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*Of Attorneys for Amicus Curiae The
Confederated Tribes of The Warm Springs
Reservation of Oregon*

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

DESCHUTES RIVER ALLIANCE, an
Oregon nonprofit corporation,

Plaintiff,

v.

PORTLAND GENERAL ELECTRIC
COMPANY, an Oregon corporation,

Defendant.

Case No. 3:16-cv-01644-SI

DECLARATION of Josh Newton In
Support of The Confederated Tribes of
the Warm Springs Reservation of
Oregon Reply in Support of Motion to
Dismiss

I, Josh Newton, declare and say:

1. I am an attorney representing amicus curiae The Confederated Tribes of the Warm Springs Reservation of Oregon (“Tribe”) in this action. I provide this declaration in support of the Tribe’s reply memorandum in support of its motion to dismiss this action.

2. I attach as Exhibit 1 the following excerpts from the Ownership and Operation Agreement for the Pelton and Round Butte Dams and Generating Facilities by The Confederated

Tribes of the Warm Springs Reservation of Oregon and Portland General Electric Company, dated January 1, 2002: Recitals, Article I (Definitions) in its entirety, and Article III, Section 3.1 (Operator).

3. I attach as Exhibit 2 the following excerpts from the Long-Term Global Settlement and Compensation Agreement between and among the Tribe, Portland General Electric Company, and the United States Department of the Interior: Recitals, Article I (Definitions) in its entirety, Article II (Treaty Reserved Rights) in its entirety, Article V, Section 5.3 (Operation of the Generating Unit in the Pelton Reregulating Dam), and Article VI (Natural Resource Regulation and Management By the Tribes) in its entirety.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 18, 2018



Josh Newton

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2018, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Oregon via the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system.

KARNOPP PETERSEN LLP

/s/ Josh Newton

Josh Newton, OSB# 983087

CERTIFICATE OF SERVICE

OWNERSHIP AND OPERATION AGREEMENT

FOR THE

**PELTON AND ROUND BUTTE DAMS
AND GENERATING FACILITIES**

BY

**THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF OREGON**

AND

PORTLAND GENERAL ELECTRIC COMPANY

**Dated as of January 1, 2002
12:15 a.m.**

1 This OWNERSHIP AND OPERATION AGREEMENT is dated as of January 1, 2002
 2 12:15 a.m. (this "Agreement") and is by and between The Confederated Tribes of the Warm
 3 Springs Reservation of Oregon, a federally recognized Indian tribe having a Constitution and
 4 Bylaws and Corporate Charter adopted pursuant to the terms of the Indian Reorganization Act
 5 including its governing body the Tribal Council (the "Tribes"), and Portland General Electric
 6 Company, an Oregon corporation ("PGE"). (The Tribes and PGE are each referred to
 7 individually herein as a "Party" and collectively as the "Parties").

8 RECITALS

9
 10 WHEREAS, the Tribes are a federally recognized Indian tribe organized under a
 11 constitution and bylaws ratified by the members of the Tribes on December 18, 1937, and
 12 approved by the Assistant Secretary of Interior of the United States on February 14, 1938,
 13 pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of
 14 June 15, 1935 (49 Stat. 378);

15 WHEREAS, the Tribes ratified on April 23, 1938 a corporate charter issued to them by
 16 Interior pursuant to Section 17 of such Act of June 18, 1934;

17 WHEREAS, pursuant to the foregoing authorities the Tribes exercise governmental and
 18 corporate powers over tribal lands within the boundaries of the Warm Springs Indian
 19 Reservation of Oregon (the "Tribal Lands") as such reservation is described in that certain Treaty
 20 between the United States of America and the Tribes and Bands of the Middle Oregon executed
 21 June 25, 1855 (12 Stat. 963);

22 WHEREAS, PGE is an electric utility engaged in generating, transmitting and
 23 distributing electric energy;

24 WHEREAS, the Tribes and PGE were parties to the 1955 Agreement pursuant to which
 25 (a) the Tribes granted PGE certain easements and rights necessary to the construction and
 26 operation of (i) the Pelton Dam and the Round Butte Dam and the generation and transmission
 27 facilities associated with such dams and (ii) the Pelton Reregulating Dam, and (b) (i) the
 28 compensation to be paid to the Tribes by PGE for such easements and rights was established and
 29 (ii) certain rights of the Tribes, including the right of the Tribes to construct, operate and
 30 maintain generation facilities in the Pelton Reregulating Dam were also established or affirmed;

31 WHEREAS, pursuant to the 1955 Agreement and Project License No. 2030 granted by
 32 the Federal Power Commission (now FERC), (a) PGE constructed, operates and maintains (i) the
 33 Pelton Dam and the Round Butte Dam and the generation and transmission facilities associated
 34 therewith and (ii) the Pelton Reregulating Dam, and (b) the Tribes constructed, operate and
 35 maintain the generation facilities in the Pelton Reregulating Dam;

36 WHEREAS, the Tribes and PGE entered into a Long-Term Global Settlement and
 37 Compensation Agreement, dated as of April 12, 2000, among themselves and Interior (the
 38 "Long-Term Global Settlement and Compensation Agreement") in order to establish their
 39 respective rights with respect to Project No. 2030 and their activities related thereto, including
 40 but not limited to all Compensation payable to the Tribes in connection therewith;

1 WHEREAS, pursuant to the Long-Term Global Settlement and Compensation
2 Agreement the Tribes have purchased from PGE an Undivided 33.33% Interest in the Pelton and
3 Round Butte Facilities;

4 WHEREAS, the Tribes and PGE desire to enter into a long-term agreement regarding the
5 ownership and operation of the Project which helps them mutually achieve long-term economic
6 benefits from the Project while addressing appropriately natural resources impacted by the
7 Project;

8 WHEREAS, the Tribes and PGE desire that such ownership and operation agreement
9 foster close working relationships and cooperation between them, and sound decision-making by
10 them, relative to the Project; and

11 WHEREAS, entering into this Agreement is required by the terms of the Long-Term
12 Global Settlement and Compensation Agreement.

13 NOW THEREFORE, in consideration of the premises and the representations,
14 warranties, covenants and agreements contained herein, the Parties hereto, intending to be legally
15 bound, hereby agree as follows:

16 ARTICLE I 17 DEFINITIONS

18 1.1 Definitions.

19 (1) Unless otherwise defined in this Agreement, terms defined in the Long-Term Global
20 Settlement and Compensation Agreement shall have the same meanings when used herein as in
21 such agreement. As used in this Agreement, the following terms shall have the meanings
22 specified in this Section 1.1:

23 (2) "Acquisition Loan" has the meaning set forth in Section 5.12.

24 (3) "Adjustment Amount" has the meaning assigned to that term in the Asset Purchase
25 Agreement.

26 (4) "Agreement" has the meaning set forth in the introductory paragraph hereof.

27 (5) "Applicable Law" has the meaning set forth in the Long-Term Global Settlement and
28 Compensation Agreement.

29 (6) "Capacity" means the rate at which electrical energy can be generated, expressed in
30 megawatts (MW).

31 (7) "Capital Additions" means additions, improvements and betterments to the Project.

32 (8) "Cause" has the meaning set forth in Section 3.1(f)(ii).

(9) "Claimable Event" has the meaning set forth in the Long-Term Global Settlement and Compensation Agreement.

(10) "Claiming Party" has the meaning set forth in the definition of "Force Majeure."

(11) "Claims" has the meaning set forth in the Long-Term Global Settlement and Compensation Agreement.

(12) "Costs of Capital Additions" means those costs incurred or to be incurred to effect Capital Additions.

(13) "Costs of Operation" means all costs attributable to the operation and maintenance of the Project, including administrative and general costs determined pursuant to Exhibit B and repairs, renewals and replacements necessary to assure design capability and reliability or that are required by any Governmental Authority. Costs of Operation shall not include either taxes based upon the income of either of the Owners or property taxes that are assessed exclusively on the property interests of only one of the Owners.

(14) "Cove Agreements" means (a) the Cove Replacement Agreement between PGE and PacifiCorp, dated as of June 2, 1961, pursuant to which PGE compensates PacifiCorp for inundation of PacifiCorp's Cove Project by the construction of the Pelton and Round Butte Facilities, (b) the Agreement between the United States Department of the Interior (Bureau of Reclamation), Pacific Power & Light Company and PGE dated June 2, 1961 whereby the Bureau of Reclamation became a beneficiary of the alternative power arrangements made in the Cove Replacement Agreement of the same date, (c) the Agreement Concerning Interconnection and Power Exchange dated as of November 1, 1963 and as amended June 27, 1974, between PGE and PacifiCorp and (d) the Round Butte/Cove Interconnection and Operation Agreement between PGE and PacifiCorp dated July 8, 1993.

(15) "Covered Claims" has the meaning set forth in Section 3.1(e)(iv).

(16) "Effective Budget" has the meaning ascribed to it in Section 3.6(a).

(17) "Effective Date" has the meaning set forth in Section 9.1.

(18) "Elective Capital Additions" means additions, improvements and betterments to the Project that are not required to assure design capability or reliability or that are not required by any Governmental Authority.

