Substantial Completion Date;

(d) Developer makes a false or unsubstantiated claim of Force Majeure;

(e) A Project Party: (i) fails to comply with the approved Developer Safety Assurance Program set forth in Appendix T, and such failure continues for fifteen (15) Business Days after Developer receives notice thereof from PacifiCorp; or (ii) assigns a Project Document to which it is a party or all or a portion of its rights and obligations thereunder other than as permitted both hereunder and thereunder;

(f) Developer fails in any material respect to comply with any of its other material obligations under this Agreement (not otherwise described in this Section 29.1); provided, however, that if such failure can be cured or remedied by Developer within a period of thirty (30) Business Days and Developer is diligently pursuing such cure or remedy, then such failure shall not become a Developer Default until thirty (30) Business Days after Developer receives notice thereof from PacifiCorp (unless such failure is cured or remedied prior thereto);

(g) A Project Party shall (i) commence a voluntary case under the Bankruptcy Code; (ii) file a petition seeking to take advantage of any Bankruptcy Laws; (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an insolvency case under Bankruptcy Laws; (iv) apply for, or consent to or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of itself or of a substantial part of its assets; (v) admit in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; (vi) make a general assignment for the benefit of creditors; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) have a case or other proceeding commenced by a third party against it seeking (A) relief under the Bankruptcy Code or under any other Bankruptcy Laws or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Project Party of all or any substantial part of its assets, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) days;

(h) any representation or warranty made by Developer for which an express remedy is not provided shall prove to have been false in any material respect as of the date made or deemed made; provided, however, that if the circumstances which make such representation or warranty false are subject to cure or remedy by Developer within a period of thirty (30) Business Days and Developer is diligently pursuing such cure or remedy, then such representation or warranty being false in any material respect shall not become a Developer Default until thirty (30) Business Days after Developer receives notice thereof from PacifiCorp (unless such representation and warranty is no longer false in any material respect prior thereto); or

(i) a Material Adverse Change shall have occurred and be continuing, unless such Material Adverse Change is a result of an act or omission of PacifiCorp in violation of the terms of this Agreement.

Section 29.2 PacifiCorp Default.

PacifiCorp shall be in default (a “PacifiCorp Default”) hereunder if:

(a) PacifiCorp fails to pay Developer any undisputed amount due Developer under this Agreement, and such failure continues for fifteen (15) Business Days after PacifiCorp receives notice thereof from Developer;

(b) PacifiCorp fails in any material respect to comply with any of its other material obligations under this Agreement (not otherwise described in this Section 29.2); provided, however, that if such failure can be cured or remedied by PacifiCorp within a period of thirty (30) Business Days and PacifiCorp is diligently pursuing such cure or remedy, then such failure shall not become a PacifiCorp Default until thirty (30) Business Days after PacifiCorp receives notice thereof from Developer (unless such failure is cured or remedied prior thereto);

(c) PacifiCorp shall (i) commence a voluntary case under the Bankruptcy Code; (ii) file a petition seeking to take advantage of any other Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts (collectively, “Bankruptcy Laws”); (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an insolvency case under the Bankruptcy Laws; (iv) apply for, or consent to or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of itself or of a substantial part of its assets; (v) admit in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; (vi) make a general assignment for the benefit of creditors; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) have a case or other proceeding commenced by a third party against it seeking (A) relief under the Bankruptcy Code or under any other Bankruptcy Laws or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of PacifiCorp of all or any substantial part of its assets, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) days; or

(d) any representation or warranty made by PacifiCorp in this Agreement for which an express remedy is not provided shall have been false in any material respect as of the date made; provided, however, that if the circumstances which make such representation or warranty false are subject to cure or remedy by PacifiCorp within a period of thirty (30) Business Days and PacifiCorp is diligently pursuing such cure or remedy, then such representation or warranty being false in any material respect shall not become a PacifiCorp Default until thirty (30) Business Days after PacifiCorp receives notice thereof from Developer (unless such representation and warranty is no longer false in any material respect prior thereto).

Section 29.3 Remedies on Default.

