

March 10, 2020

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

Attn: Filing Center

**Re: Reply to Stakeholder Comments on PacifiCorp's Proposed Form of Community Solar Program Purchase Agreement**

PacifiCorp, d/b/a Pacific Power (PacifiCorp) respectfully provides these reply comments in response to issues raised in comments by the Renewable Energy Coalition (the Coalition) and other stakeholders<sup>1</sup> regarding PacifiCorp's Draft Community Solar Program (CSP) Purchase Agreement.<sup>2</sup>

PacifiCorp respectfully disagrees with many of the comments raised by the Coalition in its February 19 Comments. The Coalition's apparent overall concern is that PacifiCorp has not proposed to model its form of CSP Purchase Agreement after its standard form of power purchase agreement applicable to "as available" qualifying facilities (QFs) under the Public Utility Commission of Oregon's (Commission) implementation of the Public Utility Regulatory Policies Act (PURPA). As discussed below, the CSP is not well served by modeling its form of purchase agreement against a form that was developed well over a decade ago and is currently subject to a docket (AR 631) focused on reform. PacifiCorp has proposed a simple and easily understandable form of CSP Purchase Agreement that is specific to the CSP. PacifiCorp has no objection to allowing additional time for the Coalition and other stakeholders to carefully review the short proposed form of agreement. And, notwithstanding the Coalition's contention throughout its February 19 Comments, PacifiCorp has not and does not seek to argue that this proposed form of CSP Purchase Agreement should have any precedential impact at all in ongoing PURPA QF contracting dockets.

While several of the Coalition's specific objections appear to result from an incomplete or rushed review of the draft form of CSP Purchase Agreement, PacifiCorp agrees with other specific comments, as discussed below. Moreover, in the spirit of our shared interest in facilitating a successful and timely launch of the CSP, PacifiCorp has accepted other changes requested by the Coalition that PacifiCorp nonetheless believes are appropriate to retain. Accordingly, enclosed with these reply comments is PacifiCorp's updated form of CSP Purchase Agreement for

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<sup>1</sup> Docket No. UM 1930, Renewable Energy Coalition comments, filed February 19, 2020 (February 19 Comments). The Renewable Energy Coalition's comments were echoed in February 24, 2020 comments filed by a group of organizations consisting of the Oregon Solar Energy Industries Association, Verde, Renewable Northwest, the Coalition for Community Solar Access, Bonneville Environmental Foundation, and Spark Northwest.

<sup>2</sup> Docket No. UM 1930, PacifiCorp Draft CSP Purchase Agreement, filed February 18, 2020.

Commission Staff and stakeholder review, along with a version that shows how this updated form differs from the original form of CSP Purchase Agreement proposed by the company February 18, 2020. A more detailed discussion of PacifiCorp's response to the Coalition's February 19 Comments is provided below.

**I. PacifiCorp's form of CSP Purchase Agreement is appropriately distinct from its standard form PURPA contracts, has no impact on the Commission's QF contracting precedent, and does not restrict successful implementation of the Oregon CSP.**

In its February 19 Comments, the Coalition asserts that "[a]bsent unanimous agreement between Staff, the Utilities and key stakeholders, there should be no provisions of the CSP Contracts that depart from [standard form PURPA contracts]."<sup>3</sup> PacifiCorp does not recall any such pronouncement in this proceeding from either the Commission, Staff or Staff counsel. Oregon's CSP is not confined to the Commission's policies implementing standard PURPA contracts that are now more than a decade old, have been the subject of multiple disputes due to often ambiguous language, and are, in fact, now subject to a docket (AR 631) that is intended to update the Commission's PURPA contracting guidelines.

The Coalition states in its February 19 Comments that PacifiCorp's and the other utilities' forms of CSP Purchase Agreement could "significantly harm the entire CSP as well as set negative precedent for the power purchase agreements ... for other qualifying facilities ... under [PURPA]."<sup>4</sup> Yet, beyond this summary and unsupported statement (and others like it within the Coalition's comments), the Coalition defends many of its requested changes by stating it did not have enough time to review the proposed forms of CSP Purchase Agreement in detail and therefore does not know if the language is or is not problematic to its members. The Coalition asserts this concern notwithstanding the utilities' proposed forms of CSP Purchase Agreement are quite short in length as compared to a typical stand-alone power purchase agreement<sup>5</sup> and were provided to stakeholders in advance by Staff on February 7, 2020, before being formally filed by the utilities February 18, 2020, as directed by Staff.

With full transparency to Staff, PacifiCorp drew from a variety of source material in developing the CSP Purchase Agreement, including an initial draft of agreement that the Department of Justice provided to PacifiCorp on September 16, 2019. PacifiCorp was focused on creating a form of CSP Purchase Agreement that was "short form" in nature, easily managed by both the

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<sup>3</sup> The Coalition's February 19 Comments at 2.

<sup>4</sup> The Coalition's February 19 Comments at 1.

<sup>5</sup> As filed February 18, 2020, PacifiCorp's form of CSP Purchase Agreement is just over twelve pages (excluding technical exhibits); Idaho Power Company's form of CSP Purchase Agreement is eight pages, and Portland General Electric's form of CSP Purchase Agreement is 10 pages.

company and Project Managers, and fully deferential to the implementing regulations of the CSP and the Program Implementation Manual.<sup>6</sup>

PacifiCorp continues to support Staff and the Commission's goal of successful implementation of the CSP. PacifiCorp recognizes that paramount to such success is stakeholder confidence in the utilities' implementing tariffs and contracts, including the form of CSP Purchase Agreement. For these reasons, PacifiCorp encourages Staff and stakeholders to review PacifiCorp's further revised form of CSP Purchase Agreement enclosed with this filing<sup>7</sup> as well as the explanatory comments provided in Part II of this Reply. PacifiCorp strongly believes the form of agreement is fair to all CSP stakeholders.

## **II. PacifiCorp's responses to the specific issues identified in the Coalition's February 19 Comments.**

In reviewing the list of issues raised by the Coalition in its February 19 Comments, PacifiCorp has identified several areas of compromise. In other instances, it appears the Coalition may not have properly read the specific clause at issue. PacifiCorp's response to each of the issues raised by the Coalition applicable to PacifiCorp's form of CSP Purchase Agreement is provided below.

### **1) 3 percent withholding for contingency reserves**

The Coalition objects to PacifiCorp withholding 3 percent of energy produced by a community solar project to satisfy contingency reserve requirements. Pursuant to NERC/WECC requirements (BAL-002-WECC-2), PacifiCorp is obligated to maintain contingency reserves in an amount equal to three percent of load and three percent of generation in its balancing authority area. PacifiCorp contends that it is appropriate that the Project Manager be responsible for the 3 percent reserves that PacifiCorp is required to maintain that are associated with the resource.

### **2) Failure to comply with the Program Implementation Manual; Termination Remedy**

PacifiCorp respectfully contends that it is reasonable and appropriate to declare a Project Manager in breach of the CSP Purchase Agreement if it is violating the terms of the Program Implementation Manual. As clearly stated in Section 13.1 of PacifiCorp's form of CSP Purchase Agreement, any breach is capable of cure by the Project Manager before a termination remedy is available to PacifiCorp. Notwithstanding this fact, in response to concerns by the Coalition that PacifiCorp would seek to terminate a CSP Purchase Agreement unilaterally for breach, or in

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<sup>6</sup> As just one example, in the event there was an unintended conflict between the terms of PacifiCorp's form of CSP Purchase Agreement and the requirements of the Oregon CSP, PacifiCorp included a clause in its form of agreement – both the original filed form and the updated form included with these reply comments – that expressly states that the requirements of the Oregon Community Solar Program will control. See Section 14.9 of the original form submitted February 18<sup>th</sup>, and Section 14.8 of the newly revised form.

<sup>7</sup> PacifiCorp has enclosed both a “clean” form of updated CSP Purchase Agreement and a “marked” version that shows changes between the updated form and the form originally filed February 18, 2020.

non-compliance with the rules of the CSP, the company has added language in Section 13.1 of the form of CSP Purchase Agreement that requires PacifiCorp to first inform the Program Administrator.

**3) Failure to comply with future versions of the Program Implementation Manual**

PacifiCorp understands and appreciates the concern raised by the Coalition to the extent that a Project Manager could be found in default under a CSP Purchase Agreement due to updates to the Program Implementation Manual that impact eligibility of a previously approved project, or otherwise have potential backward-looking impacts. However, PacifiCorp respectfully contends that Project Managers should be responsible for complying with updates to the Program Implementation Manual to the extent the updates are intended to address continued operation of an already certified CSP project. PacifiCorp has proposed changes to the definition of “Program Implementation Manual” in its attached updated form of CSP Purchase Agreement that are intended to clarify that the Project Manager under an existing, executed CSP Purchase Agreement would only be obligated to comply with changes that are intended by the Commission or Program Administrator to apply to the continued operation of a certified CSP project.

**4) Requirement for an “A-” insurance provider rating**

PacifiCorp does not agree with the Coalition’s contention that PacifiCorp must agree to accept a lower rated insurance provider simply because this was agreed to by PacifiCorp almost 15 years ago in the context of the Commission’s PURPA QF contracting docket for “standard” contracts. As stated above, there is no requirement or legitimate policy reason to restrict the CSP’s contracting forms to the Commission’s older PURPA contracting precedent that has been the subject of extensive litigation and acknowledged recent efforts at reform. PacifiCorp has required at least an “A-” insurance rating in all of its recent contracts, and respectfully contends that such a required insurance provider rating is standard in most contracting. PacifiCorp is unaware of any concern raised by community solar developers that they would be unwilling or unable to secure insurance by an “A-” rated insurance provider. To the extent such a concern was appropriately demonstrated, PacifiCorp is willing to reassess this issue.