(19) "Energy" means kilowatt-hours (kWh).

(20) "Estimated Purchase Price" has the meaning assigned to that term in the Asset Purchase Agreement.

(21) "Force Majeure" means an event not anticipated as of the Effective Date which is not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party) claiming suspension (the "Claiming Party"), and which by the exercise of due diligence the Claiming Party is unable to overcome in a commercially reasonable manner

1 or obtain or cause to be obtained a commercially reasonable substitute performance therefor.
 2 Events of Force Majeure include, but are not restricted to: wrongful or negligent acts of the
 3 other Party; acts of God; fire, civil disturbance; labor dispute or labor shortages; strikes;
 4 sabotage; action or restraint by court order or Governmental Authority (so long as the Claiming
 5 Party has not applied for or assisted in the application for, and has opposed where and to the
 6 extent reasonable, such action or restraint); and inability after diligent application to obtain or
 7 maintain required permits, licenses, zoning or other required approvals from any Governmental
 8 Authority or other third-party Person whose consent is required as a condition to a Party's
 9 performance hereunder.

10 (22) "Governmental Authority" has the meaning set forth in the Long-Term Global
 11 Settlement and Compensation Agreement.

12 (23) "Implementation Effective Date" has the meaning set forth in Section 5.7.

13 (24) "Indemnified Owner" has the meaning set forth in Section 6.1(a).

14 (25) "Indemnifying Owner" has the meaning set forth in Section 6.1(a).

15 (26) "Index Value" has the meaning set forth in Section 5.4.

16 (27) "Long-Term Global Settlement and Compensation Agreement" has the meaning
 17 set forth in the recitals hereof.

18 (28) "Market Value" has the meaning set forth in Section 5.6.

19 (29) "Net Generating Capability" means the total amount of Energy which the Project
 20 is capable of generating, due allowance being made for legal, regulatory and physical constraints
 21 then existing, less the amount used in the production thereof.

22 (30) "Net Output" means the net amount of Capacity and Energy produced by the
 23 Project from time to time under the operating conditions then existing, including periods when
 24 some or all of the Project may be inoperable. "Net Output" is net of station use and after
 25 depletions required by the Original License or the New FERC License, as applicable, and other
 26 agreements and obligations from time-to-time, including obligations to supply Capacity and/or
 27 Energy pursuant to the Cove Agreements.

28 (31) "Off-Peak Hours" has the meaning set forth in Section 5.4.

29 (32) "Off-Peak Index Value" has the meaning set forth in Section 5.4.

30 (33) "On-Peak Hours" has the meaning set forth in Section 5.4.

31 (34) "On-Peak Index Value" has the meaning set forth in Section 5.4.

32 (35) "Operating Committee" means the committee established pursuant to Section
 33 3.2(a).

(36) "Operating Guidelines" means the Operating Guidelines for the Project attached hereto as Exhibit A (as they may be modified from time to time by the Operating Committee).

(37) "Operating Trust Account" means the bank account established by the Operator to receive and disburse funds pursuant to this Agreement as more specifically provided in Section 3.3(a).

(38) "Operator" means the entity appointed pursuant to Section 3.1 to operate the Project.

(39) "Owners" means PGE and the Tribes and their permitted successors and assigns, and any other Person that becomes a holder of an Ownership Share, by operation of law or otherwise, pursuant to the terms of this Agreement, provided, that no such Person shall succeed to or acquire the rights provided to Owners under this Agreement unless and to the extent (a) the assignment or transfer pursuant to which it acquired its Ownership Share is valid under the terms of this Agreement and (b) it becomes a Party to this Agreement by execution of this Agreement or by a written agreement, acceptable to a majority of the holders of the Ownership Shares and the Operator, to be bound by all of the terms and conditions hereof.

(40) "Ownership Share" means the respective ownership interest of an Owner expressed as a decimal fraction as specified in Section 2.1 as such may be altered or adjusted pursuant to this Agreement. In all cases Ownership Share shall be computed to two decimal places.

(41) "Permitted Claims" has the meaning set forth in Section 3.8(d).

(42) "Person" has the meaning set forth in the Long-Term Global Settlement and Compensation Agreement.

(43) "PGE" has the meaning set forth in the introductory paragraph hereof.

(44) "PGE's Allocation" means the percentage of the Project Rights to which PGE is entitled from time to time, as set forth in Article IV.

(45) "Power Purchase and Sale Agreement No.02-03-A" has the meaning set forth in Section 5.11.

(46) "Power Purchase and Sale Agreements" means the Wholesale Power Purchase and Sale Agreement No. 02-03-A and the Wholesale Power Purchase and Sale Agreement No. 02-06-A attached as Exhibit C hereto.

(47) "PRD Implementation Effective Date" has the meaning set forth in Section 5.9.

(48) "PRD Net Output" has the meaning set forth in Section 5.8.

(49) "Proceedings" has the meaning set forth in the Long-Term Global Settlement and Compensation Agreement.

1 (50) "Project" means the "Pelton and Round Butte Facilities", as defined in the Long-
2 Term Global Settlement and Compensation Agreement.

3 (51) "Project Rights" means generator capability, pondage, reservoir elevation limits,
4 inflows, minimum discharge, generator availability, reserves, load following, spill and all other
5 capability derived from the Project (specifically including capability which may not be
6 considered a "product" as of the Effective Date of this Agreement). "Project Rights" are net of
7 station use and after depletions required by the Original License or the New FERC License, as
8 applicable, and other agreements and obligations from time-to-time, including obligations to
9 supply Capacity and/or Energy pursuant to the Cove Agreements.

10 (52) "Prudent Utility Practice" means any of the practices, methods and acts engaged
11 in or approved by a significant portion of the electric utility industry prior to the action in
12 question or any of the practices, methods and acts, which, in the exercise of reasonable judgment
13 in light of the facts known at the time the decision was made, could have been expected to
14 accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and
15 expedition. Prudent Utility Practice shall apply not only to functional parts of the Project, but
16 also to appropriate structures, landscaping, painting, signs, lighting and other facilities and public
17 relations programs reasonably designed to promote public enjoyment, understanding and
18 acceptance of the Project. Prudent Utility Practice is not intended to be limited to the optimum
19 practice, method or act to the exclusion of all others, but rather to be a spectrum of possible
20 practices, methods or acts. Prudent Utility Practice shall also include those practices, methods
21 and acts that are required by Applicable Law and final orders or regulations of Governmental
22 Authorities having jurisdiction.

23 (53) "Purchase Price" has the meaning assigned to that term in the Asset Purchase
24 Agreement.

25 (54) "Reserve Account" has the meaning set forth in Section 5.14.

26 (55) "Right of First Refusal" has the meaning set forth in Section 12.2.

27 (56) "Scheduling Day" means those days on which the majority of the power market
28 participants in the geographic area of the Western Systems Coordinating Council (as such
29 geographic area is defined as of the Effective Date) schedule Energy, Capacity and other
30 products for future deliveries. (With limited exceptions, as of January 1, 2001 such Scheduling
31 Days are all days except Saturdays, Sundays and holidays).

32 (57) "Taxes" means any or all ad valorem, property, occupation, severance,
33 generation, first use, conservation, Btu or energy, transmission, utility gross receipts, privilege,
34 sales, use, consumption, excise, lease, transaction and other taxes or governmental charges,
35 licenses, fees, permits and assessments or increases therein, other than taxes based upon net
36 income or net worth.

37 (58) "Term" means the term of this Agreement as defined in Section 9.1.

38 (59) "Tribal Lands" has the meaning set forth in the recitals hereof.

1 (60) "Tribes" has the meaning set forth in the introductory paragraph hereof.

2 (61) "Tribes' Allocation" means the percentage of the Project Rights to which the
3 Tribes are entitled from time to time, determined as set forth in Article IV.

4 (62) "Tribes As Third Party" means the Tribes in their status not as an Owner, but
5 rather as a third party otherwise independent of the Project. For example, the Tribes would be a
6 third party relative to their status as the owner of the lumber mill in Warm Springs, but would
7 not be a third party relative to their status as an Owner of an undivided interest in the Project.

8 (63) "Tribes' Ownership Costs" means all of the actual, out-of-pocket costs incurred
9 by the Tribes relating to the Project which would be recognized by FERC were the Tribes
10 required to maintain accounts in accordance with the Uniform System of Accounts. Such costs
11 shall include all costs arising from the ownership, operation and maintenance of the Project and
12 the depreciation component of renewals and replacements for which the Tribes are required to
13 reimburse PGE pursuant to this Agreement. Such costs shall include debt service, return or and
14 of equity capital contributed by the Tribes using the same amortization schedule and rate of
15 return as those related to debt service, the costs of renewals and replacements, FERC fees,
16 payments in lieu of Taxes, insurance and reasonable administrative costs incurred directly by the
17 Tribes. Tribes' Ownership Costs shall also include all the prorations identified in Section 3.6(a)
18 of the Asset Purchase Agreement.

19 (64) "Uniform System of Accounts" means the Uniform System of Accounts
20 prescribed by FERC for electric utilities and hydroelectric licensees as in effect from time to
1 time.