(a) Step-In Rights. During the occurrence and continuance of any Developer Default, and in addition to any other rights PacifiCorp may have hereunder or at law or in equity, PacifiCorp shall have the right, but not the obligation, to take all actions necessary to perform or cause to be performed any and all work and labor it deems necessary to construct, complete, operate or maintain the Project in accordance with the terms of this Agreement, including causing Developer to vacate the Site and surrender possession of the Project and all proprietary information, Equipment, Materials, spare parts

and other supplies located at the Site to PacifiCorp. If PacifiCorp at any time exercises its rights under this Section 29.3(a), PacifiCorp shall be relieved of its obligations of payment during such time as it is exercising its right under this Section 29.3(a), and shall be entitled to recover all costs incurred by PacifiCorp, plus twenty percent (20%) for general and administrative costs in connection with work performed during that time.

(b) Cure Rights. During the occurrence and continuance of any Developer Default and upon receipt of any notice that Developer is in default of any of its obligations under this or any of the Project Documents, and in addition to any other rights PacifiCorp may have hereunder or at law or in equity, PacifiCorp shall have the right, but not the obligation, to cure any Developer Default under this or any Project Document. If PacifiCorp at any time exercises its right under this Section 29.3(b), PacifiCorp shall be relieved of its obligations of payment during such time as it is exercising its right under this Section 29.3(b).

(c) No Excuse. Notwithstanding the exercise by PacifiCorp of any of its rights under this Section 29.3, nothing set forth in this Section 29.3 shall excuse Developer of its obligations to remedy a Developer Default and perform its obligations hereunder.

ARTICLE 30 TERMINATION

Section 30.1 Termination by PacifiCorp.

(a) Upon the occurrence and continuation of a Developer Default, this Agreement shall terminate as follows:

(i) with respect to a Developer Default described in Section 29.1(c), immediately;
and

(ii) with respect to a Developer Default described in Section 29.1 (other than Section 29.1(c)), upon delivery to Developer of written notice of termination after the end of the applicable cure period provided for in Section 29.1, and if no such cure period is provided for in Section 29.1, then fourteen (14) days after delivery to Developer of such written notice of termination.

(b) Notwithstanding anything to the contrary in this Agreement, PacifiCorp's right to collect damages from Developer will not be limited or foreclosed by any termination by PacifiCorp under this Section 30.1 or otherwise.

Section 30.2 Termination by Developer.

(a) Upon the occurrence and continuation of a PacifiCorp Default, this Agreement shall terminate as follows:

(i) with respect to a PacifiCorp Default described in Section 29.2(c), immediately;
and

(ii) with respect to a PacifiCorp Default described in Section 29.2 (other than Section 29.2(c)), upon delivery to Developer of written notice of termination after the end of the applicable cure period provided for in Section 29.1, and if no such cure period is provided for in Section 29.1, then fourteen (14) days after delivery to Developer of such written notice of termination.

(b) Developer may elect to terminate this Agreement due to suspension of the Work as provided in Section 16.1(b).

Section 30.3 Procedures Following Termination.

(a) Upon termination of this Agreement pursuant to Section 16.1(b), Section 28.4 or Section 30.2, the following provisions shall apply: (i) PacifiCorp shall pay to Developer such portion of the Progress Payment as shall be applicable to any Work performed by Developer prior to the effective date of termination of this Agreement consistent with Appendix R; (ii) at PacifiCorp's option, title (to the extent not already transferred) and risk of loss to some or all of the Site, Equipment, Materials and the Facility shall transfer to PacifiCorp; (iii) PacifiCorp shall be responsible for, as applicable, any transportation, storage and insurance of and for the Equipment, Materials and the Facility for which PacifiCorp has elected to take title; and (iv) Developer shall be entitled to remove during normal working hours all of the Developer's Equipment that is on the Site, provided that prior to removing any Developer's Equipment from the Site, Developer shall provide to PacifiCorp a detailed list of Developer's Equipment to be removed; provided, further, that no equipment shall be Developer's Equipment unless it is included in the then-current list of Developer's Equipment approved pursuant to Section 12.1.

(b) Upon termination of this Agreement pursuant to Section 30.1, PacifiCorp may elect one or more of the following remedies: (i) require, at no cost to PacifiCorp, that Developer take all steps necessary or requested by PacifiCorp to assign to PacifiCorp its rights and obligations under the Project Documents and the Developer Permits identified by PacifiCorp and to transfer to PacifiCorp all Work and other property, whether tangible or intangible, in which Developer or its Affiliates has rights which is necessary or desirable for the development, construction, ownership or operation of the Project; (ii) enter onto the Site and remove, at Developer's cost, all Equipment and Materials for which PacifiCorp has elected to take title pursuant to Section 30.3(b)(i); (iii) Developer shall pay to PacifiCorp within five (5) Business Days of receipt of an invoice from PacifiCorp: (A) the positive difference, if any, obtained by subtracting from the Contract Price PacifiCorp's cost to replace or otherwise have performed, as determined and calculated by PacifiCorp in its discretion, any Work that Developer was otherwise obligated to provide during the remaining term of this Agreement; (B) compensation for additional managerial and administrative services incurred by or on behalf of PacifiCorp; and (C) such other costs and expenses and damages as PacifiCorp may suffer as a result of the Developer Default; and (iv) exercise all of PacifiCorp's other rights and remedies under this Agreement or otherwise available at law or in equity.