**5) Curtailment provisions**

PacifiCorp does not agree with the Coalition’s allegation that the company’s curtailment provision in its form of CSP Purchase Agreement violates PURPA or any associated rule or order of the Federal Regulatory Energy Commission. The Coalition’s description of the provision – Section 3.3 of PacifiCorp’s form of CSP Purchase Agreement – appears to reflect a misreading of the provision. The provision expressly prohibits PacifiCorp from curtailing for solely economic reasons. PacifiCorp has used similar language in numerous QF power purchase agreements without objection.

**6) Commercially reasonable efforts to avoid planning scheduled outages for certain peak months**

PacifiCorp does not fully understand the Coalition’s concerns with respect to PacifiCorp’s language in Section 5.8 of its form of CSP Purchase Agreement. It is common in power purchase agreements for a utility to request that the seller make *commercially reasonable efforts* to not *schedule in advance a planned outage* during a time that the utility most needs the generation from a facility. However, in the interest of reaching consensus, PacifiCorp has proposed changes to Section 5.8 of its attached updated form of CSP Purchase Agreement to reduce the number of months subject to this “commercially reasonable efforts” requirement. Under the revised language, PacifiCorp would limit the “commercially reasonable efforts” requirement to PacifiCorp’s peak winter and summer month.

**7) Jury trial waiver**

The Coalition objects to PacifiCorp’s inclusion of its standard jury trial waiver clause that the company seeks to include in all contracts. PacifiCorp believes such clauses are appropriate and continues generally to advocate for their inclusion. However, in the interest of reaching consensus, for purposes of advancing the development of the Oregon CSP, PacifiCorp has proposed to remove its standard jury trial waiver clause from the attached updated form of CSP Purchase Agreement.

**8) PURPA repeal**

PacifiCorp appreciates the concern raised by the Coalition. In the attached updated form of CSP Purchase Agreement, PacifiCorp revised this section of the form agreement consistent with the Coalition’s request.

**9) Project Manager Release of PacifiCorp from Third Party Claims**

The Coalition objects to PacifiCorp’s provision in its form of CSP Purchase Agreement that requires the Project Manager to release PacifiCorp from any potential claims related to the Facility that are brought by a third party and that arose prior to the effective date of the executed CSP Purchase Agreement. PacifiCorp does not understand the Coalition’s stated objection in its February 19 Comments, but this is a standard clause in commercial contracts. It is hard to understand why the Coalition would argue that PacifiCorp (or any utility) should be responsible for a third-party (e.g., landowner) claim that is related to activities associated with a community solar project that arose prior to the date of contracting with PacifiCorp. When considering whether to sue an under-capitalized project company or the local utility, a third-party litigant will always be incentivized to sue the utility. Assuming PacifiCorp would readily succeed in its defense against such a lawsuit brought by a third party, the litigation cost and employee burden alone would have a negative impact on PacifiCorp’s customers (both those participating and not participating in the Oregon CSP).

### **10) Indemnity provisions**

PacifiCorp respectfully contends that the Coalition is incorrect in its reading of PacifiCorp’s proposed indemnity clause in its form of CSP Purchase Agreement. PacifiCorp is not asking the Project Manager to indemnify for PacifiCorp’s negligence or willful misconduct, as the Coalition contends in its February 19 Comments.<sup>8</sup> The indemnification clauses in Sections 12.1 and 12.2 of PacifiCorp’s form of CSP Purchase Agreement—reflecting both the Project Manager’s and PacifiCorp’s indemnity obligations, respectively—are nearly identical and apply to both parties in the same fashion. Both clauses state the opposite of what the Coalition contends.

### **11) Successors and assigns**

In response to inquiries raised by Staff following the Coalition’s February 19 Comments, PacifiCorp has proposed to modify this language in its form of CSP Purchase Agreement—Section 10—to require consent by the Commission prior to any assignment of a CSP Purchase Agreement by either party.

### **12) Definition of “Generation Interconnection Agreement” in form of CSP Purchase Agreement**

PacifiCorp does not understand the Coalition’s concerns with the company’s definition of “Generation Interconnection Agreement” in its form of CSP Purchase Agreement. The Coalition appears to object to the use of the defined term “Transmission Provider” in the definition of “Generation Interconnection Agreement,” instead of using “PacifiCorp.” However, the definition of “Transmission Provider” in the company’s form of CSP Purchase Agreement reads “PacifiCorp, acting in its transmission provider capacity.” PacifiCorp created the defined term “Transmission Provider” (which PacifiCorp has done in numerous other power purchase agreements) as a means to improve clarity by properly differentiating between PacifiCorp, *acting in its merchant function capacity* (i.e., as purchaser under the CSP Purchase Agreement), and PacifiCorp, *acting in its transmission provider capacity* (i.e., as the interconnection and transmission service provider that operates as a functionally separate unit consistent with the Federal Energy Regulatory Commission’s Standards of Conduct).

### **13) Definition of “Project Manager” in form of CSP Purchase Agreement**

PacifiCorp has revised the proposed definition of “Project Manager” in its form of CSP Purchase Agreement to address the concerns raised by the Coalition in its February 19 Comments. However, in response to the concern raised by the Coalition that slight non-alignment of terms or phrases between the CSP Purchase Agreement and Program Implementation Manual present a potentially material risk to a Project Manager, PacifiCorp respectfully points to the last sentence of proposed Section 14.8 of the form of CSP Purchase Agreement, which states as follows: “[i]f there is a conflict between the terms of [the CSP Purchase Agreement] and the [the Oregon CSP statute, the Commission’s implementing regulations, or the Program Implementation Manual (all

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<sup>8</sup> The Coalition’s February 19 Comments at 25.

referred to collectively in the CSP Purchase Agreement as “the Community Solar Program”)] *the Community Solar Program shall apply and prevail*” (emphasis added).

#### **14) Taxes Provision**

In response to objections by the Coalition in its February 19 Comments, PacifiCorp agrees to remove the taxes provision from its form of CSP Purchase Agreement. Although PacifiCorp respectfully contends that such tax clauses are customary in power purchase agreements and aid in avoiding uncertainty or potential disagreements among parties, instances of material disagreement with counterparties on these matters have been rare in the recent past.

#### **15) Conditional DNR Notice**

PacifiCorp’s language in Section 3.1 of its form of CSP Purchase Agreement is intended only to preserve PacifiCorp’s ability to raise to the Commission, if necessary, the proper treatment of system upgrade costs triggered by a transmission service request to deliver power from a community solar project (as contrasted with an interconnection service request to interconnect a community solar project).

The CSP interconnection rules allow a community solar project to interconnect using energy resource (ER) interconnection service, but only because the community solar project must also cap its size in a manner that mitigates the risk that deliverability-related upgrades will be needed to facilitate the project’s transmission service arrangements. As discussed previously in this proceeding, the size cap cannot eliminate that risk entirely. Thus, if, despite the carefully crafted risk mitigating measures included in the CSP interconnection rules, the transmission service arrangements for a community solar project trigger upgrade requirements and the parties cannot agree on how to proceed, Section 3.1 of PacifiCorp’s form of CSP Purchase Agreement is intended to provide the parties a procedural avenue to seek Commission guidance. Contrary to the concerns expressed by the Coalition, PacifiCorp did not intend for the provision to preemptively determine what range of potential solutions might be available for the Commission’s consideration under the particular facts and circumstances at issue in a specific CSP Purchase Agreement negotiation, including cost responsibility options for transmission service-related network upgrade costs.

Seeking Commission guidance if a community solar project’s transmission service arrangements require upgrades is consistent with the CSP statute, which requires that the community solar project “[m]inimize the shifting of costs from the program to ratepayers.”<sup>9</sup> Indeed, if a community solar project’s transmission service arrangement requires significant upgrade costs, those costs will be rolled into PacifiCorp’s transmission rate base and borne by all customers (including those that have elected not to or cannot participate in the CSP). It is therefore appropriate that the Commission have the opportunity to examine those costs and make a fact-specific determination about whether and how the parties should proceed with the CSP Purchase Agreement in light of the CSP’s statutory mandate. Without Section 3.1 of the CSP Purchase

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<sup>9</sup> ORS 757.386(2)(b)(B).

Agreement, the Commission would be deprived of this opportunity and such unanticipated costs would be automatically incurred by all of PacifiCorp's customers, participating and non-participating, Oregon and non-Oregon.

Section 3.1 of PacifiCorp's form of CSP Purchase Agreement is consistent with the approach proposed by all utilities. It is the Company's understanding that Portland General Electric has proposed an identical provision in its form of CSP Purchase Agreement. Idaho Power Company has proposed the following "Special Condition" in the interconnection section of its proposed tariff: "Interconnection of the CSPs will be limited to Energy Resource Interconnection Service only. The Company will designate each CSP a Network Resource. If designating the CSP a Network Resource identifies additional network upgrades beyond those identified in the Energy Resource Interconnection Service study process, then the Company will make a subsequent filing with the Commission regarding allocation of the additional network upgrade costs." Idaho Power Company also included nearly identical language in its bridge implementation plan.<sup>10</sup>

This is not an attempt to force community solar projects to take network resource (NR) interconnection service or re-litigate any other resolved issue, as suggested by the Coalition. It is merely a procedural "safety valve" that PacifiCorp hopes and expects not to need, but views as critical to comply with the ratepayer protections mandated in the CSP statute, particularly if a community solar project happens to trigger significant transmission service-related network upgrades. If the Commission's ruling on a specific CSP Purchase Agreement dispute is dissatisfactory to a community solar project, PacifiCorp would not oppose the Coalition's request that the generator be able to terminate that CSP Purchase Agreement, as well as any executed CSP interconnection agreements.

