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Spring Canyon Exhibit 1.1

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**SPRING CANYON, LLC.**

**AND**

**PACIFICORP**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_ 2005, is between Spring Canyon, LLC (“Seller”) and PacifiCorp (collectively, the “Parties”).

**RECITALS**

Seller intends to construct, own, operate and maintain a facility for the generation of electric power located in, Juab County, Utah with a Nameplate Capacity Rating of approximately ----- kilowatts (“kW”) with an estimated output of approximately ----- kW (“Facility”); and

Seller intends to operate the Facility as a “qualifying facility,” as such term is defined in Section 3.2.6 below.

Seller shall deliver the Net Output to PacifiCorp as scheduled and dispatched by PacifiCorp, which amount of capacity and energy PacifiCorp will include in its resource planning; and

Seller shall sell and PacifiCorp shall purchase the Net Output from the Facility in accordance with the terms and conditions of this 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:

1.1 “As-built Supplement” shall be a supplement to Exhibit A, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 “Billing Period” means each calendar month of a year.

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1.3 “Commercial Operation Date” means the date that the Facility is deemed to be fully operational and reliable, which shall require that all of the following events have occurred:

1.3.1 PacifiCorp has received from Seller a certificate from a Licensed Professional Engineer stating that the Facility is able to generate electric power reliably in amounts required by this Agreement and that as built, the Facility is substantially in conformance with the design;

1.3.2 Start-Up Testing of the expanded Facility has been completed in accordance with Section 1.32;

1.3.3 After PacifiCorp has received notice of completion of the upgrade Start-Up Testing, PacifiCorp has been provided a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, using the fuel type and composition specified in this Agreement, the Facility has operated for testing purposes under this Agreement uninterrupted for a period of ---- (----) consecutive ---- (----) hour days at a rate of at least ----- kW based upon any - ---- (----) minute period for the entire testing period. The Facility must provide ---- (----) working days’ written notice to PacifiCorp prior to the start of the initial testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive ---- (----) day testing period and provide PacifiCorp ---- (----) hours written notice prior to the start of such testing period;

1.3.4 PacifiCorp has received from Seller a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, in accordance with the Generation Interconnection Agreement, any additional required interconnection facilities attributable to the expansion have been constructed, all required interconnection tests have been completed, and the Facility is physically interconnected with PacifiCorp’s electric system; and

1.3.5 PacifiCorp has received, if requested by PacifiCorp in writing at least thirty (30) days before the Commercial Operation Date, copies of any or all requested Required Facility Documents.

1.4 “Commission” means the Public Service Commission of Utah.

1.5 “Contract Price” means the applicable price for capacity or energy, or both capacity and energy, stated in Section 5.1.

1.6 “Contract Year” means a twelve (12) month period commencing at hour ending (“HE”) 0100 Pacific Prevailing Time (“PPT”) on January 1 and ending HE2400 PPT on December 31 of the same calendar year, except that the first Contract Year shall commence at HE0100 PPT of the Commercial Operation Date, if other than

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January 1, and end at HE2400 PPT on December 31 of the calendar year in which the Commercial Operation Date occurred.

1.7 “Credit Requirements” means both the Project Development Security pursuant to Section 8.1 and the Default Security pursuant to Section 8.2 required to be posted by Seller in accordance with those provisions.

1.8 “Delay Damages” shall be those damages payable to PacifiCorp due to Seller’s failure to meet the Scheduled Commercial Operation Date, as specified in Sections 2.4 and 8.1.

1.9 “Dispatch” means a day-ahead pre-schedule of desired operating levels with the PacifiCorp right to make adjustments to the schedule during the day of delivery (subject to agreed upon Facility limitations and the availability of fuel).

1.10 “Event of Default” shall have the meaning set forth in Section 11.

1.11 “Facility” means Seller’s generation facility as described in Exhibit A of this Agreement.

1.12 “Generation Interconnection Agreement” means the generation interconnection agreement that has been entered into separately between Seller and PacifiCorp’s transmission department providing for the construction and operation of the interconnection facilities at the Point of Delivery, as such agreement may be amended from time to time.

1.13 “Hourly Market Price” means the applicable Index Price for the specified time period (on-peak or off-peak) in a specified day multiplied by the Hourly Shaping Factor.

1.14 “Hourly Shaping Factor” means the Hourly Shaping Factors utilized by PacifiCorp for transactions at Palo Verde, as set forth in Exhibit G for each hour. By notice given to Seller at least ---- (----) days before the beginning of another Contract Year, PacifiCorp may adjust the Hourly Shaping Factors set forth in Exhibit G in a commercially reasonable manner, with such adjustment to be in effect during the next Contract Year; provided, the summation of the Hourly Shaping Factors for the on-peak sixteen (16) hour period, divided by sixteen (16), shall equal one (1), and the summation of the Hourly Shaping Factors for the eight (8) hour off-peak time period, divided by eight (8), shall equal one (1), and the summation of the Hourly Shaping Factors for a twenty-four (24) hour period, divided by twenty-four (24), shall equal one (1). Such adjustment shall be subject to Seller’s consent, which Seller shall not unreasonably withhold, condition or delay.

1.15 “Index Price” means for Monday through Saturday, the Dow Jones <sup>TM</sup> Palo Verde Firm On-Peak Price and the Dow Jones <sup>TM</sup> Palo Verde Firm Off-Peak Price. For Sunday and NERC holidays, Dow Jones <sup>TM</sup> Palo Verde 24-Hour Index Price, unless

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Dow Jones<sup>TM</sup> shall publish a Firm On-Peak and Firm Off-Peak Price for such days for Palo Verde, in which event such indices shall be utilized for such days with adjustments for appropriate Hourly Shaping Factors. Dow Jones<sup>TM</sup> Palo Verde daily indexes are calculated seven (7) days a week, including NERC holidays. If the Dow Jones<sup>TM</sup> Palo Verde index or any replacement of that index ceases to be published during the Term, PacifiCorp shall select as a replacement a substantially equivalent, published, industry standard index that, after any appropriate or necessary adjustments, provides the most reasonable substitute for the index in question. PacifiCorp's selection shall be subject to Seller's consent, which Seller shall not unreasonably withhold, condition or delay.