(c) If this Agreement is terminated pursuant to Section 30.1 or Section 30.2 or otherwise in accordance with its terms, then all further obligations of the Parties under this Agreement (other than the provisions which by their terms are intended to survive the expiration or termination of this Agreement) shall be terminated without further liability of any Party to the other Party; provided, however, that

nothing herein shall relieve any Party from liability provided for herein for its breach or default of this Agreement.

Section 30.4 Exclusive Remedy.

THE RIGHTS AND REMEDIES OF DEVELOPER SET FORTH HEREIN FOR A BREACH OR DEFAULT BY PACIFICORP AND TERMINATION OF THIS AGREEMENT BY DEVELOPER ARE EXCLUSIVE AND NO OTHER REMEDIES OF ANY KIND WHATSOEVER SHALL APPLY IN THE EVENT OF SUCH BREACH OR DEFAULT BY PACIFICORP OR TERMINATION OF THIS AGREEMENT BY DEVELOPER.

**ARTICLE 31
TAXES**

Section 31.1 PacifiCorp's Obligation.

In addition to the Contract Price, PacifiCorp shall be obligated to pay the amount of any property, privilege, license, sales, use, excise, gross receipts, value added, privilege or similar Taxes or assessments applicable to the sale of the Work or to the use of the Work after the Substantial Completion Date. Developer shall use all reasonable efforts to minimize the amount of such Taxes and assessments payable by PacifiCorp. All real or personal property Taxes related to the Project shall be paid by PacifiCorp and shall not be apportioned at the Closing.

Section 31.2 Developer's Obligation.

Developer has included in the Contract Price the amount of any customs duties, and related customs broker fees and charges or similar charges, for delivery of any components to the United States from countries outside of the United States and transportation to the Site. Developer shall be liable for all payroll and other employee related Taxes and costs, for all property Taxes related to the Site prior to Closing and for all Taxes based on its income. Contractor shall cooperate with PacifiCorp's reasonable requests with respect to any challenge that PacifiCorp elects to make with respect to any Taxes imposed in connection with the Project.

**ARTICLE 32
CLAIMS, CLAIM NOTICE AND DISPUTE RESOLUTION**

Section 32.1 Claims.

(a) Submission of Claims.

(i) In the event Developer has a Claim or request for a time extension, additional compensation, any other adjustment to the terms and conditions of this Agreement, or any dispute with PacifiCorp arising out of the Work or this Agreement (each a "Developer Claim"), Developer shall notify PacifiCorp in writing within five (5) Business Days following the occurrence of the event giving rise to the Developer Claim. Developer's failure timely to give notice as required herein will constitute a waiver of all of Developer's rights and remedies with respect to the Developer Claim.

(ii) As soon as practicable, but in no event longer than sixty (60) days after notification of the Developer Claim, Developer shall submit the Developer Claim to PacifiCorp with all supporting information and documentation. Developer shall also respond promptly to all PacifiCorp inquiries about the Developer Claim and its basis.

(iii) Any Developer Claim which is not disposed of by mutual agreement between the Parties within sixty (60) days after submission of the Developer Claim to PacifiCorp pursuant to Section 32.1(a)(ii) shall be decided by PacifiCorp, which decision shall be in writing and delivered to Developer. Such decision shall be final unless Developer, within thirty (30) days after receipt of PacifiCorp's decision, provides to PacifiCorp a written protest, stating clearly and in detail the basis thereof, and such protest shall be resolved in accordance with Section 32.2. Developer's failure timely to protest PacifiCorp's decision as required herein shall constitute a waiver by Developer of its Developer Claim.

(iv) Developer shall continue its performance of this Agreement and the Project Documents notwithstanding the submission of any Developer Claim.