In response to concerns regarding the ability of a Project Manager to secure financing for its proposed community solar project, PacifiCorp has added language to its updated form of CSP Purchase Agreement that requires the company to promptly communicate the status of PacifiCorp's transmission service request to the Transmission Provider following execution of a CSP Purchase Agreement.

### **III. Conclusion**

PacifiCorp appreciates the opportunity to provide these reply comments and looks forward to continuing its efforts to facilitate the timely and successful launch of the Oregon CSP.

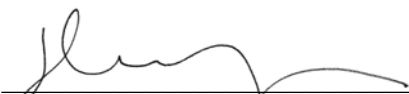
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<sup>10</sup> In particular, Idaho Power's bridge implementation plan states: "As required by Order No. 19-392, Idaho Power will study community solar projects for ER interconnection service. Consistent with its current practices, and federal requirements, Idaho Power will still be required to designate the community solar project as a Network Resource. Therefore, the Company will still identify the network upgrades required to designate each community solar project as a Network Resource. If the Company identifies additional network upgrades required to serve load beyond those identified in the ER interconnection study, then the Company will make a subsequent filing with the Commission regarding allocation of the additional network upgrade costs."



UM 1930  
Public Utility Commission of Oregon  
March 10, 2020

Respectfully submitted this 10<sup>th</sup> day of March, 2020.



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# **Community Solar Program Purchase Agreement**

## COMMUNITY SOLAR PROGRAM PURCHASE AGREEMENT

THIS COMMUNITY SOLAR PROGRAM PURCHASE AGREEMENT (the “Agreement”) entered into this [\_\_] day of [\_\_\_\_], 20[\_\_] (the “Effective Date”), is between [\_\_\_\_], a [\_\_\_\_] [\_\_\_\_] (“Project Manager”), and PacifiCorp, an Oregon corporation acting in its regulated utility capacity (“PacifiCorp”). Project Manager and PacifiCorp are referred to individually in this Agreement as a “Party” and collectively as the “Parties.”

### RECITALS

A. Project Manager intends to operate a solar photovoltaic facility for the generation of electric power, including interconnection facilities, located in [\_\_\_\_] with a facility capacity rating of [\_\_] kilowatts (kW) as further described in Exhibit A and Exhibit B (“Facility”); and

B. Project Manager intends to commence delivery of Net Output under this Agreement, for the purpose of start-up testing, on [\_\_\_\_], 20[\_\_]; and

C. Project Manager intends to operate the Facility as a Community Solar Program Project, commencing commercial operations on [\_\_\_\_], 20[\_\_] (“Scheduled Commercial Operation Date”).

D. Project Manager estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is [\_\_\_\_] kilowatt-hours (kWh); and

E. This Agreement is a Community Solar Program Purchase Agreement under the Oregon Community Solar Program implemented by the Oregon Public Utility Commission pursuant to ORS 757.386(2).

### AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

#### SECTION 1: DEFINITIONS

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

**Agreement** means this Community Solar Program Purchase Agreement.

**As-Available Rate** is the rate at which PacifiCorp will purchase a Project’s Unsubscribed Energy. The As-Available Rate will be calculated using the Non-Firm Market Price Index.

**Average Annual Generation** has the meaning stated in Section 5.7.

**Certified Project** is a Community Solar Program Project that has been certified by the Oregon Public Utility Commission under OAR 860-088-0050 and in accordance with the Program Implementation Manual.

**Commercial Operation Date** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which requires, among other things, that all of the following events have occurred:

1. Seller provides evidence that the Facility is a Certified Project.
2. PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the facility capacity rating of the Facility at the anticipated Commercial Operation Date; (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement; (c) the Facility has completed start-up testing and commissioning; and (d) in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed, and the Facility is physically interconnected with PacifiCorp's electric system;
3. PacifiCorp has received a certificate addressed to PacifiCorp from an officer of Project Manager stating that Project Manager has obtained all Required Project Documents and, if requested by PacifiCorp in writing, has provided copies of any or all such requested Required Project Documents; and
4. PacifiCorp has received an executed copy of Exhibit E—Project Manager's Authorization to Release Generation Data to PacifiCorp.

**Community Solar Program** is the program established for the procurement of electricity from community solar projects pursuant to ORS 757.386(2), the Commission's implementing regulations, and the Program Implementation Manual.

**Community Solar Program Project** is one or more solar photovoltaic energy systems used to generate electric energy on behalf of Community Solar Program owners and subscribers and for which owners and subscribers receive credit on their electric bills.

**Conditional DNR Notice** has the meaning provided in Section 3.1.

**Contract Interest Rate** means the lesser of (a) the highest rate permitted under applicable law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate." If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid.

**Contract Year** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (PPT) on January 1 and ending on 24:00 hours PPT on December 31; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the date of termination or expiration of this Agreement.

**Effective Date** means the date stated in the first sentence of this Agreement.

**Energy Delivery Schedule** has the meaning provided in Section 5.7.

**Facility** has the meaning provided in the Recitals.

**Generation Interconnection Agreement** means the generation interconnection agreement between Project Manager and Transmission Provider, providing for the construction, operation, and maintenance of the interconnection facilities required to accommodate deliveries of the Facility's Net Output.

**Licensed Professional Engineer** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon and is not an employee of Project Manager. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

**Losses** are the loss of electric energy occurring as a result of the transformation and transmission of electric energy from the Facility to the Point of Delivery.

**Net Output** means all energy produced by the Facility, less Station Use and Losses, if any. For purposes of calculating payment under this Agreement, Net Output shall be the amount of energy flowing through the Point of Delivery less three percent (3%) for contingency reserves.

**Non-Firm Market Price Index** means ninety three percent (93%) of the hourly value calculated based on the average prices reported for a blending of Intercontinental Exchange, Inc. ("ICE") Day Ahead Power Price Report at market hubs for firm index prices for a given day, weighted by the count of hours for each ICE index on such day, multiplied by the then-current hourly energy scalars for a given day calculated under the methodology approved in the Resource Value of Solar docket (UM 1910) or a successor proceeding. If applicable, the resulting value will be reduced by the integration costs specified in the then-current standard avoided cost rate schedule as applicable to the Facility. The market blending and scalar matrices are available upon request. If any index is not available for a given period, the Non-Firm Market Price Index will be the average price derived from days in which all published data is available, for the same number of days immediately preceding and immediately succeeding the period in which an index was not available, regardless of which days of the week are used for this purpose. The Non-Firm Market Price Index will remain in effect until a replacement Non-Firm Market Price Index is approved by the Oregon Public Utility Commission.

**Participant** means a customer of PacifiCorp that is either a subscriber or owner of the Facility.

**Point of Delivery** is the location where PacifiCorp's and Facility's electrical facilities are interconnected.

**Program Administrator** means the third-party directed by the Oregon Public Utility Commission to administer the Community Solar Program.

**Program Implementation Manual** means the manual of requirements applicable to the Project Manager, PacifiCorp and Participants for the Community Solar Program adopted by the Oregon Public Utility Commission. In the event there are revisions to the Program Implementation Manual during the term of this Agreement, such revisions will only apply to performance by Project Manager and PacifiCorp after the effective date of such revisions.

**Project Manager** is the entity having responsibility for managing the operation of the Facility and for maintaining contact with PacifiCorp, as stated in the first sentence of this Agreement.

**Prudent Electrical Practices** means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electric Coordinating Council 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 applicable equipment suppliers and manufacturers, operational limits, and all applicable law. Prudent Electrical Practices are 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 relevant region, during the relevant period, as described in the immediately preceding sentence.

**PURPA** means the Public Utility Regulatory Policies Act of 1978.

**Qualifying Facility** is a solar photovoltaic facility that meets the PURPA criteria for qualification set forth in Subpart B of Part 292, Subchapter K, Chapter I, Title 18, of the Code of Federal Regulations.

**Renewable Energy Credits** means green tags, green certificates, renewable energy credits (RECs) and tradable renewable certificates, as those terms are commonly used in the regional electric utility industry, directly associated with the production of energy from the Facility.

**Required Project Documents** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement and Qualifying Facility certification or self-certification, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those listed in Exhibit C.

**Scheduled Commercial Operation Date** has the meaning provided in the Recitals.

**Station Use** is electric energy used to operate the Facility that is auxiliary to or directly related to the generation of electricity and which, but for the contemporaneous generation of electricity, would not be consumed by the Facility.

**Subscribed Energy** means that portion of the Net Output for which the Project Manager has obtained a Participant and for which PacifiCorp must credit the Participant's electric bills consistent with the Community Solar Program.

**Transmission Provider** means PacifiCorp, acting in its transmission provider capacity.

**Unsubscribed Energy** means that portion of the Net Output for which the Project Manager has no Participant and that is purchased by PacifiCorp at the As-Available Rate consistent with the Community Solar Program.

## SECTION 2: TERM

2.1 Term. Except as otherwise provided herein, this Agreement shall terminate at midnight (Pacific prevailing time) on the date that is the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date.

