

**RFP 2012
ATTACHMENT 6
ASSET PURCHASE AND SALE
AGREEMENT (APSA) WITH
APPENDICES**

ASSET PURCHASE AND SALE AGREEMENT

dated as of [DATE]

by and between

PACIFICORP,

as Buyer

and

as Seller

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND INTERPRETATION	2
Section 1.1 Defined Terms	2
Section 1.2 Interpretation.....	2
ARTICLE 2 SALE OF ASSETS	2
Section 2.1 Sale and Transfer of Project by Seller	2
Section 2.2 Purchase Price.....	4
Section 2.3 Closing	5
Section 2.4 Assumption of Liabilities	6
Section 2.5 Further Assurances	6
Section 2.6 Conditions to Buyer’s Obligation to Close.....	6
Section 2.7 Conditions to Seller’s Obligations to Close.....	7
ARTICLE 3 TERMS FOR PROGRESS PAYMENTS.....	7
Section 3.1 Terms	7
Section 3.2 Conditions Precedent	8
Section 3.3 Notice of Request for Progress Payment	9
ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF SELLER.....	12
Section 4.1 Organization, Standing and Power	12
Section 4.2 Capital Structure	12
Section 4.3 Authority; Execution and Delivery: Enforceability.....	12
Section 4.4 Validity of Agreement; No Conflict	13
Section 4.5 Governmental Approvals and Consents	13
Section 4.6 No Proceedings	14
Section 4.7 Compliance	14
Section 4.8 Taxes.....	14
Section 4.9 Environmental Matters	15
Section 4.10 Title to Properties	16
Section 4.11 Real Estate	16
Section 4.12 Transaction Documents; Representations and Warranties in Transaction Documents	16
Section 4.13 Sufficiency of Assets	17
Section 4.14 Water Rights	17
Section 4.15 Emission Reduction Credits	18
Section 4.16 Discharge Permit	18
Section 4.17 Security Interests and Liens.....	18
Section 4.18 No Defaults	18
Section 4.19 Expertise	18
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER.....	19
Section 5.1 Corporate Organization; Etc.	19

Section 5.2	Validity of Contract; No Conflict	19
Section 5.3	Consents, Approvals and Authorizations	20
Section 5.4	Resources	20
Section 5.5	No Proceedings	20
ARTICLE 6 CREDIT REQUIREMENTS		20
Section 6.1	Credit Requirements	20
Section 6.2	Security	Error! Bookmark not defined.
ARTICLE 7 GENERAL OBLIGATIONS OF SELLER		21
Section 7.1	Seller's General Obligations	21
Section 7.2	Physical Obstructions And Conditions (PacifiCorp Sites Only)	22
Section 7.3	The Contractor and Subcontractors	22
Section 7.4	Compliance With Applicable Law	23
Section 7.5	Governmental Approvals	23
Section 7.6	Opportunities for Other Contractors; Labor Relations	23
Section 7.7	Labor and Employment	24
Section 7.8	Authority for Access for Inspection	25
Section 7.9	Seller's Use of Buyer's Drawings	25
Section 7.10	Contractor Drawings and Manuals	25
Section 7.11	Training	26
Section 7.12	Safety	27
Section 7.13	Intellectual Property Rights and Computer Program Licenses	27
Section 7.14	Seller's Representatives	28
Section 7.15	Seller's Personnel/Drugs, Alcohol and Firearms	29
Section 7.16	Use of Premises and Trespassing	29
Section 7.17	Electricity, Water and Pipeline Natural Gas	29
Section 7.18	Temporary Facilities	30
Section 7.19	Decisions and Instruction of Buyer's Representative	30
Section 7.20	Cooperation Between the Parties	31
Section 7.21	Spare Parts Inventory	31
Section 7.22	Maintenance of Buyer Lien	31
Section 7.23	Further Assurances	32
Section 7.24	Indebtedness	32
Section 7.25	Other Liens	32
Section 7.26	Restriction on Fundamental Changes	33
Section 7.27	Contingent Obligations	33
Section 7.28	Amendment of Project Documents; Additional Project Documents	33
Section 7.29	Environmental Matters	34
Section 7.30	Records and Accounts	34
Section 7.31	Condemnation, Eminent Domain, Casualty Events	34
Section 7.32	Seller's Organizational Documents	34
Section 7.33	Construction Coordination Agreement [PacifiCorp Sites Only]	35
Section 7.34	Import Permits, Licenses and Duties	35
Section 7.35	Compliance with Planning Permissions, Consents	35
Section 7.36	Permits	35
Section 7.37	Lay Out	35

ARTICLE 8 GENERAL OBLIGATIONS OF BUYER	36
Section 8.1 Buyer’s General Obligations	36
Section 8.2 Planning Permissions, Consents (PacifiCorp Sites Only)	36
Section 8.3 Operations and Maintenance Staff.....	36
Section 8.4 Certificate of Convenience and Necessity	37
Section 8.5 Buyer’s Representative	37
Section 8.6 Standard of Conduct	37
ARTICLE 9 WORKING ARRANGEMENTS	38
Section 9.1 Site Regulations	38
Section 9.2 Site Security	38
Section 9.3 Preservation of Public and Private Access	39
Section 9.4 Night, Weekend or Holiday Work.....	39
Section 9.5 Avoidance of Noise and Disturbance	39
Section 9.6 Opening Up of Work	39
Section 9.7 Fencing, Protection, Lighting	40
Section 9.8 Site Services.....	40
Section 9.9 Cleanup	40
Section 9.10 Contamination.....	40
Section 9.11 Material Safety Data	40
Section 9.12 Historical Artifacts (PacifiCorp Sites Only).....	41
ARTICLE 10 PROJECT SCHEDULE.....	41
Section 10.1 Project Schedule	41
Section 10.2 Form of Project Schedule	41
Section 10.3 Rejection of the Project Schedule.....	42
Section 10.4 Alterations to Project Schedule	42
Section 10.5 Revision of Project Schedule.....	42
Section 10.6 Seller’s Responsibility to Comply with Milestone Completion Dates.....	42
Section 10.7 Rate of Progress.....	42
Section 10.8 Progress Reports	43
Section 10.9 Progress Meetings.....	43
ARTICLE 11 DELIVERY, SHIPPING, AND HANDLING OF PLANT AND EQUIPMENT	44
Section 11.1 Delivery Responsibility.	44
Section 11.2 Packing	44
Section 11.3 Transportation.....	44
Section 11.4 Extraordinary Traffic	44
Section 11.5 Allocation	45
ARTICLE 12 SELLER’S EQUIPMENT	45
Section 12.1 Seller’s Equipment.....	45
Section 12.2 Seller’s Equipment on Site	45
Section 12.3 Loss or Damage to Seller’s Equipment	45
Section 12.4 Maintenance of Seller’s Equipment.....	45

ARTICLE 13 CHANGE ORDERS	45
Section 13.1 Changes.....	45
Section 13.2 Procedure for Changes.....	47
Section 13.3 Continued Performance Pending Resolution of Disputes	48
Section 13.4 Preservation of Schedule and Purchase Price	48
ARTICLE 14 WORKMANSHIP AND MATERIALS.....	48
Section 14.1 Manner of Execution	48
Section 14.2 Condition of Materials.....	49
Section 14.3 Inspection.....	49
ARTICLE 15 DRAWINGS	50
Section 15.1 Drawings.....	50
Section 15.2 Consequences of Documents not in accordance with Agreement.....	50
Section 15.3 Drawings Submitted	50
Section 15.4 Inspection of Drawings.....	50
Section 15.5 Operating and Maintenance Instructions	50
Section 15.6 Buyer’s Use of Drawings.....	51
Section 15.7 Manufacturing Drawings.....	51
Section 15.8 Errors in Drawings Supplied by Seller	52
ARTICLE 16 SUSPENSION OF WORKS, DELIVERY OR ERECTION	52
Section 16.1 Order to Suspend	52
Section 16.2 Protection of Work	53
Section 16.3 Resumption of Work.....	53
Section 16.4 Change Order in Event of Suspension.....	53
ARTICLE 17 PROJECT COMMENCEMENT AND COMPLETION.....	55
Section 17.1 Notice To Proceed	55
Section 17.2 Time for Completion	56
Section 17.3 Buyer’s Request for Earlier Completion	57
Section 17.4 Delay in Completion.....	57
ARTICLE 18 PERFORMANCE TESTING	57
Section 18.1 Performance Tests	57
Section 18.2 Emissions Guarantee	57
Section 18.3 Cost and Direction	57
Section 18.4 Buyer’s Right to Validate	58
Section 18.5 Additional Tests; Test Energy	58
Section 18.6 Timing.....	58
Section 18.7 Test Reports	59
Section 18.8 Failure on Tests or Inspection.....	59
Section 18.9 Duty to Advise of Defects, Errors and Omissions in Plant and Equipment	59
ARTICLE 19 DEFECTS BEFORE TRANSFER OF POSSESSION AND CONTROL OF WORK	60
Section 19.1 Identification of Defects	60

Section 19.2	Replacement of Defects	60
ARTICLE 20 NOTICE OF SUBSTANTIAL COMPLETION, NOTICE OF FINAL ACCEPTANCE AND TRANSFER OF CARE, CUSTODY AND CONTROL.....		
60		
Section 20.1	Notice of Substantial Completion of Work	60
Section 20.2	Care, Custody and Control; Punch List Items	61
Section 20.3	Dispatch Coordination	61
Section 20.4	Use Before Acceptance Date	62
Section 20.5	Title and Risk of Loss.....	62
Section 20.6	Marking of Equipment and Plant.....	62
Section 20.7	Removal of Equipment	63
Section 20.8	Notice of Final Acceptance of Work	64
ARTICLE 21 CODES AND STANDARDS.....		
64		
Section 21.1	Comparable Quality	64
ARTICLE 22 ENVIRONMENTAL MATTERS		
64		
Section 22.1	General.....	64
Section 22.2	Release On-Site	65
Section 22.3	Release Off-Site.....	65
Section 22.4	Liability.....	65
Section 22.5	Pre-existing Regulated Materials.....	65
Section 22.6	Notice.....	66
ARTICLE 23 WARRANTIES OF WORK.....		
66		
Section 23.1	Warranties.....	66
Section 23.2	Warranty Period.....	66
Section 23.3	Repair of Defects	66
Section 23.4	Warranty Period Extension.....	67
Section 23.5	Contractor and Subcontractor Warranties	67
Section 23.6	Delay in Remediating Defects.....	67
Section 23.7	Removal of Defective Work.....	67
Section 23.8	Further Tests	67
Section 23.9	Seller to Diagnose.....	67
Section 23.10	Latent Defects.....	68
Section 23.11	Significant Defects.....	68
ARTICLE 24 LIQUIDATED DAMAGES		
68		
Section 24.1	General.....	68
Section 24.2	Critical Milestone Guarantee Liquidated Damages.....	69
Section 24.3	Liquidated Damages for Delay in Substantial Completion	69
Section 24.4	Liquidated Damages for Net Capacity and Net Heat Rate	69
Section 24.5	Liquidated Damages for Startup and Commissioning.....	70
Section 24.6	Calculations and Payments of Liquidated Damages	70
ARTICLE 25 LIMITATIONS OF LIABILITY		
70		
Section 25.1	Duty to Mitigate.....	70

Section 25.2	Limitation of Buyer’s Liability.....	70
Section 25.3	Enforceability of Liquidated Damages.....	71
Section 25.4	Limitations on Liquidated Damages.....	71
ARTICLE 26 INDEMNIFICATION		72
Section 26.1	Indemnification for Third Party Claims	72
Section 26.2	Title Indemnity and Liens.....	73
Section 26.3	Indemnity Period	74
ARTICLE 27 INSURANCE.....		75
Section 27.1	Contractor’s and Subcontractors’ Insurance Coverage	75
Section 27.2	Buyer’s Insurance	77
Section 27.3	Waiver of Rights.....	78
Section 27.4	Seller’s Cooperation with Buyer	78
ARTICLE 28 FORCE MAJEURE		79
Section 28.1	Effect of Force Majeure.....	79
Section 28.2	Notice of Occurrence.....	79
Section 28.3	Performance to Continue	79
Section 28.4	Termination in Consequence of Force Majeure	79
Section 28.5	Risk of Loss	79
ARTICLE 29 DEFAULT		80
Section 29.1	Seller’s Default	80
Section 29.2	Buyer’s Default.....	81
Section 29.3	Removal of Seller’s Equipment.....	81
Section 29.4	Remedies on Default.....	82
ARTICLE 30 TERMINATION.....		83
Section 30.1	Termination by Buyer.....	83
Section 30.2	Termination by Seller	83
Section 30.3	Procedures Following Termination by Seller or due to Force Majeure	84
Section 30.4	Exclusivity	84
ARTICLE 31 TAXES.....		84
Section 31.1	Buyer’s Obligation.....	84
Section 31.2	Seller’s Obligation	85
ARTICLE 32 CLAIMS, CLAIM NOTICE AND DISPUTE RESOLUTION.....		85
Section 32.1	Claims	85
Section 32.2	Dispute Resolution.....	86
ARTICLE 33 ASSIGNMENT.....		86
Section 33.1	Assignment of Seller’s Interests	86
ARTICLE 34 CONFIDENTIALITY		86
Section 34.1	Confidentiality	86

ARTICLE 35 MISCELLANEOUS PROVISIONS.....	87
Section 35.1 Notices, Consents and Approvals	87
Section 35.2 Entire Agreement.....	88
Section 35.3 Amendment; Waiver.....	89
Section 35.4 Successors and Assigns	89
Section 35.5 Third Party Beneficiaries	89
Section 35.6 Severability	89
Section 35.7 Further Assurances	89
Section 35.8 Publicity	89
Section 35.9 Independent Contractor	89
Section 35.10 Survival.....	90
Section 35.11 Governing Law; Waiver of Jury Trial	90
Section 35.12 Counterparts.....	90
Section 35.13 Captions	90
Section 35.14 Consent Agreements	91

List of Appendices

Appendix A:	Site References; Legal Description
Appendix B:	Scope of Supply and Technical Specifications
Appendix C:	Project Schedule
Appendix D:	Seller's Submittals
Appendix E:	Governmental Approvals
Appendix F:	Glossary of Terms
Appendix G:	[RESERVED]
Appendix H:	Substantial Completion, Final Acceptance, Performance Guarantees and Performance Tests,
Appendix I:	Progress Payment and Cancellation Schedule
Appendix J:	Change Order Costing
Appendix K:	[RESERVED]
Appendix L:	Seller and Contractor Final Waiver and Release of Lien
Appendix M:	Emissions Reductions Credits
Appendix N:	Pre-Existing Regulated Materials
Appendix O:	[RESERVED]
Appendix P:	[RESERVED]
Appendix Q:	Approved/Preferred Supplier List
Appendix R:	Price Options
Appendix S:	Construction Coordination Agreement
Appendix T:	Witness Point Schedule

List of Exhibits

Exhibit A	Form Of Notice Of Request For Progress Payment
Exhibit B	Form of Notice to Proceed
Exhibit C	Credit Matrix
Exhibit D	Change Order Forms:
D-1	Form of Change Order
D-2	Form of Change Order Request
D-3	Form of Change Order Notice
Exhibit E	Form of Officers' Certificates for Notice to Proceed
Exhibit F	Form of Letter of Credit
Exhibit G	Planning Consents
Exhibit H	Insurance Certificates
Exhibit I	Form of Seller Lien Release
Exhibit J	Form of Contractor Lien Release
Exhibit K	Form of Subcontractor Lien Release
Exhibit L	Form of Supplier Lien Release

List of Schedules

Schedule 2.6	Authorization Parties
Schedule 4.2	Seller Membership Interests

Schedule 4.2 (a)	Seller Membership Interested Controlled
Schedule 4.2 (b)	Seller Membership Interests or other voting securities
Schedule 4.5 (b)	Approval Persons for Transfer of Project
Schedule 4.6	Seller or Project Proceedings
Schedule 4.11	Pending Appropriation or Condemnation Claims
Schedule 4.12 (a)	Seller Documents that may affect the Transaction
Schedule 4.12 (d)	Material Defaults under Transaction (Project) Documents
Schedule 7.3	Seller Assignable Contracts and Sub-Contracts
Schedule 7.27 (c)	Liens
Schedule 11.1 (b) (xiii)	Record Searches

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE TOLLING AGREEMENT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of _____ (the "Effective Date"), by and between PacifiCorp, an Oregon corporation ("Buyer"), and [SELLER FULL NAME], a Delaware limited liability company ("Seller"), each referred to individually as "Party" and collectively, as "Parties."