(b) Notification Prior to Incurring Costs. Developer shall, before incurring any cost or expense in connection with a Developer Claim, first give PacifiCorp every opportunity to determine whether the cost or expense should be incurred or whether any act or forbearance shall or might mitigate the cost or expense of any such Developer Claim.

(c) PacifiCorp's Liability to Pay Developer Claims. PacifiCorp shall not be liable to make payment in respect of any Developer Claim for an additional payment unless Developer has complied with each and all of the requirements of this ARTICLE 32, whether as to the time within which Developer Claims must be made or information provided or otherwise, it being acknowledged and agreed by the Parties that the absence of complete compliance herewith will involve significant prejudice to PacifiCorp.

Section 32.2 Dispute Resolution.

Following written notice from either Party to the other Party setting forth a dispute arising from, relating to or otherwise in connection with or arising out of this Agreement (including any Developer Claim, but only if it has not been resolved in accordance with the requirements of Section 32.1), the Parties shall use good faith efforts to settle such dispute through negotiation between PacifiCorp's Representative and Developer's Representative. If the dispute is not resolved by such negotiations within fifteen (15) days after delivery of such initial notice, either Party may, by delivering a subsequent written notice to the other Party, cause the matter to be referred to a meeting of appropriate senior management representatives of the Parties with the power and authority to resolve such dispute. Such meeting shall be held within thirty (30) days following the delivery of the subsequent notice. If the matter is not resolved within thirty (30) days after the first such meeting of the senior management representatives or such later date as may be mutually agreed upon by the Parties, either Party may then, subject to the terms of this Agreement, commence legal action in a court of competent jurisdiction in order to resolve the dispute.

ARTICLE 33 ASSIGNMENT

Section 33.1 Assignment of Developer's Interests.

Developer shall not sell, transfer or otherwise assign, in whole or in part, this Agreement or any Product Document to which it is a party or any of its rights or obligations hereunder or thereunder, except with PacifiCorp's prior written consent, which consent shall be in PacifiCorp's discretion.

ARTICLE 34 CONFIDENTIALITY

Section 34.1 Confidentiality.

(a) It is understood that certain information may be exchanged among PacifiCorp and Developer that the disclosing Party considers proprietary and confidential. Each Party agrees that it shall and shall cause its Affiliates and its and their respective officers, directors, consultants, employees, legal counsel, agents and representatives (together with the Affiliates, the "Confidentiality Affiliates") to: (i) hold confidential and not disclose (other than to its Confidentiality Affiliates having a reasonable need to know in connection with the permitted purposes hereunder), without the prior consent of the other Party, all confidential or proprietary written information which is marked confidential or proprietary or oral information or data which is reduced to writing within five (5) days of such disclosure and marked as confidential or proprietary (including sources of equity or other financing, development strategy, competitor information, cost and pricing data, warranties, technical information, research, developmental, engineering, manufacturing, marketing, sales, financial, operating, performance, business and process information or data, knowhow and computer programming and other software techniques) provided or developed by the other Party or its Confidentiality Affiliates in connection herewith or the Work ("Confidential Information"); and (ii) use such Confidential Information only for the purposes of performing its obligations or exercising its rights hereunder. In no event shall any Confidential Information be disclosed to any competitor of Developer or PacifiCorp. As to Confidential Information that is not a trade secret under applicable Law, the foregoing obligations shall expire three (3) years after the Substantial Completion Date.

(b) The obligations contained in the preceding paragraph shall not apply, or shall cease to apply, to Confidential Information if or when, and to the extent that, such Confidential Information (i) was known to the receiving Party or its Confidentiality Affiliates prior to receipt from the disclosing Party or its Confidentiality Affiliates; (ii) was, or becomes through no breach of the receiving Party's obligations hereunder, known to the public; (iii) becomes known to the receiving Party or its Confidentiality Affiliates from other sources under circumstances not involving any breach of any confidentiality obligation between such source and the disclosing Party's or disclosing Party's Confidentiality Affiliates or a third party; (iv) is independently developed by the receiving Party or its Confidentiality Affiliates; or (v) is required to be disclosed by applicable Law or Governmental Authority or applicable legal process. Developer acknowledges that PacifiCorp is subject to regulation as a public utility, and as such may be required to disclose all or substantially all information provided by Developer pursuant to this Agreement, including the terms of this Agreement and any Project Document, by order of state and federal Governmental Authorities, and that such disclosure shall in no event be deemed a violation of this Section 34.1.

