

**SCE REDLINE DRAFT**  
**August 9, 2005**

POWER PURCHASE AGREEMENT

BETWEEN

SPRING CANYON ENERGY, LLC.

AND

PACIFICORP

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_ 2005, is between Spring Canyon Energy, LLC (“**Seller**”) and PacifiCorp (“**PacifiCorp**”) (each, a “**Party**” and 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 260,000 kilowatts (“**kW**”) capable of delivering 100,000 kW that will be sold to PacifiCorp as contemplated by the Report and Order dated April 1, 2005 in Commission Docket 03-035-14, this Agreement, and the Stipulation in Docket 03-035-14, approved by the Commission on June 28, 2004; 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 by PacifiCorp, which amount of scheduled 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 specified below. The singular includes the plural and the masculine includes the feminine and neuter, and vice versa. “Includes” or “including” means “including, without limitation.” Unless

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otherwise specifically provided, the terms “approval,” “consent,” “accept,” “acceptance,” “agreement,” “authorization” and terms of similar import will be deemed to be followed by the phrase “which will not be unreasonably withheld, unreasonably conditioned or unreasonably delayed.”

1.1 “Annual Maintenance Schedule” shall have the meaning set forth in Section 6.2.1.

1.2 “As-built Supplement” means a supplement to **Exhibit A**, provided by Seller following completion of construction of the Facility, updating the information in **Exhibit A** to describe the Facility as actually built.

1.3 “Availability Factor” or “AF” means, for a given Billing Period, the hours during which the Facility was available for operation divided by the total hours during such given Billing Period, expressed as a three-place decimal, as computed in accordance with the following equation:

$$AF = \frac{PH - \sum_{i=1}^n EDH_i}{PH}$$

where:

- (i) “PH” means the number of hours in the Billing Period.
- (ii) “EDH<sub>i</sub>” means the equivalent derated or outage hours during hour “i.” If during hour “i” no derate or outage occurs, or if such derate or outage was due to a Force Majeure or a Scheduled Maintenance Period, then for such hour “i,” the EDH is equal to zero. For other hours, the EDH is computed as follows:

$$EDH_i = \frac{SD_i}{CC_i}$$

where:

- (A) “SD<sub>i</sub>” means the size of the derate, at ambient conditions, below CC<sub>i</sub> during hour “i” to the extent that the derate is not due to Force Majeure or is not due to a Scheduled Maintenance Period. During hours in which the entire Facility is out of service for reasons other than a Force Majeure or a Scheduled Maintenance Period, SD<sub>i</sub> equals CC<sub>i</sub>.

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(B) “CC<sub>i</sub>” means the Net Dependable Capacity.

(iii) “i” means the summation index for the number of PH hours in the Billing Period.

(iv) “n” means the total number of PH hours in the Billing Period.

1.4 “Billing Period” means each calendar month of a Contract Year.

1.5 “Business Day” means any calendar day other than Saturday, Sunday, or a federal holiday.

1.6 “Capacity Adjustment Factor” shall have the meaning set forth in Section 5.1.2.

1.7 “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:

1.7.1 PacifiCorp has received from Seller a certificate from a Licensed Professional Engineer stating that the Facility is able to generate electric power in amounts required by this Agreement and that the Facility has been completed in all material respects (excluding punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with the requirements of this Agreement;

1.7.2 Start-Up Testing of the Facility has been completed in accordance with Section 2.3.5;

1.7.3 PacifiCorp has been provided a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, using natural gas meeting the quality requirements set forth in the applicable pipeline tariff, the Facility has operated for testing purposes under this Agreement uninterrupted for a period of three (3) consecutive days for sixteen (16) hours on each day (exclusive of hours in which the Facility was starting up or shutting down) at a rate of at least 85,000 kW (based upon any sixty (60) minute period) for each of the three 16 hour operation periods. Seller must provide three (3) Business 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 for any reason other than a normal shut down at the conclusion of a 16 hour operation period, the Facility shall start a new consecutive three (3) day

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testing period and provide PacifiCorp forty-eight (48) hours written notice prior to the start of such testing period;

1.7.4 PacifiCorp has received from Seller a certificate addressed to PacifiCorp from a Licensed Professional Engineer or Transmission Provider stating that, in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed, and the Facility is physically interconnected with PacifiCorp's electric system;

1.7.5 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; and

1.7.6 Seller has satisfied the Credit Requirements set out in Article 8 below.

1.8 "Commission" means the Public Service Commission of Utah.

1.9 "Contract Price" means the applicable price for capacity or energy, or both capacity and energy, as stated in Section 5.1.

1.10 "Contract Year" means a twelve (12) month period commencing at the beginning of HE 0100 Mountain Prevailing Time ("MPT") on January 1 and ending at the end of HE 2400 MPT on December 31 of the same calendar year, except that (i) the first Contract Year shall commence at the beginning of HE 0100 MPT of the Commercial Operation Date, if other than January 1, and end at the end of HE 2400 MPT on December 31 of the calendar year in which the Commercial Operation Date occurred, and (ii) the last Contract Year shall commence at the beginning of HE 0100 MPT on January 1 and end at the end of HE 2400 MPT on the 20<sup>th</sup> anniversary date of the Commercial Operation Date.

1.11 "CPI" shall have the meaning set forth in Section 5.7.

1.12 "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.

1.13 "Delay Contract Price" means, as determined on a monthly basis, the sum of (i) the Fixed Capacity Payment in dollars not paid to Seller during the month as a result of Seller's

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failure to achieve the Scheduled Commercial Operation Date, plus (ii) the Variable Energy Payment in dollars that PacifiCorp would have paid Seller during the month for the Scheduled Deliveries that Seller failed to provide PacifiCorp as a result of Seller's failure to achieve the Scheduled Commercial Operation Date and for which PacifiCorp purchased Delay Energy.