22 1.2 Interpretations.

23 In this Agreement, unless clear contrary intention appears: (a) the singular number
24 includes the plural number and vice versa; (b) reference to any person includes such person's
25 successors and assigns but, if applicable, only if such successors and assigns are permitted by
26 this Agreement, and reference to a person in a particular capacity excludes such person in any
27 other capacity; (c) reference to any gender includes each other gender; (d) reference to any
28 agreement (including this Agreement), document or instrument means such agreement,
29 document or instrument as amended or modified and in effect from time to time in accordance
30 with the terms thereof and, if applicable, the terms hereof; (e) reference to any Article, Section,
31 Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and
32 references in any Article, Section, Schedule, Exhibit or definition to any clause means such
33 clause of such Article, Section, Schedule, Exhibit or definition; (f) "hereunder", "hereof",
34 "hereto", "herein" and words of similar import are reference to this Agreement as a whole and
35 not to any particular Section or other provision hereof; (g) relative to the determination of any
36 period of time, "from" means "from and including", "to" means "to but excluding" and
37 "through" means "through and including"; (h) "including" (and with correlative meaning
38 "include") means including without limiting the generality of any description proceeding such
39 term; and (i) reference to any law (including statutes and ordinances) means such law as
40 amended, modified, codified or reenacted, in whole or in part, and in effect from time to time,
1 including rules and regulations promulgated thereunder.

1 AGREEMENT, THE OWNERS SHALL NOT BE CONSIDERED FIDUCIARIES OR TO
 2 HAVE ESTABLISHED A CONFIDENTIAL RELATIONSHIP, BUT RATHER SHALL BE
 3 FREE TO ACT ON AN ARM'S LENGTH BASIS IN ACCORDANCE WITH THEIR OWN
 4 RESPECTIVE SELF-INTEREST, SUBJECT, HOWEVER, TO THE OBLIGATIONS OF THE
 5 OWNERS TO ACT IN GOOD FAITH IN THEIR DEALINGS WITH EACH OTHER WITH
 6 RESPECT TO ACTIVITIES HEREUNDER.

7 (d) Each Owner and its designees shall have the right to go upon and into the
 8 Project at any time, subject to the necessity of efficient and safe construction and operation of the
 9 Project; but the Operator alone shall have possession and control of the Project for and on behalf
 10 of all of the Owners.

11 2.5 Round Butte Switching Station 230 kV Main Bus.

12 (a) The Tribes shall have the right, without Operating Committee approval, to
 13 install a 230kV line position in the Round Butte switching station, to connect such line position
 14 to the Round Butte Switching Station 230kV Main and Auxiliary Bus and to operate such line
 15 position. Design and operation of such line position shall be in accordance with Prudent Utility
 16 Practice and all applicable standards of the Operator, and the Tribes shall obtain the Operator's
 17 approval for the design and protection scheme for the line position. PGE shall have no right to
 18 use such line position and shall not be required to pay for any of the costs thereof. The Tribes
 19 shall compensate PGE equitably for any costs and losses incurred by PGE in connection with the
 20 installation of the line position and the connection of such line position to the Round Butte
 21 Switching Station 230kV Main and Auxiliary Bus.

22 (b) PGE shall have the right, without Operating Committee approval, to
 23 modify the Round Butte Switching Station 230kV Main Bus to increase the capacity of such bus.
 24 Design of such modifications to achieve the capacity increase shall be in accordance with
 25 Prudent Utility Practice and all applicable standards of the Operator, and PGE shall obtain the
 26 Operator's approval for the design and protection scheme for the modifications. The Tribes shall
 27 not have the right to participate in, or utilize, the increase in capacity and shall not be required to
 28 pay for any of the costs thereof. The Tribes shall modify the line position described in Section
 29 2.5(a) above if necessary to accommodate the modifications to achieve the capacity increase.
 30 PGE shall compensate the Tribes equitably for any costs (including costs related to any
 31 necessary modification of the Tribes' line position, both at the time of the capacity increase and
 32 thereafter) and losses incurred by the Tribes in connection with any modification of the Round
 33 Butte Switching Station 230kV Main Bus to increase the capacity of such bus.

34 ARTICLE III 35 OPERATION

36 3.1 Operator.

37 (a) Appointment of PGE as Operator. In order to provide unified
 38 management of the Project, each Owner authorizes and designates PGE alone as operator (the
 39 "Operator") to operate and maintain the Project under the terms of this Agreement; provided that

PGE shall not be deemed to have the status or responsibility of an independent consultant, contractor or engineer.

(b) Rights and Duties of the Operator. The Operator, as agent for and on behalf of the Owners, shall, in accordance with Prudent Utility Practice, this Agreement, the Operating Guidelines, any manufacturer's warranty requirements and all Applicable Laws, orders, permits and licenses, now or hereafter in effect:

(i) operate and maintain the Project;

(ii) represent the Owners with Governmental Authorities on all Project matters within the scope of the Operator's responsibilities hereunder;

(iii) take any and all actions necessary or appropriate to comply with such Applicable Laws, orders, permits and licenses, now or hereafter in effect;

(iv) hire all Project personnel; and

(v) pay all Costs of Operation.

Subject to the foregoing, the Operator shall operate and maintain the Project so as to produce, where practicable and consistent with Prudent Utility Practice and the terms of this Agreement, the amounts of Energy which may be scheduled by the Owners as provided herein. The Operator is hereby granted and shall have the rights and powers to do everything necessary, proper and customary, in the ordinary course of business, to fulfill its obligations and effectuate its role as Operator, including the power to enter into contracts with third parties for and in behalf of the Owners, the power to make and receive payments, the power to initiate, compromise or settle claims with third parties, the power to act as agent in its own name and the power to appoint subagents. The Operator shall negotiate any contracts entered into with unions and set wage scales for nonunion personnel.

(c) Licensing. The Operator shall, in consultation with the Operating Committee, diligently pursue whatever action is necessary or appropriate to obtain and maintain all FERC, Oregon and general licenses, permits and other rights and regulatory approvals necessary to operation of the Project for itself and in behalf of the Owners. The Owners acknowledge that there is no assurance that such permits, licenses and approvals will be retained or obtained.

(d) Communications by Operator to Owners. The Operator shall inform each of the Owners of all material matters necessary to enable all the Owners to participate meaningfully in decision-making related to the Project. The Operator shall provide such information reasonably in advance of any actions or decisions to be made by the Operating Committee, subject to the circumstances thereof. The Operator shall accommodate to the extent reasonably possible reasonable requests for additional information and reasonable requests to discuss matters with the Tribal Council and other representatives of the Tribes.

The Operator shall present to each of the Owners a written report describing any event related to the Project which (x) involved a failure to operate the Project in accordance with

Prudent Utility Practice, this Agreement or the Operating Guidelines or (y) resulted in, or created a significant risk of, either serious injury to a Project employee or member of the public; serious damage to fish, wildlife or other environmental interests; or material economic injury to an Owner. The Operator shall also discuss with the Operating Committee any measures it proposes to prevent or mitigate any similar events in the future. No failure to provide such a report shall by itself either be an event of default or prejudice the Operator's status as the Operator if the Operator's actions were not in bad faith.

(e) Limitations on Compensation and Liability of Operator; Limited Indemnification by Operator. The Tribes acknowledge that were PGE or any other entity to be exposed to significant potential liability to the Tribes arising from the role of Operator, PGE or such other entity would insist upon being adequately compensated by the Tribes for accepting such risk. PGE is willing to perform the role of Operator without compensation other than reimbursement of its expenses and costs, including overhead, as provided in Section 3.4, provided PGE's liability to the Tribes arising or resulting from its role as Operator is substantially limited both with respect to the kind and amount of damages to which it might be exposed. As provided in this Section 3.1(e), the Tribes and PGE intend to limit substantially PGE's potential liability arising from PGE's role as Operator, purchase insurance to mitigate some risks, allocate some risks to the Owners collectively as Costs of Operation and allocate other risks to the Owners individually. To achieve a fair balance of cost and risk allocation, the Owners agree as follows.

(i) The Tribes and PGE agree that PGE shall act without compensation in its role as the Operator of the Project other than reimbursement of its expenses and costs, including overhead, as provided in Section 3.4.

(ii) The Tribes acknowledge therefore that, under the terms of this Agreement, PGE is not being compensated, as would be an independent provider of operating services, for any risk that it would be liable to the Tribes for any failure of its performance to satisfy any contractual or tort standard.

(iii) In behalf of the Tribes and PGE as Owners, PGE as Operator shall procure and maintain the insurance coverage described in Section 11.1 related to Project property and equipment in the same manner as the Operator insures its other owned and operated like facilities.

(iv) PGE as Operator shall procure and maintain the insurance coverage described in Section 11.2 related to workers' compensation, general liability and automobile liability in the amounts specified in Section 11.2. To the extent, and only to the extent, any claims, demands, losses, liabilities, and expenses (including reasonable attorneys' fees) are covered by the insurance obtained pursuant to Section 11.2, both with respect to scope of coverage and dollar limits of coverage (collectively, "Covered Claims"), PGE as Operator agrees to indemnify and hold harmless the Tribes from and against all such Covered Claims.