(c) When required by a Governmental Authority, a Party may disclose the Confidential Information of the other Party to such Governmental Authority; provided, however, that prior to making any such disclosure, such Party shall (unless prohibited from doing so by applicable Law or the Governmental Authority): (i) provide the other Party with timely advance notice of the Confidential Information requested by such Governmental Authority and the intent of such Party to so disclose; (ii) minimize to the extent possible (consistent with applicable Law and the requirements of the Governmental Authority involved) the amount of Confidential Information to be provided to the Governmental Authority involved ; and (iii) make every reasonable effort (which shall include participation by the other Party in discussions with the Governmental Authority involved) to secure confidential treatment and to minimize the Confidential Information to be provided. In the event that efforts to secure confidential treatment are unsuccessful, the other Party shall have the prior right to revise such information to minimize the disclosure of such Confidential Information in a manner consistent with applicable Laws and the requirements of the Governmental Authority involved.

(d) PacifiCorp's disclosure of drawings and manuals received from Developer Parties to third parties in accordance with PacifiCorp's rights and obligations hereunder shall not be a breach of this ARTICLE 34.

ARTICLE 35 MISCELLANEOUS PROVISIONS

Section 35.1 Notices, Consents and Approvals.

Contact information for notices, requests, demands and other communications required or permitted hereunder is as follows:

(a) if to Developer, to:

with copies to:

or to such other person(s) or address(es) as Developer shall provide to PacifiCorp from time to time in accordance with this Section 35.1;

(b) if to PacifiCorp, to:

PacifiCorp

825 NE Multnomah, Suite [____]
Portland, Oregon 97232-2315
Attn: _____

Tel: _____
Fax: _____

with copies to:

PacifiCorp
825 NE Multnomah, Suite [____]
Portland, Oregon 97232-2315
Attn: Law Department

Tel: _____
Fax: _____

or to such other person(s) or address(es) as PacifiCorp shall provide to Developer from time to time in accordance with this Section 35.1.

(c) All notices (including acceptances, consents, approvals, agreements, deliveries of information, designations), requests, demands and other communications required or permitted hereunder shall be in writing, properly addressed as provided in paragraphs (a) and (b) above, and given by (i) hand delivery, (ii) a national overnight courier service, (iii) confirmed facsimile transmission, followed by a hard copy, or (iv) certified or registered mail, return receipt requested, and postage prepaid. Any such notice, request, demand or other communication shall be deemed to have been duly given as of the date delivered if by hand delivery, national overnight courier service or confirmed facsimile transmission (provided a hard copy promptly follows by other means provided herein), or five (5) calendar days after mailing if by certified or registered mail.

Section 35.2 Entire Agreement.

This Agreement, together with the Appendices, Schedules and Exhibits attached hereto, contains the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, of the Parties relating to the subject matter hereof. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on either Party.

Section 35.3 Amendment; Waiver.

No amendment or other modification of any provision of this Agreement shall be valid or binding unless it is signed by each of the Parties. No waiver of any provision of this Agreement shall be valid or binding unless it signed by the Party waiving compliance with such provision. No delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any breach,

term or condition of this Agreement by any Party shall constitute a subsequent waiver of the same or any other breach, term or condition of this Agreement.

Section 35.4 Successors and Assigns.

Each and all of the rights, obligations, covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective successors and assigns.

Section 35.5 Third Party Beneficiaries.

The provisions of this Agreement shall only be for the benefit of, and enforceable by, the Parties hereto and shall not inure to the benefit of or be enforceable by any third party.

Section 35.6 Severability.

In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

Section 35.7 Further Assurances.

Each Party shall execute and deliver or cause to be executed and delivered such documents and instruments not otherwise specified herein, and take or cause to be taken all such other actions, as the other Party may reasonably request to more fully and effectively carry out the intent and purposes of this Agreement.

Section 35.8 Publicity.

Except as required by applicable Law, Developer agrees that Developer will not issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to the Project, or to this Agreement without first consulting with and obtaining the prior written consent of PacifiCorp, which consent shall not be unreasonably withheld or delayed.

Section 35.9 Independent Contractor.

Developer is an independent contractor with respect to the Work, and each part thereof, and in respect of all work to be performed hereunder. Neither Developer nor any of the other Developer Parties shall be deemed to be agents, representatives, joint ventures, employees or servants of PacifiCorp by reason of their performance hereunder or in any manner dealt with herein. Neither Party shall perform any act or make any representation to any Person to the effect that Developer or any other Developer Parties is the agent of PacifiCorp.