1.14 "Delay Damages" means 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.

1.15 "Delay Energy" means the Scheduled Deliveries, determined on a monthly basis in MWhs, that PacifiCorp would have Dispatched from the Facility had the Commercial Operation Date occurred on the Scheduled Commercial Operation Date.

1.16 "Delay Period" shall have the meaning set forth in Section 2.4.

1.17 "Delay Price" means, for each month in the Delay Period, or part thereof, the product of the Delay Energy purchased by PacifiCorp times the average Replacement Purchase Price incurred by PacifiCorp (in dollars per MWh) for such month or part thereof.

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

1.19 "Effective Date" shall have the meaning set forth in Section 2.1.

1.20 "Event of Default" shall have the meaning set forth in Section 11.1.

1.21 "Facility" means Seller's generation facility as described in **Exhibit A** of this Agreement and the As-Built Supplement.

1.22 "FERC" means the Federal Energy Regulatory Commission.

1.23 "Financing Date" shall have the meaning set forth in Section 11.8.

1.24 "Financing Documents" means the loans and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap agreements and other documents relating to the development, bridge, construction and/or the permanent financing for the Facility, including any credit enhancement, credit

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support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time.

1.25 “Fixed Capacity Payment” shall have the meaning set forth in Section 5.1.2.

1.26 “Fixed Capacity Price<sub>Year</sub>” shall have the meaning set forth in Section 5.1.2.

1.27 “Future Debt” shall have the meaning set forth in Section 8.2.

1.28 “Generation Interconnection Agreement” means the generation interconnection agreement that has been entered into separately between Seller and the Transmission Provider 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.

1.29 “HE” shall have the meaning set forth in Section 1.31.

1.30 “Hourly Market Price” means Powerdex™ hourly power index for the Palo Verde market as reported by Powerdex™ at [www.hourlyindexes.com](http://www.hourlyindexes.com). If the Powerdex™ 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.

1.31 “Hourly Shaping Factor” means the Hourly Shaping Factors utilized by PacifiCorp for transactions at the Palo Verde market, as set forth in **Exhibit G** for each hour. Such factors shall be shown with both hour-ending (“HE”) PPT and MPT format. By notice given to Seller at least sixty (60) days before the beginning of the next 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.

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1.32 “IAF” shall have the meaning set forth in Section 5.7.

1.33 “Index Price” means for Monday through Saturday, the Dow Jones™ Palo Verde Firm On-Peak Price and the Dow Jones™ Palo Verde Firm Off-Peak Price. For Sunday and NERC holidays, Dow Jones™ Palo Verde 24-Hour Index Price, unless Dow Jones™ shall publish a Firm On-Peak and Firm Off-Peak Price for such days for Palo Verde. Dow Jones™ Palo Verde daily indices are calculated seven (7) days a week, including NERC holidays. If the Dow Jones™ 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. The Index Price will be expressed in dollars per MWh.

1.34 “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) is issued by (a) a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a credit rating on its senior unsecured debt of:
  - (I) “A2” or higher from Moody’s; or
  - (II) “A” or higher from Standard & Poor’s unless otherwise approved by PacifiCorp; or(b) any other commercial bank approved by PacifiCorp’s credit department, in writing;
- (2) on the terms provided in the letter(s) of credit, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder upon the occurrence of an Event of Default by Seller.
- (3) if a Letter of Credit is issued by a foreign bank with a U.S. branch, permits PacifiCorp to draw upon the U.S. branch;

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- (4) permits PacifiCorp to draw the entire amount available thereunder if such Letter of Credit is not renewed or replaced at least thirty (30) days prior to its stated expiration date;
- (5) permits PacifiCorp to draw the entire amount available thereunder if such Letter(s) of Credit are not increased, replaced or replenished as and when provided herein; and
- (6) shall remain in effect as provided in Section 8.

1.35 “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 power plant design and construction, 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. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement and/or the Financing Documents 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, unreasonably conditioned, or unduly delayed. If no Utah Licensed Professional Engineer meets these criteria, then the Parties may mutually agree to a Licensed Professional Engineer nevertheless mutually acceptable to them or, failing that, to a Licensed Professional Engineer proposed by Seller knowledgeable in the requirements of the Western Electric Coordinating Council (“WECC”).

1.36 “Material Adverse Change” means, with respect to the Seller, if the Seller, in the reasonable opinion of PacifiCorp, has experienced a material adverse change in ability to fulfill its obligations under this Agreement, including, but not limited to, any such change that results in its inability to satisfy the Credit Requirements, unless either Seller’s senior unsecured debt or credit rating shall have a Standard & Poor’s rating of BBB- or better.

1.37 “MPT” shall have the meaning set forth in Section 1.10.



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1.38 “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.

1.39 “NERC” means the North American Reliability Counsel or any successor organization.

1.40 “Net Dependable Capacity” means 100,000 kW at an ambient temperature of 59.5° F, sixty percent (60%) relative humidity, as set forth in Report and Order dated April 1, 2004 in Docket 03-035-14, corrected to ambient conditions using applicable manufacturer’s correction curves.

1.41 “Net Output” means the energy produced by the Facility, net of station power and transmission losses, up to the Net Dependable Capacity and available for sale, as measured pursuant to the Generation Interconnection Agreement.

1.42 “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.

1.43 “O&M Capacity Price” shall have the meaning set forth in Section 5.7.

1.44 “O&M Capacity Price<sub>Year</sub>” shall have the meaning set forth in Section 5.1.2.