1.16 "Letter of Credit" means an irrevocable standby letter of credit in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder, which letter(s) of credit:

1.17 "Licensed Professional Engineer" means a person proposed by Seller and acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the State of Utah, who has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called to provide a certification, evaluation and/or opinion, who has no economic relationship, association, or nexus with either PacifiCorp or with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or any PacifiCorp Facility, or of a manufacturer or supplier of any equipment installed in the Facility, or any PacifiCorp Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with the Seller, so long as such engineer has no other economic relationship, association or nexus with the Seller. PacifiCorp's approval shall not be unreasonably withheld. If no Utah Licensed Engineer meets these criteria, then the parties may mutually agree to a Licensed Engineer nevertheless mutually acceptable to them or, failing that, to a Licensed Engineer knowledgeable in the requirements of the Western Electric Coordinating Council ("WECC").

1.18 "Material Adverse Change"

1.19 "Nameplate Capacity Rating" means the nameplated baseload capacity of the Facility, expressed in kW, when operated consistent with the manufacturers' recommended power factor and operating parameters, as set forth in Exhibit A.

1.20 "Net Dependable Capacity" means the baseload capacity of the Facility can sustain over a specified period at an ambient temperature of 59.5° F, sixty percent (60%) Relative Humidity, modified for seasonal limitations and reduced by the capacity required for station service or auxiliaries, unless otherwise supplied by PacifiCorp. For purposes of this Agreement, Net Dependable Capacity shall be ----- kW, subject to adjustment following final testing of the Facility.

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1.21 “Net Output” means all energy and capacity produced by the Facility and available for sale, less station use not obtained from other sources and less transformer and transmission losses and other adjustments, if any.

1.22 “No-Notice” means any form of “no-notice” gas supply or transportation service, however characterized pursuant to Questar Pipeline Company FERC Gas Tariff, Rate Schedule NNT, No-Notice Transportation Service 1, or any successor or similar tariff, or pursuant to any similar tariff from other gas pipeline or transportation companies.

1.23 “Point of Delivery”

1.24 “Prime Rate” means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.25 “Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.26 “Replacement Price”

1.27 “Required Facility Documents” means all licenses, permits, plans, authorizations, and agreements necessary for construction, operation, and maintenance of the Facility, or such other interim authorizations sufficient to allow the plant to operate pending issuance of final authorizations or permits.

1.28 “Scheduled Commercial Operation Date” means a date no later than ----- months after the Effective Date, but no earlier than June 1, 2007, unless otherwise mutually agreed.

1.29 “Scheduled Delivery(ies)” means capacity and energy scheduled by PacifiCorp for delivery by Seller in accordance with Section 6, up to the Net Dependable Capacity.

1.30 “Scheduled Maintenance Periods” means those times scheduled by Seller with advance notice to PacifiCorp as provided in Section 6 unless otherwise mutually

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agreed. Schedule Maintenance Periods shall be limited to NERC events PO, PE, and PD and by mutual agreement of the Parties, NERC events MO, ME and D4 as defined in Exhibit D, during which time the Facility is shut down or derated for scheduled maintenance. No Scheduled Deliveries shall be scheduled by PacifiCorp from the Facility during Scheduled Maintenance Periods without Seller's consent.

1.31 "Standard & Poor's" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

1.32 "Start-Up Testing" means the completion of start-up tests as set forth in Exhibit E hereto.

1.33 "Term" has the meaning set forth in Section 2.2 below.

### SECTION 2: TERM; COMMERCIAL OPERATION DATE

2.1 This Agreement shall become effective after execution by both Parties and after approval by the Commission is no longer subject to judicial review ("Effective Date"); provided, however, this Agreement shall not become effective until the Commission has determined that the prices to be paid for energy and capacity are just and reasonable, and in the public interest. For purposes of inter-jurisdictional cost allocation, this Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol and, as such, its costs are allocated as a system resource unless any portion of the cost of this Agreement exceeds the cost PacifiCorp would have otherwise incurred acquiring comparable resources. In that event, the Revised Protocol assigns those excess costs on a situs basis. The rates, terms and conditions in this Agreement are in accordance with the rates, terms and conditions approved by the Commission in Docket No. 03-035-14 for purchases from qualifying facilities. In addition, for the purposes of inter-jurisdictional cost allocation, PacifiCorp represents that the costs of this Agreement do not exceed the costs PacifiCorp would have otherwise incurred acquiring resources in the market that are defined as "Comparable Resources" in Appendix A to the Inter-jurisdictional Cost Allocation Revised Protocol. In the event that the Commission order approving this Agreement contains any condition, that is materially adverse to either party, the party adversely impacted by the condition may terminate this Agreement by providing the other party notice within thirty (30) days of the entry of the Commission's order.

2.2 The term of this Agreement shall commence on the Effective Date and, except as otherwise provided herein, shall terminate at the end of the twentieth (20<sup>th</sup>) Contract Year.

2.3 Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver energy and capacity by the Scheduled Commercial Operation Date is critically important. Therefore:

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2.3.1 No later than -----months after the Effective Date, Seller shall provide Project Development Security as described in Section 8.1;

2.3.2 No later than ----- months after the Effective Date, Seller shall provide evidence of available fuel transportation or other arrangements sufficient to allow it to perform its obligations hereunder, except that nothing contained herein shall require Seller to obtain any form of No-Notice supply or transportation service, however characterized, or perform any obligations that would require such No-Notice service.