### SECTION 3: DELIVERY OF POWER AND COMPENSATION

3.1 Designation of Network Resource. Within five (5) business days following the Effective Date, PacifiCorp will submit an application to the Transmission Provider requesting designation of the Facility as a network resource, thereby authorizing network transmission service under PacifiCorp's Network Integration Transmission Service Agreement with the Transmission Provider. PacifiCorp will request an effective date for commencement of network transmission service for the Facility that is ninety (90) days prior to the Scheduled Commercial Operation Date. PacifiCorp will inform Project Manager of Transmission Provider's response to the application described above in this paragraph within five (5) days of PacifiCorp's receipt of such response from the Transmission Provider. If PacifiCorp is notified in writing by the Transmission Provider that designation of the Facility as a network resource requires the construction of transmission system network upgrades or otherwise requires potential re-dispatch of other network resources of PacifiCorp (a "Conditional DNR Notice"), PacifiCorp and Project Manager will promptly meet to determine how such conditions to the Facility's network resource designation will be addressed in this Agreement. If, within sixty (60) days following the date of PacifiCorp's receipt of the Conditional DNR Notice, PacifiCorp and Project Manager are unable to reach agreement regarding how to designate the Facility as a network resource in light of the Conditional DNR Notice, PacifiCorp will submit the matter to the Commission for a determination on whether, as a result of the Conditional DNR Notice, this Agreement should be terminated or amended. PacifiCorp will submit such filing to the Commission within ninety (90) days following the date of PacifiCorp's receipt of the Conditional DNR Notice. In the event of such a filing to the Commission under this Section, the Parties' obligations under this Agreement will be suspended until such time that the Commission issues a final decision. In the event of a Conditional DNR Notice, Project Manager will have the right to terminate this Agreement upon written notice to PacifiCorp and such termination by Project Manager will not be an event of default and no damages will be owed by Project Manager to PacifiCorp related to the termination of this Agreement except to the extent PacifiCorp has incurred costs at Project Manager's request in furtherance of addressing the matters covered under this Section.

3.2 Delivery and Purchase of Net Output. Subject to Section 3.1 above and unless otherwise provided in this Agreement, commencing on the Commercial Operation Date, Project Manager will transmit to PacifiCorp all Net Output and PacifiCorp will accept all Net Output delivered to the Point of Delivery. PacifiCorp will accept Net Output delivered to the Point of Delivery as early as ninety (90) days prior to the Scheduled Commercial Operation Date. If Seller desires to begin transmitting Net Output to PacifiCorp at a date earlier than ninety (90) days prior to the Scheduled Commercial Operation Date, PacifiCorp will only be obligated to purchase such Net Output if PacifiCorp is able to modify its network resource designation for the Facility such that the output could be delivered using network transmission service as described in Section 3.1 above at no additional cost or other economic impact to PacifiCorp.

3.3 Curtailement. PacifiCorp is not obligated to purchase, receive, pay for, or pay any damages associated with, energy from the Facility not delivered to the Point of Delivery due to any of the following: (a) the Facility's interconnection is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement; (b) the general, non-discriminatory curtailment, reduction, or redispatch of generation in the area for any reason, even if such curtailment or redispatch directive is carried out by PacifiCorp (but excluding curtailment of purchases for solely economic reasons unilaterally directed by PacifiCorp); (c) the Facility's lack of integration or synchronization to the transmission system; or (d) a force majeure event.

3.4 Compensation. PacifiCorp will compensate the Project Manager for Unsubscribed Energy and the Participants for Subscribed Energy on a monthly basis as provided in the Community Solar Program.

(a) For the portion of the monthly Net Output that is Subscribed Energy, PacifiCorp will credit the electric bills of Participants to account for their proportionate share of the Net Output in accordance with the requirements of the Community Solar Program and data provided by the Program Administrator.

(b) For the portion of the monthly Net Output that is Unsubscribed Energy that is delivered to PacifiCorp by Project Manager from the Facility at the Point of Delivery, PacifiCorp will pay the Project Manager the As-Available Rate consistent with the Community Solar Program.

#### **SECTION 4: RENEWABLE ENERGY CREDITS**

4.1 No Claim to Renewable Energy Certificates. PacifiCorp waives any claim to ownership of any Renewable Energy Certificates that are issued by the Western Renewable Energy Generation Information System associated with the Facility's Net Output.

#### **SECTION 5: OPERATION AND CONTROL**

5.1 Community Solar Program. Both Parties shall comply with the requirements of the Community Solar Program. Failure to comply with the Community Solar Program shall be considered a material breach of this Agreement.

5.2 Certification. Project Manager shall maintain the Facility as a Certified Project at all times during the term of this Agreement. Failure to maintain the Facility as a Certified Project shall be considered a material breach of this Agreement.

5.3 Qualifying Facility. Project Manager shall maintain the Facility as a Qualifying Facility at all times during the term of this Agreement. Failure to maintain the Facility as a Qualifying Facility shall be considered a material breach of this Agreement.

5.4 As-Built Supplement. Upon completion of initial construction of the Facility, and upon any subsequent material modification of the Facility, Project Manager shall provide PacifiCorp an as-built supplement to specify the actual Facility as built.

5.5 Facility Operation. Project Manager must operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp has no obligation to purchase Net Output from the Project Manager to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement.

5.6 Facility Inspection. Project Manager is solely responsible for the operation and maintenance of the Facility. PacifiCorp has the right, upon reasonable prior notice to Project Manager, to inspect the Facility to confirm that the Project Manager is operating the Facility in accordance with the provisions of this Agreement, provided that PacifiCorp is not, by reason of its decision to inspect or not to



inspect the Facility, or by any action or inaction taken with respect to any such inspection, assuming any responsibility for any liability or occurrence arising from the operation and maintenance by Project Manager of the Facility.

5.7 Average Generation and Energy Delivery Schedules. Project Manager estimates that the Facility will generate, on average, [\_\_\_\_\_] kWh per Contract Year (“Average Annual Generation”). Project Manager may, upon at least six (6) months prior written notice, modify the Average Annual Generation every other Contract Year. Project Manager’s initial monthly schedule of expected Net Output from the Facility is attached as Exhibit D (the “Energy Delivery Schedule”). Project Manager must update and provide to PacifiCorp a revised Energy Delivery Schedule within thirty (30) days following the end of each Contract Year.

5.8 Scheduled Outages. Project Manager may cease operation of the entire Facility or individual units for maintenance or other purposes. Project Manager must exercise reasonable efforts to notify PacifiCorp of planned outages at least ninety (90) days prior to the planned outage. Additionally, Project Manager must use commercially reasonable efforts to not plan outages during the months of December and July.

5.9 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the facility capacity rating expected to last more than 48 hours, Project Manager must promptly notify PacifiCorp of the unscheduled outage or curtailment, the time when such occurred or will occur, and the anticipated duration.

5.10 Adjustments to Scheduled Commercial Operation Date. Project Manager must promptly notify PacifiCorp in writing of any adjustments (earlier or later) to the Scheduled Commercial Operation Date. Project Manager must also inform PacifiCorp in writing no later than ten (10) business days prior to the Scheduled Commercial Operation Date of the anticipated Commercial Operation Date, provided such notice to PacifiCorp may not be provided earlier than twenty (20) business days prior to the anticipated Commercial Operation Date.

## **SECTION 6: METERING AND COMMUNICATIONS**

### **6.1 Metering and Communications.**

(a) Metering equipment will be designed, furnished, installed, owned, inspected, tested, maintained and replaced pursuant to the terms of the Generation Interconnection Agreement. To the extent not otherwise provided in the Generation Interconnection Agreement, Project Manager will bear all costs (including PacifiCorp’s costs) relating to all metering and communication equipment installed to accommodate the Facility.

(b) Metering shall be performed at the location and in a manner consistent with this Agreement, the Generation Interconnection Agreement, and the requirements of the Community Solar Program. All quantities of energy purchased under this Agreement will be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp’s system at the Point of Delivery.

(c) If any of the inspections or tests of the metering equipment discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, will be made of previous readings for the actual period during which the metering equipment rendered

inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction will be made to the measurements taken during the time the metering equipment was in service since the last test in which the metering equipment was found to be accurate, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records will be made in the next payment rendered following the repair of the meter.

## **SECTION 7: INSURANCE**

7.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, Project Manager shall secure and continuously carry insurance in compliance with the requirements of this Section. Project Manager shall provide PacifiCorp insurance certificate(s) confirming Project Manager's compliance with the insurance requirements hereunder. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

7.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Project Manager under this Agreement, Project Manager shall secure and continuously carry with an insurance company or companies rated not lower than "A-/VII" by the A.M. Best Company commercial general liability insurance to include premises and operations, contractual liability, with a minimum single limit of \$1,000,000 each occurrence to protect against and from loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

7.3 The commercial general liability policy required herein shall include (a) provisions or endorsements naming PacifiCorp, its board of directors, officers and employees as additional insureds, and (b) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured. In addition, unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against PacifiCorp.

7.4 The commercial general liability policy required herein shall include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without (a) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or (b) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

7.5 Commercial general liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate, and Project Manager shall be maintained by Project Manager for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

## **SECTION 8: COMPUTATIONS**

8.1 Net Output Data. No later than the second business day of each month, PacifiCorp will transfer to the Program Administrator the data related to the amount of Net Output delivered to PacifiCorp from the Facility for the month, measured in kWh.

## **SECTION 9: COMPENSATION**

9.1 Payment for Unsubscribed Energy. No later than the 20<sup>th</sup> day of the month or ten (10) days after receiving kWh data from Program Administrator regarding the prior month's Subscribed Energy amount and Unsubscribed Energy amount, whichever occurs later, PacifiCorp will send to Program Administrator payment for Project Manager deliveries of Unsubscribed Energy to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Project Manager to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp may adjust any payment made under this Agreement for Unsubscribed Energy or Subscribed Energy up to eighteen (18) months following the date of original payment.