1.45 “On-Peak” means those hours starting HE0700 PPT through HE2200 PPT (HE0800 to HE2300 MPT) and “Off-Peak” means those hours starting HE2300 PPT through HE0600 PPT (HE2400 to HE0700 MPT).

1.46 “Operating Hour” means the top of the hour and six (6) minutes thereafter.

1.47 “Peak Months” shall have the meaning set forth in Section 6.2.1.

1.48 “Pre-Schedule Day” means, unless modified pursuant to the WECC ISAS Pre-scheduling calendar, 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.

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1.49 “PPT” means Pacific Prevailing Time.

1.50 “Point of Delivery” means the point of interconnection between the Facility and PacifiCorp’s transmission system, as specified in the Generation Interconnection Agreement and in **Exhibit B**.

1.51 “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.

1.52 “Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry in connection with power generation stations of similar size and duty as the Facility, and in connection with power delivery operations owned or operated by Seller, 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.

1.53 “Replacement Contract Price” means the sum (in dollars) of (i) any portion of the Fixed Capacity Payment not paid to Seller pursuant to this Agreement, plus (ii) the product of the Replacement Energy (in kWh) times the Heat Rate<sub>Year</sub> used for the for the Billing Period in which the Replacement Energy was purchased times the average Daily Gas Price for such Billing Period divided by one million.

1.54 “Replacement Energy” means the energy actually purchased or otherwise acquired by PacifiCorp to replace the Scheduled Deliveries that Seller does not deliver from the Facility in compliance with the terms and conditions of this Agreement, for any reason other than Force Majeure or the occurrence of a Scheduled Maintenance Period, as determined in accordance with the following formula:

$$RE_j = 0.85 \times DC_j - NO_j$$

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where:

1.54.1 “RE<sub>j</sub>” means the Replacement Energy for hour “j,” expressed in MWh, during the Billing Period for which the Replacement Energy calculation is being performed. If the formula above results in a negative RE<sub>j</sub>, then RE<sub>j</sub> for the hour will be zero.

1.54.2 “DC<sub>j</sub>” mean the Scheduled Deliveries, expressed in MWh, for hour “j” that PacifiCorp Dispatched or would have Dispatched from the Facility had the Facility been capable of being Dispatched to its full Net Dependable Capacity.

1.54.3 “NO<sub>j</sub>” means the Net Output for hour “j” expressed in MWh.

1.54.4 “j” has the meaning specified in Section 1.55.

Notwithstanding anything in this Section 1.54 to the contrary, if the Availability Factor for the Billing Period in question is equal to or greater than 85 percent, then RE<sub>j</sub> for all hours during the Billing Period will be deemed to equal zero.

1.55 “Replacement Price” means the aggregate of the sum of the product of RE<sub>j</sub> times the Replacement Purchase Price for hour “j” during a Billing Period, which is expressed as a formula below:

$$RP = \sum_j^m RE_j \times RPP_j$$

where:

1.55.1 “RP” means the Replacement Price for the Billing Period for which the Replacement Energy calculation is being performed.

1.55.2 “RPP<sub>j</sub>” means the hourly Replacement Purchase Price, expressed in dollars per MWh, for energy actually purchased by PacifiCorp in hour “j” for delivery to the Point of Delivery to replace the Scheduled Deliveries not provided by Seller during such hour.

1.55.3 “j” means the summation index for the number of PH hours during the Billing Period.

1.55.4 “m” means the total number of PH hours in the Billing Period.

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1.56 “Replacement Purchase Price” means the price (in dollars per MWh) at which PacifiCorp, acting in a commercially reasonable manner, actually purchases energy for delivery to the Point of Delivery to replace the Scheduled Deliveries not provided by Seller, plus (i) actual costs reasonably incurred by PacifiCorp in purchasing such energy, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp for delivery of such energy to the Point of Delivery if not included in the Replacement Purchase Price, or absent a purchase, by delivery from PacifiCorp’s own or controlled plants or existing power purchase agreements, the Hourly Market Price derived at the Point of Delivery for such energy not delivered. The Replacement Purchase Price does not include any costs or expenses that are or would have been incurred by PacifiCorp if Seller had delivered the Scheduled Deliveries for which PacifiCorp has acquired energy in accordance with this Agreement.

1.57 “Required Facility Documents” means the licenses, permits, plans, authorizations, and agreements necessary for construction, operation, and maintenance of the Facility, or such other interim authorizations sufficient to allow the Facility to operate pending issuance of final authorizations or permits, as set forth in **Exhibit H**.

1.58 “Scheduled Commercial Operation Date” means a date no later than June 1, 2007, as such date may be extended by the occurrence of Force Majeure.

1.59 “Scheduled Delivery(ies)” means Net Dependable Capacity Dispatched by PacifiCorp for delivery by Seller in accordance with Sections 6.6 and 6.7.

1.60 “Scheduled Maintenance Periods” means those times scheduled by Seller with advance notice to PacifiCorp as provided in Section 6.2 unless otherwise mutually agreed. Schedule Maintenance Periods shall be limited to NERC events PO, PE, and PD and by mutual agreement of the Parties, the other NERC events MO, ME and U3, D3, 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.

1.61 “Second Year” shall have the meaning set forth in Section 5.7.

1.62 “Standard & Poor’s” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

1.63 “Start-up” shall have the meaning set forth in Section 5.8.

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1.64 “Start-Up Testing” means the start-up tests as set forth in **Exhibit E** hereto.

1.65 “Tariff” means the PacifiCorp FERC Electric Tariff Fifth Revised Volume No.11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

1.66 “Term” shall mean the period of time commencing on the Effective Date and ending upon termination of this Agreement in accordance with Section 2.2, unless earlier terminated in accordance with Sections 11.2, 11.8, or 13.5.

1.67 “Test Energy” shall have the meaning set forth in Section 4.5.