Section 35.10 Survival.

The provisions of ARTICLE 4 (Representations and Warranties of Developer), ARTICLE 12 (Developer's Equipment), ARTICLE 23 (Warranties of Work), ARTICLE 24 (Liquidated Damages),

ARTICLE 25 (Limitation of Liability), ARTICLE 26 (Indemnification), ARTICLE 27 (Insurance), ARTICLE 32 (Claims, Claim Notice and Dispute Resolution), ARTICLE 34 (Confidentiality), Section 7.9 (Contractor Drawings and Manuals), Section 7.12 (Intellectual Property Rights), Section 7.21 (Other Liens), Section 7.25 (Environmental Matters), Section 7.26 (Records and Accounts), Section 9.1 (Site Regulations), Section 9.2 (Site Security), Section 9.8 (Cleanup), Section 15.6 (PacifiCorp's Use of Drawings), Section 15.7 (Manufacturing Drawings), Section 22.4 (Liability), and Section 35.11 (Governing Law; Waiver of Jury Trial) of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely, provided that the foregoing enumeration shall not be interpreted to bar survival of any other provision hereof which by its express terms or by operation of Law would otherwise be deemed to survive.

Section 35.11 Governing Law; Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WYOMING (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

(b) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER PROJECT DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER PROJECT DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

Section 35.12 Counterparts.

This Agreement may be executed by the Parties in two or more separate counterparts (including by facsimile transmission), each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

Section 35.13 Captions.

The captions for Articles and Sections contained in this Agreement, including the Appendices, Schedules and Exhibits attached hereto, are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

Section 35.14 Consent Agreements.

Developer agrees to cooperate with PacifiCorp's efforts to obtain on a timely basis such direct agreements, consents, opinions and related documents from Project Parties or any of Developer's counterparties to any Additional Project Document as may be reasonably requested by PacifiCorp or its Affiliates or financing parties.

Section 35.15 Offset

Notwithstanding any other provision of this Agreement to the contrary, any and all amounts owing or to be paid by PacifiCorp or Developer to the other hereunder for the Work, shall be subject to offset and reduction in an amount equal to any amounts that may be owing at any time. Further, for the avoidance of doubt, with respect to any provision of this Agreement that allows PacifiCorp to offset, set-off or draw against a bond or other credit support any amount then owed to Developer, PacifiCorp shall have the express right to include in the amount offset, set-off or drawn under a bond or other credit support all of the reasonable costs and expenses it incurs in connection with enforcing such provision (including attorneys' and other consultants' fees).

Section 35.16 Time of the Essence

Time is of the essence in the performance of the Work by Contractor hereunder.

Section 35.17 Recitals.

The Recitals in this Agreement are true and correct and hereby incorporated into this Agreement by reference.

[Signature page follows.]

IN WITNESS WHEREOF, each of the authorized representatives of the Parties have executed this Agreement as of the first date set forth above.

PACIFICORP:

PACIFICORP,
an Oregon corporation

By: _____

Name: _____

Title: _____

DEVELOPER:

[_____],

a [_____]

By: _____

Name: _____

Title: _____

EXHIBITS

EXHIBIT A
Form of Notice of Request for Progress Payment

[_____, 20__]*

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attention: Director of Contract Administration

Ladies and Gentlemen:

Reference is made to the Build Transfer Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the "Agreement"), by and between PacifiCorp, an Oregon corporation ("PacifiCorp"), and [_____] a [_____] ("Developer" and together with the PacifiCorp, collectively, the "Parties"). Capitalized terms used herein but not otherwise defined herein shall have the meanings given to them in the Agreement.

1. Developer hereby irrevocably requests payment of a Progress Payment on the date (the "Requested Progress Payment Date") (which is a Business Day) and in the aggregate amount (the "Requested Progress Payment Amount") indicated below (the "Requested Progress Payment"):

Requested Progress Payment Date: _____
Requested Progress Payment Number[†] _____
Requested Progress Payment Amount:[‡] \$ _____

2. The undersigned, an Authorized Officer of Developer, hereby certifies on behalf of Developer that, in accordance with Section 3.3:

(a) As of the Requested Progress Payment Date, Developer has achieved (i) the Milestones for which the Requested Progress Payment is requested and (ii) all of the Milestones with Milestone Dates prior to the Requested Progress Payment Date.