WITNESSETH:

WHEREAS, Seller responded to a Request for Proposals – PacifiCorp RFP-2012 (the "RFP") which was issued by Buyer on [RFP DATE]. Buyer's objective in issuing the RFP was to fulfill a portion of its resource requirements as contemplated in Buyer's integrated resource plan published in January, 2005;

WHEREAS, Buyer's selection of Seller's bid was based upon a competitive bid and was, in part, based upon Seller's representations and warranties and Seller's guaranteed performance of the Plant. Such matters were a material inducement for the selection of Seller, and Seller's failure to perform in accordance with the terms and conditions hereof shall cause material damage to Buyer;

WHEREAS, following negotiations with Seller Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Project (defined below), upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual representations and warranties and covenants made herein, Buyer and Seller, each intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

Section 1.1 Defined Terms

Unless the context requires otherwise, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as Appendix F.

Section 1.2 Interpretation

Unless the context requires otherwise, in this Agreement: (a) words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other; (b) any reference in this Agreement to any person shall include its permitted successors and assigns and, in the case of any governmental instrumentality, any person succeeding to its functions and capacities; (c) any reference in this Agreement to any Article, sub-Article, Section, sub-Section, Appendix, Exhibit, Schedule or Attachment to any of these shall mean and refer to the Article, sub-Article, Section, sub-Section, Appendix, Exhibit, Schedule or Attachment contained in or the Article, sub-Article, Section, sub-Section, Appendix, Exhibit, Schedule or Attachment attached to this Agreement, as the same may be amended or modified from time to time; and (d) the words “include” and “including” shall mean to include, without limitation.

ARTICLE 2

SALE OF ASSETS

Section 2.1 Sale and Transfer of Project by Seller

(a) Subject to the terms and conditions of this Agreement, and in reliance upon the representations, warranties and agreements herein, Seller shall sell, convey, transfer, deliver and assign to Buyer, and Buyer shall purchase, receive and accept, the Project and its component parts, free and clear of all Liens and other Liabilities not otherwise permitted hereunder. Title to various of the constituent components of the Project will be transferred over time as provided in this Agreement, with overall title to the Project and certain of its components to be transferred at Closing as further defined or described in this Agreement and in the Appendices and Exhibits attached hereto.

(b) At Closing, Seller shall deliver or cause to be delivered to Buyer such documents, deeds, bills of sale, assignments and other instruments of transfer or assignment, together with such releases of Liens, as Buyer shall deem necessary or Buyer may reasonably request to effect the conveyances contemplated by this Agreement at Closing, each in form and substance reasonably satisfactory to Buyer. Such documents, deeds, bills of sale, assignments and other instruments shall include:

(c) For owned Real Property and interests in owned Real Property,

(i) special warranty deeds in recordable form, properly executed and acknowledged, conforming to and conveying Real Property interests held by or on behalf of Seller;

- (ii) a Title Policy covering the Real Property interests held by or on behalf of Seller;
- (iii) a bring-down endorsement issued by the Title Company, procured by Seller and at Seller's expense, in the face amount of the Title Policy and otherwise in such form and with such exceptions as are satisfactory to Buyer, in its sole and absolute discretion;
- (iv) an endorsement from the Title Company to insure that the foundations of the Plant have been constructed within the boundaries of the Site and in accordance with all applicable easements, covenants and restrictions;
- (v) a complete and accurate as-built survey of the Project, in form and substance reasonably acceptable to Buyer, in accordance with minimum ALTA/ACSM standards then in effect and sufficient in form and substance to permit issuance of the endorsement described in Section 2.1(c)(iii) hereof, prepared and certified as correct by a licensed land surveyor or registered engineer reasonably satisfactory to Buyer. Such survey shall show the location of the Site and all improvements thereon, including the Plant, and the location of all easements and rights-of-way, whether above or underground, and shall show no encroachments of the Plant or other improvements onto such easements or rights-of-way (except as expressly permitted under the documents governing such easements and rights-of-way) or onto property outside the boundaries of the Site as shown on the survey; and
- (vi) an affidavit of the Secretary or Assistant Secretary of Seller including Seller's name, address, and taxpayer identification number, certifying that Seller is not a "foreign person" within the meaning of the Foreign Investment Real Property Tax Act of 1980.
- (d) Assignment with assumption and novation of each Project Document, each Contractor Guaranty, and all warranties associated with the Work, with consent of the parties thereto, as may be required or reasonably requested by Buyer;
- (e) Assignment and assumptions for the Plant, Equipment or machinery, labor and other warranties, accompanied by all consents as may be required or reasonably requested by Buyer;
- (f) Deeds, bills of sale and other instruments of transfer or assignment of any other assets of Seller to be transferred hereunder, in a form acceptable to Buyer in its sole discretion;
- (g) Assignment and/or executed requests for Governmental Authority transfer, as appropriate, of all Governmental Approvals identified by Buyer, accompanied by all consents as required or as may be reasonably requested by Buyer;
- (h) Assignment of the right to use all Intellectual Property required in connection with the Project;
- (i) At the Closing, the final waiver and release(s) of Lien in the form set forth in Appendix L or posting of a bond or other security satisfactory to Buyer that all Liens will be released ; and
- (j) At the Closing, the following certificates of Seller:

(i) a certificate of the Secretary or an Assistant Secretary of Seller certifying: (A) a true copy of the [Certificate of Formation] of Seller and all amendments thereto as in effect at Closing, (B) a true copy of the [Operating Agreement] of Seller as in effect at Closing, (C) copies of resolutions duly adopted by Seller's board of directors (or similar body), authorizing the sale of the Project to Buyer and the execution, delivery and performance of this Agreement and the transactions contemplated hereby and attesting that such resolutions are in full force and effect without amendment or modification at Closing, and (D) the incumbency of the officers of Seller who execute this Agreement or any document or instrument to be delivered pursuant hereto;

(ii) a certificate signed by an Authorized Officer of Seller to the effect that the conditions specified in Section 2.6(a) and Section 2.6(b) have been satisfied; and

(iii) a certificate signed by an Authorized Officer of Seller certifying as to the true and complete nature of attached originals (or copies where originals do not exist) of the Transaction Documents.

Section 2.2 Purchase Price

(a) The aggregate consideration payable by Buyer to Seller for the Project, comprising the sum of Progress Payments (if any) made pursuant to article 3 ("Terms for Progress Payments"), plus the residual amount payable at Closing (but counting as Progress Payments and amounts payable at closing any amounts retained by Buyer as retainage pursuant to Section 3.3 ("Notice of Request for Progress Payment")) is the "Purchase Price."

(b) Basis of Purchase Price

(i) Seller Duty to Inform Itself. Seller shall be deemed to have satisfied itself, through its own due diligence efforts and not based on any representation of Buyer or employees or agents thereof (except as set forth in this Section), as to the nature and location of the Work, the general, local, physical and other conditions of the Work, and all other matters which could in any way affect the Work or the cost thereof under this Agreement. Without limiting the foregoing, Seller shall be deemed to have inspected the Site and to have satisfied itself as to the state and condition (including but not limited to ground, geological, climatic and hydrological condition) of all circumstances affecting the Site (including but not limited to any reasonable safety regulations of Buyer or otherwise applicable to the Work and the project) and to have examined any documentation and information supplied or made available to Seller by Buyer or available for inspection in the public domain, the conditions and/or the Specification (with such drawings, exhibits, plans and information as may be annexed thereto or referred to therein) and to have satisfied itself as to the feasibility of executing the Work at the Site. Seller shall be responsible for its own interpretation of such documentation and information. The failure of Seller to adequately investigate and acquaint itself with any applicable conditions and other matters shall not relieve Seller from the responsibility for properly estimating the difficulties and costs of successfully performing the Work and completing this Agreement, and shall not be grounds for adjusting either the Purchase Price or the schedule agreed in this Agreement.

(ii) Underground Obstructions. Without prejudicing or limiting the provisions of the preceding paragraph (b)(i) or of Section 10.1 (“Project Schedule”), Seller shall be responsible for ascertaining the location of and avoiding damage to all underground installations including without limitation cable, gas, water pipes, telephone lines, and other underground installations, whether the location of the excavation, digging, or trenching required for performance of the Work is fixed by Buyer or by Seller. Seller shall be responsible for all delays, costs, loss and/or expense arising, whether directly or indirectly, from any ground conditions or artificial obstructions or hazards (excluding hazardous materials encountered by Seller during the execution of the Work) including any Work underground or involving excavation that Seller should have been made reasonably aware of based on information available and Seller shall not be entitled to any additional Cost, any extension to the Time for Completion or any increase in the Purchase Price as a result thereof.

(iii) Surveying. Seller is responsible for performing, and shall include in its pricing, all construction layout surveying required for execution of the Work. Seller shall be held responsible for preserving all established project control monuments unless their removal is requested by Seller and authorized in writing by Buyer. Any costs incurred by Buyer to reestablish control monuments destroyed by Seller shall be borne by Seller.

(iv) Responsibility for Information. Seller shall be responsible for any misunderstanding or incorrect information in connection with the Site (excluding information provided by Buyer or its representative prior to the date of commencement of the Work unless such information could reasonably be verified by Seller).

(v) Existing Foundations, Structures and Work. Seller shall be solely responsible for the consequences of incorporating into the Work any existing foundations, structures, Work, equipment or materials including, without limitation, any existing piling, floor slabs and culverts. To the extent that the same are incorporated into the Work, such pre-existing items shall be subject to the applicable conditions as if they were supplied by Seller hereunder. Without prejudice to the foregoing, Seller shall notify Buyer’s Representative of its intention to incorporate any existing foundations, structures, Work, equipment or materials into the Work other than those specifically identified in the Agreement as soon as is practicable and seek the prior written consent of Buyer’s Representative to the use or utilization thereof, which consent may be withheld in the sole discretion of Buyer’s Representative.

Section 2.3 Closing

(a) Closing Date, Place and Time. The closing (the “Closing”) of the sale and purchase of the Project shall take place at _____, local time, on the first Business Day after Notice of Final Acceptance has been issued pursuant to Section 20.8 (“Notice of Final Acceptance of Work”), at Buyer’s offices in Salt Lake City, Utah, or at such other time and date as the Parties shall designate in writing (such time and date, the “Closing Date”).

(b) Purchase Price Calculation. At least thirty (30) days prior to the Closing Date, Seller shall submit to Buyer a detailed calculation setting forth the Purchase Price, as the same may have been adjusted pursuant to Change Orders, if any, together with supporting documents used by Seller in calculating the Purchase Price, including an allocation of the Purchase Price not yet paid and such

other documents reasonably requested by Buyer to support the calculation. At least fifteen (15) days prior to Closing Buyer shall notify Seller of any disputed amounts included in Seller's calculation of the Purchase Price. Within five (5) days prior to Closing Seller shall (a) notify Buyer of any disputes Seller may have regarding Buyer's challenges to amounts, and (b) provide a revised calculation with supporting documents showing agreed changes to the initial calculation statement. Any disputes remaining after such exchange shall be submitted for dispute resolution as set forth in article 32 ("Claims, Claim Notice and Dispute Resolution").

(c) Payment of Purchase Price. At the Closing, Buyer shall pay the Purchase Price, calculated in accordance with Section 2.3(b) ("Purchase Price Calculation"), less two times the amount (if any) then in dispute, in immediately available funds, via wire transfer to an account designated by Seller on or prior to the Closing Date.

Section 2.4 Assumption of Liabilities

Except as otherwise expressly provided herein, Buyer is not assuming, and will not assume, any present or future debt, liability or obligation of Seller, whether known or unknown, fixed or contingent. Seller agrees to indemnify and hold Buyer harmless against all present and future debts, claims, liabilities and obligations of Seller, its Contractor and Subcontractors.

Section 2.5 Further Assurances

From time to time after the Closing Date, Seller shall, at the request of Buyer but without further consideration, promptly execute and deliver to Buyer such other agreements, certificates and further instruments of sale, assignment, transfer and conveyance and take such other and further actions as Buyer may reasonably request in order to vest in Buyer or its assigns and put Buyer or its assigns in possession of the Project and to carry out and implement the transactions contemplated herein, including any financing arrangements of Buyer.

Section 2.6 Conditions to Buyer's Obligation to Close

The obligations of Buyer to effect the transactions contemplated in this Agreement are subject to the satisfaction or waiver by Buyer on or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects, as of the date hereof and as of the Closing Date.

(b) Performance. Seller shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied by them on or prior to the Closing Date (including, without limitation, the deliveries required by Section 2.1("Sale and Transfer of Project by Seller")).

(c) Authorizations. The parties shall have or shall have caused to be delivered, made or obtained all notices to, declarations, designations, registrations, filings or submissions with, and authorizations, approvals, orders, consents or waivers from Governmental Authorities and other parties listed on Schedule 2.6, and the same shall not have been withdrawn, suspended or modified.

(d) Absence of Orders. No preliminary or permanent injunction or other order of any Governmental Authority to prevent the consummation of the transactions contemplated in this Agreement shall be in effect or pending and no statute, rule or regulation shall have been enacted by any Governmental Authority that makes consummation of such transactions illegal.

(e) Material Adverse Change. No Material Adverse Change shall have occurred.

Section 2.7 Conditions to Seller's Obligations to Close

The obligation of Seller to effect the transactions contemplated in this Agreement is subject to the satisfaction or waiver by Seller on or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Buyer made in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date.

(b) Performance. Buyer shall each have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Absence of Orders. No preliminary or permanent injunction or other order of any Governmental Authority to prevent the consummation of the transactions contemplated in this Agreement shall be in effect or pending and no statute, rule or regulation shall have been enacted by any Governmental Authority that makes consummation of such transactions illegal.

ARTICLE 3

TERMS FOR PROGRESS PAYMENTS

Section 3.1 Terms

(a) Procedures. A Progress Payment (if any) shall, subject to Buyer's review as set forth herein, be paid by Buyer in accordance with Appendix I and this article 3 within 30 days after submission of a Notice of Request for Progress Payment that meets the requirements of this Article and satisfaction of the conditions precedent set forth in Section 3.2 ("Conditions Precedent"). Buyer shall pay any Progress Payments (i) to Seller or (ii) either (A) to any Contractor performing or furnishing the Work or (B) jointly to Seller and such other Contractor. In addition to the foregoing, Buyer may require that to the extent Progress Payments to any direct payee (other than Seller) are made via check, that such check contain Lien release provisions and be endorsed personally by payee or payees. To the extent that a Progress Payment Date is other than a Business Day, no interest shall accrue on such Progress Payment until the next Business Day.

(b) Payment in Dollars. All payments to Seller hereunder shall be paid in Dollars via wire transfer to a bank account of Seller as specified by Seller. All payments to Buyer hereunder shall be paid in Dollars via wire transfer to the bank account as specified by Buyer.

Section 3.2 Conditions Precedent

The obligation of Buyer to pay Progress Payments (including payment of the Purchase Price at the Closing), is subject to the satisfaction on each Progress Payment Date of each the following conditions precedent:

(a) Payments on Business Days. The Progress Payment Date shall be a Business Day. If any Progress Payment becomes payable on a day that is not a Business Day, the Progress Payment shall be paid on the next succeeding Business Day. Seller shall bear the cost of any and all banking charges imposed by Seller's bank with respect to any Progress Payment.

(b) Milestones. Seller shall have achieved the Milestones associated with the Work for which the payment is requested prior to Seller submitting its commercial invoice with respect thereto, and shall have completed all Milestones to have been achieved prior to the date of such Progress Payment.

(c) Representations and Warranties. (i) The representations and warranties made by Seller in each Transaction Document to which it is a party shall be true and correct in all material respects on such Progress Payment Date both before and after giving effect to the making of such Progress Payment, and (ii) the representations and warranties made by each Project Party other than Seller in the Transaction Documents shall be true and correct in all material respects on such Progress Payment Date both before and after giving effect to the making of such Progress Payment. In each case such representations and warranties shall be deemed renewed and re-stated as of the date of such Progress Payment.

(d) No Default. (i) No circumstance, event or condition shall exist which either immediately or with the passage of time or the giving of notice, or both, would permit Seller to withhold payment under any Primary Construction Contract; (ii) no breach, violation or default shall have occurred and be continuing under (A) this Agreement (B) any Contractor Guaranty; (C) any Consent or (D) the Security Documents and (iii) to the extent not already set forth in this Section 3.2(d), no circumstance, event or condition shall exist which either immediately or with the passage of time or the giving of notice, or both, would permit Seller's counterparty to terminate any Transaction Document.

(e) No Proceeding or Litigation. No action, suit, proceeding or investigation by or before any Governmental Authority or any arbitrator shall be pending or to Seller's knowledge threatened against or affecting a Project Party or the Project which would result in a Material Adverse Change, unless such action, suit, proceeding or investigation has been initiated or threatened by Buyer.

(f) Material Adverse Change. Since the date hereof, no Material Adverse Change shall have occurred, except and to the extent that such Material Adverse Change is a result of an act or omission of Buyer.

(g) Notice of Request for Progress Payment. Buyer shall have received a Notice of Request for Progress Payment in compliance with Section 3.3 ("Notice of Request for Progress Payment"), together with all supporting documents.

(h) Governmental Approvals. Except with respect to the Deferred Governmental Approvals, all Necessary Governmental Approvals required to be obtained by such time shall have been obtained and shall be in full force and effect.

(i) Notice to Proceed. Buyer shall have issued the Notice to Proceed.