9.3 Interest. Any amounts owing after the due date thereof will bear interest at the Contract Interest Rate.

9.4 Payment for Subscribed Energy. PacifiCorp will credit the electric bills of Participants for their proportionate shares of Subscribed Energy in accordance with the Program Implementation Manual and data provided by Program Administrator.

9.5 Offset. PacifiCorp may offset any payment due to the Project Manager by amounts owing from the Project Manager pursuant to this Agreement and any other agreement between the Parties related to the Facility.

#### **SECTION 10: SUCCESSORS AND ASSIGNS**

Neither Party may assign this Agreement without the consent of the other Party and the Oregon Public Utility Commission, which shall not be unreasonably withheld. This Agreement and all of the terms shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

#### **SECTION 11: NOTICES**

All notices except as otherwise provided in this Agreement shall be in writing addressed to the addresses set forth below and shall be considered if delivered in person or when deposited in the U.S. Mail, postage prepared by certified or registered mail and return receipt requested.

If to PacifiCorp:


If to Project Manager:


#### **SECTION 12: INDEMNIFICATION AND LIABILITY**

12.1 Project Manager's Indemnity. Project Manager agrees to defend, indemnify and hold harmless PacifiCorp, its directors, officers, employees, agents, and representatives against and from any and all claims resulting from, or arising out of or in any way connected with (i) Project Manager's performance hereunder, including the delivery of energy to and at the Point of Delivery; (ii) Project

Manager's development, construction, ownership, operation, maintenance, or decommissioning of the Facility; (iii) the violation of any law, rule, order or regulation by Project Manager or any of its affiliates, or their respective employees, contractors or agents in connection with this Agreement; (iv) Project Manager's failure to perform any of Project Manager's obligations under this Agreement or the Required Facility Documents; (v) Project Manager's breach of any representation or warranty set forth in this Agreement; or (vi) Project Manager's negligence or willful misconduct in connection with this Agreement, except to the extent such claim is caused by breach of this Agreement or by the negligence or willful misconduct of PacifiCorp, its directors, officers, employees, agents or representatives.

12.2 PacifiCorp's Indemnity. PacifiCorp agrees to defend, indemnify and hold harmless Project Manager, its directors, officers, agents, and representatives against and from any and all claims resulting from, or arising out of or in any way connected with (i) PacifiCorp's receipt of Net Output under this Agreement after its delivery at the Point of Delivery; (ii) the violation of any law, rule, order or regulation by PacifiCorp, or their respective employees, or agents in connection with this Agreement; (iii) PacifiCorp's failure to perform any of PacifiCorp's obligations under this Agreement; (iv) PacifiCorp's breach of any representation or warranty set forth in this Agreement; or (v) PacifiCorp's negligence or willful misconduct in connection with this Agreement, except to the extent such claim is caused by Project Manager's breach of this Agreement or by the negligence or willful misconduct of Project Manager, its directors, officers, employees, agents or representatives.

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

12.4 Disclaimer of Consequential Damages. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.**

### **SECTION 13: TERMINATION**

13.1 Termination. A Party may terminate this Agreement in the event of a failure of the other Party to perform any material covenant or obligation set forth in this Agreement, if (i) notice of intent to terminate the Agreement is submitted to the Program Administrator at least thirty (30) days prior to termination; and (ii) 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 and the defaulting Party promptly commences and diligently pursues the remediation plan.

### **SECTION 14: GENERAL PROVISIONS**

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

14.2 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.

14.3 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. This Agreement is subject to the jurisdiction of those governmental agencies and courts having control over either Party or this Agreement. Each Party hereby acknowledges that this Agreement and any dispute that arises under this Agreement is subject to the jurisdiction of the Oregon Public Utility Commission. If a dispute related to this Agreement arises between the Parties, the Parties' representatives shall first attempt to resolve the dispute informally through negotiation and consultation. If the Parties are unable to resolve their differences through such negotiation and consultation, any complaint, claim or action to resolve such dispute may be brought in a court or governmental agency with jurisdiction over the dispute.

14.4 Severability. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of this Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations, and seek guidance from the Program Administrator and Oregon Public Utility Commission as necessary, concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law, the intent of the Parties, and the Community Solar Program.

14.5 Effect of PURPA Repeal. The repeal of PURPA shall not result in the early termination of this Agreement unless such termination is mandated by state or federal law.

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

14.7 Survival. Notwithstanding termination of this Agreement, PacifiCorp and Project Manager shall continue to be bound by the provisions of this Agreement which by their terms or by their nature shall survive such completion or termination.

14.8 Entire Agreement; Amendments; Order of Precedence. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of energy from the Facility. No amendment or modification of this Agreement shall be effective unless it is in writing and signed by both Parties. If there is a conflict between the terms of this Agreement and the Community Solar Program the Community Solar Program shall apply and prevail.

14.9 Project Release. By executing this Agreement, Project Manager releases PacifiCorp from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

14.10 Rights and Remedies Cumulative. Except as expressly set forth in this Agreement, the rights and remedies of the Parties provided in this Agreement and otherwise available at law or in equity are cumulative, such that the exercise of one or more rights or remedies shall not constitute a waiver of any other rights or remedies.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

**PacifiCorp**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**Project Manager**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF PROJECT MANAGER'S FACILITY**

*[Project Manager to Complete]*

**Location of the Facility:** The Facility is to be constructed in the vicinity of [\_\_\_\_\_] in [\_\_\_\_\_] County, Oregon. The location is more particularly described as follows:

*[insert legal description of parcel]*

**Description of the Facility:** Project Manager's Facility consists of [\_\_\_\_\_] panels rated at [\_\_\_\_\_] watts DC and an expected annual degradation rate of [\_\_\_\_\_] % manufactured by [\_\_\_\_\_] (or equivalent), [\_\_\_\_\_] inverters manufactured by [\_\_\_\_\_] , and a [\_\_\_\_\_] racking system.

More specifically, each generator at the Facility is described as:

Manufacturer's Nameplate Data: [\_\_\_\_\_] KW DC, [\_\_\_\_\_] KW AC

Solar Panels

Manufacturer: [\_\_\_\_\_] or equivalent  
Model: [\_\_\_\_\_]   
Power rating (Watts DC @ STC): [\_\_\_\_\_]W  
Number of Modules: [\_\_\_\_\_]   
Number of Modules per string: [\_\_\_\_\_]

Inverters

Manufacturer: [\_\_\_\_\_] or equivalent  
Model: [\_\_\_\_\_]   
Inverter Rating (AC, kW): [\_\_\_\_\_]   
Number of Inverters: [\_\_\_\_\_]   
Inverter Efficiency at Full Power Rating (%): [\_\_\_\_\_] %  
Inverter Capacity for Site (AC, kW): [\_\_\_\_\_]   
Operation Voltage (Volts): [\_\_\_\_\_]   
Maximum System Design Voltage: [\_\_\_\_\_]   
Number of Phases: [\_\_\_\_\_]

Mounting

Groundmount or rooftop? [\_\_\_\_\_]   
Fixed tilt or Single-axis Tracking? [\_\_\_\_\_]   
Proposed Module orientation: [\_\_\_\_\_]



Tilt Angle (Degrees): [\_\_\_\_\_]
Azimuth (Degrees): [\_\_\_\_\_]
Pitch (Row Spacing) (Feet): [\_\_\_\_\_]
Row Width (Feet): [\_\_\_\_\_]
Row Length (Feet): [\_\_\_\_\_]
Max/min rotation (if tracking) (Degrees): [+\_\_\_\_]/[-\_\_\_\_]
Ground Coverage Ratio: [\_\_\_\_]%

PV Array Characteristics

Rated Output (kW): [\_\_\_\_\_]kW DC / [\_\_\_\_\_]kW AC
Rated Output (kVA): [\_\_\_\_\_] kVA

Transformation

Number of Step-up transformers: [\_\_\_\_\_]
Size of Step-up Transformers (kVA): [\_\_\_\_\_]
Low Side voltage of Step-up transformer (volts): [\_\_\_\_\_]
High Side voltage of Step up transformer (volts): [\_\_\_\_\_]
Total land required: [\_\_\_\_\_] acres

Power factor requirements

Rated Power Factor (PF) or reactive load (kVAR): PF= [\_\_\_\_\_]
Leading: [\_\_\_\_\_] Lagging: [\_\_\_\_\_]
Project Manager’s Estimate of Facility Annual Output Under Ideal (Maximum) or Worst (Minimum) Conditions

Project Manager’s Estimate of Facility Annual Output Under Ideal (Maximum) or Worst (Minimum) Conditions

Maximum kW Output (“Maximum Facility Delivery Rate”): [\_\_\_\_\_] kW AC
Maximum kVA Output: [\_\_\_\_\_] kVA
Minimum kW Output: [\_\_\_\_\_] kW
Estimated kW Output: [\_\_\_\_\_] kW AC
Maximum Generator Interconnection Agreement Delivery Rate: [\_\_\_\_\_] kW [instantaneous]

Nameplate Capacity Rating: [\_\_\_\_\_] kW AC at 25° C

Estimated station service for lighting and other auxiliary energy requirements is estimated to be approximately [\_\_\_\_\_] kWh annually.

PV Panel output degradation factor: [\_\_\_\_\_] % per year.

**EXHIBIT B**

**POINT OF DELIVERY / PROJECT MANAGER'S INTERCONNECTION FACILITIES**

[Instructions to Project Manager:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Project Manager's side of the Point of Delivery.]