(b) The representations and warranties made by Developer in this Agreement and each Project Document to which it is a party that are qualified with respect

* Must be submitted not less than 30 days prior to the date Developer expects to be paid (*i.e.*, payment, net 30 days). See Agreement, § 3.2(a) (Procedures).

† Must correspond with Progress Payment Number identified on Appendix R of the Agreement.

‡ Must correspond with Progress Payment Amount identified opposite Progress Payment Number on Appendix R.

to materiality are true and accurate in all respects, and the representations and warranties made by Developer in this Agreement and each Project Document to which it is a party that are not so qualified are true and accurate in all material respects, on and as of such Requested Progress Payment Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date), both before and after giving effect to the making of such Progress Payment , (ii) the representations and warranties made by each Project Party (other than Developer) in the Project Documents that are qualified with respect to materiality are true and accurate in all respects, and the representations and warranties made by each Project Party (other than Developer) in this Agreement and each Project Document to which it is a party that are not so qualified are true and accurate in all material respects, on and as of such Requested Progress Payment Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date), in each case such representations and warranties shall be deemed renewed and restated as of the date of such Progress Payment.

(c) As of the Requested Progress Payment Date (i) no circumstance, event or condition exists which either immediately or with the passage of time or the giving of notice, or both, (A) permits Developer to withhold payment under any Project Document, (B) permits any Project Party to terminate or suspend performance under any Project Document, or (C) is reasonably expected to result in a Material Adverse Change; and (ii) no breach, violation or default has occurred and is continuing under any Project Document to which a Project Party is a party.

(d) As of the Requested Progress Payment Date, no action, suit, proceeding or investigation by or before any Governmental Authority or any arbitrator is pending or to Developer's Knowledge threatened against or affecting a Project Party or the Project which is reasonably expected to result in a Material Adverse Change [other than _____].[§]

(e) Since the Effective Date of the Agreement, no Material Adverse Change has occurred and is continuing [other than _____].^{**}

(f) As of the Requested Progress Payment Date, all Developer Permits have been obtained and are in full force and effect.

(g) As of the Requested Progress Payment Date, PacifiCorp has not determined that it is necessary to withhold payment to protect PacifiCorp from loss relating to, (i) Work not in accordance with the requirements of the Project Documents, (ii) Claims filed against PacifiCorp or the Project as a result of the actions or inactions of Developer, Contractor or any Subcontractor in connection with the performance of the Work (and not otherwise covered by insurance) [other than _____]***** or (iii) failure of Developer to make payments in respect of Equipment, Material and supplies, or labor or

[§] Insert if any action, suit, proceeding or investigation has been threatened by the PacifiCorp. See Section 3.3(e) of the Agreement.

^{**} Insert if any Material Adverse Change is the result of an act or omission by PacifiCorp. See Section 3.3(f) of the Agreement.

other obligations incurred as a result of activities covered by the Agreement [other than _____]#####

3. In accordance with Section 3.4(b)(i) of the Agreement, the commercial invoice of Developer (in the form of Appendix Y) substantiating the amounts payable by PacifiCorp in connection with the Requested Progress Payment and the Work covered thereunder (in accordance with Appendix R) and certifying as to the other matters provided therein is attached hereto as Annex 1.

4. In accordance with Section 3.4(b)(ii) of the Agreement, the monthly Progress Report (in the form of Appendix N) is attached hereto as Annex 2.^{††}

5. In accordance with Section 3.4(b)(iii) of the Agreement, an officer's certificate signed by an Authorized Officer of Developer certifying that the conditions in Section 3.3(b), c, d, e, f, and h of the Agreement has been and is satisfied as of the Requested Progress Payment Date.

6. In accordance with Section 3.4(b)(iv) of the Agreement, a bill of sale transferring title to all Work relating to this Notice of Request for Progress Payment, in form and substance reasonably satisfactory to PacifiCorp is attached hereto as Annex 5.

7. In accordance with Section 3.4(b)(v) of the Agreement, Lien releases from Developer, Contractor and all Subcontractors, in the forms attached in Appendix J, with respect to all Liens that arise with respect to the Project, including the Work are attached hereto as Annex 6.

8. Developer hereby requests that the Requested Progress Payment be paid in the amounts and to the payees, in each case as set forth on Annex 4.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

^{††} Progress Reports to be prepared monthly.