(v) To the extent not covered by the insurance described in Sections 11.1 and 11.2, the Tribes hereby waive any and all Claims whether in contract, warranty, tort (including PGE negligence), strict liability or otherwise, against PGE, its employees, officers, agents or Affiliates related to the role of Operator with respect to all risks of physical damage to property and equipment part of or in any way related to the Project, worker's compensation, general liability for personal and bodily injury and property damage (including damages to the property of the Tribes As Third Party), automobile liability and all other risks described in Sections 11.1 and 11.2.

(vi) The following amounts shall be treated as Costs of Operation and therefore shared by the Owners in accordance with their Ownership Shares:

- (A) Any self-insurance or deductible amounts for damages otherwise covered under any of the policies described in Sections 11.1 and 11.2;
- (B) Any amounts for damages otherwise covered under any of the policies described in Sections 11.1 and 11.2 that are in excess of the policy limits;
- (C) Any amounts for risks not covered by the policy described in Section 11.1;
- (D) Damages paid to third parties other than the Tribes As Third Party, including on account of risks not covered by the insurance in subsection (iv) above or excluded by that insurance, as provided in Section 3.8(c) below; and
- (E) Damages paid to the Tribes As Third Party, as provided in Section 3.8(d) below.

(vii) The Tribes and PGE agree that they shall separately and individually bear the risks of non-operation and reduced operation of the Project and that they shall separately and individually make determinations whether they desire to procure insurance to cover risks related to special, incidental, exemplary or consequential damages including, but not limited to, loss of profits or revenue, loss of use of the Project or any associated equipment, cost of capital, cost of purchased power, cost of substitute equipment, facilities or services, downtime costs, or Claims of customers of Tribes for such damages and such Claims from Tribes' customers. None of the foregoing damages shall be treated as Costs of Operation.

(viii) In the event any of the foregoing provisions of this Section 3.1(e) with respect to limitations on PGE's potential liability arising from the role of Operator are held unenforceable in whole or in part for any reason, THE TRIBES AGREE THAT IN NO EVENT SHALL PGE, ITS EMPLOYEES, OFFICERS, AGENTS OR AFFILIATES BE LIABLE TO THE TRIBES WITH RESPECT

TO PUBLIC LIABILITY FOR PERSONAL AND BODILY INJURY AND PROPERTY DAMAGE, ALL RISKS OF PHYSICAL DAMAGE TO PROPERTY AND EQUIPMENT THAT IS PART OF THE PROJECT, WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY AND ALL OTHER RISKS COVERED BY THE INSURANCE DESCRIBED IN SECTIONS 11.1 AND 11.2, DURING ANY PERIOD OF TWELVE (12) CONSECUTIVE MONTHS FOR AN AMOUNT IN EXCESS OF THE AGGREGATE PAYMENTS PGE HAS RECEIVED FROM THE TRIBES UNDER THIS AGREEMENT DURING SUCH TWELVE (12) MONTH PERIOD AS REIMBURSEMENT ON ACCOUNT OF PGE'S LABOR AND OTHER INTERNAL COSTS, INCLUDING OVERHEAD, INCURRED AS OPERATOR OF THE PROJECT.

(ix) Consistent with the agreements expressed in paragraphs (i) and (vii) of this Section 3.1(e) and the acknowledgment expressed in Section 3.1(e) above, THE TRIBES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON CONTRACT LAW, IN NO EVENT SHALL PGE FROM ITS ROLE AS OPERATOR BE LIABLE TO THE TRIBES HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED. This Section 3.1(e)(ix) shall not apply to Covered Claims for which PGE has indemnified the Tribes pursuant to Section 3.1(e)(iv) and to Claims by the Tribes As Third Party brought against the Project, as opposed to PGE in its role as Operator.

(x) Consistent with the agreements expressed in paragraphs (i) and (vii) of this Section 3.1(e) and the acknowledgment expressed in Section 3.1(e) above, THE TRIBES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON TORT LAW, IN NO EVENT SHALL PGE FROM ITS ROLE AS OPERATOR BE LIABLE TO THE TRIBES HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM A PARTY'S SOLE, JOINT OR CURRENT NEGLIGENCE, GROSS NEGLIGENCE OR RECKLESS CONDUCT. This Section 3.1(e)(x) shall not apply to Covered Claims for which PGE has indemnified the Tribes pursuant to Section 3.1(e)(iv) and to Claims by the Tribes As Third Party brought against the Project, as opposed to PGE in its role as Operator.

(xi) To the extent the foregoing limitations of liability and exclusions of damages described in paragraphs (ix) and (x) of this Section 3.1(e) are for any

reason determined to be ineffective by a court of competent jurisdiction, the Parties stipulate that the calculation of damages for those claims which survive the limitations and exclusions specifically set forth in paragraphs (ix) and (x) shall be no greater than \$500,000 per Claim.

(f) Replacement of Operator. The Operator may be replaced only as provided in this Section 3.1(f).

(i) The Operator may be replaced without cause by majority vote of total Ownership Shares; provided that no replacement of an Operator without "Cause" (as defined below) shall become effective earlier than four (4) years from the date of such vote unless the existing Operator consents to an earlier date. No proposal to replace the Operator without Cause may be submitted to arbitration pursuant to this Section 3.1(f) or otherwise, and the vote of the Operating Committee shall be final, conclusive and binding on the Owners for all purposes.

(ii) Any Party may propose to the Operating Committee that the Operator be replaced for "Cause." "Cause" for this purpose means the existence of all three of the following conditions:

(A) The Operator has failed on at least three (3) occasions within the immediately preceding five year period to operate the Project in accordance with Prudent Utility Practice, this Agreement or directions of the Operating Committee;

(B) At least three (3) of the events referred to in Section 3.1(f)(ii)(A) have resulted in, or created a significant risk of, either serious injury to a Project employee or member of the public; serious damage to fish, wildlife or other environmental interests; or material economic injury to an Owner; and

(C) The Operator has failed to present to the Operating Committee a plan that provides reasonable assurance that the Operator will in the future operate the Project in accordance with Prudent Utility Practice, this Agreement and directions of the Operating Committee.

Replacement of the Operator for Cause shall require (x) "Cause", as defined above, and (y) a vote of members of the Operating Committee representing at least 65% of the total Ownership Shares. Any Owner may submit the result of such vote to arbitration utilizing the procedures specified in Section 3.2(g) below; provided, however, the arbitrator may approve the proposal to remove the Operator for Cause if, and only if, the arbitrator issues a written decision including findings of fact that all of the elements of Cause set forth above were established by clear and convincing evidence.

1 (iii) If the Operator is replaced, whether or not for Cause, it shall be
2 entitled to be reimbursed as Costs of Operation the reasonable costs it incurs as a
3 result of such replacement (e.g., employee severance costs).

4 (iv) The Operator may resign its duties as Operator at any time;
5 provided that no such resignation shall become effective earlier than one (1) year
6 from the date of notice thereof to all the Owners unless all the Owners consent to
7 an earlier date. If the Operator resigns it shall not be entitled to reimbursement of
8 the costs it incurs as a result of such resignation.

9 (v) In the event the Operator is replaced or resigns pursuant to this
10 Section 3.1(f), the Operating Committee shall select a new Operator and enter into
11 a contract with such new Operator by vote of seventy-five per cent (75%) of the
12 Ownership Shares; provided, however, that the Operating Committee may only
13 select as the new Operator an Affiliate of an Owner by a unanimous vote of the
14 Ownership Shares. Any Owner that disapproves any such selection may submit
15 the selection to arbitration utilizing the procedures specified in Section 3.2(g)
16 below. The arbitrator shall approve the selection unless the arbitrator issues a
17 written decision including findings of fact that one or more of the following
18 conditions has been established by clear and convincing evidence:

19 (A) The proposed Operator lacks reasonable experience in the
20 operation and maintenance of hydroelectric generating
21 stations;

22 (B) The proposed Operator has a record of serious failures to
23 operate other hydroelectric generating stations in
24 accordance with Prudent Utility Practice; or

25 (C) The proposed Operator has a history of dishonesty, willful
26 misconduct or serious violations of environmental laws or
27 regulations which provides a strong basis to conclude that
28 the Operator will not operate the Project in accordance with
29 Prudent Utility Practice, this Agreement or directions of the
30 Operating Committee.

31 (vi) An existing Operator that is an Owner may only assign its role as
32 Operator to an entity to which such Owner transfers all of its Ownership Shares.
33 Any Owner that objects to such assignment of the Operator role may, within thirty
34 (30) days' of the date of such notice, submit such assignment of the Operator role
35 to arbitration utilizing the procedures specified in Section 3.2(g) below. The
36 arbitrator shall approve the assignment unless the arbitrator issues a written
37 decision including findings of fact that one or more of the following conditions
38 has been established by clear and convincing evidence:

- 1 (A) The proposed Operator lacks reasonable experience in the
2 operation and maintenance of hydroelectric generating
3 stations;
- 4 (B) The proposed Operator has a record of serious failures to
5 operate other hydroelectric generating stations in
6 accordance with Prudent Utility Practice; or
- 7 (C) The proposed Operator has a history of dishonesty, willful
8 misconduct or serious violations of environmental laws or
9 regulations which provides a strong basis to conclude that
10 the Operator will not operate the Project in accordance with
11 Prudent Utility Practice, this Agreement or directions of the
12 Operating Committee.