2.3.3 No later than ----- months after the Effective Date, Seller shall obtain and provide to PacifiCorp copies of all governmental permits and authorizations or such other interim authorizations necessary for construction of the Facility;

2.3.4 No later than ----- months after the Effective Date, Seller shall provide to PacifiCorp written evidence acceptable to PacifiCorp that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);

2.3.5 No later than ----- months after the Commercial Operation Date, Seller shall provide PacifiCorp with an As-built Supplement certified by a Licensed Professional Engineer that the As-built Supplement is substantially the same as Seller's initial design;

2.3.6 No later than ----- from the Effective Date, Seller shall begin deliveries of Net Output for purposes of initiating Start-Up Testing, which power shall be paid for in accordance with Section 5.2; and

2.3.7 No later than ----- from the Effective Date, Seller shall have completed all requirements under Section 1.3 and established the Commercial - Operation Date.

2.4 Seller shall cause the Facility to achieve the Commercial Operation Date on or before the Scheduled Commercial Operation Date. If the Commercial Operation Date occurs ----- days after the Scheduled Commercial Operation Date (the "Delay Period"), PacifiCorp shall not pay the Seller the Scheduled Deliveries Payment as defined in Section 5.1 for any days during the Delay Period and the Fixed Capacity Payment shall be prorated for the month in which the Commercial Operation Date occurs. Seller shall pay PacifiCorp Delay Damages, equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any power that PacifiCorp would have scheduled from the Facility and not delivered, by the Seller, had the Commercial Operation Date occurred on or before the Scheduled Commercial Operation Date, up to a total of 120 days, subject to extension pursuant to the provisions of Section 11.1.4.

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### SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon and duly qualified to do business in Utah.

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 Subject to Commission approval, the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

3.1.5 Subject to Commission approval, this Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a limited partnership duly organized and validly existing under the laws of the State of Utah and duly qualified to do business in Utah.

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Seller's general partner has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other



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material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.2.5 Subject to Commission approval, this Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a "qualifying facility" ("QF") as that term is defined for a plant meeting Seller's plant's qualifying criteria in the version of 18 C.F.R. Part 292 in effect on the date of Seller's filing of self-certification of QF status with the Federal Energy Regulatory Commission ("FERC"). If based on a good faith belief that Seller's circumstances have changed, PacifiCorp may require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing in the State of Utah stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained the Facility as a QF.

### SECTION 4 : DELIVERY OF POWER

4.1 Commencing on the Commercial Operation Date and continuing through the term of this Agreement, Seller shall sell and make available to PacifiCorp the entire Net Output scheduled by PacifiCorp from the Facility at the Point of Delivery.

4.2 Seller shall meet an ----- percent (-----%) monthly availability factor for Scheduled Deliveries. For the purpose of this section, Scheduled Maintenance Periods shall be excluded from the calculation of the monthly availability factor, except if the Scheduled Maintenance Period shall extend for a full calendar month or more, the monthly availability factor for such calendar month shall be deemed to be ----- (----%). An example of how the availability factor is calculated is attached hereto and made a part hereof as Exhibit K.

4.3 Absent agreement of the parties otherwise, PacifiCorp shall not schedule and Seller shall not deliver less than ----- percent (-----%) of Net Dependable Capacity during any Scheduled Deliveries, and PacifiCorp shall not schedule and Seller shall not be required to provide more than ----- Facility starts in any calendar day.

4.4 Upon completion of construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and certified by a Licensed Professional Engineer pursuant to Section 2.3.5 of this Agreement. Seller generally shall design the plant in

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conformance with the Nameplate Capacity Rating specified in Exhibit A and will not substantially modify, replace, or add to existing equipment, except with the written consent of PacifiCorp. To the extent not otherwise provided in the Generation Interconnection Agreement, all costs associated with the modifications to PacifiCorp's interconnection facilities or electric system occasioned by or related to the interconnection of the Facility with PacifiCorp's system, or any increase in generating capability of the Facility, or any increase of delivery of Net Dependable Capacity from the Facility to the Point of Delivery, shall be borne by Seller.

### SECTION 5: PURCHASE PRICES

5.1 PacifiCorp shall pay Seller the prices stated below for all Scheduled Deliveries of Net Output up to Net Dependable Capacity. These payments shall consist of a fixed capacity payment and variable energy payment.

$$\text{Scheduled Deliveries Payment} = \text{Variable Energy Payment} + \text{Fixed Capacity Payment}$$

Where:

5.1.1 Variable Energy Payment = The sum of the following for all Scheduled Delivery hours in a billing month:

Heat Rate<sub>Year</sub> times the Daily Gas Price times the hourly generation output, measured in kWh.

"Heat Rate<sub>Year</sub>" is the generator heat rate in Btu per kWh by Contract Year as listed in Exhibit C.

Daily Gas Price is the gas price applied to the Heat Rate<sub>Year</sub> and shall be the sum of the following components:

- (a) the midpoint of the Gas Daily index for the Kern River Opal plant, plus
- (b) ----- per MMBtu and ----- shrinkage (subject to actual change in Questar Pipeline firm tariff T-1 after May 20, 2004), plus
- (c) -----/MMBtu and ----- shrinkage (subject to actual change in Questar Gas Company firm tariff FT-1 after May 20, 2004).

If the midpoint of the Gas Daily index for the Kern River Opal plant or any replacement of that index ceases to be published during the Term, PacifiCorp shall select as a replacement a substantially equivalent, published, industry standard index that, after any appropriate or necessary adjustments, provides the most

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reasonable substitute for the index in question. PacifiCorp's selection shall be subject to Seller's consent, which Seller shall not unreasonably withhold, condition or delay.

5.1.2 Fixed Capacity Payment = Fixed Capacity Price<sub>Year</sub> divided by 12 times Net Dependable Capacity in each billing month.

Where the Fixed Capacity Price<sub>Year</sub> is the sum of the Capital Capacity Price<sub>Year</sub> and the O&M Capacity Price<sub>Year</sub>, both as set out in Exhibit C hereto. The Fixed Capacity Price<sub>Year</sub> shall be adjusted (either positively or negatively) by the adjustment in the values set out at Exhibit C hereto computed in accordance with Section 5.6 hereof.