(j) Right to Withhold Payment. Buyer shall have determined that it is not necessary to withhold payment to protect Buyer from loss relating to any of the following causes:

(i) Work not in accordance with the requirements of the Project Documents;

(ii) Claims filed against Buyer, the Plant, or the Site from Seller's actions or inactions in connection with the performance of the Work (and not otherwise covered by insurance), unless Seller is disputing such Claims in good faith and if reasonably requested by Buyer, has bonded the Claim with a bonding company or other surety reasonably acceptable to Buyer, and if any Lien is imposed with respect to such Claims, Seller has discharged such Lien; or

(iii) failure of Seller to make payments in respect of material or labor or other obligations incurred as a result of activities covered by this Agreement, unless Seller has, in good faith, disputed such payments and, if any Lien is filed with respect thereto, Seller has posted a bond against such Lien with a bonding company or other surety reasonably acceptable to Buyer.

Section 3.3 Notice of Request for Progress Payment

(a) Notice Required. Prior to being entitled to any Progress Payment Seller shall submit a Notice of Request for Progress Payment in the form attached hereto as Exhibit A and in substance satisfactory to Buyer, that meets all of the requirements of this Section 3.3.

(b) Documents to be attached to Notice for Progress Payment. Each Notice of Request for Progress Payment shall be accompanied by the following documents:

(i) an invoice of Seller substantiating the amounts payable by Buyer in connection with such Progress Payment and the Work covered thereunder. Seller's invoice shall provide separate invoices or line-items for the following items:

(A) Taxable Items. Tax paid by contractor on Materials and Parts shall be listed as a separate line item and identified as 'Tax on Parts to be reimbursed.'

(B) Non Taxable Items Listed Separately. The following items shall be listed separately and not taxed on the invoice: (1) Labor to Recondition Materials and Parts (non-taxable) and (2) Freight (non-taxable).

(C) Non Taxable Items able to be Invoiced Together. The following items may be invoiced together but shall be listed separately on the same invoice and shall not be taxed on the invoice: (1) Scheduled and Unscheduled Work including inspection and on-site Turbine Services work (non-taxable) and (2) 'Scheduled and Unscheduled

Work' and 'Management Services, Consulting, Administrative, Engineering or Professional Services' (non-taxable);

(ii) a report (the "Progress Report") in a form consistent with the progress report included in Appendix D that indicates the percentage completion achieved compared to the planned percentage completion for each activity relating to the Work and where any activity is behind the Schedule giving comments and likely consequences and stating the corrective action being taken. The Progress Report also shall present any other information reasonably requested by Buyer relating to progress of the Work;

(iii) an officer's certificate signed by an Authorized Officer of Seller certifying that each of the conditions in Sections 3.2(b), 3.2(c) 3.2(d), 3.2(e), 3.2(f), 3.2(h), and 3.2(i) has been and will be satisfied as of the date of such Progress Payment Date and such other items as may be required by this Agreement or as Buyer may reasonably request; and

(iv) A bill of sale transferring title to the Work relating to the Request for Progress Payment.

(c) Address. All Notices of Request for Progress Payment shall be addressed as follows:

PacifiCorp
Attn: _____
201 South Main Street, Suite 2200
Salt Lake City, UT 84111

With a copy provided to: _____
Attn: _____

(d) Review of Notice.

(i) Buyer shall, within fifteen (15) days after receipt of any Notice of Request for Progress Payment, determine whether (A) the Work evidenced by the Notice of Request for Progress Payment has been completed in conformance with the requirements of this Agreement; (B) the Notice of Request for Progress Payment and any required backup information have been properly submitted and (C) the Notice of Request for Progress Payment amount reflects the payment due under Appendix I and shall inform Seller as to whether it disputes any portion of the Notice of Request for Progress Payment. Buyer may also inform Seller as to whether Buyer disputes any portion of the Notice of Request for Progress Payment due to the failure of Seller (or the Contractor or any Subcontractor) to complete the Work covered by such Notice of Request for Progress Payment, and Buyer may withhold such portion of due under Seller's invoice in the amount reasonably necessary to complete such portion of the Work in accordance with Seller's Notice of Request for Progress Payment and this Agreement.

(ii) Upon receipt of a notice from Buyer that the Notice of Request for Progress Payment is deficient, Seller shall promptly take any and all reasonable steps available to remedy any condition identified by Buyer leading to such claim of deficiency. Subject to a mutually agreed upon resolution of such claim of deficiency or a final determination of a court, payment of the disputed portion of Seller's invoice shall be made by Buyer within ten (10) Business Days following the date of such agreement or determination. In the event that Buyer is entitled to withhold payment to Seller because a condition precedent set forth in this article 3 has not been satisfied, Buyer may elect to pay the amounts due to Contractor under the Primary Contracts directly to such Contractor and such payments shall be credited against the Purchase Price. Provided Buyer has paid such amounts to a Contractor, no action properly taken by Buyer in compliance with this Article 3 shall affect the Guaranteed Substantial Completion Date for the Plant.

(iii) Subject to (A) such determination by Buyer and (B) the satisfaction of the conditions set forth in Section 3.2 ("Conditions Precedent"), and except for disputed portions of any Notice for Progress Payment, Buyer shall pay Seller on the applicable Progress Payment Date the stated amount, less any disputed portion of such Request of Request for Notice for Progress Payment and any withholding permitted under this Agreement. Late payments not excused under the provisions of this Section 3.3(d)(iii) shall accrue interest at the Late Payment Rate at that time from the date due until paid. Excused late payments shall not accrue interest until the event giving rise to the dispute has been remedied; provided, however, that if it is later determined that an excuse or withholding was improper, interest shall accrue at the Late Payment Rate on the amount which should have been paid from the date such funds should have been paid until actual payment is received by Seller. In the alternative, in the event of a disputed amount, Buyer may pay to Seller the entire amount stated in the Notice of Request for Progress Payment, and if it is subsequently determined that Buyer was entitled to withhold all or part of the amount shown on the Notice of Request for Progress Payment, Seller shall pay to Buyer upon demand interest at the Late Payment Rate on the amount that Buyer was entitled to withhold from the date of payment by Buyer until the earlier of the date of repayment to Buyer and the date on which Buyer was no longer entitled to withhold such amount. The determinations made by Buyer pursuant to this Section 3.3(d) and Section 3.2(j) are solely for

the purpose of determining whether to pay a Progress Payment, and such determinations shall not prevent Buyer from subsequently asserting that Seller, a Contractor, or any Subcontractor failed to perform its obligations under a Transaction Document, nor shall such determinations be used as evidence that Seller, the Contractor, or any Subcontractor performed such obligations.

(e) A NOTICE OF REQUEST FOR PROGRESS PAYMENT THAT DOES NOT MEET THE REQUIREMENTS OF THIS SECTION MAY RESULT IN A PAYMENT DELAY.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

As used in this Article 4, “to Seller’s knowledge” refers to matters within the actual knowledge of Seller. Seller represents and warrants to Buyer on the Effective Date (except as otherwise stated), and on each date the following representations and warranties are made or are deemed made, as follows:

Section 4.1 Organization, Standing and Power

Seller is a [ENTITY TYPE AND DESCRIPTION], duly formed, validly existing and in good standing under the laws of the State of _____ and has the full [corporate/limited liability company] power and authority and possess all material governmental franchises, licenses, permits, authorizations and approvals necessary to enable them to own, lease or otherwise hold its properties and assets (including the Project) and to carry on its business in the places and in the manner currently conducted. Seller is duly qualified to do business in each jurisdiction where the nature of its business or the ownership or leasing of its properties makes such qualification necessary, including without limitation the State of Utah.

Section 4.2 Capital Structure

(a) [ASSUMES LLC STRUCTURE; CORRESPONDING REPRESENTATIONS WILL BE EXPECTED TO REFLECT CORPORATE STRUCTURE IF APPLICABLE] All of the membership interests of Seller (the “Membership Interests”) are issued and outstanding, and no Membership Interests are held by Seller in its treasury. The names of each member of Seller and the amount of Membership Interests Controlled by each such Person are set forth on Schedule 4.2(a).

(b) Except as set forth on Schedule 4.2(b), no Membership Interests or other voting securities of Seller are issued, reserved for issuance or outstanding. There are not any bonds, debentures, notes or other securities or Indebtedness of Seller having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which Membership of Seller may vote.

Section 4.3 Authority; Execution and Delivery: Enforceability

(a) Seller has all requisite power and authority to execute each of the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of each Transaction Document to which it is a party and the

consummation by Seller of the transactions contemplated hereby and thereby has been duly authorized by all necessary [limited liability company/corporate] action on the part of Seller. Seller has duly executed and delivered each Transaction Document to which it is a party, and each Transaction Document to which it is a party constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors' rights generally and by legal and equitable limitations on the availability of specific remedies.

(b) The Managing Member(s) of Seller, acting by written consent in lieu of meeting and executed as of _____ unanimously adopted resolutions approving this Agreement, the other Transaction Documents and in accordance with Seller's organizational documents and the [APPLICABLE STATE ORGANIZATIONAL LAWS].

(c) Other than approvals or votes that are required pursuant to [STATE ORGANIZATIONAL LAW] that are required to effect and consummate the Initial Closing and the Closing in accordance with Seller's Organizational Documents and the [STATE ORGANIZATIONAL LAW], no other vote of the Membership with respect to any of the Membership Interests is required under applicable Law or otherwise in connection with Seller's execution and delivery of this Agreement, the other Transaction Documents or the consummation of the transactions contemplated hereby and thereby.

Section 4.4 Validity of Agreement; No Conflict

The execution, delivery and performance by Seller of this Agreement and each other Transaction Document to which Seller is a party, the consummation of the transactions contemplated hereby and thereby, and the compliance with the provisions hereof or thereof, by Seller shall not, with or without the passage of time or the giving of notice or both:

(a) conflict with, constitute or result in a breach, default or violation of any provision of, or give rise to any right of termination, cancellation or acceleration under, or loss of any right and/or benefit under, any contract, lease, license, Governmental Approval, instrument or other agreement to which Seller is a party or by which it, the Project or its assets is bound;

(b) conflict with or violate Seller's Organizational Documents;

(c) result in the creation or imposition of any Lien of any nature on the Project, other than Permitted Liens; or

(d) violate any Applicable Law applicable to Seller.

Section 4.5 Governmental Approvals and Consents

(a) Appendix E sets forth all Governmental Approvals. Such Governmental Approvals that are the responsibility of Buyer to obtain prior to Substantial Completion are separately identified on Appendix E (the "Buyer Governmental Approvals"). All Necessary Governmental Approvals have been obtained, are in full force and effect, and are final and all appeal periods with respect thereto have expired or terminated. Each Deferred Governmental Approval shall be obtained in a final and non-appealable form in the ordinary course prior to the time it is required to be obtained hereunder or under

the other Transaction Documents. There is no action, suit, investigation or proceeding pending, or, to Seller's knowledge, threatened, that could result in the modification, rescission, termination, or suspension of any Necessary Governmental Approval obtained prior to the date this representation is made or deemed made. Subject to Section 8.2 ("Planning Permissions, Consents"), except for the Governmental Approvals listed in Appendix E, Seller is not required, and under existing Applicable Law will not in the future be required, to obtain any Governmental Approval in connection with the execution and delivery by Seller of this Agreement or the performance of Seller's obligations hereunder.

(b) Except as set forth on Schedule 4.5(b), no consent or approval of any Person is required to be obtained or made by or with respect to Seller transferring the Project to Buyer or in connection with the execution, delivery and performance of this Agreement, the Transaction Documents or the consummation of the transactions contemplated hereby other than those that may be required solely as result of the specific regulatory status of Buyer.

Section 4.6 No Proceedings

Except as set forth on Schedule 4.6, (a) there are no actions, suits, investigations or proceedings by or before any Governmental Authority or arbitrator pending against Seller or against the Project, or, to Seller's knowledge, threatened against or affecting Seller or the Project, which would result in a Material Adverse Change and (b) there are no actions, suits, investigations or proceedings by or before any Governmental Authority or arbitrator pending or, to Seller's knowledge, threatened, against or affecting any Contractor or Guarantor which would result in a Material Adverse Change.

Section 4.7 Compliance

(a) The Project is being owned, developed, constructed, and permitted in compliance with all Applicable Law in existence as of the Effective Date and in compliance with the requirements of all Governmental Approvals and Prudent Industry Practice. As constructed, based on Applicable Law currently in effect, the Project shall conform to and comply with all zoning, environmental, land use and other Applicable Law and the requirements of all Governmental Approvals.

(b) Seller and the operation of its businesses are, and at all times have been, in compliance in with all Applicable Laws, including those relating to occupational health and safety.

Section 4.8 Taxes

(a) For purposes of this Agreement, (i) "Tax" or "Taxes" shall mean all federal, state, local and foreign taxes and similar assessments, including all interest, penalties and additions imposed with respect to such amounts; (ii) "Pre-Closing Tax Period" shall mean all taxable periods ending on or before the Closing Date and the portion ending on the Closing Date of any taxable period that includes the Closing Date and (iii) "Returns" shall mean returns, reports or forms, including information returns, in respect of Taxes.

(b) Seller has filed or caused to be filed in a timely manner (within any applicable extension periods), all Returns required by applicable Tax laws to be filed by Seller prior to or as of the date hereof, and each such Return is true, complete and correct in all material respects.

(c) Seller has timely paid or caused to be paid all Taxes due and payable, whether or not shown as due and payable, on any Return. The accruals for Taxes not yet due and payable are adequate to cover such Taxes.

(d) All Taxes that Seller is required by Applicable Law to withhold or collect have been duly withheld or collected, and have been timely paid over to the appropriate Governmental Authority to the extent due and payable.

(e) No deficiencies for any Taxes have been proposed, asserted or assessed against Seller, and no requests for waivers of the time to assess any Taxes are pending. No Tax Liens have been filed and no claims are being asserted with respect to any Taxes.

(f) There are no outstanding agreements or waivers extending the statutory period of limitations applicable to any Returns required to be filed by or on behalf of Seller and Seller has not requested any extension of time within which to file any Return, which Return has not yet been filed within the applicable extension period.

(g) Seller does not hold a permit to engage in sales of tangible personal property issued by the State of Utah, and Seller has not within the past twelve (12) months made, and has no current intention of making in the next twelve (12) months, any retail sales of tangible personal property within the State of Utah.

Section 4.9 Environmental Matters

(a) Seller has provided Buyer or its representatives with all environmental reports, assessments and audits, including reports, assessments and audits relating to wetlands, air and emissions or discharges, and studies relating to threatened or endangered species, prepared by or on behalf of Seller in connection with the Project or otherwise in Seller's possession or control with respect to the Site or the Project.

(b) (i) Seller has maintained a due diligence program designed to identify all Necessary Governmental Approvals; (ii) except for Buyer Governmental Approvals, Seller holds and is in compliance with, all Necessary Governmental Approvals; (iii) Buyer appears properly as the permittee, co-permittee or authorized party with respect to all Necessary Government Approvals other than as set forth on Appendix E, (iv) the Project has been constructed and can be operated, and the Work has been performed, in compliance with all Environmental Laws, (v) Seller has not received any notice of a pending or threatened Claim, or inquiry by any Governmental Authority or other Person relating to any actual or alleged violations of Environmental Laws or any actual or potential obligation on the part of Seller to investigate or take any other action relative to any Regulated Material (as defined herein) or threatened Release of any Regulated Material and is and has been in compliance with all Environmental Laws; (vi) Seller has not entered into or agreed to any decree or order with any Governmental Authority and Seller is not subject to any Judgment relating to compliance with any Environmental Law or to the investigation or cleanup of Regulated Materials; (vii) neither Seller nor any other Person has generated, transported, treated, stored, disposed of, arranged to be disposed of, Released or threatened to Release any Regulated Materials at, on, from or under the Site in violation of, or so as would reasonably be expected to result in liability under, any Environmental Laws; (viii) Seller has not assumed any liabilities or obligations arising under any Environmental Law in

connection with currently or formerly owned, leased or operated properties or facilities or in connection with any former divisions, subsidiaries or companies owned directly or indirectly by Seller; (ix) Seller has not utilized any underground storage tanks (“USTs”), Equipment using PCBs or asbestos in the conduct of its operations, on or under any property currently owned or operated by Seller.

(c) No Environmental Law imposes any obligation upon Seller or Buyer arising out of or as a condition to any transaction contemplated by this Agreement or any other Transaction Document, including (i) any requirement to modify or to transfer any Governmental Approval or license, (ii) any requirement to file any notice or other submission with any Governmental Authority, (iii) the placement of any notice, acknowledgment or covenant in any land records, or (iii) the modification of or provision of notice under any agreement, consent order or consent decree. No Lien has been placed upon any of Seller’s currently-owned properties related to the Project under any Environmental Law.

Section 4.10 Title to Properties

Other than with respect to the Permitted Liens, Seller has good and valid title to all of the tangible and intangible personal property to be transferred to Buyer hereunder, free and clear of all Liens and Claims.