1.68 “Transmission Provider” means PacifiCorp transmission function or a successor, including any RTO.

1.69 “Variable Energy Payment” has the meaning set forth in Section 5.1.1.

1.70 “WECC” shall have the meaning set forth in Section 1.35.

**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

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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 Except as otherwise provided herein, this Agreement shall terminate on the 20th anniversary of the Commercial Operation Date. Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to satisfy the terms and conditions of this Agreement and, as applicable, to provide for: final billings and adjustments related to the period prior to termination; payment of any money due and owing a Party pursuant to this Agreement; repayment of principal and interest associated with security funds; and the indemnifications specified in this Agreement.

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:

2.3.1 On the earlier of (i) the date Seller obtains 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), or (ii) the first Business Day after the Financing Date, Seller shall provide Project Development Security as described in Section 8.1;

2.3.2 No later than twelve (12) months before the Scheduled Commercial Operation 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 twelve (12) months before the Scheduled Commercial Operation Date, Seller shall obtain and provide to PacifiCorp copies of the governmental permits, licenses, and authorizations or such other interim authorizations necessary for construction of the Facility identified in **Exhibit H**;

2.3.4 No later than sixty (60) days before the Scheduled Commercial Operation Date, Seller shall provide to PacifiCorp written evidence reasonably acceptable to PacifiCorp that Seller has obtained construction financing for the Facility (or

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alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents); and

2.3.5 No later than 1 month before the Scheduled Commercial Operation Date, Seller shall use all reasonable efforts to begin deliveries of Test Energy for purposes of initiating Start-Up Testing, which energy shall be paid for in accordance with Section 5.2.

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 one (1) or more days after the Scheduled Commercial Operation Date (the "**Delay Period**"), PacifiCorp shall not pay the Seller the Contract Price 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 Delay Contract Price, in dollars, from the Delay Price, in dollars, for the Delay Energy purchased by PacifiCorp during the Delay Period to replace the Scheduled Deliveries that PacifiCorp would have Dispatched from the Facility had the Commercial Operation Date occurred on the Scheduled Commercial Operation Date. The Delay Period will not exceed a total of ninety (90) days.

Delay Damages will be calculated on a monthly basis and will be invoiced by PacifiCorp to Seller within twenty (20) days after the end of the month. Within twenty (20) days of Seller's receipt of PacifiCorp's invoice for Delay Damages, Seller shall (i) pay all undisputed amounts by wire transfer or as otherwise reasonably directed by PacifiCorp from time to time, and (ii) provide written notice to PacifiCorp of any disputed amounts invoiced by PacifiCorp, which notice will (a) set forth the disputed amount, and (b) describe in reasonable detail Seller's position for disputing the amount. PacifiCorp shall submit to Seller upon request reasonably detailed information supporting its determination of the Scheduled Deliveries that would have been made during the Delay Period and the Delay Price for Delay Energy.

2.5 If, during the Term, Seller seeks to sell capacity and/or associated energy from the Facility in excess of the Net Dependable Capacity to PacifiCorp under a separate QF power purchase agreement, the Parties may seek to renegotiate as to how, if at all, such a separate QF power purchase agreement would impact this Agreement including, but not limited to, operation and control of the Facility per Section 6 and appropriate accounting adjustments as a result of capital lease treatment under FASB-13, or any successor thereto, or consolidation required by FIN-46, and if so, at what level. In the event the Parties are unable to reach agreement on these

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issues, the Parties may seek Commission review and determination of the issues. Notwithstanding anything in this Section to the contrary, no amendment, modification, or supplement to this Agreement shall be binding on either Party except as provided in Section 22.1.

2.6 Notwithstanding anything in this Agreement to the contrary, Seller's total liability to PacifiCorp for any failure to achieve or any delay in achieving the Commercial Operation Date of the Facility shall not exceed, including any draws on the Project Development Security, the amount of \$1.8 million. Except for PacifiCorp's right to terminate this Agreement in Section 11, the remedies provided in this Section 2 are the exclusive remedies of PacifiCorp for any delay or failure of Seller to achieve the Commercial Operation Date, and the remedies provided in this Section 2 are the sole liability of Seller to PacifiCorp for money damages for the failure to achieve or delay in achieving the Commercial Operation Date.

**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,



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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 liability company 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 has taken all limited liability company 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 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 the Facility'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, (i) PacifiCorp may require Seller to provide PacifiCorp with a written legal opinion stating

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that the Facility is a QF and (ii) Seller will provide PacifiCorp with such reasonable information as PacifiCorp requests regarding the Facility.

**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 up to the Net Dependable Capacity Dispatched by PacifiCorp from the Facility at the Point of Delivery.

4.2 If Seller fails to meet a ninety percent (90%) monthly Availability Factor during a Billing Period for Scheduled Deliveries of the Net Dependable Capacity, Seller's Fixed Capacity Payment for the Billing Period will be adjusted pursuant to Section 5.1.2. No Scheduled Deliveries shall be scheduled by PacifiCorp from the Facility during Scheduled Maintenance Periods without Seller's consent.

4.3 PacifiCorp shall not Dispatch, and Seller shall not be required to provide more than two (2) Facility Start-ups in any calendar day, and Seller shall not be required to provide more than 260 Start-ups in any Contract Year. PacifiCorp's Dispatch of Net Dependable Capacity from the Facility shall be in accordance with the limitations on start time and other limitations and requirements as set forth from time to time in the turbine manufacturer's recommended operating procedures and bulletins and as otherwise established or recommended in writing by the turbine manufacturer.