5.2 During hours that are not Scheduled Deliveries and the Seller chooses to sell power to PacifiCorp, PacifiCorp shall pay the Seller for the energy delivered. The monthly energy payment shall be 0.93 times the applicable Index Price times the appropriate Hourly Shaping Factors in Exhibit G times the metered generation output for those non-Scheduled Delivery hours. In the event that PacifiCorp dispatches the Facility at less than Net Dependable Capacity ("Adjusted Net Dependable Capacity") during a Scheduled Delivery hour, any power delivered by the Seller in excess of the Adjusted Net Dependable Capacity during a Scheduled Delivery hour shall be paid at 0.93 times the applicable Index Price times the appropriate Hourly Shaping Factors in Exhibit G times the quantity of metered generation output minus the Adjusted Net Dependable Capacity.

5.3 Force Majeure

5.4 The Parties agree that if any future taxes, governmental levies or other costs associated with emissions or air quality are charged to Seller by fuel suppliers or other means, the Parties may reopen this contract for the purpose of negotiation as to how, if at all, such costs should be included in this Agreement, and if so, at what level. In the event the Parties are unable to reach agreement on these issues, the Parties will seek Commission review and determination of the issues.

5.5 The volume of energy provided during Scheduled Deliveries and non-Scheduled Deliveries to PacifiCorp by Seller each month will be grossed up to account for Facility specific avoided transmission losses ("Losses") where the Losses are the system transmission losses equal to ----- percent. The grossed up energy volume is calculated by multiplying 1+Losses times the volume of energy of Scheduled Deliveries and non-Scheduled Deliveries to PacifiCorp. An example of a Losses calculation is attached hereto and made a part hereof as Exhibit I.

5.6 Seller may apply an inflation adjustment to the operation and maintenance component ("O&M Capacity Price", as set out in Exhibit C as updated by each adjustment, if any, made pursuant to this Section) of the Fixed Capacity Price if inflation as measured by the annual Consumer Price Index ("CPI") exceeds four percent (----%) for ---- (----) consecutive years. If the CPI is less than ---- percent (----%) for ---- (----)

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consecutive years, PacifiCorp may apply an inflation adjustment to the O&M Capacity Price. The inflation adjustment factor (“IAF”) will only be applied based on the difference between the reported CPI and the base inflation rate of ---- percent (----%). The IAF will equal the CPI in the ---- year minus ---- percent (----%). The change to the O&M Capacity Price shall be calculated by multiplying the sum of 1+ IAF times the O&M Capacity Price of the second consecutive year and shall apply in the Contract Year following the second consecutive year where the CPI either exceeds ---- percent (----%) or is less than ---- percent (----%) and in all subsequent Contract Years and the adjustment will be inflated at the base inflation rate of two and one-half percent (----%) per year. The CPI measurement shall be based on calendar year measurements. The O&M Capacity Price, as adjusted for each year pursuant to the terms hereof, shall become the O&M Capacity Price to be utilized in computing the Fixed Capacity Price unless and until subject to further adjustment pursuant to the terms hereof, at which time such recalculated O&M Capacity Price shall be the component utilized for purposes of the Fixed Capacity Price. An example of an inflation-related price adjustment is attached hereto and made a part hereof as Exhibit J.

5.7 PacifiCorp shall pay Seller for prudently-incurred costs for Start-up fuel for each start-up PacifiCorp requests for Scheduled Deliveries or Day-of Changes to the Schedule as described in Sections 6.6 and 6.7. For purposes of this Section, “Start-up” is defined as the period between the time of the Facility start and the time a Facility generator has synchronized to the PacifiCorp electrical system and is released for dispatch (“Minimum Sustainable Load”). For a cold start defined as being a start occurring at least ----- (----) days after the last Scheduled Deliveries, PacifiCorp will pay for ----- (-----) MMBtu per gas turbine per start based on the Daily Gas Price. For a warm or hot start, PacifiCorp will pay for ----- MMBtu per gas turbine per start based on the Daily Gas Price. PacifiCorp shall not be liable to pay for costs for Start-up fuel for any start associated with non-Scheduled Deliveries or for any start requested for Schedule Deliveries or Day-of Changes to the Schedule if no start is in fact required for any reason.-

### SECTION 6: OPERATION AND CONTROL

6.1 Seller shall 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 shall have no obligation to purchase Net Output from the Facility 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, or to the extent generation curtailment is required as a result of Seller’s non-compliance with the Generation Interconnection Agreement.

6.2 Seller may cease operation of the entire Facility or individual units, if applicable, during Scheduled Maintenance Periods not to exceed ---- (----) days each Contract Year (unless otherwise agreed, which agreement will not be unreasonably

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withheld). Scheduled Maintenance Periods shall be reasonably determined by Seller and provided to PacifiCorp at least ---- (----) days prior to the commencement of each Contract Year, as thereafter adjusted by mutual agreement of the Parties. Seller shall determine Scheduled Maintenance Periods in consultation with PacifiCorp in a joint effort to minimize disruption and cost to Seller and to maximize availability of the Facility during peak periods.

6.3 If all or part of the Facility ceases operation for unscheduled maintenance, Seller shall promptly notify PacifiCorp of the same including the time when the shutdown occurred or is expected to occur and the anticipated duration of such shutdown. Seller shall use reasonable commercial efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during non-peak hours.

6.4 Seller shall have the right, but not the obligation, to interrupt deliveries to PacifiCorp, on a pro-rata basis, in the event of the following - event types: - as defined on Exhibit D. Seller shall have the right, but not the obligation, to curtail deliveries to PacifiCorp, on a pro-rata basis, in the event of the following - event types: - as defined on Exhibit D hereto. Seller shall not have the right to interrupt or curtail deliveries to PacifiCorp due to - event type -, as defined on Exhibit D hereto.