Section 4.11 Real Estate

(a) Seller has heretofore delivered to Buyer true, correct and complete copies of all agreements, contracts or other instruments providing for the sale, lease, transfer or other disposition of the Site (including any options).

(b) Seller represents and warrants to Buyer that:

(i) except as set forth on Schedule 4.11, there is no pending appropriation or condemnation Claim of which Seller has been notified, and, there is no contemplated or threatened appropriation or condemnation Claim affecting the Site or any part thereof or any sale or other disposition of the Site or any part thereof in lieu of condemnation;

(ii) to Seller’s knowledge, except for assessments occurring on a regular basis in accordance with Applicable Law or as a result of the sale of the Project contemplated by this Agreement, there is no pending or contemplated reassessment of any parcel included in the Site that is reasonably expected to increase the real estate tax assessment for such properties; and

(iii) There is no violation of any applicable zoning law, regulation or other Applicable Law, relating to or affecting the Site.

Section 4.12 Transaction Documents; Representations and Warranties in Transaction Documents

(a) Set forth on Schedule 4.12(a) is a list of all contracts, agreements, letters of intent, understandings, and instruments to which Seller is a party or by which it or its property is bound (including all amendments, supplements, waivers, letter agreements, interpretations and other documents amending, supplementing or otherwise modifying or clarifying such agreements and

instruments) that may affect the Project or any transaction contemplated hereunder, (i) the termination or cancellation of which would result in a Material Adverse Change, or (ii) have a value of twenty-five thousand Dollars (\$25,000) or more;

(b) (i) All representations and warranties made by Seller in each Transaction Document are true and correct in all material respects as of the date made or deemed made, and (ii) to Seller's knowledge, all representations, warranties and other factual statements made by each Project Party other than Seller in the Transaction Documents are true and correct in all material respects as of the date made or deemed made.

(c) All Transaction Documents required for the ownership, construction, operation and maintenance of the Project are in full force and effect.

(d) Except as set forth on Schedule 4.12(d), no event has occurred that constitutes or, with the giving of notice or passage of time, or both, would constitute, a material Seller Default under any Transaction Document or, to the knowledge of Seller, any third party under any such Transaction Document. To Seller's knowledge, no claim, action, proceeding or investigation, is pending or threatened, that challenges the enforceability of any of the Transaction Documents.

Section 4.13 Sufficiency of Assets

The assets constituting the Project to be sold, transferred, conveyed, assigned and delivered to Buyer pursuant to this Agreement or any other Transaction Document, include all of the assets used, held by or necessary or convenient for the ownership of the Project and to provide an operational Project at the Site in accordance with Prudent Industry Practice and no other Person other than Seller and Buyer owns or has any rights in or to the Project.

Section 4.14 Water Rights

(a) The Project Water Rights will provide sufficient water to operate the Project.

(b) Seller has good and marketable title to the Water Rights.

(c) All of the water available for diversion under the Water Rights has been beneficially used and is not subject to forfeiture or abandonment.

(d) As and when drilled, constructed or installed, the wells, pumps, pipelines, conveyance and discharge systems and other associated equipment necessary to deliver water and discharge water are in good working order and are sufficient for the purposes of operating the Project.

(e) To the extent not already drilled, upon the drilling thereof, the wells used to produce water for the operation of the Project have been drilled and outfitted at the points of diversion approved to deliver the Project Water Rights.

(f) The water to be produced from wells (if any) required for the Project is consistent with the Specifications.

(g) Copies establishing control of a sufficient quantity of Water Rights to operate the Project at a one hundred percent (100%) capacity factor, including summer peaking operations, are attached as Appendix M. These Water Rights shall be acquired no less than six months prior to Substantial Completion.

Section 4.15 Emission Reduction Credits

(a) The Emission Reduction Credits to be transferred to Buyer hereunder are valid and properly registered in the State Emissions Registry established by UDAQ pursuant to R-307-403-8 of the Utah Administrative Code. Upon transfer of the Emission Reduction Credits hereunder, the Emission Reduction Credits will be usable under the Utah Air Quality Rules as emission offsets for the Project, and a sufficient quantity of Emission Reduction Credits will sufficient to satisfy fully any emission offset requirements necessary to obtain the Emissions Approvals.

(b) Documents establishing control of a sufficient quantity of ERCs to operate the Project at a one hundred percent (100%) capacity factor, including summer peaking operations, are attached as Appendix M. These Credits shall be acquired no less than six months prior to Substantial Completion.

Section 4.16 Discharge Permit

The Project is capable of being operated in compliance with UPDES requirements applicable to all discharges from the Plant, including stormwater and process water.

Section 4.17 Security Interests and Liens

The Security Documents create, as security for the Secured Obligations, valid and enforceable perfected first priority Liens on all of the Collateral, in favor of Buyer, subject to no Liens other than the Permitted Liens. All Necessary Governmental Approvals relating to such Liens in favor of Buyer have been duly effected or taken.

Section 4.18 No Defaults

(i) Seller is not in breach of, or in default under, any Transaction Document, or any other agreement or instrument to which it is a party or by which it or its properties or assets may be bound and (ii) no Project Party is in breach of, or in default under, any other agreement or instrument to which it is a party or by which it or its properties or assets may be bound except where such breach or default would not, singly or in the aggregate, result in a Material Adverse Change.

Section 4.19 Expertise

(a) Seller has no reason to believe that (i) the Project will not achieve Substantial Completion by May 1, 2012, 2013 or 2014 or (ii) that the cost to complete the Project will exceed the Purchase Price.

(b) The construction and operation of the Project in accordance with the Transaction Documents and in compliance with Governmental Approvals, Applicable Law and pursuant to this Agreement is technically feasible.

(c) Contractor represents it has substantial experience and expertise in the development and management of turnkey construction of combined cycle power plants such as the Plant and the capability to carry out the Work and acknowledge that Buyer is relying on such experience, expertise and capability in executing this Agreement.

Contractor has not relied on any information supplied by Buyer regarding the environmental condition or Regulated Materials at, on, or under the Site in order to make any representation or warranty in this Agreement accurate or not misleading

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

As used in this Article 5, “to Buyer’s knowledge” refers to matters within the actual knowledge of Buyer. Buyer represents and warrants to Seller on the Effective Date (except as otherwise stated) and on each date the following representations and warranties are made or are deemed made as follows:

Section 5.1 Corporate Organization; Etc.

Buyer is a corporation duly organized and validly existing under the laws of the State of Oregon. Buyer has full corporate power and authority to carry on its business as it is now being conducted and to own the properties and assets it now owns.

Section 5.2 Validity of Contract; No Conflict

(a) This Agreement has been duly authorized, executed and delivered by Buyer and is a legal, binding and valid obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors’ rights generally and by legal and equitable limitations on the availability of specific remedies.

(b) The execution, delivery and performance by Buyer of this Agreement, the consummation of the transactions contemplated hereby, and the compliance with the provisions hereof by Buyer shall not, with or without the passage of time or the giving of notice or both:

(i) as to execution, delivery and performance, require any consent or approval of Buyer’s board of directors or any of Buyer’s shareholders which has not been obtained and each such consent and approval that has been obtained is in full force and effect,

(ii) conflict with, constitute a breach or violation of any provision of, or give rise to any right of termination, cancellation or acceleration under, or loss of any right and/or benefit under, any material contract or agreement to which Buyer is a party or to which it or its assets are subject or to any Governmental Approval held by or on behalf of Buyer, the loss of which would reasonably be expected to result in a Material Adverse Change on Buyer’s performance under this Agreement;

(iii) conflict with or violate the certificate of incorporation or bylaws of Buyer;

- (iv) violate any Applicable Law applicable to Buyer.

Section 5.3 Consents, Approvals and Authorizations

Appendix E sets forth all Buyer Governmental Approvals. Except for Buyer Governmental Approvals listed in Appendix E, to Buyer's knowledge, Buyer is not required, and under existing Applicable Law, will not in the future be required, to obtain any Governmental Approval in connection with the execution and delivery by Buyer of this Agreement or the performance of its obligations hereunder, the failure to obtain which would materially impair Buyer's performance of its obligations hereunder.

Section 5.4 Resources

Buyer has the financial resources, assets, operating capital, credit and other resources and means necessary to fulfill its obligations under this Agreement on a timely basis.

Section 5.5 No Proceedings

Except as otherwise disclosed by Buyer to Seller prior to the Effective Date, there are no actions, suits, investigations or proceedings by or before any Governmental Authority or arbitrator pending or, to its knowledge, threatened against or affecting Buyer which, to Buyer's knowledge, would result in a Material Adverse Change.

ARTICLE 6

CREDIT REQUIREMENTS

Section 6.1 Credit Requirements

(a) Seller is to utilize the Credit Matrix in the attached Exhibit C to determine the amount of any credit assurances to be provided. The amount of credit assurances will be based upon the Credit Rating of Seller or the entity providing credit assurances on behalf of Seller, and the size of the Project.

(b) The Credit Rating will be the lower of: (x) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is not available) from Standard & Poor's (S&P), or (y) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is not available) from Moody's Investor Services. If Option (x) or (y) is not available, the Credit Rating will be determined by Buyer's Credit Dept. through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with S&P.

(c) If requested by Buyer, Seller shall, within thirty (30) days, provide Buyer with copies of its most recent annual and quarterly financial statements prepared in accordance with GAAP.

Section 6.2 Security

(a) Security for the credit assurances required in the Credit Matrix shall include, but not be limited to, a guaranty in a form acceptable to Buyer, a Letter of Credit or Cash Escrow.

(b) If this Contract is terminated as a result of Seller's default, Seller shall pay Buyer the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any Work that Seller was otherwise obligated to provide during the remaining term of this Contract plus compensation for additional managerial and administrative services and such other costs and damages as Buyer may suffer as a result of Seller's breach ("Net Replacement Cost"). Amounts owed by Seller pursuant to this paragraph shall be due within five (5) Business Days after any invoice from Buyer for the same.

If required by Buyer, Seller shall, within five (5) Business Days after the Effective Date, submit to Buyer a Letter of Credit in the amount set forth in the Credit Matrix. The terms of the Letter of Credit shall meet the requirements of the attached Exhibit F [Dale, do we have this? – the requirements for the Letter of Credit are set forth in Attachment 11 to RFP 2012 solicitation] as well as the requirements of this Contract and be issued by a bank satisfactory to Buyer. The Letter of Credit shall provide for payment to Buyer of the Letter of Credit face value if Seller defaults under the terms of this Contract. Buyer shall have the right to call the entire amount of the Letter of Credit if Seller has not renewed the Letter of Credit by thirty (30) days prior to its expiration date. Seller's expenses of complying with this Letter of Credit requirement shall be paid by Seller.

ARTICLE 7

GENERAL OBLIGATIONS OF SELLER

Section 7.1 Seller's General Obligations

(a) Seller's general obligation hereunder is to provide Buyer with the Project for the Purchase Price, completed in accordance with the terms of this Agreement.

(b) The finished Work shall be complete in all respects. The intent of this Agreement, the Appendices, Exhibits and the Scope of Work is for Seller to provide to Buyer an engineered solution of first class workmanship in each and every respect. All hardware shall be manufactured, fabricated, assembled, finished and documented with workmanship of the highest quality throughout, and all of its components shall be new and suitable for the purposes specified. In addition, the solution shall be engineered, implemented, tested and documented in accordance with the Prudent Industry Practice and shall be suitable for the purpose specified.

(c) The Work shall be manufactured and executed in the manner set forth in the Specification or, where not so set forth, to the reasonable satisfaction of Buyer and Buyer's Representative and all Work on the Site shall be carried out in accordance with Prudent Industry Practice and such reasonable directions as Buyer or Buyer's Representative may give.

(d) Seller shall, in accordance with the terms and conditions of this Agreement, employ the Contractor and the Subcontractors who in turn shall provide all labor, services, management, supervision, Materials, tools, facilities, utilities, Governmental Approvals, licenses and other aspects of the Work necessary for the design, engineering, construction, startup, testing, commissioning and completion of the Plant including those items specifically required in Appendix B.

(e) Seller shall: (i) cause the Contractor and Subcontractors to carry out and complete the Work in accordance with the requirements, duties and obligations imposed on the Contractor and Subcontractors pursuant to Prudent Industry Practice and all applicable Site conditions; (ii) ensure that the Contractor and each and every Subcontractor designs and performs the Work such as to achieve the objective of a Project which complies with the Applicable Law and the other requirements of this Agreement and their respective contracts; (iii) have the resources, experience, qualifications and capabilities as are required to fully perform its obligations under this Agreement; (iv) keep Buyer informed as to the status of deliveries, and if any such materials or Equipment are not being properly manufactured or fabricated in accordance with the requirements of contracts and the requirements pursuant to which they were purchased, or do not otherwise conform with such requirements, promptly making Buyer aware thereof and taking necessary corrective action; (v) acquire the Site, the Water Rights, all Governmental Approvals necessary for the development, construction and operation of the Plant, and the Emission Reduction Credits in accordance with the Milestones; (vi) cause each of the conditions precedent to the issuance of the Notice to Proceed set forth in Section 17.1 (“Notice To Proceed”) to occur; and (vii) maintain at least one office in the State of Utah.

Section 7.2 Physical Obstructions And Conditions (PacifiCorp Sites Only)

If, during the performance of the Work on the Site, Seller encounters unusual or unforeseen (a) threatened or endangered plant and animal species which are regulated or require special handling under Environmental Laws, (b) underground conditions or (c) items of archeological or historical significance, Seller shall notify Buyer as soon as practicable and shall perform its obligations hereunder, including those obligations affected by such discoveries, in compliance with Applicable Law.

Section 7.3 The Contractor and Subcontractors

(a) In connection with its performance of this Agreement, Seller shall either (i) cause the Contractor and each Subcontractor to purchase Equipment from the Approved/Preferred Suppliers set forth in Appendix Q, or (ii) elect to use vendors others than those set forth in Appendix Q, in which event, Seller shall provide a price adjustment to the Purchase Price. Such adjustment shall be set forth in Appendix R, and shall be accepted by Buyer in its sole discretion.

(b) Seller shall be fully liable to the Buyer hereunder for all acts and omissions of the Contractor and each Subcontractor to the same extent as though any such act or omission had been performed or omitted to be performed by Seller directly. In no case shall Seller’s engagement of the Contractor or any Subcontractor relieve Seller of any of its obligations or Liabilities hereunder and, notwithstanding the use of the Contractor or any Subcontractors hereunder, Seller shall remain fully and primarily liable to the Buyer for the full and complete performance of Seller’s obligations hereunder.

(c) Buyer shall have no contractual obligation to, and shall not be deemed to be in privity with, the Contractor or any Subcontractor; provided, however, that in the event Seller’s obligations hereunder terminate for any reason, Seller shall, at Buyer’s request, take such actions and execute such documents as may be necessary or desirable to assign any or all of the contracts set forth on Schedule 4.12 selected by Buyer to Buyer at Seller’s sole cost and expense. Seller shall include in all

contracts with the Contractor, any Subcontractors and all other vendors, a consent by such Contractor, Subcontractor(s) and other vendor(s) in advance to such future assignment(s).

Section 7.4 Compliance With Applicable Law

(a) Seller shall comply with all Applicable Law, and shall cause the Contractor and each Subcontractor to comply with all Applicable Laws applicable to its respective scope of work on the Project, the noncompliance with which could adversely affect the Work, the Plant, the Site or Seller's obligations under this Agreement. Seller shall be responsible for ascertaining the nature and extent of any Applicable Law, which may affect Seller, the Work, the Plant or the Site as a result of the performance by Seller of its obligations under this Agreement or, prior to Substantial Completion, the operation of the Plant. Seller shall ensure that the Work complies with Applicable Law, Prudent Industry Practice and Governmental Approvals and further except to the extent any non-compliance therewith results from Buyer's gross negligence or willful misconduct or operation of the Work by or for Buyer (other than by Seller) not in compliance with [*insert applicable Equipment manufacturer*] product manual, a copy of which is included in Appendix D.

(b) Subject to the preceding paragraph, Seller shall be responsible for fines and penalties which may arise (including those that Buyer pays or becomes liable to pay) as a direct result of Seller's non-compliance with Applicable Law, or as a result of Buyer's inability to operate the Project in compliance with Applicable Law due to the inaccuracy of Seller's representations and warranties or the breach by Seller of any of its covenants, other than any fines and penalties arising from any act or omission of Buyer, or the agents, employees, contractors (other than the Contractor and each and every Subcontractor), and representatives of Buyer.

Section 7.5 Governmental Approvals

(a) Seller shall obtain all Governmental Approvals designated as Seller's responsibility in Appendix E and all other Governmental Approvals that are not specifically designated as Buyer Governmental Approvals in Appendix E and shall cause the Contractor and the Subcontractors to reasonably support the efforts of Buyer in obtaining all Buyer Governmental Approvals, including providing such engineering and environmental data and statistical information as may be reasonably requested by Buyer. Buyer shall be properly included as the permittee, co-permittee or authorized party with respect to all Governmental Approvals.