13 (vii) Any determination by the arbitrator to prohibit the assignment of
14 the role of Operator shall not adversely affect any otherwise valid assignment of
15 the Ownership Share of the Owner that is also the Operator if such latter
16 assignment is valid pursuant to Section 12.1; provided, however, that the assignee
17 of such Ownership Share shall then not be entitled to propose that it become the
18 new Operator. If the arbitrator determines consistent with Section 3.1(f)(vi) to
19 prohibit the assignment of the role of Operator and the Owner that is also the
20 Operator nevertheless consummates the assignment of its Ownership Share, then
21 the Operator shall offer to the Owners to continue to perform as Operator under
22 the terms and conditions of this Agreement for a period of no greater than one
23 year from the date of such arbitrator's decision. Any acceptance of such offer
24 shall be by majority vote of the Ownership Shares of all Owners not assigning
25 their shares.

26 (viii) The Parties acknowledge that if a new Operator is installed other
27 than as a result of assignment of PGE's role as Operator that it will likely be
28 necessary to negotiate and execute a contract with such new Operator which
29 includes provisions for compensation and risk allocation that could be
30 significantly different than those provided for in this Ownership and Operation
31 Agreement. The Owners agree that in the event the Owners enter into such a
32 contract with a new Operator, then all provisions in this Agreement related to the
33 compensation of the Operator and limitations on the liability of the Operator shall
34 thereafter be void relative to the new Operator.

35 (g) Ratification of PGE's Prior Acts. The Tribes hereby ratify and approve all
36 contracts entered into by PGE and all actions taken by PGE with respect to the Project which
37 were entered into or taken by PGE prior to the Effective Date of this Agreement, including the
38 Long-Term Global Settlement and Compensation Agreement.

1 This LONG-TERM GLOBAL SETTLEMENT AND COMPENSATION
 2 AGREEMENT, is dated as of April 12, 2000 (this "Agreement"), and is by and among
 3 The Confederated Tribes of the Warm Springs Reservation of Oregon, a federally
 4 recognized Indian tribe having a Constitution and Bylaws and Corporate Charter adopted
 5 pursuant to the terms of the Indian Reorganization Act (the "Tribes"), the United States
 6 Department of the Interior, acting by and through the Secretary of the United States
 7 Department of the Interior (collectively, "Interior"), and Portland General Electric
 8 Company, an Oregon corporation ("PGE"). (The Tribes, Interior and PGE are each
 9 referred to individually herein as a "Party" and collectively as the "Parties").

10 RECITALS

11
 12 WHEREAS, the Tribes are a federally recognized Indian tribe organized under a
 13 constitution and bylaws ratified by the members of the Tribes on December 18, 1937, and
 14 approved by the Assistant Secretary of the Interior of the United States on February 14,
 15 1938, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by
 16 the Act of June 15, 1935 (49 Stat. 378);

17 WHEREAS, the Tribes ratified on April 23, 1938 a corporate charter issued to
 18 them by Interior pursuant to Section 17 of such Act of June 18, 1934;

19 WHEREAS, pursuant to the foregoing authorities the Tribes exercise
 20 governmental and corporate powers over tribal lands and resources within the boundaries
 21 of the Warm Springs Indian Reservation of Oregon (the "Tribal Lands") as such
 22 reservation is described in that certain Treaty between the United States of America and
 23 the Tribes and Bands of Middle Oregon executed June 25, 1855 (12 Stat. 963);

24 WHEREAS, PGE is an electric utility engaged in generating, transmitting and
 25 distributing electric energy to approximately 700,000 retail customers in the State of
 26 Oregon;

27 WHEREAS, the Tribes and PGE are parties to an agreement, dated December 22,
 28 1955, as amended February 16, 1961 (the "1955 Agreement"), attached hereto as
 29 Exhibit A;

30 WHEREAS, pursuant to the 1955 Agreement, (a) the Tribes granted PGE certain
 31 easements and rights necessary to the construction and operation of (i) the Pelton Dam
 32 and the Round Butte Dam and the generation and transmission facilities associated
 33 therewith and (ii) the Pelton Reregulating Dam, and (b) (i) the compensation to be paid to
 34 the Tribes by PGE for such easements and rights was established and (ii) certain rights of
 35 the Tribes, including the right of the Tribes to construct, operate and maintain generation
 36 facilities in the Pelton Reregulating Dam were also established or affirmed;

37 WHEREAS, pursuant to the 1955 Agreement, and the license for Project
 38 No. 2030 as granted and amended by the Federal Power Commission (predecessor of the
 39 Federal Energy Regulatory Commission) ("FERC"), (a) PGE constructed, operates and
 40 maintains (i) the Pelton Dam, the Round Butte Dam and the generation and transmission

1 facilities associated therewith and (ii) the Pelton Reregulating Dam, and (b) the Tribes
 2 constructed, operate and maintain the generation facilities in the Pelton Reregulating
 3 Dam and the transmission facilities associated therewith. (The Pelton Dam, the Round
 4 Butte Dam and the generation and transmission facilities associated therewith, together
 5 with the Pelton Reregulating Dam and the generation facilities therein, and all related
 6 facilities and licenses are collectively referred to herein as "Project No. 2030");

7 WHEREAS, the Tribes and PGE are co-licensees of the Original License (as
 8 defined below) for Project No. 2030, "to the extent of their interests", and such Original
 9 License expires December 31, 2001, and if FERC has not issued a new long-term license
 10 by that date, then it will issue annual licenses to the Tribes and PGE as co-licensees until
 11 the issuance of such new license;

12 WHEREAS, pursuant to Section 10(e) ("Section 10(e)") of the Federal Power
 13 Act, as amended (the "Federal Power Act") (16 U.S.C. 803(e)), FERC is authorized, with
 14 the approval of the Indian tribe having jurisdiction of such lands, (a) to fix a reasonable
 15 annual charge for use of tribal lands used by a FERC-licensed hydroelectric project and
 16 (b) to readjust such charge periodically during the term of such license;

17 WHEREAS, the Tribes and PGE have in the past disagreed about the appropriate
 18 level of compensation to be paid to the Tribes by PGE pursuant to the 1955 Agreement
 19 and Section 10(e), and these disagreements led to disputes between the Tribes and PGE
 20 before various arbitration panels, FERC, the United States District Court for the District
 21 of Oregon, the United States Court of Appeals for the Ninth Circuit and the Warm
 22 Springs Tribal Court;

23 WHEREAS, the Parties entered into a Settlement Agreement dated February 6,
 24 1985 (the "1985 Settlement Agreement"), attached hereto as Exhibit B, which resolved
 25 their then-existing disputes and established the compensation to be paid to the Tribes by
 26 PGE through December 31, 2001;

27 WHEREAS, as required by Section 15 of the Federal Power Act (16 U.S.C. 808)
 28 and the FERC regulations thereunder (18 C.F.R. 16.6), on December 9, 1996, PGE filed a
 29 notice of intent to file an application for a new FERC license for Project No. 2030
 30 effective at the end of the current license. On December 28, 1998, pursuant to FERC
 31 regulations (18 C.F.R. 16.8) PGE initiated second-stage consultation for its application
 32 by circulating its draft application for such new license to the Tribes and to the
 33 appropriate federal, state and local agencies, and to certain nongovernmental
 34 organizations. On December 16, 1999 PGE filed its final application for a new FERC
 35 license for Project No. 2030 effective at the end of the current license. As required by
 36 these same provisions, on December 26, 1996, the Tribes filed a notice of intent to file a
 37 competing application for such Project No. 2030 license. On April 5, 1999 the Tribes
 38 initiated second-stage consultation for its application by circulating its draft application
 39 for such new license to PGE and to the appropriate federal, state and local agencies, and
 40 to certain nongovernmental organizations. On December 17, 1999 the Tribes filed their
 41 final application for a new FERC license for Project No. 2030 effective at the end of the
 42 current license;

1 WHEREAS, on March 11, 1998, the Tribal Council of the Tribes enacted
 2 Ordinance No. 77, titled "Hydroelectric Licensing and Regulation Ordinance" (the
 3 "Tribes' Hydroelectric Ordinance") relating to the development and operation of
 4 hydroelectric projects affecting the Warm Springs Reservation and off-reservation
 5 reserved interests;

6 WHEREAS, pursuant to various sections of the Federal Power Act, FERC has
 7 authority to impose conditions on original and subsequent licenses for hydroelectric
 8 projects subject to its jurisdiction;

9 WHEREAS, pursuant to Section 4(e) ("Section 4(e)") of the Federal Power Act,
 10 (16 U.S.C. 797(e)) the Secretary of the Interior has authority to require FERC to include
 11 in hydroelectric licenses within reservations of the United States such conditions as the
 12 Secretary deems necessary for the adequate protection and utilization of such
 13 reservations;