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. Seller generally shall design the plant in conformance with the Nameplate Capacity Rating specified in **Exhibit A** and will not substantially modify, replace, or add to existing equipment in such a manner as to exceed the Nameplate Capacity Rating, except with written notice to PacifiCorp provided eighteen (18) months prior to the date of financial closing or the date that a notice to proceed is provided to a contractor for any such modification, replacement or addition of equipment, whichever is earlier. The 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, shall be borne by the Parties as set out in the Generation Interconnection Agreement.

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4.5 To assist in the start up and testing of the Facility, PacifiCorp will take all energy generated in connection with the startup and testing of the Facility prior to the Commercial Operation Date (“**Test Energy**”). PacifiCorp will pay Seller for the Test Energy at the price specified in Section 5.2 for energy that is not generated pursuant to a Scheduled Delivery.

4.6 PacifiCorp will Dispatch the Facility as part of its resource portfolio in accordance with its normal business practices subject to the individual operating characteristics of the generating plants or terms and conditions of its power purchase agreements.

4.7 PacifiCorp shall not be obligated to purchase, receive or pay for energy that is not delivered to the Point of Delivery (a) during times and to the extent that such energy is not delivered because the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, (b) during times and to the extent that such energy is not delivered because the Transmission Provider Curtails (as defined in the Tariff) Network Integration Transmission Service (as defined in the Tariff) to PacifiCorp pursuant to the terms of the Tariff, or (c) during times and to the extent that an event of Force Majeure prevents either Party from delivering or receiving such energy.

**SECTION 5: PURCHASE PRICES**

5.1 PacifiCorp shall pay Seller the Contract Price stated below for all Scheduled Deliveries of Net Output up to the Net Dependable Capacity. These payments shall consist of a Fixed Capacity Payment and Variable Energy Payment.

Scheduled Deliveries Payment = Variable Energy Payment + Fixed Capacity Payment

Where:

5.1.1 Variable Energy Payment = The sum of the following for all hours in a billing month in which Seller is making Scheduled Deliveries:

Heat Rate<sub>Year</sub> times the Daily Gas Price times the hourly Net Output in kWh, up to the Net Dependable Capacity divided by one million.

Where:

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“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 (expressed in \$/MMBtu at higher heating value) 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) \$0.13 per MMBtu and 1.6% shrinkage (subject to actual change in Questar Pipeline firm tariff T-1 after May 20, 2004), plus
- (c) \$0.09/MMBtu and 1.5% 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 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>, as set out in **Exhibit C** divided by 12 times 100,000 kW in each Billing Period times the Capacity Adjustment Factor.

Where:

Fixed Capacity Price<sub>Year</sub> equals 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 5.7 hereof.

In any Billing Period where Seller’s Availability Factor is less than ninety (90) percent but greater than or equal to eighty-five (85) percent, the “Capacity Adjustment Factor” for the Billing Period shall equal the Availability Factor for the Billing Period divided by ninety

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(90) percent. No Fixed Capacity Payment shall be made for any Billing Period that Seller's Availability Factor does not equal or exceed eighty-five (85) percent. In any Billing Period where Seller's Availability Factor is ninety (90) percent, or greater, the Capacity Adjustment Factor shall equal one (1).

5.2 During hours in which PacifiCorp has not requested Scheduled Deliveries and the Seller elects to sell energy to PacifiCorp, PacifiCorp shall pay the Seller for the energy delivered. The monthly energy payment for such non-firm energy up to the Net Dependable Capacity shall be 0.93 times the applicable Index Price times the appropriate Hourly Shaping Factors in **Exhibit G** times the Net Output (MWhs) at the Point of Delivery for those hours where there are no Scheduled Deliveries.

5.3 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 such hour in excess of the Adjusted Net Dependable Capacity up to the Net Dependable Capacity shall be paid for by PacifiCorp. The monthly energy payment for such non-firm energy up to the Net Dependable Capacity shall be 0.93 times the applicable Index Price times the appropriate Hourly Shaping Factors in **Exhibit G** times the difference between the Net Output (in MWhs) at the Point of Delivery and the Adjusted Net Dependable Capacity.

5.4 Any energy delivered by the Seller to PacifiCorp during any hour in excess of the Net Dependable Capacity up to the Nameplate Capacity Rating 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 (in MWhs) at the Point of Delivery minus the Net Dependable Capacity. The difference between the Nameplate Capacity Rating and the Net Dependable Capacity shall be referred to as the “Excess Energy.”

5.5 If Seller fails for any reason other than Force Majeure or the occurrence of a Scheduled Maintenance Period to deliver Scheduled Deliveries from its Facility, Seller shall, subject to the limitations below, pay PacifiCorp damages equal to the positive difference, if any, obtained by subtracting the Replacement Contract Price in dollars from the Replacement Price, which amount shall be a credit that PacifiCorp shall be entitled to apply against any sums due Seller herein for the month in which such shortfall occurs, unless the amount of such credit is more than the amount due from PacifiCorp for such month, in which event such net remaining amount due PacifiCorp shall be paid by Seller to PacifiCorp on the date PacifiCorp's payment would have been due. Notwithstanding anything in this Section 5.5 to the contrary, however,

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Seller's obligation to pay for Replacement Energy in any Contract Year shall not exceed \$3,870,000.

5.6 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, or if Seller is required to make capital investments in the Facility to comply with changes in applicable laws associated within emissions or air quality, the Parties may reopen this Agreement for the purpose of negotiation in good faith as to how, if at all, such costs said investments 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 may seek Commission review and determination of the issues.