**EXHIBIT C**

**REQUIRED FACILITY DOCUMENTS**

[Reference QF certification]

[Reference Interconnection Agreement]

**EXHIBIT D**  
**ENERGY DELIVERY SCHEDULE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Project Manager to provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

**EXHIBIT E**  
**PROJECT MANAGER AUTHORIZATION TO RELEASE**  
**GENERATION DATA TO PACIFICORP**

*[Interconnection Customer Letterhead]*

[DATE]

Director, Transmission Services  
PacifiCorp  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

To Whom it May Concern:

\_\_\_\_\_ (“Seller”) hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Seller's interconnection information with marketing function employees of PacifiCorp, including but not limited to those in Energy Supply Management. Seller acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

\_\_\_\_\_

**Community Solar Program Purchase Agreement  
Redline**

## COMMUNITY SOLAR PROGRAM PURCHASE AGREEMENT

THIS COMMUNITY SOLAR PROGRAM PURCHASE AGREEMENT (the “Agreement”) entered into this [ ] day of [ ], 20[ ] (the “Effective Date”), is between [ ], a [ ] [ ] (“Project Manager”), and PacifiCorp, an Oregon corporation acting in its regulated utility capacity (“PacifiCorp”). Project Manager and PacifiCorp are referred to individually in this Agreement as a “Party” and collectively as the “Parties.”

### RECITALS

A. Project Manager intends to ~~construct, own, operate and maintain~~ a solar photovoltaic facility for the generation of electric power, including interconnection facilities, located in [ ] with a facility capacity rating of [ ] kilowatts (kW) as further described in Exhibit A and Exhibit B (“Facility”); and

B. Project Manager intends to commence delivery of Net Output under this Agreement, for the purpose of start-up testing, on [ ], 20[ ]; and

C. Project Manager intends to operate the Facility as a Community Solar Program Project, commencing commercial operations on [ ], 20[ ] (“Scheduled Commercial Operation Date”).

D. Project Manager estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is [ ] kilowatt-hours (kWh); and

E. This Agreement is a Community Solar Program Purchase Agreement under the Oregon Community Solar Program implemented by the Oregon Public Utility Commission pursuant to ORS 757.386(2).

### AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

#### SECTION 1: DEFINITIONS

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

**Agreement** means this Community Solar Program Purchase Agreement.

**As-Available Rate** is the rate at which PacifiCorp will purchase a Project’s Unsubscribed Energy. The As-Available Rate will be calculated using the Non-Firm Market Price Index.

**Average Annual Generation** has the meaning stated in Section 5.7.

**Certified Project** is a Community Solar Program Project that has been certified by the Oregon Public Utility Commission under OAR 860-088-0050 and in accordance with the Program Implementation Manual.

**Commercial Operation Date** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which requires, among other things, that all of the following events have occurred:

1. Seller provides evidence that the Facility is a Certified Project.
2. ~~1.~~ PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the facility capacity rating of the Facility at the anticipated Commercial Operation Date; (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement; (c) the Facility has completed start-up testing and commissioning; and (d) in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed, and the Facility is physically interconnected with PacifiCorp's electric system;
3. ~~2.~~ PacifiCorp has received a certificate addressed to PacifiCorp from an officer of Project Manager stating that Project Manager has obtained all Required Project Documents and, if requested by PacifiCorp in writing, has provided copies of any or all such requested Required Project Documents; and
4. ~~3.~~ PacifiCorp has received an executed copy of Exhibit E—Project Manager's Authorization to Release Generation Data to PacifiCorp.

**Community Solar Program** is the program established for the procurement of electricity from community solar projects pursuant to ORS 757.386(2), the Commission's implementing regulations, and the Program Implementation Manual.

**Community Solar Program Project** is one or more solar photovoltaic energy systems used to generate electric energy on behalf of Community Solar Program owners and subscribers and for which owners and subscribers receive credit on their electric bills.

**Conditional DNR Notice** has the meaning provided in Section 3.1.

**Contract Interest Rate** means the lesser of (a) the highest rate permitted under applicable law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate." If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid.

**Contract Year** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (PPT) on January 1 and ending on 24:00 hours PPT on December 31; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the date of termination or expiration of this Agreement.

**Effective Date** means the date stated in the first sentence of this Agreement.

**Energy Delivery Schedule** has the meaning provided in Section 5.7.



**Facility** has the meaning provided in the Recitals.

**Generation Interconnection Agreement** means the generation interconnection agreement between Project Manager and Transmission Provider, providing for the construction, operation, and maintenance of the interconnection facilities required to accommodate deliveries of the Facility's Net Output.

**Licensed Professional Engineer** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon and is not an employee of Project Manager. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

**Losses** are the loss of electric energy occurring as a result of the transformation and transmission of electric energy from the Facility to the Point of Delivery.

**Net Output** means all energy produced by the Facility, less Station Use and Losses, if any. For purposes of calculating payment under this Agreement, Net Output shall be the amount of energy flowing through the Point of Delivery less three percent (3%) for contingency reserves.

**Non-Firm Market Price Index** means ninety three percent (93%) of the hourly value calculated based on the average prices reported for a blending of Intercontinental Exchange, Inc. ("ICE") Day Ahead Power Price Report at market hubs for firm index prices for a given day, weighted by the count of hours for each ICE index on such day, multiplied by the then-current hourly energy scalars for a given day calculated under the methodology approved in the Resource Value of Solar docket (UM 1910) or a successor proceeding. If applicable, the resulting value will be reduced by the integration costs specified in the then-current standard avoided cost rate schedule as applicable to the Facility. The market blending and scalar matrices are available upon request. If any index is not available for a given period, the Non-Firm Market Price Index will be the average price derived from days in which all published data is available, for the same number of days immediately preceding and immediately succeeding the period in which an index was not available, regardless of which days of the week are used for this purpose. The Non-Firm Market Price Index will remain in effect until a replacement Non-Firm Market Price Index is approved by the Oregon Public Utility Commission.

**Participant** means a customer of PacifiCorp that is either a subscriber or owner of the Facility.

**Point of Delivery** is the location where PacifiCorp's and Facility's electrical facilities are interconnected.

**Program Administrator** means the third-party directed by the Oregon Public Utility Commission to administer the Community Solar Program.

**Program Implementation Manual** means the manual of requirements applicable to the Project Manager, PacifiCorp and Participants for the Community Solar Program adopted by the Oregon Public Utility Commission, ~~as may be amended from time to time.~~ [In the event there are revisions to the Program Implementation Manual during the term of this Agreement, such revisions will only apply to performance by Project Manager and PacifiCorp after the effective date of such revisions.](#)

**Project Manager** is the entity having responsibility for managing the operation of the Facility [and for maintaining contact with PacifiCorp](#), as stated in the first sentence of this Agreement.

**Prudent Electrical Practices** means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electric Coordinating Council 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 applicable equipment suppliers and manufacturers, operational limits, and all applicable law. Prudent Electrical Practices are 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 relevant region, during the relevant period, as described in the immediately preceding sentence.

**PURPA** means the Public Utility Regulatory Policies Act of 1978.

**Qualifying Facility** is a solar photovoltaic facility that meets the PURPA criteria for qualification set forth in Subpart B of Part 292, Subchapter K, Chapter I, Title 18, of the Code of Federal Regulations.

**Renewable Energy Credits** means green tags, green certificates, renewable energy credits (RECs) and tradable renewable certificates, as those terms are commonly used in the regional electric utility industry, directly associated with the production of energy from the Facility.

**Required Project Documents** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement and Qualifying Facility certification or self-certification, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those listed in Exhibit C.

**Scheduled Commercial Operation Date** has the meaning provided in the Recitals.

**Station Use** is electric energy used to operate the Facility that is auxiliary to or directly related to the generation of electricity and which, but for the contemporaneous generation of electricity, would not be consumed by the Facility.

**Subscribed Energy** means that portion of the Net Output for which the Project Manager has obtained a Participant and for which PacifiCorp must credit the Participant's electric bills consistent with the Community Solar Program.

**Transmission Provider** means PacifiCorp, acting in its transmission provider capacity.

**Unsubscribed Energy** means that portion of the Net Output for which the Project Manager has no Participant and that is purchased by PacifiCorp at the As-Available Rate consistent with the Community Solar Program.

## SECTION 2: TERM

2.1 Term. Except as otherwise provided herein, this Agreement shall terminate at midnight (Pacific prevailing time) on the date that is the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date.

## SECTION 3: DELIVERY OF POWER AND COMPENSATION

3.1 Designation of Network Resource. Within five (5) business days following the Effective Date, PacifiCorp will submit an application to the Transmission Provider requesting designation of the Facility as a network resource, thereby authorizing network transmission service under PacifiCorp's Network Integration Transmission Service Agreement with the Transmission Provider. PacifiCorp will request an effective date for commencement of network transmission service for the Facility that is ninety (90) days prior to the Scheduled Commercial Operation Date. PacifiCorp will inform Project Manager of Transmission Provider's response to the application described above in this paragraph within five (5) days of PacifiCorp's receipt of such response from the Transmission Provider. If PacifiCorp is notified in writing by the Transmission Provider that designation of the Facility as a network resource requires the construction of transmission system network upgrades or otherwise requires potential re-dispatch of other network resources of PacifiCorp (a "Conditional DNR Notice"), PacifiCorp and Project Manager will promptly meet to determine how such conditions to the Facility's network resource designation will be addressed in this Agreement. If, within sixty (60) days following the date of PacifiCorp's receipt of the Conditional DNR Notice, PacifiCorp and Project Manager are unable to reach agreement regarding how to designate the Facility as a network resource in light of the Conditional DNR Notice, PacifiCorp will submit the matter to the Commission for a determination on whether, as a result of the Conditional DNR Notice, this Agreement should be terminated or amended. PacifiCorp will submit such filing to the Commission within ninety (90) days following the date of PacifiCorp's receipt of the Conditional DNR Notice. In the event of such a filing to the Commission under this Section, the Parties' obligations under this Agreement will be suspended until such time that the Commission issues a final decision. In the event of a Conditional DNR Notice, Project Manager will have the right to terminate this Agreement upon written notice to PacifiCorp and such termination by Project Manager will not be an event of default and no damages will be owed by Project Manager to PacifiCorp related to the termination of this Agreement except to the extent PacifiCorp has incurred costs at Project Manager's request in furtherance of addressing the matters covered under this Section.