6.5 At least ---- (----) days prior to the commencement of each Contract Year, PacifiCorp shall provide Seller with an expected, projected schedule for the Facility for the following Contract Year and, thereafter, of any changes reasonably anticipated. Such projected schedule shall not be binding on PacifiCorp or the Seller. Seller shall advise PacifiCorp of any expected changes in the availability of its Facility, including the details of any such changes.

6.6 PacifiCorp shall have the option, but not the obligation, to schedule on a daily pre-schedule, capacity and energy for delivery hereunder pursuant to these scheduling guidelines. Prior to ---- a.m. PPT, PacifiCorp shall provide to Seller or Seller's agent, PacifiCorp's daily pre-schedule quantities by hour for the following calendar day. Unless modified pursuant to the WECC ISAS Pre-scheduling calendar, "Pre-Schedule Day" means the business day immediately preceding the day of delivery unless the day of delivery is Sunday or Monday, in which case the Pre-Schedule Day shall be the immediately preceding Friday, or unless the day of delivery is Saturday, the Pre-Schedule Day shall be the immediately preceding Thursday. In the event the Pre-Schedule day falls on a NERC defined holiday, the pre-schedule requirement shall be adjusted to reflect such holiday. NERC tags shall be completed in accordance with NERC guidelines. PacifiCorp may schedule ---- or no less than ---- percent (----%) of the Net Dependable Capacity in any hour of the Scheduled Deliveries unless otherwise agreed. In the event PacifiCorp has not scheduled day-ahead pre-Scheduled Deliveries by the time specified herein, ---- Scheduled Deliveries shall be imputed for such following calendar day, and any such request by PacifiCorp will be deemed to be a day-of change to schedule governed by Section 6.7 hereof.

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6.7 PacifiCorp shall have the option, but not the obligation, to make schedule changes within the day of delivery; provided such schedule changes are in conformance with the accepted practices of the control area operator. Notwithstanding the foregoing, PacifiCorp shall provide notification to Seller, or Seller's agent, of any changes in the schedule thirty (30) minutes prior to the next Operating Hour. "Operating Hour" means the top of the hour and six (6) minutes thereafter. PacifiCorp may change its pre-scheduled amounts on any given hour within the day of delivery; provided, however that the Facility has no more than ---- (----) starts in any day of Scheduled Deliveries and the change results in Facility output no less than ---- percent (----%) of the Net Dependable Capacity in any hour unless otherwise agreed. Seller shall use reasonable commercial efforts to comply with any such request, including, for any increase in deliveries, so long as Seller is able, using good faith best efforts, to obtain natural gas supplies required for such additional deliveries. PacifiCorp shall pay all prudently-incurred incremental costs incurred by Seller in providing such unscheduled deliveries, or in reducing Scheduled Deliveries, including any penalties prudently incurred by Seller in connection with delivery or non-delivery of such natural gas; however, in no event will PacifiCorp pay for Seller to obtain No-Notice gas supply service. Seller shall make documents kept pursuant to Section 14.3 available to PacifiCorp for audit prior to the time PacifiCorp is obligated to pay Seller for such incremental costs.

6.8 Seller shall have the option to sell power to PacifiCorp and PacifiCorp shall accept such power in any hour outside of Scheduled Deliveries. Seller shall be compensated for such energy deliveries in accordance with Section 5.2.

### SECTION 7: FUEL

Seller shall use commercial reasonable efforts to obtain all natural gas supplies necessary to make Scheduled Deliveries from the general gas market, and to maintain transportation arrangements to effect delivery of such natural gas supplies, and shall promptly notify PacifiCorp if its ability to obtain such supplies appears uncertain.

### SECTION 8: SECURITY

8.1 No later than ----- ( ) months after the Effective Date, Seller shall deposit in a specific deposit account established by PacifiCorp the sum of ----- ("Project Development Security"). For a period of one year from posting, such sum shall earn interest at a rate equal to the [Fidelity Institutional Money Market Funds #59 or a similar or successor fund used by PacifiCorp for similar purposes](#). In the event that the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, PacifiCorp shall be entitled to withdraw from the Project Development Security deposit account an amount equal to the Delay Damages. If at anytime during the Delay Period, the Delay Damages exceed the Project Development Security, then Seller shall deposit additional funds into the Project Development Security deposit account to return the Project Development Security to ----- . After the Commercial Operation Date has occurred, any funds in the Project Development Security deposit account shall be transferred to the Default Security account provided for in Section 8.2 for the benefit of

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Seller, except that, to the extent the amount of the Project Development Security exceeds ----, then such amount in excess of ----- shall be refunded to Seller.