5.7 Seller may apply an inflation adjustment to the operation and maintenance component (“**O&M Capacity Price**”, as set out in **Exhibit C** and as updated by each adjustment, if any, made pursuant to this Section) of the Fixed Capacity Price<sub>Year</sub> if inflation as measured by the annual Consumer Price Index (“**CPI**”) exceeds four percent (4%) for two (2) consecutive years. If the CPI is less than one and one-quarter percent (1.25%) for two (2) 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 two and one-half percent (2.5%). The IAF will equal the CPI in the second year of the two (2) consecutive year period described above (the “**Second Year**”) minus two and one-half percent (2.5%). 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 Year and shall apply in the Contract Year following the Second Year and in all subsequent Contract Years and the adjustment will be inflated at the base inflation rate of two and one-half percent (2.5%) per year. The CPI measurement shall be based on calendar year measurements. The O&M Capacity Price, as adjusted for each Contract 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 I**.

5.8 PacifiCorp shall pay Seller for prudently-incurred costs for Start-up fuel for each start-up PacifiCorp requests for Scheduled Deliveries. For purposes of this Agreement, “Start-

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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. For a cold Start-up, defined as being a Start-up occurring at least seventy-two (72) hours after the last Scheduled Deliveries, PacifiCorp will pay for two thousand two hundred (2,200) MMBtu (HHV) per gas turbine per Start-up based on the Daily Gas Price. For any other Start-up, PacifiCorp will pay for one-thousand one hundred (1,100) MMBtu (HHV) per gas turbine per Start-up based on the Daily Gas Price. PacifiCorp shall not be liable to pay for costs for Start-up fuel for any Start-up associated with non-Scheduled Deliveries or for any Start-up requested for Scheduled Deliveries if no Start-up is in fact required for any reason, including but not limited to no Start-up being required because Seller is delivering non-Scheduled energy to PacifiCorp or making sales to other buyers.

**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 the 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 1080 hours each Contract Year (unless otherwise agreed, which agreement will not be unreasonably withheld, conditioned, or delayed).

6.2.1 Scheduled Maintenance Periods shall be reasonably determined by Seller and provided to PacifiCorp at least ninety (90) days prior to the commencement of each Contract Year, as thereafter adjusted by mutual agreement of the Parties pursuant to the provisions in Section 6.2.2 (the “**Annual Maintenance Schedule**”). Seller shall determine the Annual Maintenance Schedule in accordance with Prudent Electrical Practices and in consultation with PacifiCorp in a joint effort to minimize disruption and cost to the Parties and to maximize availability of the Facility during Peak Months. As used in this Agreement, “Peak Months” means the months of June through September.

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6.2.2 Modifications to the Annual Maintenance Schedule may be made by the Seller with the consent of PacifiCorp. Seller shall furnish PacifiCorp with reasonable advance notice of any change in the Annual Maintenance Schedule. Reasonable advance notice of any change in the maintenance schedule is as follows

Anticipated Duration of Scheduled Maintenance Period	Advance Notice to PacifiCorp
(1) Less than 2 days	24 hour minimum
(2) 2 to 5 days	7 day minimum
(3) Major maintenance (over 5 days)	90 day minimum

6.2.3 Seller will use its commercially reasonable efforts to avoid scheduling Scheduled Maintenance Periods during Peak Months; however, PacifiCorp acknowledges that the Facility's need for scheduled maintenance will be affected by PacifiCorp's Dispatch of the Facility and other factors outside Seller's control and agrees not to unreasonably withhold or condition its consent to requests for Scheduled Maintenance Periods during Peak Months as necessary to avoid damage to Facility equipment or a material adverse effect on the operating cost or reliability of the Facility.

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 in Peak Months during Off-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 NERC event types: U1, U2, U3, SF, MO, ME, PO, and PE 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 NERC event types: D1, D2, D3, D4, and PD, as defined on **Exhibit D** hereto. Seller shall not have the right to interrupt or curtail deliveries to PacifiCorp due to NERC event type NC, as defined on **Exhibit D** hereto.

6.5 At least sixty (60) days prior to the commencement of each Contract Year, PacifiCorp shall provide Seller with an expected, projected schedule of Scheduled Deliveries for the following Contract Year and, thereafter, of any changes reasonably anticipated. Such



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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 Dispatch the Net Dependable Capacity for delivery hereunder pursuant to these scheduling guidelines, subject to the start time and other Facility limitations described in Section 4.3 and other applicable provisions of this Agreement. Prior to 6:30 a.m. PPT (7:30 a.m. MPT) on each Pre-Scheduled Day, PacifiCorp shall provide to Seller or Seller's agent, PacifiCorp's daily pre-schedule quantities by hour for the applicable day of delivery. 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 by PacifiCorp in accordance with NERC guidelines. PacifiCorp may schedule zero (0) or no less than eighty percent (80%) of the Net Dependable Capacity in any hour of the Scheduled Deliveries unless otherwise agreed. In the event PacifiCorp has not noticed Seller of Scheduled Deliveries by the time specified herein on the Pre-Schedule Day, zero (0) Scheduled Deliveries shall be imputed for the applicable delivery day, and any such request by PacifiCorp will be deemed to be a Day-of Change to Schedule governed by Section 6.7 hereof.

6.7 PacifiCorp shall have the option, but not the obligation, to make schedule changes within the day of delivery (each, a "**Day-of Change to the Schedule**"); provided such schedule changes are in conformance with the accepted practices of the applicable control area operator(s). Notwithstanding the foregoing, PacifiCorp shall provide notification to Seller, or Seller's agent, of any changes in the schedule as soon as possible, but in any event no later than thirty (30) minutes prior to the next Operating Hour. PacifiCorp may change its pre-scheduled Scheduled Deliveries on any given hour within the day of delivery; provided, however that (i) the Facility has no more than two (2) starts in any day of Scheduled Deliveries (and otherwise in accordance with the limitations of Section 4.3), (ii) the change results in Facility output no less than eighty percent (80%) of the Net Dependable Capacity in any hour, and (iii) PacifiCorp has complied with the notice requirements set forth in this Section. Seller shall use commercially reasonable efforts to comply with any such request, so long as Seller is able, using commercially reasonable 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 incurred by Seller in connection with delivery or non-delivery of such natural gas; however, in

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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. Notwithstanding anything in this Section 6.7 to the contrary, Seller is not required to obtain No-Notice gas supply service to comply with a request of PacifiCorp for a Day-of Change to the Schedule.