3.2 Delivery and Purchase of Net Output. Subject to Section 3.1 above and unless otherwise provided in this Agreement, commencing on the Commercial Operation Date, Project Manager will transmit to PacifiCorp all Net Output and PacifiCorp will accept all Net Output delivered to the Point of Delivery. PacifiCorp will accept Net Output delivered to the Point of Delivery as early as ninety (90) days prior to the Scheduled Commercial Operation Date. If Seller desires to begin transmitting Net Output to PacifiCorp at a date earlier than ninety (90) days prior to the Scheduled Commercial Operation Date, PacifiCorp will only be obligated to purchase such Net Output if PacifiCorp is able to modify its network resource designation for the Facility such that the output could be delivered using network transmission service as described in Section 3.1 above at no additional cost or other economic impact to PacifiCorp.

3.3 Curtailment. PacifiCorp is not obligated to purchase, receive, pay for, or pay any damages associated with, energy from the Facility not delivered to the Point of Delivery due to any of the following: (a) the Facility's interconnection is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement; (b) the general, non-discriminatory curtailment, reduction, or redispatch of generation in the area for any reason, even if such curtailment or redispatch directive is carried out by PacifiCorp (but excluding curtailment of purchases for solely economic reasons unilaterally directed by PacifiCorp); (c) the Facility's lack of integration or synchronization to the transmission system; or (d) a force majeure event.

3.4 Compensation. PacifiCorp will compensate the Project Manager for Unsubscribed Energy and the Participants for Subscribed Energy on a monthly basis as provided in the Community Solar Program.

(a) For the portion of the monthly Net Output that is Subscribed Energy, PacifiCorp will credit the electric bills of Participants to account for their proportionate share of the Net Output in accordance with the requirements of the Community Solar Program and data provided by the Program Administrator.

(b) For the portion of the monthly Net Output that is Unsubscribed Energy that is delivered to PacifiCorp by Project Manager from the Facility at the Point of Delivery, PacifiCorp will pay the Project Manager the As-Available Rate consistent with the Community Solar Program.

#### **SECTION 4: RENEWABLE ENERGY CREDITS**

4.1 No Claim to Renewable Energy Certificates. PacifiCorp waives any claim to ownership of any Renewable Energy Certificates that are issued by the Western Renewable Energy Generation Information System associated with the Facility's Net Output.

#### **SECTION 5: OPERATION AND CONTROL**

5.1 Community Solar Program. Both Parties shall comply with the requirements of the Community Solar Program. Failure to comply with the Community Solar Program shall be considered a material breach of this Agreement.

5.2 Certification. Project Manager shall maintain the Facility as a Certified Project at all times during the term of this Agreement. Failure to maintain the Facility as a Certified Project shall be considered a material breach of this Agreement.

5.3 Qualifying Facility. Project Manager shall maintain the Facility as a Qualifying Facility at all times during the term of this Agreement. Failure to maintain the Facility as a Qualifying Facility shall be considered a material breach of this Agreement.

5.4 As-Built Supplement. Upon completion of initial construction of the Facility, and upon any subsequent material modification of the Facility, Project Manager shall provide PacifiCorp an as-built supplement to specify the actual Facility as built.

5.5 Facility Operation. Project Manager must operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp has no obligation to purchase Net Output from the Project Manager to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement.

5.6 Facility Inspection. Project Manager is solely responsible for the operation and maintenance of the Facility. PacifiCorp has the right, upon reasonable prior notice to Project Manager, to inspect the Facility to confirm that the Project Manager is operating the Facility in accordance with the provisions of this Agreement, provided that PacifiCorp is not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assuming any responsibility for any liability or occurrence arising from the operation and maintenance by Project Manager of the Facility.

5.7 Average Generation and Energy Delivery Schedules. Project Manager estimates that the Facility will generate, on average, [ ] kWh per Contract Year (“Average Annual Generation”). Project Manager may, upon at least six (6) months prior written notice, modify the Average Annual Generation every other Contract Year. Project Manager’s initial monthly schedule of expected Net Output from the Facility is attached as Exhibit D (the “Energy Delivery Schedule”). Project Manager must update and provide to PacifiCorp a revised Energy Delivery Schedule within thirty (30) days following the end of each Contract Year.

5.8 Scheduled Outages. Project Manager may cease operation of the entire Facility or individual units for maintenance or other purposes. Project Manager must exercise reasonable efforts to notify PacifiCorp of planned outages at least ninety (90) days prior to the planned outage. Additionally, Project Manager must use commercially reasonable efforts to not plan outages during the months of December, ~~January, February, and~~ July, ~~August and September.~~

5.9 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the facility capacity rating expected to last more than 48 hours, Project Manager must promptly notify PacifiCorp of the unscheduled outage or curtailment, the time when such occurred or will occur, and the anticipated duration.

5.10 Adjustments to Scheduled Commercial Operation Date. Project Manager must promptly notify PacifiCorp in writing of any adjustments (earlier or later) to the Scheduled Commercial Operation Date. Project Manager must also inform PacifiCorp in writing no later than ten (10) business days prior to the Scheduled Commercial Operation Date of the anticipated Commercial Operation Date, provided such notice to PacifiCorp may not be provided earlier than twenty (20) business days prior to the anticipated Commercial Operation Date.

## **SECTION 6: METERING AND COMMUNICATIONS**

### **6.1 Metering and Communications.**

(a) Metering equipment will be designed, furnished, installed, owned, inspected, tested, maintained and replaced pursuant to the terms of the Generation Interconnection Agreement. To the extent not otherwise provided in the Generation Interconnection Agreement, Project Manager will bear all costs (including PacifiCorp’s costs) relating to all metering and communication equipment installed to accommodate the Facility.

(b) Metering shall be performed at the location and in a manner consistent with this Agreement, the Generation Interconnection Agreement, and the requirements of the Community Solar Program. All quantities of energy purchased under this Agreement will be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp’s system at the Point of Delivery.

(c) If any of the inspections or tests of the metering equipment discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, will be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction will be made to the measurements taken during the time the metering equipment was in service since the last test in which the metering equipment was found to be accurate, but not exceeding three (3)

months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records will be made in the next payment rendered following the repair of the meter.

## **SECTION 7: INSURANCE**

7.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, Project Manager shall secure and continuously carry insurance in compliance with the requirements of this Section. Project Manager shall provide PacifiCorp insurance certificate(s) confirming Project Manager's compliance with the insurance requirements hereunder. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

7.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Project Manager under this Agreement, Project Manager shall secure and continuously carry with an insurance company or companies rated not lower than "A-/VII" by the A.M. Best Company commercial general liability insurance to include premises and operations, contractual liability, with a minimum single limit of \$1,000,000 each occurrence to protect against and from loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

7.3 The commercial general liability policy required herein shall include (a) provisions or endorsements naming PacifiCorp, its board of directors, officers and employees as additional insureds, and (b) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured. In addition, unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against PacifiCorp.

7.4 The commercial general liability policy required herein shall include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without (a) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or (b) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

7.5 Commercial general liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate, and Project Manager shall be maintained by Project Manager for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

## **SECTION 8: COMPUTATIONS**

8.1 Net Output Data. No later than the second business day of each month, PacifiCorp will transfer to the Program Administrator the data related to the amount of Net Output delivered to PacifiCorp from the Facility for the month, measured in kWh.

## **SECTION 9: COMPENSATION**

9.1 Payment for Unsubscribed Energy. No later than the 20<sup>th</sup> day of the month or ten (10) days after receiving kWh data from Program Administrator regarding the prior month's Subscribed Energy

amount and Unsubscribed Energy amount, whichever occurs later, PacifiCorp will send to Program Administrator payment for Project Manager deliveries of Unsubscribed Energy to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Project Manager to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp may adjust any payment made under this Agreement for Unsubscribed Energy or Subscribed Energy up to eighteen (18) months following the date of original payment.

9.3 Interest. Any amounts owing after the due date thereof will bear interest at the Contract Interest Rate.

9.4 Payment for Subscribed Energy. PacifiCorp will credit the electric bills of Participants for their proportionate shares of Subscribed Energy in accordance with the Program Implementation Manual and data provided by Program Administrator.

~~9.5 Taxes. Project Manager must pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any governmental authority on the energy, Net Output or any other attributes of the Facility up to and including, but not beyond, the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Project Manager under applicable law. PacifiCorp must pay or cause to be paid when due all such taxes imposed or levied by any governmental authority on the Net Output beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Project Manager under applicable law. In the event any taxes are imposed on a Party for which the other Party is responsible hereunder, the Party on which the taxes are imposed must promptly provide the other Party notice thereof and such other information as such Party may reasonably request with respect to any such taxes. PacifiCorp and Project Manager agree that all Net Output being purchased under this Agreement by PacifiCorp is for resale.~~

9.6 Offset. PacifiCorp may offset any payment due to the Project Manager by amounts owing from the Project Manager pursuant to this Agreement and any other agreement between the Parties related to the Facility.