Section 7.6 Opportunities for Other Contractors; Labor Relations

(a) Seller shall, in accordance with Buyer's reasonable instructions, afford to other contractors identified by Buyer all reasonable opportunities for carrying out their work at the Site, provided that the same shall not materially obstruct or disturb the progress of the Work. Seller shall also afford access to Buyer's employees, including employees who will operate and maintain the Plant, to perform their work at the Site.

(b) Seller shall be responsible for coordinating Buyer's contractors and employees as it relates to mobilization and laydown space requirements, interconnection with Site construction power and temporary storage facilities, water, emergency evacuation requirements, trash/waste disposal, Site access, temporary office space, safety and security and other Site regulations and requirements. Each of Buyer's contractors shall be responsible for any costs with respect to that contractor's work,

including mobilization and laydown space requirements, interconnection with Site construction power and temporary storage facilities, water, emergency evacuation requirements, trash/waste disposal, Site access, safety and security and other Site regulations and requirements.

(c) Seller agrees that claims resulting from the concurrent Buyer contractor activities shall be brought to Buyer's attention within ten (10) Business Days of their occurrence. Buyer and Seller agree to informally resolve claims as they occur and otherwise in accordance with article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 7.7 Labor and Employment

(a) Seller shall, and shall cause the Contractor to, ensure that all construction contracts and subcontracts of any tier for the Project be awarded (i) in compliance with Utah State and Federal and all other Applicable Law and (ii) on a Merit Shop basis. Seller shall, and shall award construction contracts and subcontracts of any tier for the Work (x) in compliance with the requirements of U.S. Federal and Utah state laws and regulations and (y) on a Merit Shop basis or (z) through a project labor agreement. Each Contractor shall, subject always to the requirements of law or regulation or applicable collective bargaining agreement, and to the fullest extent commercially reasonable, perform the Work using Utah labor.. Any contract or subcontract shall be awarded on the basis of the best value to the Project including an evaluation of the Subcontractors' ability to work in harmony with others working on the Project including the Contractor, the existing labor force, Governmental Authorities, and without regard to whether or not the successful bidder is signatory or non-signatory to agreements with labor organizations. Seller shall, and shall cause the Contractor and each Subcontractor to, refrain from any discrimination against any employee on the basis of such employee's membership in any labor organization, or his or her lack of such membership. All employees working on the Project shall be permitted to exercise their right to engage in protected concerted activity, as defined in Section 7 of the National Labor Relations Act, as amended, or to refrain from doing so, without any discrimination or other adverse consequence. Seller shall, and shall cause the Contractor and each Subcontractor to, comply with Applicable Law regarding labor relations and employment matters. Any administrative or civil proceedings filed against a Project Party or any Subcontractor shall be promptly reported to Buyer. Nothing in this provision shall affect any obligation of a Project Party or Subcontractor under a lawful collective bargaining agreement applicable to some or all of such Person's operations on the Project.

(b) Seller shall be aware of, and familiar with, all collective bargaining agreements, which do or may pertain to or affect the work under this Agreement or other work at the Site. Seller shall plan and conduct its operations so that its employees and subcontractors of any tier will work harmoniously with Buyer employees and other workers employed on the same or related projects to assure that there will be no delays, work stoppages, excessive labor costs, or other labor difficulties. Seller shall ensure that Contractor and each and every Subcontractor comply with all Applicable Law pertaining to such labor.

(c) Scarcity and Quality of Labor. Seller shall have no claim for an extension of the Time for Completion or a claim for loss, damage or additional Costs of any kind in respect of any alleged or proved unsuitability, scarcity, inefficiency of the labor it may engage or wish to engage.

(d) Equal Employment Opportunity and Other Non-Discrimination Clauses.

(i) Seller shall, at all times, comply with all Applicable Law applicable to employees, including without limitation those governing wages, hours, desegregation, employment discrimination, employment of minors, health and safety. Seller shall comply with equal opportunity laws and regulations to the extent that they are applicable.

(ii) Seller shall indemnify, defend and hold harmless Buyer, its Board of Directors, officers, employees and agents from all losses, costs and damages by reason of any violation thereof and from any liability, including without limitation fines, penalties and other costs arising out of Vendor's failure to so comply.

(iii) Seller shall execute and deliver to Buyer a completed Certificate of Compliance using Buyer's form of Certificate before starting to perform Work under this Agreement.

(e) Workers Compensation. Seller shall comply with all applicable Applicable Law regarding workers' compensation and shall, prior to commencing Work, furnish proof thereof satisfactory to Buyer.

Section 7.8 Authority for Access for Inspection

Inspection of the Work at the Site and attendance at meetings (whether conducted in-person, telephonically or through similar medium) relating to the Project which are attended by Seller and Contractor or Subcontractor and related to status, progress, quality, scope, schedule and safety coordination shall at all times be afforded by Seller to Buyer, Buyer's Representative and such other Persons as shall be designated by Buyer or Buyer's Representative. Buyer, in its inspection, shall give due consideration to the needs of Seller to carry out Seller's obligations and strive not to hinder or unduly impede Seller while carrying out such inspection. Buyer, in its inspection, may observe the progress and quality of the Work to determine, in general, if the Work is proceeding in accordance with the Transaction Documents. Inspections under this Section 7.8 are solely for the benefit of Buyer and any inspection or failure to inspect and any objection or failure to object by Buyer shall not (i) relieve Seller, the Contractor, or any Subcontractor of its respective obligations under any Transaction Document or (ii) be used as evidence that Buyer agreed that Seller, Contractor, or any Subcontractor had fulfilled any obligations under any Transaction Document or that Buyer had waived any of its rights under any Transaction Document.

Section 7.9 Seller's Use of Buyer's Drawings

Seller may use Buyer's Drawings only for fulfilling its obligations under this Agreement. Buyer's Drawings, specifications and other information submitted by Buyer to Seller shall remain the property of Buyer. Such materials shall not, without the written consent of Buyer, which consent may be withheld in Buyer's sole discretion, be used, copied or communicated to a third party, other than the Contractor, by Seller unless necessary to fulfill the purposes of this Agreement, and then pursuant to a full reservation of rights in Buyer. Buyer makes no representations or warranties as to the accuracy, completeness or suitability of Buyer's Drawings and Seller shall not rely on such Buyer's Drawings.

Section 7.10 Contractor Drawings and Manuals

(a) Seller shall at all times keep a copy of the most recent version of the Contractor Drawings and Manuals at Seller's office on the Site to be made available for Buyer's review. In

addition, Seller shall provide and make available to Buyer electronic versions of the Contractor Drawings and Manuals accessible by Buyer through a file transfer protocol site to be maintained by Seller.

(b) Seller shall cause to be set forth in the Contractor Drawings and Manuals provided to Buyer such information as is required to operate and maintain the Work, including to the extent applicable, recommended operating and maintenance procedures, system descriptions, product catalogs, drawings, design sheets, specifications, logic diagrams, maintenance and instruction sections, spare parts lists, any vendor-supplied training documents, and current heat balances. The Contractor Drawings and Manuals shall be (i) prepared in accordance with the Specification and when completed, shall be in sufficient detail to accurately represent the Project as constructed. The Contractor Drawings and Manual shall be maintained and be available, with up-to-date drawings, specifications and design sheets, for the training as set forth in Section 7.11 (“Training”).

(c) Seller shall prepare initial system descriptions, design basis documents, and operational guidelines for the Project and deliver such to Buyer for its review at least one (1) year prior to the Guaranteed Substantial Completion Date.

(d) At least sixty (60) days prior to the Guaranteed Substantial Completion Date, Seller shall provide Buyer with initial drafts of the final Contractor Drawings and Manuals for review (the “Draft Manuals”). The Draft Manuals shall contain such information described in Section 7.10(b), other than the drawings which, in accordance with this Section 7.10, are being maintained so as to be up-to-date. Two (2) complete sets of the Draft Manuals shall be provided to Buyer at least sixty (60) days prior to Substantial Completion and shall be a condition of Substantial Completion.

(e) Seller shall provide to Buyer both hard and electronic final copies of the Contractor Drawings and Manuals. Seller shall provide to Buyer five (5) final hard copies of the Contractor Drawings and Manuals within sixty (60) days after achievement of Substantial Completion. Buyer shall not be required to deliver the Notice of Final Acceptance until all such Contractor Drawings and Manuals have been so delivered.

(f) Any modifications to the Contractor Drawings and Manuals made necessary as a consequence of any Final Punch List items or modifications to the Work shall be issued as addenda to the Contractor Drawings and Manuals within sixty (60) days following completion thereof.

Section 7.11 Training

(a) Training of Buyer’s personnel (or other employees or agents of Buyer) shall be given by Seller or the Contractor prior to the Closing Date as required by the Specification, in accordance with the timetable to be agreed upon with Buyer prior to the Closing Date and shall include training (including on-site and classroom) in connection with the operation and maintenance of the Project. Such training shall be provided directly to Buyer’s personnel as specified by Buyer in Section 10 to Appendix B and shall be conducted by a trainer experienced in the operation and maintenance of the Project.

(b) As more fully described in Section 10 of Appendix B, starting at least sixty (60) days prior to the first operation of one of the combustion turbines at the Site of the Project and continuing until Final Acceptance, Seller shall oversee the development of and provide qualified and experienced

support for Buyer's execution of a practical and participatory training program at the Site for an adequate number of employees designated by Buyer, which personnel shall be experienced in electric generating facility operation appropriate to their respective job descriptions.

Section 7.12 Safety

(a) Seller shall be solely responsible for being aware of and initiating, maintaining and supervising compliance with all safety laws, regulations, precautions, and programs in connection with the performance of this Agreement, including without limitation the provisions of Section 9.2 ("Site Security"), Section 9.7 ("Fencing, Protection, Lighting"), and Section 9.11 ("Material Safety Data") of this Agreement. Prior to the start and throughout the performance of the Work, Seller shall assure that each of its employees, together with all employees of its Contractor and each Subcontractor, are fully informed concerning all safety, health, and security regulations pertaining to the Work. Seller shall conduct all operations under this Agreement in such a manner as to avoid the risk of bodily harm to persons or risk of damage to any property.

(b) In the event Seller fails to promptly correct any violation of safety or health regulations, Buyer may suspend all or any part of the Work. Seller shall not be entitled to any extension of time or reimbursement for costs caused by any such suspension order. Failure of Buyer to order discontinuance of any or all of Seller's operations shall not relieve Seller of its responsibility for the safety of personnel and property. Seller shall maintain an accurate record of and shall promptly report to Buyer all cases of property damage in excess of \$100 and of death, occupational diseases, or injury to employees or any other third parties and incident to performance of Work under this Agreement. Seller shall promptly notify Buyer and provide a copy of any safety citation issued by any governmental entity. Seller shall perform all Work under this Agreement in strict accordance with its Buyer-approved Health and Safety Plan.

Section 7.13 Intellectual Property Rights and Computer Program Licenses

(a) Seller represents and warrants that it has and upon the Closing will have, (i) all rights necessary with respect to the Work (and each part thereof) and the ownership or operation of the Project after it is constructed and to perform Seller's obligations under this Agreement and (ii) that the Work (and each part thereof) does not violate or infringe any patent or copyright. Seller shall not take any action that would violate or infringe any patent or copyright.

(b) Seller shall, at its sole expense, settle or defend and pay any costs (including attorney's fees) and damages awarded in connection with, and shall defend, indemnify and hold harmless each of Buyer and Buyer's Representative, and any of its respective officers, directors, employees, contractors, agents or representatives, from and against, any and all Claims, suits or proceedings based on a Claim that the Work (or any part thereof) or the ownership or operation of the Project, infringes or violates any patent or copyright. Buyer shall give Seller notice of any such Claim promptly after Buyer has actual knowledge thereof, provided that the omission of Buyer to give such notice shall not relieve Seller of their obligations hereunder except to the extent that such omission results in a failure of actual notice to Seller and Seller are damaged as a result of such failure. The provisions of article 26 ("Indemnification") and article 32 ("Claims, Claim Notice and Dispute Resolution") shall also apply to any Claim under this Section 7.13(b).

(c) In case the Work (or any part thereof) or the ownership or operation of the Project is held to infringe or violate any patent or copyright and the use of the Work (or part thereof) or the operation of the Project is restricted or prohibited as a result thereof, Seller shall, at its sole cost and expense, at Seller's option, either procure for Buyer the right to continue using the Work (or part thereof), replace the same with non-infringing comparable substitute Work, or modify the Work (or part thereof) so that it becomes non-infringing (provided that such modification does not adversely affect the Work (or any part thereof)).

(d) Seller shall obtain and transfer to Buyer perpetual, fully-paid licenses to use all computer programs necessary or useful for the operation of the Plant, together with all warranties related thereto. Nothing contained in the Computer Program License shall restrict any of Buyer's rights under this Agreement.

Section 7.14 Seller's Representatives

(a) Seller shall employ one or more competent representatives, whose name or names and details of qualifications and previous experience shall have been provided to Buyer and Buyer's Representative by Seller, to manage the project and who shall have Seller's authority in respect of all matters arising out of or in connection with the Agreement and the Work.

(b) Assigned Project Roster.

(i) Seller shall designate a Project Manager, a Project Engineer, a Lead Mechanical and Lead Electrical, a Construction/Site Manager, a Safety Manager and a Startup or Commissioning Manager for the Project, and shall provide to Buyer a list setting forth each such position prior to beginning the Work. All employees assigned by Seller to perform any of Seller's obligations shall be fully qualified to perform the tasks assigned them.

(ii) Such representatives, or if more than one shall be employed, then one of each such representatives, shall be present on the Site during working hours and at all times the Work is in progress during the times relevant to the representative's duties are applicable to the Work, and any orders or instructions which Buyer or Buyer's Representative may give to the said representative of Seller shall be deemed to have been given to Seller.

(iii) Buyer or Buyer's Representative shall each have the right, in its sole discretion, to approve or disapprove Seller's selections for Project Manager, Project Engineer, Lead Mechanical and Lead Electrical, Construction/Site Manager, Safety Manager, Startup or Commissioning Manager and any Subcontractors or independent contractors or consultants utilized by Seller.

(iv) In the event Seller intends to remove or change its Project Manager, Project Engineer, Lead Mechanical and Lead Electrical, Construction/Site Manager, Safety Manager, or Startup or Commissioning Manager assigned to the project or reassign any such personnel to another project, Seller shall give Buyer fifteen (15) days advance written notice of Seller's intentions. Buyer shall give due diligence and consideration to any request by Seller to replace such persons and shall respond within fifteen (15) days to any such requests. Seller shall not replace its Project Manager, Project Engineer, Lead Mechanical and Lead Electrical,

Construction/Site Manager, Safety Manager, or Startup or Commissioning Manager assigned to the project without the prior written consent of Buyer.

(v) Buyer shall have the right to approve Seller's senior staff on Site, and may request the removal of any of Contractor's personnel

(vi) Seller shall not remove any of the individuals identified in Section 7.14(b)(i) from the Work or the Site without the prior written consent of Buyer, and then only if a suitable replacement for such representative has been approved by Buyer prior to the removal of such representative.

(c) Objection to Seller or Contractor Representatives or Employees. Buyer shall be entitled by notice to Seller to object to any representative or person employed directly or indirectly by Seller, Contractor or any Subcontractor in the execution of or otherwise about the Work who, in the opinion of Buyer, misconducts itself, is incompetent or negligent, and Seller, Contractor or any Subcontractor, as the case may be, shall remove and exclude such person from the Work.

Section 7.15 Seller's Personnel/Drugs, Alcohol and Firearms

With regard to the performance of the Work, Seller shall, and shall ensure that Contractor shall, only employ persons qualified to perform the Work. Seller shall, at all times, enforce strict discipline and good order among its employees and the employees of the Contractor and any Subcontractor. Seller shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicants upon the Work under this Agreement, or upon any of the grounds occupied, controlled, or used by Seller in the performance of the Work. Seller shall immediately remove from the Work, whenever requested by Buyer, any person considered by Buyer to be incompetent, insubordinate, careless, disorderly, in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, or under the influence of illegal drugs or intoxicants, and such person shall not again be employed in the performance of the Work herein without the consent of Buyer.

Section 7.16 Use of Premises and Trespassing

Seller shall confine the storage of materials and construction equipment to locations acceptable to Buyer and in accordance with Applicable Law. Seller shall, at all times, prohibit its staff, workers and all other persons employed directly or indirectly by Seller on the Site from poaching or trespassing and any such person found so doing shall be removed forthwith from the Work and shall not be re-employed without the prior Written consent of Buyer.

Section 7.17 Electricity, Water and Pipeline Natural Gas

(a) During the construction of the Plant, Seller shall provide for its own use, on-Site distribution for all utilities, including, the following: drainage, water, sewage and electrical power. Seller shall pay for electrical power, fuel and raw water used by Seller during the construction of the Plant. Seller shall make provisions in its temporary construction power load center for loads and feeds of Buyer, provided that Seller have been supplied with adequate information relative to such additional uses prior to initial mobilization at the Site; provided, however, distribution of such additional power feeds, and the cost of usage of such electrical power, shall be borne by Buyer or contractors engaged by Buyer.