6.8 Seller shall have the option but not the obligation to sell Net Output to PacifiCorp up to the Net Dependable Capacity in any hour outside of Scheduled Deliveries, and PacifiCorp shall accept such Net Output. Seller shall be compensated for such energy deliveries in accordance with Section 5.2.

6.9 Seller shall have the option but not the obligation to sell energy to PacifiCorp in excess of the Net Dependable Capacity up to the Nameplate Capacity Rating in any hour, and PacifiCorp shall accept such excess. Seller shall be compensated for such energy deliveries in accordance with Section 5.4.

6.10 PacifiCorp and Seller shall each appoint one representative and one alternate representative to act in matters relating to the operation of the Facility and PacifiCorp's purchase of energy and capacity under this Agreement and to develop communication and scheduling protocols for delivery of power from the Facility to PacifiCorp. The Parties shall notify each other in writing of such appointments and any changes thereto. These representatives shall have no authority to modify the terms or conditions of this Agreement.

6.11 Notwithstanding the foregoing, PacifiCorp has no responsibility for the day-to-day operation of the Facility and shall not be considered the operator of the Facility. Seller shall be solely responsible for operating the Facility consistent with this Agreement.

**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. Seller's fuel plan is provided in **Exhibit F**.

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**SECTION 8: SECURITY**

8.1 On the date required by Section 2.3.1, Seller shall provide PacifiCorp with a Letter of Credit in the amount of \$1,800,000 (“**Project Development Security**”). In the event that the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, and Seller fails to pay PacifiCorp Delay Damages in accordance with this Agreement, PacifiCorp shall be entitled to draw an amount equal to the unpaid Delay Damages. After the Commercial Operation Date has occurred and PacifiCorp has receipt of the Default Security, PacifiCorp will return the Letter of Credit provided by Seller to Seller for termination.

8.2 Beginning on the Commercial Operation Date, Seller shall provide default security (“**Default Security**”) for its performance hereunder. For such purposes, the Default Security shall be composed of a Letter of Credit to the benefit of PacifiCorp established by Seller on or before the Scheduled Commercial Operation Date and will initially be in the amount of \$4,210,000 and adjusted according to the following schedule: On January 1 (or the next Business Day) of the calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$5,040,000. On January 1 (or the next Business Day) of the second calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$5,940,000. On January 1 (or the next Business Day) of the 3rd calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$6,845,000. On January 1 (or the next Business Day) of the 4th calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$7,470,000. Then, if Seller has performed in accordance with the terms of this Agreement, on January 1 (or the next Business Day) of the sixth calendar year following the Commercial Operation Date, Seller may reduce the Default Security to \$6,320,000; on January 1 (or the next Business Day) of the seventh calendar year following the Commercial Operation Date, Seller may reduce the amount of the Default Security to \$5,270,000, and on January 1 (or the next Business Day) of the eighth calendar year following the Commercial Operation Date, Seller may reduce the amount of the Default Security to \$4,225,000, and on January 1 (or the next Business Day) of the ninth calendar year following the Commercial Operation Date, Seller may reduce the amount of the default security to \$3,680,000, at which level it shall remain for the duration of the Agreement. To the extent of any draw on the Letter of Credit, Seller shall, within thirty (30) days, restore the amount of 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. Seller has represented that it may at some future date seek debt financing (the “**Future Debt**”). In the

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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 Letter of Credit shall be released to Seller; provided, however, that if Seller's credit rating is no longer BBB- or BBB- is not deemed to be investment grade by Standard & Poors, then Seller shall reinstate the Letter of Credit to the amount required by this Section 8.2, after giving effect to any increases or decreases in the amount thereof.

8.3 If requested by PacifiCorp, Seller shall within thirty (30) 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 thirty (30) days of a written 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 in accordance with the Generation Interconnection Agreement. If any of the inspections or tests disclose an error exceeding the allowed metering accuracy as stated in the Generation Interconnection Agreement, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings as specified in the Generation Interconnection Agreement. Any correction in billings or payments resulting from a correction in the meter records shall be settled and/or netted pursuant to Section 14.2.

9.4 Costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by the Parties as provided in the Generation Interconnection Agreement.

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9.5 Seller may install check metering as provided in the Generation Interconnection Agreement.

**SECTION 10: BILLINGS, COMPUTATIONS AND PAYMENTS**

10.1 No later than the twentieth (20th) 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 twenty (20) 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, and (ii) provide written notice to Seller of any disputed amounts invoiced by Seller, which notice will (A) set forth the disputed amount, and (B) describe in sufficient detail PacifiCorp's position for disputing the amount.

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 relating to the purchase or sale of electric capacity or energy. 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 ten (10) days by the owing Party to the other.

10.3 Parties shall attempt in good faith to resolve any billing disputes within thirty (30) days of notice by any Party to the other of a billing dispute. If either Party pays any invoice under protest and its position is subsequently upheld, or if an error in any billing is discovered within two (2) 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 two percent (2%) from the date due until paid; provided however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

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**SECTION 11: DEFAULT AND REMEDIES**

11.1 The following events shall constitute Events of Default (“**Events of Default**”) under this Agreement:

11.1.1 Failure of a Party to pay any amount due to the other Party hereunder within thirty (30) Business Days of written notice from the payee to the payor that such amount has not been paid.