8.2 Seller shall provide default security (“Default Security”) for its performance hereunder. For such purposes, the Default Security shall be composed of (1) a Letter of Credit to the benefit of PacifiCorp on or before the Scheduled Commercial Operation Date in the amount of -----, upon the posting of which PacifiCorp shall return to Seller the amount of the Project Development Security transferred to the Default Security account.; and (2) a withholding of ---- per month by PacifiCorp from PacifiCorp’s payment to the Seller (“Withholding Security”) beginning with the billing for the first calendar month after the Commercial Operation Date and continuing for ---- (---- consecutive months (“Withholding Period”) or until a minimum cumulative Default Security of ---- is collected from or provided by Seller. In the event that for any particular month wherein PacifiCorp is entitled to withhold ----, PacifiCorp’s total payments to Seller are less than ----, during the following month(s), PacifiCorp may withhold not only the ---- for that given month, but also any deficit amounts from previous months whereby PacifiCorp was unable to withhold the full ----. At the end of each Contract Year during the Withholding Period, Seller shall convert the Withholding Security for the current Contract Year into a Letter of Credit to the benefit of PacifiCorp, at which time the Withholding Security for that particular contract year shall be refunded to Seller. In the event that Seller should be required to pay damages pursuant to Section 5.3 in any month, such sum shall first be deducted against any Withholding Security for the current Contract Year and thereafter by draw on the Letter of Credit. To the extent of any draw on the Letter of Credit and/or any deduction from the Withholding Security, Seller shall, within ---- (----) days, restore the amount of the Withholding Security deducted and, to the extent of a draw on the Letter of Credit such that the amount of Default Security held by PacifiCorp shall be the amount as if no such deduction had occurred. PacifiCorp may at any time, or pursuant to a request by Seller, request a recalculation of the Default Security required pursuant to this paragraph based upon an assessment of potential default damages. For purposes hereof, taking the value of the Withholding Security and the Letter of Credit, the value of the Default Security provided hereunder is ----. Once the Default Security accrues to ----, PacifiCorp shall retain the Default Security for ---- (----) months. On each January 1<sup>st</sup> (or next business day) of the next ---- (----) years following the end of the ---- (----) month period whereby PacifiCorp holds Default Security of ----, Seller may adjust the Letter of Credit for the Default Security downward by the sum of ----. Seller may adjust the Letter of Credit for the Default Security downward by the sum of an additional ---- on June 30 of the year by which Seller makes its third and final downward adjustment of ---- to the Letter of Credit for the Default Security, provided that Seller has performed in accordance with the terms of this Agreement. Seller has represented that it may at some future date seek debt financing (the “Future Debt”). In the event that Seller’s senior unsecured debt rating with respect to the Future Debt (or in the event Seller has no such Future Debt, its corporate credit rating) has a Standard & Poor’s rating of “BBB-“ or above (so long as a rating of “BBB-“ is deemed to be investment grade by Standard & Poor’s), then Seller’s obligations hereunder shall be abated, and the Withholding Security, if any, and Letter of Credit shall be released to Seller. At least once annually, any accrued interest on the

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Withholding Security shall be returned to Seller. Such interest shall be computed in accordance with the index provided for in Section 8.1 hereof.

8.3 If requested by PacifiCorp, Seller shall within ---- (----) days provide PacifiCorp with copies of its most recent annual financial statement prepared in accordance with generally accepted accounting principles. Seller will provide PacifiCorp with copies of its most recent unaudited, quarterly financial statement within ---- (----) days of a request from PacifiCorp.

### SECTION 9: METERING

9.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement.

9.2 Metering shall be performed at the location and in the manner specified in Exhibit B and the Generation Interconnection Agreement. All quantities of energy purchased hereunder shall 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 power flowing into PacifiCorp's system at the Point of Delivery.

9.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement. If any of the inspections or tests disclose an error exceeding ---- percent (----%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding ---- (----) Billing Periods, 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 shall be settled and/or netted pursuant to Section 10.2.

9.4 To the extent not otherwise provided in the Generation Interconnection Agreement, all PacifiCorp's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

### SECTION 10: BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 No later than the twentieth (20<sup>th</sup>) day of each month, Seller shall provide to PacifiCorp by facsimile an invoice for amounts due under this Agreement for the preceding month, along with sufficient detail to allow PacifiCorp to verify the billing. Within ---- (----) days of its receipt of Seller's invoice, PacifiCorp shall pay all undisputed amounts by wire transfer or otherwise as reasonably directed by Seller from time to time.



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10.2 Either Party may offset against any payments owed to the other Party under this Agreement any undisputed amounts incurred after the Effective Date that are owed to it by the other Party pursuant to any other agreement between the Parties. If Seller and PacifiCorp disagree on the amount due under this Agreement or any other agreement, the lower of the amounts due asserted by each Party shall be so netted. After resolution of the disagreement, the balance (if any) shall be netted with the next payment, if any, due to either Party, or shall be paid in full within ---- (----) days by the owing Party to the other.

10.3 Parties shall attempt in good faith to resolve any billing disputes within --- - (----) days. If either Party pays any invoice under protest and its position is subsequently upheld, or if an error in any billing is discovered within ---- (----) years of the date on which it was submitted, interest shall accrue at the rate specified in Section 10.4, applied to the amount of any billing adjustment from the date the bill was initially paid to the date of the adjustment.

10.4 Unless otherwise provided herein, any amounts owing after the due date thereof shall bear interest at the Prime Rate plus ---- percent (----%) from the date due until paid; provided however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

### SECTION 11: DEFAULT AND REMEDIES

11.1 The following events shall constitute Events of Default under this Agreement:

11.1.1 Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure to make a payment when due, failure by Seller to provide adequate security pursuant to Section 8 or failure by Seller to meet any deadline set forth in Section 2.3) or breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within ----- (-) days following written notice by registered or certified mail;

11.1.2 Filing of a petition in bankruptcy by or against a Party if such petition is not withdrawn or dismissed within ----- (-) days after it is filed;

11.1.3 Seller's failure to cure any material default under any material Facility financing agreement or other material debt instrument entered into by Seller if Seller has failed to cure the default within the time allowed for a cure under such agreement or instrument unless the event out of which the asserted default arose is in formal arbitration pursuant to an arbitration clause in an agreement of which Seller is a party, or litigation.

11.1.4 Seller's failure to cause the Facility to achieve a Commercial Operation Date on or before the date that occurs ----- days after the

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Scheduled Commercial Operation Date. If the Commercial Operation Date has not occurred ----- (--) days after the Scheduled Commercial Operation Date and Seller reasonably believes that it cannot cause the Facility to achieve the Commercial Operation Date within the -----day period, Seller shall have the option to deposit an additional ----- in the Project Development Security account, in which event Seller shall have an additional ----- (--) days beyond the -----day period to achieve the Commercial Operation Date.

11.1.5 A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security or the maintenance or renewal of Default Security pursuant to Section 8.2, within ----- (--) days from the date of such request.

A Material Adverse Change has occurred with respect to PacifiCorp and PacifiCorp fails to provide reasonable performance assurances within ----- days (--) of the date Seller makes such a request.

11.1.6 Seller's failure to cure any material default under the Generation Interconnection Agreement within the time allowed for a cure under such agreement.