(b) Seller shall provide all required supplies of demineralized water, pipeline natural gas and other commodities required for the purposes of commissioning and startup activities and the Performance Tests in accordance with manufacturer's and/or contractors' published specifications for the Plant and Equipment. Notwithstanding the foregoing, Buyer shall reimburse Seller for the cost of providing pipeline natural gas in an amount not to exceed the equivalent to two hundred seventy-five (275) hours of full-load CT operation, without duct burners in operation, based on the design documents for the Project, for purposes of commissioning and startup activities and the Performance Tests. Seller shall provide to Buyer in writing not less than 180 days prior to first firing of the Gas Turbines, the design consumption rate to be used in calculating Buyer's reimbursement obligations under this paragraph. Seller shall be responsible for all pipeline imbalance and other charges that may be assessed by any party in connection with the supply of natural gas and/or electric service to the Plant in connection with commissioning and startup activities and Performance Testing. Seller shall be responsible for the initial filling of all chemicals, lubricants, and any other consumables necessary for the startup activities and Performance Tests.

Section 7.18 Temporary Facilities

Seller shall make provisions, at its cost, for all temporary facilities necessary for the construction of the Project and the installation of the Equipment, including arrangements for the supply of telephone, office equipment, sanitary toilet facilities, compressed air and other services for the Work and shall provide and maintain all pipes, cables and services required for its operation. Seller shall provide and maintain on the Site office accommodations for itself and an office for Buyer and Buyer's Representative. Seller shall also install and maintain, at its own cost and expense, a system of lighting to provide a reasonable degree of illumination over the area of its Work during performance of the Work. Seller shall remove any of such temporary installations pursuant to Section 20.7 ("Removal of Equipment").

Section 7.19 Decisions and Instruction of Buyer's Representative

(a) Seller shall proceed with the decisions and instructions given by Buyer's Representative in accordance with this Agreement. Such decisions or instructions may be given orally, but shall be effective only when confirmed in writing unless and only to the extent that such instructions are necessary to remedy an emergency situation that would make the provision of written instructions impractical.

(b) If Seller disputes or questions any decision or instruction by Buyer's Representative, Seller shall give notice to Buyer within five (5) days after receipt thereof, giving reasons therefor. Buyer shall within a further period of five (5) days by notice to Seller with reasons, confirm, reverse or vary such decision or instruction. If Seller disagrees with Buyer's response, or if Buyer fails to reply to Seller's notice within the stipulated days, the matter shall be resolved in accordance with article 32 ("Claims, Claim Notice and Dispute Resolution"). Notwithstanding the foregoing, to the extent that an instruction by Buyer's Representative is necessary to remedy an emergency situation and Seller disputes the action requested in such instruction, then Seller shall nonetheless comply with Buyer's instruction and the dispute shall be resolved as provided in article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 7.20 Cooperation Between the Parties

The Parties are expected to be called upon to make decisions regarding matters not reasonably anticipated in order to meet their respective obligations under this Agreement. In making such decisions, the Parties shall cooperate with the intent to improve the performance of the Work and reduce the likely operating and maintenance impacts. The vehicle for reaching agreement and causing a change to occur in the Work and/or the schedule for performance and/or the Guaranteed Substantial Completion Date and/or additional substantiated costs as a result of errors and omissions in information supplied by Buyer shall be by Change Order in accordance with article 13 (“Change Orders”). Additionally, if errors or omissions in information provided by Seller affect Buyer’s or its other contractors’ work during construction of the Plant, Buyer shall be entitled to make a Claim against Seller for Buyer’s costs as the result of errors or omissions. [Notwithstanding the foregoing, the Parties at all times shall abide by and be subject to the terms of the Construction Coordination Agreement]. [Final sentence applicable only to PacifiCorp Sites]

Section 7.21 Spare Parts Inventory

(a) Seller shall provide and include in the Purchase Price all spares and consumables necessary for the complete performance of the Work through Final Acceptance and through the Acceptance Period. Such spares and consumables shall be located at Site and immediately available to ensure all works, testing and reliability testing continues unimpeded by such unavailability of onsite spares and consumables.

(b) Seller shall prepare a proposed list of spare parts for the Work to be available one hundred eighty (180) days prior to the Guaranteed Substantial Completion Date. Seller shall submit the proposed inventory of spare parts to Buyer in a timely fashion so as to permit thirty (30) days for Buyer to review the list and for Buyer, in Buyer’s sole discretion, to procure such spare parts or, at Buyer’s option pursuant to a Change Order, to direct Seller to procure such spare parts and have such spare parts delivered to the Site or cause such spare parts to be procured and delivered to the Site, to the extent practical, prior to the Guaranteed Substantial Completion Date. The proposed inventory of spare parts shall describe each component in detail, identify the manufacturer and supplier thereof and set forth the cost and lead time of such item. Upon the request of Buyer, Seller shall meet with Buyer and its designees to discuss the proposed inventory of spare parts. If available, Buyer shall allow Seller to use any spare parts owned by Buyer, but in no event shall Buyer be liable or shall Seller be entitled to a Change Order in the event that the absence of any particular spare part or parts impacts completion of the Work.

(c) In the event Seller uses Buyer’s spare parts, such spare parts shall be expeditiously replaced by Seller at its sole cost and expense.

(d) Buyer does not warrant the condition, quality, suitability, absence of defects, fitness for any purpose or aspect of any Buyer-supplied spare part and if a Seller uses any Buyer-supplied spare part, it does so at its own risk.

Section 7.22 Maintenance of Buyer Lien

Seller shall take or cause to be taken all actions reasonably required by or deemed desirable by Buyer, in its sole discretion, to maintain and preserve the Lien of the Security Documents and the

priority thereof. Seller shall from time to time execute or cause to be executed, or authorize Buyer to prepare and file, any and all further Security Documents and register and record such documents and instruments in such offices reasonably requested by Buyer for such purposes. Seller shall take all action reasonably required by Buyer to cause each Additional Project Document to be or become subject to the Lien of the Security Documents (whether by amendment to the Security Documents or otherwise) and shall deliver or cause to be delivered to Buyer such legal opinions, certificates or other documents, including consent agreements that are substantially similar to the Consents, with respect to such Additional Project Documents as Buyer may reasonably request.

Section 7.23 Further Assurances

Seller shall take all such further actions and execute all such further documents and instruments as Buyer may at any time reasonably determine to be necessary to further carry out and consummate the transactions contemplated by the Transaction Documents or to perfect or protect the Lien of Buyer on the Collateral under the Security Documents.

Section 7.24 Indebtedness

Until the Closing shall have occurred, Seller shall not create, incur, assume, suffer to exist or otherwise become or remain directly or indirectly liable with respect to any Indebtedness other than Indebtedness incurred in the ordinary course of business that does not result in a Material Adverse Change.

Section 7.25 Other Liens

(a) Until the Closing shall have occurred, Seller shall not create, incur, assume or suffer to exist, directly or indirectly, any Lien on any of its property now owned or hereafter acquired in connection with the Project, other than the following:

(i) Liens granted to Buyer pursuant to the Security Documents;

(ii) Easements or other encumbrances on Real Property affecting the Project required to be granted (x) pursuant to Applicable Law or (y) by order of a Governmental Authority; provided, however, that such easements or other encumbrances on Real Property could not reasonably be expected to have a Material Adverse Change;

(iii) Liens set forth on Schedule 7.25 (c);

(iv) Mechanics Liens relating to the Work supplied and performed by the Contractor or by any Subcontractor that have not yet been paid in the ordinary course of business; and

(v) Liens filed with respect amounts payable to the Contractor or any Subcontractor that are being disputed in good faith, provided that Seller have posted a bond against such Liens with a bonding company or other surety reasonably acceptable to Buyer.

(b) Seller shall, and shall cause Contractor, all Subcontractors, and all Suppliers to deliver Lien Releases in the form attached as Exhibit J, Exhibit K, and Exhibit L, respectively, for all Liens that arise with respect to the Project.

Section 7.26 Restriction on Fundamental Changes

(a) Until the Closing shall have occurred, Seller shall not, without Buyer's prior written consent, enter into any merger or consolidation, or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), discontinue its business.

(b) Until the Closing shall have occurred, and except in the ordinary course of business (such as the replacement or substitution of items from customary wear and tear), Seller shall not convey, sell, lease, assign, transfer or otherwise dispose of any of Seller's assets, except in connection with the Closing, if such sale, lease, assignment, transfer or other disposition would not, singly or in the aggregate, result in a Material Adverse Change.

Section 7.27 Contingent Obligations

Until the Closing shall have occurred, Seller shall not create or become or be liable with respect to any Contingent Obligation if, the occurrence of the contingency associated with such Contingent Obligation would result in a Material Adverse Change, other than (a) indemnities of Seller in favor of Buyer pursuant to this Agreement, (b) under the Primary Construction Contracts, (c) indemnities arising in the ordinary course of business under contracts with Subcontractors or (d) any Contingent Obligation to a Governmental Authority arising in connection with Seller's seeking to obtain a Governmental Approval, but only to the extent consented to by Buyer, such consent not to be unreasonably withheld.

Section 7.28 Amendment of Project Documents; Additional Project Documents

Until the Closing shall have occurred, Seller shall not:

(a) without the prior written consent of Buyer (i) assign or permit any Person to assign any of its rights or obligations to or under any Project Document, (ii) terminate any Project Document, or (iii) make any amendment or other modification to any Project Document that would (A) result in a breach of this Agreement or the inaccuracy of any representation or warranty in this Agreement, (B) increase the Purchase Price, (C) extend the Guaranteed Substantial Completion Date, or (D) have a Material Adverse Change;

(b) to the extent not covered by Section 7.28(a), amend, modify, grant any consent or approval with respect to any obligation under, waive timely performance or observance by any Person (other than Buyer) of any obligation under, exercise any options or remedies or issue any change order, notice or make any elections under any Project Document without providing notice thereof and copies of all material documentation related thereto, to Buyer;

(c) compromise or settle any claim against any Project Party if to do so would have a Material Adverse Change; or

(d) enter into any Additional Project Document that would have a Material Adverse Change. Seller shall deliver copies of all Additional Project Documents to Buyer within three (3) Business Days of the execution thereof.

Section 7.29 Environmental Matters

Until the Closing shall have occurred, Seller shall not permit (a) any underground storage tanks (other than for water or sewage) to be located on any property owned or leased by Seller, (b) any asbestos to be contained in or form part of any building, building component, structure or office space owned or leased by Seller and (c) any polychlorinated biphenyls to be used or stored at any property owned or leased by Seller.

Section 7.30 Records and Accounts

Seller shall maintain all records and accounts in accordance with GAAP consistently applied and in Dollars in order to support any and all invoices, claims and disputes under this Agreement. Seller shall permit Buyer, upon reasonable prior notice and during business hours, to audit Seller's records and accounts to verify invoice amounts and to confirm any increases or decreases to the Purchase Price and any Change Orders.

Section 7.31 Condemnation, Eminent Domain, Casualty Events

(a) In the event that any Governmental Authority or any Person, acting under any Governmental Authority, other than Buyer, takes any action to condemn, seize or appropriate all or any substantial part of the Project (each a "Condemnation Proceeding"), Seller shall promptly notify Buyer of the Condemnation Proceeding and promptly update Buyer on significant events in connection with the Condemnation Proceeding, including with respect to settlement offers, and provide other information reasonably requested by Buyer as often as may be reasonably requested by Buyer. Any monetary offer to settle a Condemnation Proceeding or compensate Seller with respect thereto shall at all times be subject to Buyer's sole and absolute discretion to accept or reject such offer, and in the event that Buyer directs Seller to accept such offer, and provided that no Seller Default, shall have occurred and be continuing, the proceeds thereof shall be applied first as a credit against any cancellation payment that may apply pursuant to Appendix I, and the remainder of such proceeds shall be paid to Buyer.

(b) In the event that any casualty event (other than a Force Majeure) shall occur which causes a suspension of all or a substantial portion of the Work for a period greater than (i) forty-five (45) days after the receipt of insurance proceeds in an amount required to successfully restore or repair the Project without having to increase the Purchase Price or (ii) ninety (90) days after the occurrence of such casualty event, then, provided that no Seller Default shall have occurred and be continuing, the proceeds of any insurance policies in respect of such casualty event shall be applied first as a credit against any cancellation payment that may apply pursuant to Appendix I and the remainder of such proceeds shall be paid to Buyer.

Section 7.32 Seller's Organizational Documents

Within thirty (30) days following the Effective Date, Seller shall deliver to Buyer or its representatives true and complete copies of their [APPLICABLE ORGANIZATIONAL DOCUMENTS] (the "Seller's Organizational Documents"), as amended through (and including) such date.

Section 7.33 Construction Coordination Agreement [PacifiCorp Sites Only]

Seller shall conduct all development, construction, commissioning and testing activities in accordance with the provisions of the Construction Coordination Agreement and in a manner that shall not interfere with the operation of Unit 1.

Section 7.34 Import Permits, Licenses and Duties

Seller shall obtain all import permits or licenses required for any part of the Plant, Equipment or Work within the time stated in the Project Schedule or, if not so stated, in reasonable time having regard to the time for delivery of the Plant, the Equipment and the Time for Completion. Seller shall pay all customs and import duties arising upon the importation of Plant into the applicable port of entry. All such payments shall be deemed to be included in the Purchase Price.

Section 7.35 Compliance with Planning Permissions, Consents

Seller shall comply fully in respect of design and work at Site and all other obligations under the Agreement, with the terms, conditions and requirements of all consents, licenses and planning permissions obtained by Buyer or Seller in accordance with Section 8.2 (“Planning Permissions, Consents”).

Section 7.36 Permits

Seller shall, and cause the Contractor and any Subcontractor to, at its sole cost and expense, secure and maintain all applicable construction and construction related permits which are required by Applicable Law (each a “Permit”) in order to undertake and perform the Work.

Section 7.37 Lay Out

(a) Seller shall be, and shall ensure that the Contractor and any Subcontractor is, responsible for the true and accurate laying out of the Work by reference to original points, lines and levels of reference given by Buyer’s Representative and provide all necessary instruments, appliances and labor therefore.

(b) If, at any time during the execution of the Work, any error appears in the positions, levels, dimensions or alignment of the Work, Seller shall rectify the error.

(c) Seller shall bear the Cost of rectifying any error caused or permitted, directly or indirectly, by Seller.

(d) Seller shall identify and protect bench marks, sight rails, pegs and other monuments or reference points used in laying out the Work.

ARTICLE 8

GENERAL OBLIGATIONS OF BUYER

Section 8.1 Buyer's General Obligations

(a) Buyer's general obligation hereunder is to purchase the Project, upon performance of Seller's obligations as provided in this Agreement.

(b) Additionally, Buyer shall:

(i) keep Seller informed as to the status of any governmental or regulatory or other activities undertaken by Buyer that relates to the Plant and that is likely to materially adversely affect Seller's ability to perform the Work;

(ii) comply with all Applicable Law, the noncompliance with which are likely to materially adversely affect the Work, the Plant, the Site or Seller's or Buyer's obligations under this Agreement; and

(iii) maintain its records and accounts in accordance with GAAP consistently applied in order to support any and all invoices, claims and disputes under this Agreement.

Section 8.2 Planning Permissions, Consents (PacifiCorp Sites Only)

(a) Buyer shall, before the time specified in the schedule for delivery of any Equipment or Plant to the Site, obtain the Planning Consents set forth in Exhibit G. In the event Seller considers that a consent not contained in Exhibit G must be obtained for the execution of the Work and/or operation of the Site and which, as a result of the application of Applicable Law, can only be obtained by Buyer, Seller shall immediately inform Buyer. If Buyer determines, in its sole discretion, that any additional consent is required, Buyer shall use commercially reasonable efforts to obtain such consent.

(b) Except as expressly provided or set out in this Section 8.2 or otherwise agreed in writing, Buyer shall have no obligation to obtain any further planning or similar consents which are or may be necessary for the performance of the Work. The obtaining of any and/or all other necessary consents, permits, planning permission from local or other authorities or adjacent landowners shall be the responsibility of Seller who shall ensure that the same are promptly obtained considering the schedule and the time for delivery of the Equipment, the Plant and the Time for Completion.

(c) Each Party agrees to provide reasonable assistance to the other where such assistance is necessary for any consent, license or permission to be obtained. Seller shall ascertain, comply with, and ensure that the Work complies with, all Applicable Law, and all consents, licenses and permissions relating thereto.