11.1.2 Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to 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, except that Seller’s failure to meet the deadline set forth in Section 2.3.5 shall not be an Event of Default) or breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within sixty (60) days following written notice by registered or certified mail;

11.1.3 Filing of a petition in bankruptcy by or against a Party if such petition is not withdrawn or dismissed within sixty (60) days after it is filed;

11.1.4 Seller’s failure to cause the Facility to achieve a Commercial Operation Date on or before the date that occurs ninety (90) days after the Scheduled Commercial Operation Date.

11.1.5 Material Adverse Change has occurred with respect to Seller and Seller fails to provide reasonable performance assurances in the form of a letter from Seller to PacifiCorp reaffirming Seller’s intent to be bound by this Agreement within fifteen (15) days of the date PacifiCorp makes such a request.

11.1.6 PacifiCorp, in the reasonable opinion of Seller, has experienced a material adverse change in ability to fulfill its obligations under this Agreement, including, but not limited to, PacifiCorp’s senior unsecured debt or credit rating shall no longer have a Standard & Poor’s rating of BBB- or better, and PacifiCorp fails to provide reasonable performance assurances in the form of a letter from PacifiCorp to Seller reaffirming PacifiCorp’s intent to be bound by this Agreement within fifteen (15) days of the date Seller makes such a request.

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11.1.7 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 or a payment default under Section 11.1.1, 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 eighteen (18) 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 this Agreement would terminate under 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 Replacement Contract Price in dollars from the Replacement Price in dollars for any energy and capacity that Seller was otherwise obligated to provide for thirty-six (36) months following the termination date of this Agreement. Amounts owed by Seller pursuant to this paragraph shall be due within ten (10) Business Days after any invoice from PacifiCorp for the same.

11.5 If this Agreement is terminated as a result of a material default of Seller, PacifiCorp may draw 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.

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11.7 PacifiCorp will accept a cure to a Seller default performed by the lenders under the Financing Documents, so long as the cure is accomplished within the deadlines set forth in the consent to assignment between PacifiCorp and the lender described in Section 11.6.

11.8 Notwithstanding any provision in this Agreement to the contrary, if Seller determines in its sole and absolute discretion within six (6) months from the Effective Date that the Facility cannot be financed on a non-recourse basis on terms and conditions acceptable to Seller, then Seller shall have the right to terminate this Agreement, on or before the six (6) month anniversary date following the Effective Date (the “**Financing Date**”), by delivery to PacifiCorp of a written notice of termination, receipt of which by PacifiCorp shall terminate this Agreement.

**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.



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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 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 \$1,000,000, to the extent Seller has employees.

12.5.3 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 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 provisions or endorsements naming PacifiCorp, its board of directors, officers and employees as additional insured.

12.5.4 Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to vehicles, if any,

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whether owned, hired or 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) ten (10) days prior written notice to PacifiCorp if canceled for non-payment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if cancelled for any other reason. A certificate in the form reasonably 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 two (2) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

**SECTION 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 a Party 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, terrorism, 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 amounts incurred prior to the occurrence of the Event of Force Majeure. Force Majeure,

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however, specifically excludes the cost 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; 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 six (6) 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. 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 for turbines, heat recovery steam generators, steam turbine, or step-up transformer, then no termination right shall apply up to a period of twenty-four (24) 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 twenty-four (24) months after the occurrence of the event, PacifiCorp may terminate the Agreement and Seller is bound by Section 11.3.

13.6 If Seller is prevented from achieving Commercial Operation by the Scheduled Commercial Operation Date due to the occurrence of an event of Force Majeure, then the Scheduled Commercial Operation Date shall be extended by the length of the delay occasioned

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by the event of Force Majeure. The Parties shall execute a writing setting forth the adjusted Scheduled Commercial Operation Date.

**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 the Dispatch of the Facility and the 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 PacifiCorp, 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 two percent (2%), 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 two percent (2%), 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 two (2) 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 two (2) 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

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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 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: NEGOTIATION**

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 ten (10) 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 pursue any remedies available at law or equity.

**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 amendment, supplement, or other modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

**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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<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
All Notices	PacifiCorp 825 NE Multnomah Street 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	Spring Canyon Energy, LLC
All Invoices:	Attn: Back Office, Suite 600 Phone: (503) 813 - 5674 Facsimile: (503) 813 - 5580	Spring Canyon Energy, LLC
Scheduling:	Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
Confirmation:		Plant Manager
Payments:	Attn: Back Office, Suite 600 Phone: (503) 813 - 5674 Facsimile: (503) 813 - 5580	Spring Canyon Energy, LLC
Wire Transfer:	JPM/Chase ABA: 071000013 ACCT: 55-44688  NAME: PacifiCorp Wholesale	
Credit and Collections:	Attn: Credit Manager, Suite 1800 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	Spring Canyon, LLC
With Additional Notices of an Event of Default or Potential Event of Default to:	Attn: Andrew P. Haller, Esq. and Dean Brockbank, Esq.  Phone: (503) 813-6266 and (801) 220-4568 Facsimile: (503) 813-7262 and (801) 220-3299	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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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.

**SECTION 24: MITIGATION**

24.1 Each Party agrees to use commercially reasonable efforts to mitigate the amount of its damages payable by or expenses reimbursable by the other Party pursuant to this Agreement.



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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: Stan K Watters

Title: SVP, Commercial & Trading

STATE OF OREGON )

COUNTY OF MULTNOMAH )

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

My commission expires:

\_\_\_\_\_

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

**SPRING CANYON ENERGY, LLC**

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

Name:

Title:

STATE OF )

COUNTY OF )

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

My commission expires:

\_\_\_\_\_

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