14 WHEREAS, the Tribes and PGE desire, subject to the terms and conditions
 15 provided in this Agreement, to enter into a long-term comprehensive agreement in order
 16 to (a) provide for their respective rights and obligations with respect to Project No. 2030
 17 from and after the Effective Date of this Agreement, including all manner and means of
 18 consideration of any kind to be provided to the Tribes in connection with Project No.
 19 2030 and PGE's activities related thereto for the duration of the new long-term FERC
 20 license for such project, (b) minimize the potential for future disagreements between
 21 them with respect to Project No. 2030 arising from the matters addressed in this
 22 Agreement, including with respect to such consideration, (c) avoid the incremental
 23 expenses and damage to their relationship which could result from a continued contest
 24 between them as to which of them should become the new licensee for Project No. 2030
 25 at the expiration of the current license term and (d) settle all existing disputes,
 26 controversies and Claims (as defined below) between them;

27 WHEREAS, the Tribes have expressed the desire to acquire an ownership interest
 28 in the Pelton and Round Butte Facilities (as defined below) in lieu of cash or other
 29 consideration including all manner and means of consideration of any kind to be provided
 30 to the Tribes in connection with Project No. 2030 and PGE's activities related thereto for
 31 the duration of the new long-term FERC license for such project;

32 WHEREAS, if PGE transfers such ownership interest to the Tribes pursuant to
 33 this Agreement in lieu of cash or other consideration of any kind to be provided to the
 34 Tribes including all manner and means of consideration of any kind to be provided to the
 35 Tribes in connection with Project No. 2030 and PGE's activities related thereto for the
 36 duration of the new long-term FERC license for such project, the Tribes have agreed to
 37 provide to PGE the assurances set forth in this Agreement that the Tribes will not seek
 38 under any circumstances, and will be legally unable to seek in any forum, any other or
 39 further consideration in connection with Project No. 2030 and PGE's activities related
 40 thereto other than that which is expressly provided for in this Agreement;

1 WHEREAS, to achieve these objectives, the Tribes and PGE have negotiated in
 2 good faith for several years the potential terms and conditions of such a long-term
 3 comprehensive agreement, and the Tribes and PGE believe this Agreement will achieve
 4 such objectives;

5 WHEREAS, the members of the Tribes by vote at an election held March 28,
 6 2000, ratified the terms of this Agreement;

7 WHEREAS, Interior, acting to fulfill its trust responsibility to the Tribes and its
 8 authorities under the Federal Power Act on behalf of the Tribes, has determined that this
 9 Agreement is in the Tribes' interest; and

10 NOW THEREFORE, in consideration of the premises and the representations,
 11 warranties, covenants and agreements contained herein, the Parties hereto, intending to be
 12 legally bound, hereby agree as follows:

13 ARTICLE I 14 DEFINITIONS

15 1.1 Definitions.

16 As used in this Agreement, the following terms shall have the meanings specified
 17 in this Section 1.1:

18 (1) "1955 Agreement" has the meaning set forth in the recitals hereof.

19 (2) "1985 Settlement Agreement" has the meaning set forth in the recitals
 20 herof.

21 (3) "Additional Compensation" means any Compensation beyond that
 22 described in Article V of this Agreement.

23 (4) "Affiliate" means, with respect to any Person, any other Person directly or
 24 indirectly controlling or controlled by, or under direct or indirect control with, such
 25 Person. For purposes of this definition, the term "control" shall mean the possession,
 26 directly or indirectly, of the power to direct or cause the direction of the management
 27 policies of such Person, whether through the ownership of voting securities or by contract
 28 or otherwise.

29 (5) "Agreement" has the meaning set forth in the introductory paragraph
 30 herof.

31 (6) "Applicable Law" means all laws, statutes, rules, regulations, ordinances
 32 and other pronouncements having the effect of law of the United States, any tribal
 33 government, any foreign country or any domestic or foreign state, county, city or other
 34 political subdivision or of any Governmental Authority.

1 (7) "Asset Purchase Agreement" means the Asset Purchase Agreement,
 2 effective as of the Transfer Date, between the Tribes and PGE, attached hereto as Exhibit
 3 C.

4 (8) "Business Day" means any day other than Saturday, Sunday, a legal
 5 holiday or a day on which banking institutions in Portland, Oregon are authorized by law
 6 or other governmental action to close.

7 (9) "Claimable Event" means a non-fortuitous event for which insurance is
 8 generally available commercially and that results in demonstrated bodily or personal
 9 injury or property damage.

10 (10) "Claims" means liabilities, obligations, losses, damages, penalties, claims
 11 (including without limitation claims involving liability in tort, strict liability or
 12 otherwise), actions, suits, judgments, costs, expenses and disbursements (including
 13 without limitation attorney fees and expenses) of any kind and nature whatsoever without
 14 any limitation as to amount.

15 (11) "Clean Water Act" means 33 U.S.C. 1251 et seq.

16 (12) "Closing" shall have the meaning set forth in Section 11.8.

17 (13) "Closing Date" means the date which is the later of (a) two (2) Business
 18 Days following the date upon which all of the conditions to each of the Parties' respective
 19 obligations hereunder as set forth in Article XI shall have been satisfied or waived or (b)
 20 such other date as the Parties may mutually agree and upon which the Closing actually
 21 takes place.

22 (14) "Compensation" means the transfer relative to Project No. 2030, directly
 23 or indirectly, of any consideration from PGE to the Tribes or any of its members, or to
 24 Interior for the benefit of the Tribes or any of its members, or to any third party for the
 25 benefit of the Tribes or any of its members, but does not include:

26 (i) Any payment to the Tribes or its members for damages or
 27 injury to persons or property of their members resulting from a Claimable
 28 Event as defined above;

29 (ii) Any payments to the Tribes for damages resulting from a
 30 breach by PGE of this Agreement or any of the Included Agreements;

31 (iii) Any payments to the Tribes or its members for damages or
 32 injury to persons or property of their members resulting from any
 33 negligent operation by PGE of the Transmission Facilities;

34 (iv) Any payments to the Tribes or its members for services
 35 rendered which are not required to be performed by the Tribes or its
 36 members pursuant to this Agreement, but which are nevertheless requested
 37 in writing by PGE;

- 1 (v) The costs of implementing FERC Licensing Orders (as
2 defined below);
- 3 (vi) The payment of any fee described in Section 5.9(f);
- 4 (vii) The payment of any penalty described in Section 5.9(i);
- 5 (viii) Any payment(s) to the Tribes or its members for damages
6 to Treaty Reserved Rights;
- 7 (ix) Any payment to the Tribes or its members resulting from
8 the criminal misconduct of PGE, its officers, employees and agents or
9 from other misconduct of PGE, its officers, employees and agents which
10 results from an express intention to damage the Tribes or its members.
- 11 Notwithstanding Section 1.1(14)(v) above, "Compensation" does include the
12 costs specified in Section 5.10(e) as being borne exclusively by the Tribes and for which
13 the Tribes are to reimburse PGE pursuant to Section 10.3(d) if PGE pays them initially.
- 14 (15) "Effective Date" means the date of execution of this Agreement by all
15 Parties hereto.
- 16 (16) "Endangered Species Act" means 16 U.S.C. 1531 et seq.
- 17 (17) "Escrow Agent" means the agent appointed pursuant to the Escrow
18 Agreement.
- 19 (18) "Escrow Agreement" means the Escrow Agreement, dated as of the
20 Closing Date, between the Tribes and PGE, attached hereto as Exhibit I providing for the
21 release to the Tribes of the conveyances for the Undivided 33.33% Interest on December
22 31, 2001, subject to payment of the purchase price therefor as provided in the Asset
23 Purchase Agreement.
- 24 (19) "Federal Power Act" has the meaning set forth in the recitals hereof.
- 25 (20) "FERC" has the meaning set forth in the recitals hereof.
- 26 (21) "FERC Approval" has the meaning set forth in Section 10.1(a).
- 27 (22) "FERC Licensing Orders" means all orders issued by FERC related to
28 Project No. 2030.
- 29 (23) "Final Order" means an order of any regulatory body having jurisdiction
30 over a matter and for which there is no longer any opportunity for administrative or
31 judicial review of such order.
- 32 (24) "First Purchase Option" has the meaning set forth in Section 5.6(a).
- 33 (25) "Fish and Wildlife Coordination Act" means 16 U.S.C. 661 et seq.

1 (26) "Governmental Authority" means any court, tribunal, arbitrator, authority,
 2 agency, commission, official or other instrumentality of the United States, any foreign
 3 country or any domestic or foreign state, county, city or other political subdivision or any
 4 Native American tribal council or similar governing entity.

5 (27) "Included Agreements" means the Asset Purchase Agreement, the Escrow
 6 Agreement, the Ownership and Operation Agreement and the Mutual General Release.

7 (28) "Interior" has the meaning set forth in the introductory paragraph hereto.

8 (29) "Investment Grade" means a rating (as measured by either Standard &
 9 Poor's or Moody's, or if neither is available, a rating from an alternate rating source
 10 selected by PGE and reasonably acceptable to the Tribes) of the long-term, unsecured,
 11 senior debt not supported by third-party credit enhancement of the Person in question
 12 equal or superior to BBB- (Standard & Poor's) or Baa3 (Moody's).