Section 8.3 Operations and Maintenance Staff

Buyer shall provide to Seller reasonable and necessary support during the commissioning and startup of the Plant as set out in this paragraph. Seller shall supply a schedule of requested support not less than sixty (60) days prior to commencing startup and commissioning activities. Buyer shall

provide operations and maintenance staff personnel to participate in the commissioning activities and Performance Tests during normal working hours or other times as may reasonably be requested by Seller with advance notice as follows: Buyer shall provide operation and maintenance personnel as may be reasonably required by Seller to carry out the Performance Tests for purposes of commissioning, Performance Tests, training and system turnover, not to exceed 10 FTE (full-time equivalent) personnel for a period not to exceed 180 consecutive days. Buyer's operation and maintenance personnel shall work under the direction of Seller to perform their work in connection with the startup and commissioning activities. Subject to the following sentence, Buyer's personnel shall have acceptable minimum skill levels to operate the equipment. This participation shall be considered on the job training for Buyer's personnel.

Section 8.4 Certificate of Convenience and Necessity

Prior to the issuance of the Notice to Proceed, Buyer shall open a docket before the PSCU with respect to the CCN. Promptly after obtaining the CCN, Buyer shall provide notice thereof to Seller. Seller agrees to take commercially reasonable and prudent steps to represent themselves in the PSCU's regulatory proceedings in support of the CCN, including causing the Contractor and each Subcontractor to provide cooperation and assistance to Buyer in connection therewith. Such regulatory participation by Seller shall be at Seller's sole cost and expense.

Section 8.5 Buyer's Representative

(a) Buyer's Power to Delegate. Buyer may at any time and from time to time delegate to its representative (the "Buyer's Representative") any of its duties and obligations (other than its payment obligations) under the Agreement. Except as explicitly provided herein, any written decision, instruction or order given by Buyer's Representative to Seller in accordance with such delegation shall have the same effect as though it had been given by Buyer.

(b) Duties of Buyer's Representative. Buyer's Representative shall carry out such duties in issuing certificates, decisions, instructions and orders as are specified in the Agreement but except as expressly provided in the conditions neither the performance of or the failure to perform such duties whether properly or at all by Buyer's Representative, nor the fact that a representative has been appointed by Buyer shall in any way relieve Seller of any responsibility or liability for any of its obligations under the Agreement. No approval of, or consent to or failure to approve or disapprove of any matter by Buyer or Buyer's Representative shall relieve Seller of any liability or any of its obligations under the Agreement.

Section 8.6 Standard of Conduct

Unless explicitly stated otherwise in this Agreement, whenever the Parties or their representatives are required to exercise discretion by: (a) giving a decision or consent, (b) expressing satisfaction or approval, (c) determining value, or (d) otherwise taking action which may affect their respective rights and obligations hereunder, the exercise of such discretion shall be made in a reasonable manner and in good faith consistent with this Agreement so as to reasonably minimize any disruption to the other Party, and having regard to all the circumstances reasonably applicable thereto.

ARTICLE 9

WORKING ARRANGEMENTS

Section 9.1 Site Regulations

Seller, while performing Work at the Site, shall make itself aware of and adhere to Buyer's Site regulations, if any, including without limitation environmental protection, loss control, dust control, safety, and security, as well as any plant Site special conditions.

Section 9.2 Site Security

(a) Site security shall be under the direct control of Buyer and shall be in accordance with Buyer's established procedures, which include the requirements stated in this Section. Seller and its personnel and its Subcontractor's personnel of any tier shall strictly adhere to all Site security provisions. Buyer will furnish within fenced-in areas of the Site a guard force to control access to and from the Site.

(b) All personnel working at the Site and all repeat visitors may be provided and where provided, shall be required to keep in their possession at all times, while on the premises, an identification tag ("ID Tag") provided by Buyer. Visitor's ID Tags will be available, but persons with such ID Tags may be required to be escorted by a designated representative of Buyer.

(c) Seller shall be assigned a personnel gate through which its employees must enter and depart. ID Tags issued to Seller's employees may, at Buyer's option, be utilized as "brass", and Seller shall be responsible for the control of ID Tags issued to its employees, subcontractors, suppliers and visitors.

(d) Notwithstanding Buyer's provision of guard service, Seller shall be fully responsible for all Equipment, as well as Buyer-furnished material and Equipment in the care, custody and control of Seller.

(e) Buyer shall designate parking areas for all persons outside the fenced-in area of the Site. Certain individuals, authorized specifically by Buyer, may drive vehicles onto the Site and may enter and leave through the main gate at times designated by Buyer. Access to the Site between the hours of 3:30 P.M. local time and 7:00 A.M. of the normal work week and all hours on weekends shall be subject to the consent of Buyer. Seller shall follow the procedure designated by Buyer in obtaining consent for access to the Site at other than normal working hours.

(f) Seller shall maintain and submit to Buyer an up-to-date inventory of Equipment and tools brought onto the Site.

(g) A representative of Buyer shall have the unqualified right to demand identification of and/or search all persons and all vehicles entering or leaving the Site. Materials leaving the Site must have an appropriate material pass issued by Buyer. Seller shall make, and cause its Subcontractors to make, advanced arrangements for tool inventory when leaving the Site upon completion of the Project. The inventory shall be coordinated with Buyer and can be conducted on weekdays between 9:00 A.M. to 2:00 P.M.

(h) Buyer shall inform Seller of all restricted areas of the Site. Before entering any such restricted area, Seller shall obtain prior consent from Buyer Representative. Any individual found in restricted areas without Buyer consent shall be subject to removal from the Site.

Section 9.3 Preservation of Public and Private Access

Seller shall not damage, close, or obstruct any highway, road, or other public or private easement, except to the extent allowed by Permits. If such facilities are closed, obstructed, damaged, or made unsafe by Seller, Seller shall, at its sole cost and expense, make such repair as necessary and shall also provide such temporary guards, lights, and other signals as necessary or required for safety or as reasonably requested by Buyer.

Section 9.4 Night, Weekend or Holiday Work

In the event Seller determines it necessary to undertake the Work at night, on weekends, or on holidays, and such Work is on the Site, Seller shall provide Buyer's Representative forty-eight (48) hours notice, unless the Work is necessary for the protection of life or property or for the safety of the Work, in which case Seller shall immediately advise Buyer's Representative. Such Work shall be performed in accordance with all Applicable Law, Permits, consents and licenses, and without inconvenience to third parties. Seller explicitly agrees and acknowledges that full consideration and payment for the satisfactory completion of the Work includes all necessary labor hours inclusive of Work during night, weekends and holidays and explicitly agrees and acknowledges that Seller shall not file Change Orders because of the need to attract labor to perform Work at night, weekends or on holidays.

Section 9.5 Avoidance of Noise and Disturbance

All Work at the Site (including night, weekend or Holiday Work subject to the requirements of Section 9.4 ("Night, Weekend or Holiday Work")) shall be carried out in such a way as to minimize noise and disturbance and Seller shall indemnify and keep indemnified Buyer against any costs, losses or expenses, including without limitation, liability for damages arising out of or in connection with noise or other disturbance, falling outside of the limits specified in the Applicable Law and created by Seller in performing the Work.

Section 9.6 Opening Up of Work

(a) No major material part of the Work shall be covered up or put out of view without the prior written consent of Buyer's Representative. Seller shall timely inform Buyer's Representative and shall afford full opportunity for Buyer's Representative to inspect any part of such Work which is about to be covered up or put out of view and to examine foundations before any part of the Work is placed thereon.

(b) Seller shall uncover any part of such Work or make openings in or through the same as Buyer's Representative may from time to time direct and shall reinstate and Repair such part. The cost of such uncovering, repair or reinstatement shall be borne by Seller unless (i) the requirements of Section 13.2(c), if applicable, have been fulfilled with respect to such part, (ii) such part is found to have been executed in accordance with the Agreement, and (iii) it was not reasonable to have requested

the opening up given the existence of Defects of a similar nature in other parts of the Work, in which event the cost of such uncovering, repair, or reinstatement shall be borne by Buyer.

(c) Notwithstanding any other provision of this Section, if Defects are uncovered, Buyer shall be entitled to either accept the defective Work or to accept them only partially remedied and, provided that Seller has had a reasonable opportunity to remedy the Defects (except where such work has been deliberately concealed by Seller) the Purchase Price shall be reduced by an amount mutually agreed by Buyer and Seller, and in the absence of such agreement, an amount as is determined pursuant to the provisions of article 32 (“Claims, Claim Notice and Dispute Resolution”).

Section 9.7 Fencing, Protection, Lighting

Seller shall provide adequate safety barriers, signs, lanterns, and other warning devices and service to properly protect any person having access to or near the Site. Seller shall be solely responsible for any act of trespass or any damage to adjacent property resulting from or in connection with its operations under this Agreement.

Section 9.8 Site Services

Seller shall be responsible for obtaining any and all electricity, water, fuel, air and other services as Seller may require for the purposes of the Work, and Seller shall be responsible for the cost thereof .

Section 9.9 Cleanup

Seller shall keep the Work area, including storage areas used by it, free from accumulation of waste materials or garbage arising out of the Work, and shall, prior to completion of the Work, remove and properly dispose of any such waste materials or garbage from and about the Work area as well as remove all tools, equipment and materials not property of Buyer. Upon completion of the Work, Seller shall leave the Work area in a condition reasonably satisfactory to Buyer. In the event of Seller’s failure within a reasonable time to comply with any of the foregoing, Buyer may, after written notice to Contractor of such failure, perform the cleanup and removal at the sole cost and expense of Seller.

Section 9.10 Contamination

Seller shall, at all times, be responsible for keeping the Site free from any Contamination brought to or generated at the Site by Seller, the Contractor or any Subcontractor. Prior to the Closing, Seller shall manage any Contamination, whether brought on to the Site or pre-existing, according to Applicable Law and within the requirements of Buyer’s policies and programs for management and disposal of Contamination. Seller shall not be responsible for the remediation or disposal of any pre-existing Contamination. Prior to the disposal or disposition of any Contamination, Seller shall obtain the written approval of Buyer for such disposal or disposition.

Section 9.11 Material Safety Data

Seller shall be familiar with and abide by all provisions of the OSHA Hazard Communication Standard. Seller shall pay special attention to the following provisions from the “Seller Employees” section of the PacifiCorp Hazard Communication Program:

(a) Seller shall require that suppliers furnish appropriate Material Safety Data Sheets (collectively, “MSDS”) and appropriate labels of all purchased chemicals.

(b) For materials that a Contractor plans to bring onto the Site, MSDS for those materials must first be presented to Buyer for review by Buyer’s Plant Safety Coordinator. Contractors coming onto the Site will provide to Buyer an MSDS for the materials to be used. Materials will be contained so as to meet any State or Federal Regulations.

(c) Seller and its employees shall review the MSDS of the appropriate hazardous chemicals, and follow the requirements of the OSHA Hazard Communication Standard.

(d) Seller is responsible for all applicable training and adherence to the program by its employees, Subcontractors, and Subcontractor’s employees, subcontractors and agents.

(e) Any employee of Seller working in an area where hazardous chemicals are or may be present shall be notified in writing by Seller of the chemicals present and provided with appropriate MSDS. It will be the responsibility of Buyer to inform Seller of the hazardous chemicals at the Site to which its employees may be exposed.

Section 9.12 Historical Artifacts (PacifiCorp Sites Only)

In the event that any relics, items or structures with archaeological, geographical or historical value or any Articles (including but not limited to fossils, coins, Articles of value or antiquity and any Native American relics) are discovered by Seller or any of its subcontractors of any tier or any of their representatives or employees, Seller shall leave said items undisturbed and shall immediately notify Buyer and await its direction before proceeding with any work in the vicinity. All such historical artifacts shall be deemed to be the absolute property of Buyer and under no circumstances shall Seller take possession of any item discovered.

ARTICLE 10

PROJECT SCHEDULE

Section 10.1 Project Schedule

Attached hereto as Exhibit C is a preliminary general project timetable setting forth the major tasks that must be completed by Seller (each a “Milestone”) and completion dates for such tasks (“Milestone Completion Dates”) as provided by Seller in accordance with the Specification. One such Milestone is the final approval by both parties of a more detailed project timetable (the “Project Schedule”) setting forth in more detail Milestones and Milestone Completion Dates, including all design, development and other Milestones to be achieved. In the event that the Notice to Proceed is delayed, within thirty (30) days from the date of the Notice to Proceed, Seller shall submit to Buyer’s Representative an updated version of the Project Schedule for the approval of Buyer’s Representative.

Section 10.2 Form of Project Schedule

The Project Schedule shall be in a form acceptable to Buyer. Such Project Schedule shall specify any tasks, obligations, or responsibilities (each a “Buyer Obligation”) which Buyer must

perform or fulfill in order for Seller to achieve the Milestone Completion Dates for each Milestone, and the date by which Buyer is to fulfill each and every Buyer Obligation.

Section 10.3 Rejection of the Project Schedule

(a) Buyer's Representative shall have the right to reasonably reject, vary, amend, substitute or otherwise change the Project Schedule prior to approval thereof. Any such variation, amendment, substitution, or other change (other than a rejection) shall be considered a Buyer-Initiated Change under Section 13.1 ("Changes").

(b) If, under Section 10.3(a), Buyer's Representative rejects any Project Schedule submitted by Seller, Seller shall, within seven (7) days of such rejection, submit four (4) copies of the final form of a revised Project Schedule for approval by Buyer's Representative and of the Project Schedule.

Section 10.4 Alterations to Project Schedule

Seller shall not, without the prior written consent of Buyer's Representative, make any material alteration to the Project Schedule.

Section 10.5 Revision of Project Schedule

If Buyer or Buyer's Representative determines, each in its sole discretion, that progress of the Work does not or is unlikely to match the Project Schedule, or otherwise to enable the Work to be completed by the Time for Completion, Buyer's Representative may order Seller to revise the Project Schedule. Seller shall thereafter revise the Project Schedule to show the modifications necessary to ensure completion of the Work within the Time for Completion. Seller shall notify Buyer's Representative as soon as possible of any circumstances of which Seller is or becomes aware which might result in progress not matching the Project Schedule.

Section 10.6 Seller's Responsibility to Comply with Milestone Completion Dates

Seller shall undertake sole and complete responsibility to complete and to commit sufficient manpower and resources to insure the completion of each Milestone by the appropriate Milestone Completion Date.

Section 10.7 Rate of Progress

(a) Buyer's Representative shall notify Seller if Buyer's Representative decides that the rate of progress of the Work is, in its opinion, too slow to meet the Time for Completion due to a circumstance for which Seller is entitled to an extension of the Time for Completion under the provisions of this Agreement.

(b) Following receipt of such a notice Seller shall at its own cost take such steps as may be necessary and as Buyer's Representative may approve to remedy or mitigate the likely delay, including revision of the Project Schedule. Seller shall not be entitled to any additional payment or additional Cost or any increase in the Purchase Price for taking such steps.

Section 10.8 Progress Reports

(a) Seller shall submit to Buyer's Representative on the third (3rd) working day of each month or such other date as is agreed upon between Seller and Buyer, a progress report ("Progress Report") in compliance with the requirements set forth in the Specification. Seller shall submit two (2) copies of each Progress Report to Buyer's Representative.

(b) The written progress reports submitted by Seller shall specify in detail:

(i) any problem or circumstance (each a "Project Problem") encountered by Seller or Contractor during the preceding month (including without limitation the failure of Buyer to perform any Buyer Obligations under the Agreement or the inadequacy of any such performance by Buyer) which might (A) prevent Seller from completing any Milestone by its Milestone Completion Date or (B) cause Seller to incur additional expenses in completing any Milestones;

(ii) the estimated length of any delay and the estimated amount of any additional expenses, if any, which may be chargeable to Buyer hereunder, as a result of any Project Problem identified pursuant to the Agreement, and

(iii) to the best of Seller's knowledge, after due inquiry and analysis, the cause of any Project Problem specified pursuant to the Agreement and the specific steps taken or proposed to be taken by Seller to correct such problem.

(c) In the event that Seller fails to specify in writing any Project Problem (an "Unidentified Project Problem") with respect to a given monthly period in the appropriate report and in such manner and at such time as specified pursuant to the Agreement as a Project Problem, Seller shall not be entitled to rely on any such Unidentified Project Problem as a purported justification for either (i) claiming that it is entitled to receive any additional amounts pursuant to the Agreement (including without limitation, damages arising out of any alleged failure by Buyer to perform any of Buyer Obligations) or (ii) failing to complete any Milestone by the specified Milestone Completion Date.

(d) The submission by Seller of any Progress Report shall not alter, amend or modify Seller's or Buyer's rights or obligations pursuant to this Agreement, including the Purchase Price. In the event and to the extent any Milestone is not completed by the specified Milestone Completion Date as a direct and unavoidable result of Buyer's failure (other than as a result of Seller's failure to perform any of its obligations on a timely basis) to fulfill any Buyer Obligation by its respective completion date, then the Milestone Completion Date for such Milestone shall be extended by one (1) day for each day in which completion of any such Buyer Obligation is delayed beyond its respective completion date and all extra costs actually incurred by Seller by reason of such delay shall be paid by Buyer, unless the delay in completing any Buyer obligation results from Seller's failure to perform any of its obligations on a timely basis.