11.2 In the event of a material uncured Event of Default hereunder that materially impacts its ability to perform hereunder, the non-defaulting Party may terminate this agreement by delivering written notice to the other party by registered or certified mail and, following the relevant cure period specified in Section 11.1 for the relevant Event of Default, may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

11.3 If Seller fails to provide energy to PacifiCorp for an ---- (----) month period after the Commercial Operation Date, Seller may not require PacifiCorp to purchase energy or capacity from the Facility by requesting a new or modified agreement between the Parties with pricing terms different from the then-prevailing avoided cost rates but in no event to exceed the pricing terms herein prior to the date that would apply pursuant to Section 2.2.

11.4 If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated to provide for ----- (--) months following the termination date of this Agreement. Amounts owed by Seller pursuant to this paragraph shall be due within ---- (----) business days after any invoice from PacifiCorp for the same.

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11.5 If this Agreement is terminated as a result of a material default of Seller, PacifiCorp may foreclose upon any Default Security provided pursuant to Section 8.2 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

11.6 PacifiCorp recognizes that Seller may seek to obtain debt financing for the Facility and PacifiCorp hereby agrees to cooperate reasonably with Seller's efforts to secure such financing, and to provide Seller and its lenders on a timely basis with such consents and related documents, as are reasonably requested by the lenders and reasonably acceptable to PacifiCorp.

### SECTION 12: INDEMNIFICATION, LIABILITY AND INSURANCE

#### 12.1 Indemnities.

12.1.1 Seller agrees to release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with, the facilities on Seller's side of the Point of Delivery, or Seller's operation and/or maintenance of the Facility, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 PacifiCorp agrees to release, indemnify and hold harmless Seller, its directors officers, agents and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with, the energy delivered by Seller hereunder after the Point of Delivery or with facilities on PacifiCorp's side of the Point of Delivery or PacifiCorp's operation and/or maintenance of its facilities, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents or representatives.

12.2 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

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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 Seller as an independent entity.

12.3 Neither Party hereto shall be liable to the other for special, punitive, indirect or consequential damages, whether arising from contract, tort (including negligence), strict liability or otherwise.

12.4 Each party hereto shall comply with any applicable laws, including Workers Compensation Laws.

12.5 Without limiting any liability or any other obligations of Seller, Seller shall secure and continuously carry with Best A-rated insurers or better the following insurance coverage:

- 12.5.1 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with the terms available in the insurance market for similar facilities.
- 12.5.2 Employers Liability insurance with a minimum limit of ----  
--, to the extent Seller has employees.
- 12.5.3 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of -----  
to protect against Seller's liability for injury to persons or damage to property stemming from this Agreement. To the extent available without significant additional cost, such policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insured, and ii) 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.
- 12.5.4 Business Automobile Liability insurance with a minimum single limit of ----- for bodily injury and property damage with respect to vehicles, if any, whether owned, hired or

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non-owned, assigned to or used in connection with this Agreement.

12.5.5 To the extent reasonably available, all liability policies required by this Agreement 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 cancelled or their limits reduced without 1) ---- (----) days prior written notice to PacifiCorp if canceled for non-payment of premium, or 2) ---- (----) days prior written notice to PacifiCorp if cancelled for any other reason. A certificate in the form satisfactory to PacifiCorp certifying to the issuance of such insurance shall be furnished to PacifiCorp. Commercial General Liability coverage written on a “claims-made” basis, if any, shall be specifically identified on the certificate. 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.

12.5.6 Insurance coverage, if provided on a “claims-made” basis, shall be maintained by Seller for a minimum period of ---- (----) 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.

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### SECTION 13: FORCE MAJEURE

13.1 As used in this Agreement, “Force Majeure” or “an event of Force Majeure” means any cause beyond the reasonable control of the Seller or of PacifiCorp that, despite the exercise of due diligence, such party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction by or on behalf of a public authority which is in each case (i) beyond the reasonable control of such a party, (ii) by the exercise of reasonable foresight, such party could not reasonably have been expected to avoid, and (iii) by the exercise of due diligence, such party shall be unable to overcome, except that nothing contained herein shall effect the obligation to pay. Force Majeure, however, specifically excludes the cost or market availability of fuel or motive force to operate the Facility or changes in market conditions that affect the price of energy or transmission.

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

13.2.1 the non-performing party shall promptly give notice to the other of the Force Majeure event excusing performance. Within one (1) week after the occurrence of the Force Majeure, the non-performing party shall give the other party written notice describing the particulars of the occurrence; and

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

13.2.3 the non-performing party uses reasonable commercial efforts to remedy its inability to perform.

13.3 No obligations of either party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

13.4 Neither party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the dispute, are contrary to the party’s best interests.

13.5 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller’s inability to perform, due to a Force Majeure event, within ===== (==) months after the occurrence of the event unless Seller is diligently pursuing the remedy of such event and has good-faith efforts underway to remedy such non-performance. For example, if related to facility repair, so long as Seller has with reasonable diligence pursued the repair but has been unable to do so due to lead times and parts availability, then no

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termination right shall apply up to a period of ----- (---) months from the date of the occurrence of the event. However, if Seller has failed to remedy Seller's inability to perform, due to a Force Majeure event, within ----- (--) months after the occurrence of the event, PacifiCorp may terminate the Agreement and Seller is bound by Section 11.3.

### SECTION 14: RIGHT TO AUDIT

14.1 PacifiCorp and Seller shall have the right, upon reasonable notice to the other and during regular business hours and without unduly interfering with the conduct of the other's business, to access all of PacifiCorp's or Seller's records pertaining to invoices under this Agreement including but not limited to documents related to Day-of Changes to the Schedule pursuant to Section 6.7 and any recalculation pursuant to Section 8, and to audit the reports, data, calculations and invoices that must be retained or provided under this Agreement. Each party shall bear their own costs of performing such audit; provided, however, that each Party agrees to cooperate with such audit and shall not charge the other for any reasonable costs (including without limitation the cost of photocopies) that the other may incur as a result of such audit. Each party shall have two (2) years from the date on which a billing statement is received to audit and to challenge that billing statement.