***** Insert if Developer, Contractor or any Subcontractor is disputing such Claims in good faith and if reasonably requested by PacifiCorp, has bonded the Claim with a bonding company or other surety reasonably acceptable to PacifiCorp, and if any Lien is imposed with respect to such Claims, Developer, Contractor or any Subcontractor has discharged such Lien.

Insert if Developer has, in good faith, disputed such payments and, if any Lien is filed with respect thereto, Developer has posted a bond against such Lien with a bonding company or other surety reasonably acceptable to PacifiCorp.

Very truly yours,

By: _____
Name:
Title:

Annex 1 to Exhibit A

COMMERCIAL INVOICE

[To be attached]

Annex 2 to Exhibit A

PROGRESS REPORT

[To be attached]

Annex 3 to Exhibit A

OFFICER'S CERTIFICATE

[To be attached]

Annex 4 to Exhibit A

PAYMENT INSTRUCTIONS

Payee

Amount

Wire Instructions

Annex 5 to Exhibit A

BILL OF SALE

[To be attached]

EXHIBIT B
Form of Notice to Proceed

[Date]

DEVELOPER
Street
City, State Zip Code

Attention: _____

This Notice to Proceed is delivered pursuant to that certain Build Transfer Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the "Agreement"), by and between PacifiCorp, an Oregon corporation ("PacifiCorp"), and [_____] ("Developer"). Capitalized terms used herein but not otherwise defined herein shall have the meanings given to them in the Agreement.

Pursuant to, and in accordance with, terms of the Agreement, PacifiCorp hereby issues this Notice to Proceed to Developer.

Very truly yours,

PacifiCorp,
an Oregon corporation

By: _____
Name: _____
Title: _____

cc:

EXHIBIT C
Credit Matrix

[Credit Matrix from RFP to be attached]

**EXHIBIT D-1
Form of Change Order**

Change Order

Change Order No.: _____ Date Issued: _____

Description (Attach Appropriate Documentation): _____

Cost of Change:

- I. Non-Manual Labor Man-hours Cost: _____
- II. Non-Manual Labor Expenses: _____
- III. Manual Labor Man-hours Cost: _____
- IV. Material Cost: _____
- V. Subcontracts Cost: _____
- VI. Mobilization/Demobilization Cost: _____
- VII. Equipment Cost: _____
- VIII. Other Cost (if any) _____
- IX. Mark-up (Profit and Overhead): _____
- X. **Total Cost of Change:** _____

Impact on Project Schedule, including all Milestone Dates: _____

Impact on Progress Payment Schedule: _____

Impact on the Warranties: _____

Anticipated Differences in the Costs of O & M Following Substantial Completion: _____

Other Impacts on Agreement: _____

Revised Contract Price (Including Change): _____

PacifiCorp Approval:

Developer Approval:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT D-2
Form of Change Order Request

CHANGE ORDER REQUEST

Developer: [_____]

Change Request No.: [_____]

Agreement No. (if applicable): [_____]

Date: [_____]

Date of Agreement: [_____]

Reference is made to that certain Build Transfer Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the "Agreement"), by and between PacifiCorp, an Oregon corporation ("PacifiCorp"), and [_____], a [_____] ("Developer"). Capitalized terms used herein but not otherwise defined herein shall have the meanings given to them in the Agreement.

Pursuant to Article 13 of the Agreement, the following Change is requested and modifies the Agreement as follows:

Adjustment to Scope of Work:

Adjustment to Project Schedule:

Adjustment to Pricing:

DEVELOPER

PACIFICORP

By _____

By _____

Name

Name

Title

Title

Date

Date

EXHIBIT D-3
Form of Change Order Notice

CHANGE ORDER NOTICE

Developer:
[_____]

Change Notice No.: [_____]

Agreement No. (if applicable) : [_____]

Date: [_____]

Date of Agreement: [_____]

Reference is made to that certain Build Transfer Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the "Agreement"), by and between PacifiCorp, an Oregon corporation ("PacifiCorp"), and [_____] a [_____] ("Developer"). Capitalized terms used herein but not otherwise defined herein shall have the meanings given to them in the Agreement.

Pursuant to Article 13 of the Agreement, we are issuing this form to notify you of a Change to the Agreement as follows:

Adjustment to Scope of Work:

Adjustment to Project Schedule:

Adjustment to Pricing:

[DEVELOPER/CONTRACTOR]

PACIFICORP

By _____

By _____

Name

Name

Title

Title

Date

Date