13 (30) "Mutual General Release" means the Mutual General Release, dated as of
 14 the Closing Date, between the Tribes and PGE, in the form attached hereto as Exhibit E.

15 (31) "Net Book Value of Pelton and Round Butte Facilities" means the original
 16 cost of the Pelton and Round Butte Facilities reflected on PGE's books of account from
 17 time to time, including additions, improvements, betterments, work in progress, property
 18 held for future use in connection with the Pelton and Round Butte Facilities (including all
 19 property purchased or otherwise acquired in connection with PGE's efforts to obtain a
 20 new or renewed license from FERC for Project No. 2030) and all costs incurred in
 21 connection with PGE's efforts to obtain a new or renewed license from FERC for Project
 22 No. 2030 (including fees and expenses of attorneys and consultants)), less accumulated
 23 depreciation as reflected on PGE's books of account from time to time. "Net Book Value
 24 of Pelton and Round Butte Facilities" shall also include the reasonable and necessary
 25 costs incurred by the Tribes, and reimbursed by PGE, to obtain the New FERC License
 26 (as defined below) with respect to the Pelton and Round Butte Facilities (as defined
 27 below), but not those costs incurred with respect to the Reregulating Dam Generating
 28 Facilities (as defined below).

29 (32) "New FERC License" means the first long-term (not annual) license for
 30 Project No. 2030 to be issued by FERC following the expiration of the Original License
 31 and any annual licenses to be sought jointly by the Tribes and PGE as co-licenses.

32 (33) "New License Expiration Date" means the date on which the New FERC
 33 License (including any annual licenses granted by FERC prior to the issuance of a third
 34 long-term license) for Project No. 2030 expires.

35 (34) "New License Term" means the period from the effective date of the New
 36 FERC License through the New License Expiration Date.

37 (35) "OPUC" means the Oregon Public Utility Commission.

38 (36) "OPUC Approval" has the meaning set forth in Section 10.1(c).

1 (37) "Original License" means the original fifty (50) year license, as amended,
 2 for Project No. 2030 issued by FERC with an expiration date of December 31, 2001, plus
 3 all annual licenses issued by FERC prior to issuance of the New FERC License.

4 (38) "Other Transmission Lines" means all transmission lines and equipment
 5 that are part of the Pelton and Round Butte Facilities, other than those lines and
 6 equipment related exclusively to the transmission of power generated by the Reregulating
 7 Dam Generating Facilities.

8 (39) "Ownership and Operation Agreement" means the Agreement for
 9 Ownership and Operation of the Pelton and Round Butte Dams and Generating Facilities,
 10 dated as of the Closing Date and to be effective as of the Transfer Date, between the
 11 Tribes and PGE, in the form attached hereto as Exhibit D.

12 (40) "Parties" or "Party" have the meanings set forth in the introductory
 13 paragraph hereto.

14 (41) "Pelton Reregulating Dam" means the dam downstream of Pelton Dam
 15 constructed by PGE simultaneously with the construction of Pelton Dam and designed to
 16 reregulate the flow of water in the Deschutes River after its release from Pelton Dam.

17 (42) "Pelton and Round Butte Facilities" means Project No. 2030 minus the
 18 Reregulating Dam Generating Facilities and the Transmission Facilities.

19 (43) "Person" means any natural person, corporation, general partnership,
 20 limited partnership, proprietorship, limited liability company, other business
 21 organization, trust, union, association or Governmental Authority.

22 (44) "PGE" has the meaning set forth in the introductory paragraph hereto.

23 (45) "PGE Personnel and Invitees" has the meaning set forth in Section 4.10.

24 (46) "Proceedings" has the meaning set forth in Section 13.3 (a).

25 (47) "Project No. 2030" has the meaning set forth in the recitals hereof.

26 (48) "Project Use Rights" means those rights expressly granted to PGE by the
 27 Tribes pursuant to Article IV.

28 (49) "Reregulating Dam Generating Facilities" means the electrical generating
 29 facilities installed by the Tribes in the Pelton Reregulating Dam, plus those transmission
 30 lines and equipment related exclusively to the transmission of power by such generating
 31 facilities.

32 (50) "Round Butte Switching Station 230 kV Main Bus" means the bus
 33 identified in the diagram attached hereto as Exhibit J.

34 (51) "SEC" has the meaning set forth in Section 10.1(f).

- 1 (52) "SFC Approval" has the meaning set forth in Section 10.1(f).
- 2 (53) "Second Purchase Date" has the meaning set forth in Section 5.6(b).
- 3 (54) "Second Purchase Option" has the meaning set forth in Section 5.6(b).
- 4 (55) "Secretary" means the Secretary of the Department of the Interior.
- 5 (56) "Section 4(e)" has the meaning set forth in the recitals hereof.
- 6 (57) "Section 10(e)" has the meaning set forth in the recitals hereof.
- 7 (58) "State Water Right" has the meaning set forth in Section 10.1(e).
- 8 (59) "Stated Term" means the period specified in the New FERC License as
 9 the term of such license. The "Stated Term" shall not include any annual license periods
 10 that follow the specified or implied expiration date of such license.
- 11 (60) "Term" means the term of this Agreement as provided in Article XII.
- 12 (61) "Transfer Date" means the date upon which has occurred both the
 13 satisfaction of the Escrow Conditions and delivery of the Escrow Documents (as such
 14 terms are defined in the Escrow Agreement) pursuant to Section 3(a) of the Escrow
 15 Agreement.
- 16 (62) "Transmission Facilities" means the 230 kV transmission line from the
 17 Round Butte Dam to the Bethel Substation in Salem, Oregon, plus (x) the appurtenant
 18 facilities identified by the boxes enclosed by red broken lines in the diagram attached
 19 hereto as Exhibit J and (y) an undivided 28% interest in the Round Butte Switching
 20 Station 230 kV Main Bus (as defined above).
- 21 (63) "Treaty" means the treaty of June 25, 1855, between the Tribes and Bands
 22 of Middle Oregon and the United States of America. (12 Stat. 963)
- 23 (64) "Treaty Reserved Rights" means the rights of the Tribes to hunt, fish,
 24 gather roots and berries, and pasture livestock reserved in the Treaty, and the Tribes'
 25 implied rights to water to support these rights as such implied rights are defined from
 26 time to time by applicable federal law.
- 27 (65) "Tribes" has the meaning set forth in the introductory paragraph hereof.
- 28 (66) "Tribal Lands" has the meaning set forth in the recitals hereof.
- 29 (67) "Tribes' Hydroelectric Ordinance" has the meaning set forth in the recitals
 30 hereof.
- 31 (68) "Undivided 33.33% Interest" has the meaning set forth in Section 5.1.
- 32 (69) "Undivided 16.66% Interest" has the meaning set forth in Section 5.6(a).

(70) "Undivided .02% Interest" has the meaning set forth in Section 5.6(b).

1.2 Interpretations.

In this Agreement, unless a clear contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity; (c) reference to any gender includes each other gender; (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (f) "hereunder", "hereof", "hereto", "herein" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof; (g) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

ARTICLE II TREATY RESERVED RIGHTS

2.1 Importance of Treaty Reserved Rights.

The Parties recognize and acknowledge the importance to the Tribes of the Treaty Reserved Rights and the fact that these Treaty Reserved Rights are the subject of a trust relationship between the Tribes and the United States. The Parties do not intend for any part of this Agreement to impair the protection of the Tribes' Treaty Reserved Rights.

2.2 No Waivers Related to Treaty Reserved Rights Claims.

Interior does not by this Agreement waive any of the Secretary's rights or duties to protect, preserve and maintain the Tribes' Treaty Reserved Rights. The Tribes do not by this Agreement waive any Claim(s) against PGE they may have for any harm to Treaty Reserved Rights which may occur after the Effective Date. Moreover, the Tribes also do not release or waive any Claims for damages to Treaty Reserved Rights to the extent, and only to the extent, both (a) the damages are incurred by the Tribes subsequent to the Effective Date and (b) the acts or omissions by PGE giving rise to such Claims (x) had occurred or were continuing to occur as of the Effective Date (y) or occurred after the Effective Date. PGE does not by this Agreement waive any defenses it may have against any such Claims.

1 such time as PGE and its permitted successors and assigns are no longer a licensee for
2 Project No. 2030.

3 (c) In the event of any conflict between this Section 4.10 and any other
4 express provision of this Agreement, such express provision shall control.

5 (d) Disputes over the exercise of tribal powers referred to in this Article
6 shall be resolved in accordance with Article XIII of this Agreement.

7 4.11 Other Rights Necessary to the Operation of Project No. 2030.