14.2 Should the audit discover a billing error or errors that resulted in an overpayment by Purchaser, the Seller shall refund to PacifiCorp the amount of the overpayment plus interest thereon from the date such overpayment was made by PacifiCorp to (but not including) the date PacifiCorp actually receives the refund thereof from the Seller, such interest to be at an annual rate equal to the Prime Rate in effect on the date such overpayment was made by PacifiCorp plus ---- percent (----%), provided however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law. Should the audit discover a billing error or errors that resulted in an underpayment by PacifiCorp, PacifiCorp shall pay to the Seller the amount of the underpayment plus interest thereon from the Due Date thereof to (but not including) the date the Seller actually receives the payment thereof from PacifiCorp, such interest to be at an annual rate equal to the Prime Rate in effect on the date such underpayment was made by PacifiCorp plus ---- percent (----%), provided however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

14.3 PacifiCorp and Seller shall maintain for a period of ---- (----) years records, including bills and invoices, related to the calculation of payment prices and other material terms herein. Seller shall maintain for a period of ---- (----) years records, including but not limited to bills and invoices, documenting Seller's incremental costs, including any penalties, incurred in providing unscheduled deliveries or in reducing Scheduled Deliveries.

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### **SECTION 15: SEVERAL OBLIGATIONS**

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.

### **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Utah, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

### **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the 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 the 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 concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

### **SECTION 18: 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.

### **SECTION 19: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of the Commission. Upon reasonable request, either Party shall submit to the other Party copies of all local, state and federal licenses, permits and other approvals as then may be required by law relating to this Agreement or the Facility. Each Party shall maintain all local, state and federal licenses, permits and other approvals as may be required to fully perform hereunder. Each Party shall support the other in obtaining and maintaining such approvals, except that nothing herein shall require either Party to intervene or otherwise participate in any proceeding in support of the other.

### **SECTION 20: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the



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foregoing, either Party may assign this Agreement without the other Party's consent to a lender or venture partner as part of a financing transaction or as part of (a) a sale of all or substantially all or some of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

### **SECTION 21: MEDIATION**

If the Parties are unable to resolve a dispute with respect to this Agreement, either Party may send a notice to the other requesting a meeting at which senior officers or officials of the Parties will attempt to resolve the dispute. If the Parties are unable to resolve the dispute within ---- (----) Days after the meeting notice is received by the Party to whom it is directed, or such longer period as the Parties may agree, then either Party may initiate mediation procedures at the Commission as set forth herein. If the mediator is unable to resolve the dispute between the parties to the reasonable satisfaction of both Parties, either Party may file a pleading requesting agency action to interpret and/or enforce provisions of this Agreement. The Parties shall request that the Commission use all reasonable efforts to render a written decision setting forth its findings and conclusions promptly. Each Party shall bear its own attorneys' fees and costs of pursuing the Commission mediation and action on the Agreement. Each of the Parties irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement must be brought for mediation and/or decision before the Commission prior to the filing of any action in the courts of the State of Utah and that, by execution and delivery of this Agreement, each Party accepts the primary jurisdiction of the Commission to resolve disputes concerning this Agreement.

### **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility on and after the Commercial Operation Date. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, each Party releases the other from any claims, known or unknown, that may have arisen prior to the Effective Date with respect to the Facility and any predecessor facility proposed to have been constructed on the site of the Facility.

### **SECTION 23: NOTICES**

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested

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To Seller: **All Notices:**  
Spring Canyon, LLC

**All Invoices:**  
Spring Canyon, LLC

**Scheduling:**

**Confirmation:**  
Plant Manager

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**Payments:**

Spring Canyon, LLC

**Wire Transfer:**

**Credit and Collections:**

Spring Canyon, LLC

**With Additional Notices of an Event of Default  
or Potential Event of Default to:**

Stephen F. Mecham, Esq.  
Callister Nebeker & McCullough  
Gateway Tower East, Suite 900  
10 East Temple  
Salt Lake City, Utah 84133  
Phone: (801) 530-7316  
Facsimile: (801) 364-9127

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To PacifiCorp:

### **All Notices:**

PacifiCorp  
Street: 825 NE Multnomah Street  
City: Portland, OR 97232  
Attn: Contract Administration, Suite  
600  
Phone: (503) 813 - 5952  
Facsimile: (503) 813 - 6291  
Duns: 00-790-9013  
Federal Tax ID Number: 93-  
0246090

### **Invoices:**

Attn: Back Office, Suite 600  
Phone: (503) 813 - 5585  
Facsimile: (503) 813 – 5580

### **Scheduling:**

Attn: Resource Planning, Suite  
600  
Phone: (503) 813 - 6090  
Facsimile: (503) 813 – 6265

### **Payments:**

Attn: Back Office, Suite 600  
Phone: (503) 813 - 5585  
Facsimile: (503) 813 – 5580

### **Wire Transfer:**

BNK: Bank One N.A.  
ABA: 071000013  
ACCT: 55-44688  
NAME: PacifiCorp Wholesale

### **Credit and Collections:**

Attn: Credit Manager, Suite 1800  
Phone: (503) 813 - 5684  
Facsimile: (503) 813 - 5609

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**With additional Notices of an  
Event of Default or Potential  
Event of Default to:**

Attn: Andrew P. Haller, Esq. and  
Jeremy D. Weinstein, Esq.  
Phone: (503) 813-6266 and (925)  
943-3103  
Facsimile: (503) 813-7262 and  
(925) 943-3105

23.2 The Parties may change the person to whom such notices are addressed, or the address to which notice shall be sent by providing written notices thereof in accordance with this Section.

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

PacifiCorp

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
by \_\_\_\_\_.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

**DRAFT**

Spring Canyon, LLC

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

Name:

Title:

STATE OF        )

COUNTY OF     )

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 2005,  
by

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public