## SECTION 10: SUCCESSORS AND ASSIGNS

Neither Party may assign this Agreement without the consent of the other Party and the Oregon Public Utility Commission, which shall not be unreasonably withheld. This Agreement and all of the terms shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

## SECTION 11: NOTICES

All notices except as otherwise provided in this Agreement shall be in writing addressed to the addresses set forth below and shall be considered if delivered in person or when deposited in the U.S. Mail, postage prepared by certified or registered mail and return receipt requested.

If to PacifiCorp:


If to Project Manager:


## SECTION 12: INDEMNIFICATION AND LIABILITY

12.1 Project Manager's Indemnity. Project Manager agrees to defend, indemnify and hold harmless PacifiCorp, its directors, officers, employees, agents, and representatives against and from any and all claims resulting from, or arising out of or in any way connected with (i) Project Manager's performance hereunder, including the delivery of energy to and at the Point of Delivery; (ii) Project Manager's development, construction, ownership, operation, maintenance, or decommissioning of the Facility; (iii) the violation of any law, rule, order or regulation by Project Manager or any of its affiliates, or their respective employees, contractors or agents in connection with this Agreement; (iv) Project Manager's failure to perform any of Project Manager's obligations under this Agreement or the Required Facility Documents; (v) Project Manager's breach of any representation or warranty set forth in this Agreement; or (vi) Project Manager's negligence or willful misconduct in connection with this Agreement, except to the extent such claim is caused by breach of this Agreement or by the negligence or willful misconduct of PacifiCorp, its directors, officers, employees, agents or representatives.

12.2 PacifiCorp's Indemnity. PacifiCorp agrees to defend, indemnify and hold harmless Project Manager, its directors, officers, agents, and representatives against and from any and all claims resulting from, or arising out of or in any way connected with (i) PacifiCorp's receipt of Net Output under this Agreement after its delivery at the Point of Delivery; (ii) the violation of any law, rule, order or regulation by PacifiCorp, or their respective employees, or agents in connection with this Agreement; (iii) PacifiCorp's failure to perform any of PacifiCorp's obligations under this Agreement; (iv) PacifiCorp's breach of any representation or warranty set forth in this Agreement; or (v) PacifiCorp's negligence or willful misconduct in connection with this Agreement, except to the extent such claim is caused by Project Manager's breach of this Agreement or by the negligence or willful misconduct of Project Manager, its directors, officers, employees, agents or representatives.

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

12.4 Disclaimer of Consequential Damages. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.**

## SECTION 13: TERMINATION

13.1 Termination. A Party may terminate this Agreement in the event of a failure of the other Party to perform any material covenant or obligation set forth in this Agreement, if [\(i\) notice of intent to terminate the Agreement is submitted to the Program Administrator at least thirty \(30\) days prior to termination; and \(ii\) 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 in its reasonable discretion,~~ and the defaulting Party promptly commences and diligently pursues the remediation plan.

## SECTION 14: GENERAL PROVISIONS

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

14.2 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.

14.3 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. This Agreement is subject to the jurisdiction of those governmental agencies and courts having control over either Party or this Agreement. Each Party hereby acknowledges that this Agreement and any dispute that arises under this Agreement is subject to the jurisdiction of the Oregon Public Utility Commission. If a dispute related to this Agreement arises between the Parties, the Parties' representatives shall first attempt to resolve the dispute informally through negotiation and consultation. If the Parties are unable to resolve their differences through such negotiation and consultation, any complaint, claim or action to resolve such dispute may be brought in a court or governmental agency with jurisdiction over the dispute.

14.4 ~~Waiver of Jury Trial. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THIS PARAGRAPH SURVIVES THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.~~ 14.5 Severability. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of this Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations, and seek guidance from the Program Administrator and Oregon Public Utility Commission as necessary, concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law, the intent of the Parties, and the Community Solar Program.

~~14.6~~14.5 Effect of PURPA Repeal. The repeal of PURPA shall not result in the early termination of this Agreement unless such termination is mandated by state or federal law.

~~14.7~~14.6 Waiver. Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

~~14.8~~14.7 Survival. Notwithstanding termination of this Agreement, PacifiCorp and Project Manager shall continue to be bound by the provisions of this Agreement which by their terms or by their nature shall survive such completion or termination.

~~14.9~~14.8 Entire Agreement; Amendments; Order of Precedence. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of energy from the Facility. No amendment or modification of this Agreement shall be effective unless it is in writing and signed by both Parties. If there is a conflict between the terms of this Agreement and the Community Solar Program the Community Solar Program shall apply and prevail.

~~14.10~~14.9 Project Release. By executing this Agreement, Project Manager releases PacifiCorp from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

~~14.11~~14.10 Rights and Remedies Cumulative. Except as expressly set forth in this Agreement, the rights and remedies of the Parties provided in this Agreement and otherwise available at law or in equity are cumulative, such that the exercise of one or more rights or remedies shall not constitute a waiver of any other rights or remedies.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

**PacifiCorp**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**Project Manager**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF PROJECT MANAGER'S FACILITY**

*[Project Manager to Complete]*

**Location of the Facility:** The Facility is to be constructed in the vicinity of [ ] in [ ] County, Oregon. The location is more particularly described as follows:

*[insert legal description of parcel]*

**Description of the Facility:** Project Manager's Facility consists of [ ] panels rated at [ ] watts DC and an expected annual degradation rate of [ ]% manufactured by [ ] (or equivalent), [ ] inverters manufactured by [ ], and a [ ] racking system.

More specifically, each generator at the Facility is described as:

Manufacturer's Nameplate Data: [ ] KW DC, [ ] KW AC

Solar Panels

Manufacturer: [ ] or equivalent  
Model: [ ]  
Power rating (Watts DC @ STC): [ ]W  
Number of Modules: [ ]  
Number of Modules per string: [ ]

Inverters

Manufacturer: [ ] or equivalent  
Model: [ ]  
Inverter Rating (AC, kW): [ ]  
Number of Inverters: [ ]  
Inverter Efficiency at Full Power Rating (%): [ ]%  
Inverter Capacity for Site (AC, kW): [ ]  
Operation Voltage (Volts): [ ]  
Maximum System Design Voltage: [ ]  
Number of Phases: [ ]

Mounting

Groundmount or rooftop? [ ]  
Fixed tilt or Single-axis Tracking? [ ]

Proposed Module orientation: [\_\_\_\_\_]
Tilt Angle (Degrees): [\_\_\_\_\_]
Azimuth (Degrees): [\_\_\_\_\_]
Pitch (Row Spacing) (Feet): [\_\_\_\_\_]
Row Width (Feet): [\_\_\_\_\_]
Row Length (Feet): [\_\_\_\_\_]
Max/min rotation (if tracking) (Degrees): [+\_\_\_\_]/[-\_\_\_\_]
Ground Coverage Ratio: [\_\_\_\_]%

PV Array Characteristics

Rated Output (kW): [\_\_\_\_\_]kW DC / [\_\_\_\_\_]kW AC
Rated Output (kVA): [\_\_\_\_\_] kVA

Transformation

Number of Step-up transformers: [\_\_\_\_\_]
Size of Step-up Transformers (kVA): [\_\_\_\_\_]
Low Side voltage of Step-up transformer (volts): [\_\_\_\_\_]
High Side voltage of Step up transformer (volts): [\_\_\_\_\_]

Total land required: [\_\_\_\_\_] acres

Power factor requirements

Rated Power Factor (PF) or reactive load (kVAR): PF= [\_\_\_\_\_]
Leading: [\_\_\_\_\_] Lagging: [\_\_\_\_\_]

Project Manager’s Estimate of Facility Annual Output Under Ideal (Maximum) or Worst (Minimum) Conditions

Maximum kW Output (“Maximum Facility Delivery Rate”): [\_\_\_\_\_] kW AC
Maximum kVA Output: [\_\_\_\_\_] kVA
Minimum kW Output: [\_\_\_\_\_] kW
Estimated kW Output: [\_\_\_\_\_] kW AC
Maximum Generator Interconnection Agreement Delivery Rate: [\_\_\_\_\_] kW
[instantaneous]

Nameplate Capacity Rating: [\_\_\_\_\_] kW AC at 25° C

Estimated station service for lighting and other auxiliary energy requirements is estimated to be approximately [\_\_\_\_\_] kWh annually.

PV Panel output degradation factor: [\_\_\_\_\_] % per year.

**EXHIBIT B**

**POINT OF DELIVERY / PROJECT MANAGER'S INTERCONNECTION FACILITIES**

[Instructions to Project Manager:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Project Manager's side of the Point of Delivery.]

**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

[Reference QF certification]

[Reference Interconnection Agreement]

**EXHIBIT D**  
**ENERGY DELIVERY SCHEDULE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Project Manager to provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.



**EXHIBIT E**  
**PROJECT MANAGER AUTHORIZATION TO RELEASE**  
**GENERATION DATA TO PACIFICORP**

*[Interconnection Customer Letterhead]*

[DATE]

Director, Transmission Services  
PacifiCorp  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

To Whom it May Concern:

\_\_\_\_\_ (“Seller”) hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Seller's interconnection information with marketing function employees of PacifiCorp, including but not limited to those in Energy Supply Management. Seller acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

\_\_\_\_\_

Document comparison by Workshare 9 on Monday, March 9, 2020 4:45:30 PM

Input:	
Document 1 ID	file:///C:/Users/p38209/Desktop/UM 1930/PAC CSP Purchase Agreement _ Feb 17 2020.docx
Description	PAC CSP Purchase Agreement _ Feb 17 2020
Document 2 ID	file:///C:/Users/p38209/Desktop/UM 1930/PAC CSP Purchase Agreement _ March 10 2020.docx
Description	PAC CSP Purchase Agreement _ March 10 2020
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
Moved from	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	25
Deletions	23
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	48