8 If the Tribes acquire, or are otherwise determined to possess, non-consumptive
9 water rights necessary to the operation of Project No. 2030, the Tribes grant PGE the
10 right to use such water rights but only in connection with the operation of Project No.
11 2030. Except as provided in this section, this Agreement does not limit the Tribes' right
12 to use its water rights, including those set forth in Article IV of the Water Rights
13 Settlement Agreement dated November 17, 1997, between the Tribes, the State of
14 Oregon and the United States.
15

16 **ARTICLE V**
17 **COMPENSATION TO THE TRIBES**

18 For the period from the Effective Date through the Transfer Date, PGE shall
19 continue to compensate the Tribes pursuant to the terms of the 1955 Agreement and the
20 1985 Settlement Agreement. Effective upon the Transfer Date, PGE's obligations to
21 compensate the Tribes pursuant to the 1955 Agreement and the 1985 Settlement
22 Agreement shall cease and PGE shall provide to the Tribes the exclusive Compensation
23 described below in this Article V.

24 5.1 Sale of Certain Interests in Project No. 2030.

25 At the price and on the other terms and subject to the conditions set forth in the
26 Asset Purchase Agreement, PGE shall sell and the Tribes shall purchase on the Transfer
27 Date an undivided 33.33% interest in the Pelton and Round Butte Facilities (the
28 "Undivided 33.33% Interest") as they shall exist on the Transfer Date.

29 5.2 Ownership and Operation Agreement.

30 At the Closing, PGE and the Tribes shall execute the Ownership and Operation
31 Agreement with the Tribes to be effective as of the Transfer Date.

32 5.3 Operation of Generating Unit in Pelton Reregulating Dam.

33 The Tribes shall retain the exclusive right to operate and maintain (and rebuild if
34 necessary) at the expense of the Tribes one hydroelectric generating unit in the Pelton
35 Reregulating Dam with suitable structures, accessories and appurtenances located as

1 determined by mutual agreement of the Tribes and PGE. The amounts of water to be
 2 released either through the gates in the Pelton Reregulating Dam or through such
 3 hydroelectric generating unit and the water levels of the reservoir behind such dam shall
 4 be determined by PGE consistent with the terms of the New FERC License and other
 5 regulatory requirements. To the extent not inconsistent therewith, PGE shall give
 6 consideration so far as possible to such generation by the Tribes provided that in doing so
 7 PGE shall not be required to compromise generation from the Pelton and Round Butte
 8 Facilities.

9 5.4 Excess Hatchery Fish.

10 To the extent the Round Butte hatchery continues as a part of the terms and
 11 conditions of the New FERC License, fish trapped at the Pelton trap that are in excess of
 12 the number needed for the hatchery program or other aspects of the long-term fisheries
 13 program required under the New FERC License shall be provided to the Tribes for their
 14 use.

15 5.5 Employment of Members of the Tribes.

16 To the extent not prohibited by Applicable Law, PGE shall use its best efforts to
 17 afford all reasonable opportunities for employment to qualified members of the Tribes in
 18 connection with the operation and maintenance (and rebuilding if necessary) of the
 19 Pelton and Round Butte Facilities and Transmission Facilities. Such opportunities
 20 include the conduct of studies carried out in connection with Project No. 2030.

21 5.6 Options to Purchase Additional Interests.

22 (a) PGE hereby grants the Tribes the option to purchase ("First Purchase
 23 Option"), as of 2400 hours Pacific time on December 31, 2021, an undivided 16.66%
 24 interest in the Pelton and Round Butte Facilities as such facilities exist as of such date
 25 (the "Undivided 16.66% Interest"). PGE may revoke such First Purchase Option in its
 26 sole discretion at any time prior to and including January 2, 2021 if this Agreement (a) is
 27 breached in any material way by the Tribes or (b) ceases to remain in full force and
 28 effect. The Tribes may exercise this First Purchase Option by written notice to PGE no
 29 sooner than January 2, 2019 and no later than July 1, 2021; if the Tribes do not exercise
 30 the First Purchase Option by July 1, 2021, then it shall expire. In the event the Tribes
 31 exercise this First Purchase Option, PGE shall sell the Undivided 16.66% Interest to the
 32 Tribes, and the Tribes shall purchase such interest from PGE, upon the same terms and
 33 conditions as those contained in the Asset Purchase Agreement, subject only to the
 34 following modifications:

35 (i) the time of closing, transfer of title and payment of the
 36 purchase price shall be 2400 hours Pacific time on December 31, 2021;

37 (ii) the Purchased Assets, as defined in the Asset Purchase
 38 Agreement, purchased by the Tribes shall be the Undivided 16.66%
 39 Interest in the Pelton and Round Butte Facilities as such facilities exist as
 40 of 2400 hours Pacific time on December 31, 2021; and

1 ARTICLE VI
2 NATURAL RESOURCE REGULATION AND MANAGEMENT BY THE TRIBES

3 6.1 Powers.

4 (a) Pursuant to the Constitution referenced in the recitals hereof, the
5 Tribes in their governmental capacity exercise certain governmental powers over natural
6 resources on Tribal Lands. In particular, the Constitution empowers the Tribal Council,
7 among other things, "(t)o prohibit the overgrazing of lands or other depletion of the
8 capital or natural resources of the Tribe by ordinances which shall be subject to approval
9 by the Secretary of the Interior" and "(t)o regulate the uses and disposition of tribal
10 property; to protect and preserve the tribal property, wild life and natural resources...".
11 The Parties agree that these powers are not constrained by this Agreement and the
12 Included Agreements, except as specifically set forth in this Agreement and the Included
13 Agreements and except as the exercise of such governmental powers may be constrained
14 by federal law, including but not limited to the United States Constitution, federal
15 common law and Acts of the United States Congress. In the event of any conflict
16 between this Article VI and any other express provision of this Agreement, such express
17 provision shall control.

18 6.2 Specific Tribal Ordinances.

19 PGE and the Tribes agree that the following Tribal ordinances regulating natural
20 resources on Tribal Lands shall apply to their activities on such lands related to Project
21 No. 2030, except as otherwise specifically set forth in this Agreement and the Included
22 Agreements, except as necessary to comply with the terms of the Original FERC License,
23 the New FERC License or the State Water Right, as applicable, and except as the
24 application of such ordinances is in conflict with federal law, including but not limited to
25 the United States Constitution, federal common law and Acts of the United States
26 Congress:

- 27 (a) Warm Springs Tribal Code Chapter 340 "Fishing Code";
- 28 (b) Warm Springs Tribal Code Chapter 350 "Hunting and Trapping
29 Code";
- 30 (c) Warm Springs Tribal Code Chapter 411 "Zoning and Land Use Code";
- 31 (d) Warm Springs Tribal Code Chapter 432 "Water Quality Standards,
32 Beneficial Uses, and Treatment Criteria";
- 33 (e) Warm Springs Tribal Code Chapter 433 "Implementing Provisions for
34 Tribal Water Quality Standards, Beneficial Uses, and Treatment Criteria";
- 35 (f) Warm Springs Tribal Code Chapter 460 "Range and Livestock
36 Ordinance";

1 (g) Warm Springs Tribal Code Chapter 475 "Hydroelectric Licensing and
2 Regulation Ordinance";

3 (h) Warm Springs Tribal Code Chapter 490 "Protection and Management
4 of Archaeological, Historical and Cultural Resources";

5 (i) Tribal Integrated Resources Management Plans I and II;

6 (j) Warm Springs Management Plan;

7 (k) Warm Springs Flood Damage Prevention Ordinance #77;

8 (l) Warm Springs Tribal Code Chapter 401 "Warm Springs Wild &
9 Scenic Rivers Act"; and

10 (m) Warm Springs Water Management Plan – Tribal Resolution No. 2980.

11 6.3 New Regulations and Amendments to Existing Regulations.

12 The Tribes agree that prior to adopting new regulations or ordinances, or
13 amending existing regulations or ordinances, that in any case could potentially affect
14 Project No. 2030, the Tribes shall fully consult with PGE and take into consideration any
15 and all concerns identified by PGE. The Tribes further agree that they will not effect any
16 new regulation or ordinance, or amendment to an existing regulation or ordinance, that
17 creates economic burdens on Project No. 2030 unless either: (a) PGE has given its
18 consent, (b) such economic burdens are less than or equal to like burdens which would be
19 imposed on Project No. 2030 by another Governmental Authority in the absence of
20 regulation by the Tribes or (c) the Tribes commit to bear individually the entire cost of
21 such additional economic burdens.

22 6.4 Exercise of Delegated Authority.

23 PGE acknowledges that the Tribes have been delegated certain regulatory
24 authority under the Clean Water Act and that the Tribes may be delegated similar
25 authority in the future pursuant to other congressional acts. The Parties agree that except
26 to the extent the Tribes' exercise of such delegated regulatory authority would be
27 inconsistent with this Agreement, the Included Agreements, the Original FERC License,
28 the New FERC License or the State Water Right, the provisions of this Agreement shall
29 not constrain the Tribes' exercise of such delegated regulatory authority. The costs
30 related to the Pelton and Round Butte Facilities of complying with the Tribes' exercise of
31 such delegated regulatory authority shall be treated as Costs of Operation under the
32 Ownership and Operation Agreement.

33 6.5 Conflict with Other Provisions.

34 In the event of conflict between the provisions of this Article VI and any other
35 provisions of this Agreement or the Included Agreements, such other provisions of this
36 Agreement or the Included Agreements shall control.