Section 10.9 Progress Meetings

Progress meetings will be held as deemed necessary by Buyer, but normally shall not be less than once a week. Such meetings shall be at Buyer Site unless Buyer requests to change the location of

such meetings. Progress meetings will be utilized to review the Work schedule and discuss any delays, unusual conditions or critical items, which have affected or could affect the progress of the Work.

ARTICLE 11

DELIVERY, SHIPPING, AND HANDLING OF PLANT AND EQUIPMENT

Section 11.1 Delivery Responsibility.

Seller shall be responsible for the safe delivery of all Plant and Seller's Equipment to the Site. Seller shall abide by the requirements of Appendix B for delivery of major items of Equipment, Plant or Seller's Equipment to the Site. Seller shall be responsible for the reception and unloading on Site of all Equipment, Plant and Seller's Equipment delivered for the purposes of the Agreement.

Section 11.2 Packing

(a) Seller is responsible for assuring that the Equipment is suitably packaged to ensure against damage under normal handling and transportation methods. All Equipment or components thereof shall be identified with Buyer's equipment number or tag number, if required by the technical specifications. All shipping shall be in accordance with Appendix B.

(b) The Equipment and all related parts shall be shipped FOB the Site, Freight Prepaid and Allowed, with Seller retaining risk, liability and responsibility, financial or otherwise, until Substantial Completion, and then only in accordance with this Agreement.

(c) Prior to the shipment of any Equipment, Seller shall become knowledgeable of transportation conditions, such as clearances and restrictions, height and width, bridge load limits and other limitations affecting such shipment. Notwithstanding any other provision of this Agreement, any limitations or the lack of transportation facilities shall not become the basis for Claims or damages, or for an extension of time for completion of Work under this Agreement.

Section 11.3 Transportation

Seller shall observe all Applicable Law in relation to and obtain all necessary consents and permissions for the transport of Plant, Equipment and Seller's Equipment over highways, bridges or culverts and shall indemnify Buyer against all claims for the repair of any such highways, bridges or culverts arising out of the execution of the Work and in respect of all proceedings, damages, costs, charges and expenses arising out of or in connection with such transportation.

Section 11.4 Extraordinary Traffic

Seller shall use best efforts to prevent damage to any of the highways, bridges or culverts on the routes to the Site by any traffic of Seller or any of his subcontractors. Seller shall be responsible for the cost of protecting or strengthening any highway, bridge or culvert as necessary to facilitate the moving of the Equipment, Plant or Seller's Equipment and shall be liable for any damage or injury to highways, bridges or culverts arising out of the execution of the Work, and shall indemnify Buyer in respect of any claim, proceedings, damages, cost, charges and expenses in relation thereto which may be incurred as a result of Seller's default under this Section.

Section 11.5 Allocation

In the event of a partial failure of Seller's sources of supply, Seller will first meet all of Buyer's requirements hereunder prior to any allocation among other customers

ARTICLE 12

SELLER'S EQUIPMENT

Section 12.1 Seller's Equipment

Seller shall, within thirty (30) days after the Effective Date, provide to Buyer an indicative list of Seller's Equipment that Seller intends to use on the Site, which shall be updated from time to time during the carrying out of the Work and which shall be available for inspection by Buyer's Representative.

Section 12.2 Seller's Equipment on Site

All Seller Equipment shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Work. Seller shall not thereafter remove the same or any part thereof from the Site without the consent of Buyer, which shall not be unreasonably withheld in the case of Seller's Equipment not currently required for the execution of the Work on Site.

Section 12.3 Loss or Damage to Seller's Equipment

Seller shall be liable for loss or damage to any of Seller's Equipment which may occur otherwise than through the default of Buyer or those for whom Buyer is responsible.

Section 12.4 Maintenance of Seller's Equipment

Seller shall be responsible for maintaining Seller's Equipment on Site in safe working order.

ARTICLE 13

CHANGE ORDERS

Section 13.1 Changes

- (a) From time to time circumstances may arise which justify a Change.
- (b) No Change shall be effective unless authorized by Buyer by issuance of a Change Order pursuant to the provisions of this article 13.
- (c) Buyer shall, when reviewing each potential Change and determining the nature and extent of any Change Order which is to be granted in accordance with the subsequent paragraphs of this Article, consider in detail the following information:

(i) The nature, scope and extent of the Change, including but not limited to any additions or deletions from the Scope of Work;

(ii) The effect, if any, of the Change on the Project Schedule or on the Guaranteed Substantial Completion Date(s), as applicable;

(iii) The effect, if any, of the Change on the amount the Purchase Price; provided, however, that in no event shall the amount of the Purchase Price be subject to change for any Change that does not constitute a material change in the Scope of Work requested by Buyer; and

(iv) Such other information as may reasonably be necessary for the implementation of the Change Order, including but not limited to the effect on any other provisions hereof which may be impacted by the Change.

Buyer shall, in the case of an Buyer-Initiated Change or, if it elects to do so, in the case of Seller Initiated Changes, and in all events in the case of Required Changes, thereafter issue such Change Order having regard to all such circumstances as is just and equitable and in a form substantially similar to the Change Order Form attached hereto as Exhibit D-1 which shall address, to the extent required, all of the issues set out in this Section 13.1(c).

(d) In the case of any request for a Change Order which is permitted to be made in accordance with this Agreement, it shall take the form of a Change Order Request (each a “Change Order Request”) which shall be delivered to Buyer in writing as soon as possible and in any event within ten (10) days after Seller becomes aware of the circumstances which it believes (or through the exercise of Best Recognized Practice should believe) necessitates a Change. In no case shall Seller be entitled to recover costs as a Change Order in connection with conditions that give rise to such Change Order arising prior the date on which Seller requests the Change Order, except to the extent that such costs are incurred reasonably and properly in order to achieve the Substantial Completion Date. Any Change Order Request shall be in a form substantially similar to the Form of Change Order Request attached hereto as Exhibit D-2 and comprising the following information: (a) the factors necessitating or the basis for the Change; (b) the impact, if any, which the proposed Change is likely to have on the Purchase Price; (c) the impact, if any, which the proposed Change is likely to have on the Project Schedule (including the Guaranteed Substantial Completion Date); (d) other impacted provisions hereof; and (e) such other information which Buyer may reasonably request in connection with such proposed Change.

(e) The issuance of a Change Order shall not result in invalidation of this Agreement.

(f) Except with respect to a Buyer Initiated Change, as to which the disregarded amount shall be \$25,000, no circumstances will constitute grounds for a Required Change Order or a Seller Initiated Change Order unless and to the extent that (i) the costs of such Change Order, in either case, is in excess of \$5,000, or (ii) the effect of such Change Order request impairs the achievement of an Buyer Critical Schedule Milestone or a Seller Critical Schedule Milestone, as applicable, by more than 3 days (except in circumstances where Seller has no means of recovering such schedule impairment in which case Seller shall be entitled to a Change Order if Seller would otherwise have been so entitled). Neither party shall game or otherwise manipulate the foregoing process, by aggregating or

disaggregating cost and/or circumstances as the case may be (or otherwise), for the purpose of recovering or avoiding additional cost or time in accordance with the foregoing.

(g) Change Orders (in each case in excess of the applicable disregarded amount) shall address the change, if any, in the amount of the Purchase Price in one of the following manners:

(i) Buyer and Seller shall agree upon the amount by which the Change will impact the Purchase Price; or

(ii) Buyer and Seller shall agree as to the nature and extent of the Change, but in lieu of changing the Purchase Price, Seller shall perform the activities associated with the Change on a cost-reimbursement basis, in which event no change shall be made in the amount of the Purchase Price.

Section 13.2 Procedure for Changes

(a) Changes Initiated by Seller. Seller may, at any time and from time to time, make proposals to Buyer for improvements, efficiencies, cost savings and other similar Changes to the Work (each a “Seller-Initiated Change”), but no such proposal shall be carried out by Seller except as instructed in writing by Buyer in the form of a Change Order, which Buyer may in its discretion elect to issue as it sees fit. Such proposals of Seller shall be submitted in the form of a written Change Order Request in the manner substantially as set out in 13.1(d), and shall also contain and be supplemented with such information or additional information as Buyer may reasonably require in order to effect a reasoned decision as to the implementation, or rejection, (as the case may be) of the Change Order Request.

(b) Changes Initiated by Buyer. If Buyer desires to make a Change (each a “Buyer-Initiated Change”) not comprising rectification or recovery Work due to Seller’s negligence or breach of this Agreement, Buyer will submit a written Change Order Notice to Seller, substantially in the form of Exhibit D-3, comprising the nature and extent of the proposed change to the Scope of Work together with, to the extent available and/or applicable, Buyer’s opinion as to those matters required to be taken into account in accordance with Section 13.1 (“Changes”). Seller will promptly review the Change Order Notice and notify Buyer in writing within a reasonable amount of time of the options for implementing the proposed Change (including, if possible, any option that does not involve an extension of time) and the estimated effect(s), if any, that each such option would have on the Purchase Price and Project Schedule, and any other affected provision herein, as applicable. Such response shall also contain all those matters required to be set out in a Change Order Request. Based upon such information, Buyer may, in its sole discretion, issue a Change Order making a Change.

(c) Required Change Orders. Seller shall be entitled to the issuance of Change Orders pursuant to this article 13 in connection with any circumstances which constitute a Change and which are attributable to the matters identified in subparagraphs (a) through (g) below (each a “Required Change”):

(i) Due to Change in Law Applicable Law/Permit or Site Condition. If and to the extent that a change in any Requirement of Law or Permit after the Effective Date or results in an increase in the cost of the Work or extends the Project Schedule, and in each case only to the

extent that such increase or extension is greater than the threshold amounts identified in Section 13.1(f) above.

(ii) Change Order Due to Suspension of Work by Buyer. In the event that Buyer suspends the Work (i) in the circumstances with respect to which Seller is entitled to a Change Order as set out in Section 13.1 (“Changes”), or (ii) in the circumstances set out in article 16 (“Suspension of Works, Delivery or Erection”).

(iii) Change Order Due to Non-Performance by Buyer. If Buyer fails to perform or is late in performing in any material way any material obligation of Buyer under this Agreement and the cost to Seller is in excess of \$25,000 or a delay of more than 3 days. Neither party shall game or otherwise manipulate the foregoing process, by aggregating or disaggregating cost and/or circumstances as the case may be (or otherwise), for the purpose of recovering or avoiding additional cost or time in accordance with the foregoing.

Seller shall in all cases use or have used commercially reasonable efforts to mitigate potential delays to the Project Schedule and/or potential increases to the Purchase Price (the cost of such mitigation efforts to be addressed in any applicable Change Order).

(d) Except in the circumstances as set out in this Section 13.2 and with respect to which an application is properly made in accordance with this article 13, Seller shall not be entitled to seek either a Change, Change Order or extension of the Guaranteed Substantial Completion Date, nor to receive additional remuneration or reimbursement with respect to the Work.

Section 13.3 Continued Performance Pending Resolution of Disputes

Notwithstanding and pending the resolution of any dispute with respect to a Change or Change Order, Seller must proceed with the Work and the performance of any Change ordered by Buyer or any Required Change, unless Buyer directs Seller not to so proceed, provided that Seller is being paid on a current basis for all undisputed Work and for all disputed Work which has been ordered to be paid through a Claim proceeding dispute resolution relating thereto in accordance with this Agreement.

Section 13.4 Preservation of Schedule and Purchase Price

Where any proposed Change or Change Order Request may give rise to an extension of any of the Project Schedule or an increase in the Purchase Price, then Buyer reserves, in its sole discretion and to the extent possible, the right to require Seller to vary, amend or effect such other Change to the Work in such a manner as will mitigate or avoid the requirement for such extension of time or increase in price.

ARTICLE 14

WORKMANSHIP AND MATERIALS

Section 14.1 Manner of Execution

The Work to be supplied, including all materials, manufactured components and labor and services to be performed, shall be designed and executed in the manner set out in this Agreement.

Except where the manner of design, manufacture and execution is otherwise specifically set out in this Agreement, the Work shall be designed and executed in a proper and workmanlike manner, all in accordance with accepted industry standards and Prudent Industry Practice.

Section 14.2 Condition of Materials

The materials, Equipment (including any rented Equipment), fixtures, software, any related items of personal property and other tangible personal property of Seller, any Subcontractor or the Contractor constituting the Project shall be OEM Certified, and shall be suitable for their current use in the generation of energy and the transportation of natural gas in accordance with the Specifications. All Equipment shall be procured solely for use in connection with the Project. Seller shall not allow any Equipment to be placed into storage for more than one year prior to shipping to the Site, nor utilize any Equipment in the Project that has been so stored.

Section 14.3 Inspection

(a) In addition to the inspection rights of Buyer under Section 7.8 (“Authority for Access for Inspection”), within sixty (60) days after the Effective Date, Seller shall submit to Buyer a schedule (the “Witness Point Schedule”), including but not limited to those events identified in Appendix T of tests and inspections (the “Witness Point Events”) reasonably acceptable to Buyer which shall include locations where the Equipment shall be manufactured or tested and the location at which such tests and inspections can be viewed by Buyer. Seller shall provide no less than three (3) Business Days’ advance confirmation of the actual date of each Witness Point Event identified on the Witness Point Schedule. Buyer shall be entitled to attend and witness all Witness Point Events. To the extent that any Witness Point Events have been completed prior to the date on which the Witness Point Schedule is submitted to Buyer, at Buyer’s sole discretion, Seller shall (i) allow Buyer to observe the materials and workmanship of the Project and to review documentation which may be available in lieu of viewing or witnessing the Witness Point Event, or (ii) re-open the affected portion of the Project for inspection by Buyer and repair or correct (if necessary) and restore the affected portion of the Project at no additional cost to Buyer. All inspections shall take place on the Site, on a Contractor’s or a Subcontractor’s premises or such other reasonable site as the Parties may agree, as appropriate, during normal working hours. No such inspection or examination or witnessing of tests shall release Seller from any obligation or liability under this Agreement. Inspections under this Section 14.3 are solely for the benefit of Buyer and any inspection or failure to inspect and any objection or failure to object by Buyer shall not (i) relieve Seller or any Contractor of any of their obligations under any Transaction Document or (ii) be used as evidence that Buyer agreed that either or both of Seller or any Contractor or Subcontractor had fulfilled any obligations under any Transaction Document or that Buyer had waived any of its rights under any Transaction Document.

(b) If, as a result of an inspection or examination referred to in paragraph (a) above, Buyer decides that any portion of the Work is nonconforming or otherwise not in accordance with this Agreement, Buyer shall promptly notify Seller thereof. Such notice shall state Buyer’s objections and its reasons therefor in reasonable detail. Seller shall make good the nonconformity or ensure that any such portion of the Work complies with this Agreement at no additional cost to Buyer.

(c) For purposes hereof, “nonconforming” means defective or not in conformity with the Specification.

ARTICLE 15

DRAWINGS

Section 15.1 Drawings

(a) Following receipt and approval of the Project Schedule, Seller shall prepare a contract documentation and drawing list identifying those key data, calculations (as required for regulatory purposes and consents), drawings, technical specifications and concepts required for review for conformance with the Agreement.

(b) Seller shall, within the time detailed in the Project Schedule or elsewhere in this Agreement, submit to Buyer's Representative in hard copy and electronic form (the specific form of which shall be agreed to by the Parties) such key data, calculations, drawings, technical specifications and concepts.

(c) Seller shall timely submit to Buyer's Representative drawings of temporary and permanent buildings and structures and any other information required under the terms and conditions of consents, licenses and planning permissions obtained by Seller or Buyer.

(d) Buyer's Representative may, in its sole discretion, disapprove any drawing; provided, however, it shall notify Seller of any such disapproval within twenty (20) days of receipt, except for documents and information (including calculations) which are required by Buyer's Representative for consultation with Buyer's third party contractors for the purposes of the interconnections at terminal points, where the period shall be thirty (30) days. Seller shall supply additional copies of documents or information (including calculations) in the form and numbers stated in the Agreement. Without waiver of or prejudice to any rights of Buyer, Seller shall bear all risk in relation to its performance of work arising from or in relation to all documents or information (including calculations).

Section 15.2 Consequences of Documents not in accordance with Agreement

Any documents or information (including calculations) which Buyer's Representative identifies as not being in accordance with the Agreement shall be modified and resubmitted without delay.

Section 15.3 Drawings Submitted

Seller shall not deviate from drawings accepted by Buyer or issued by Seller as approved for construction, except with the prior written consent of Buyer.

Section 15.4 Inspection of Drawings

Seller shall maintain and provide to Buyer's Representative from time to time or upon request a complete list of drawings identifying which is approved for construction. Buyer shall have the right at all reasonable times to inspect all drawings of any part of the Work.

Section 15.5 Operating and Maintenance Instructions

(a) Not less than six (6) months prior to the scheduled Guaranteed Substantial Completion Date, Seller shall deliver to Buyer's Representative one (1) set of preliminary operating and

maintenance manuals sufficiently complete that the Plant and Equipment may be safely commissioned and Buyer's personnel properly trained pursuant to Section 7.11 ("Training"). Seller shall, at its sole cost and expense, continuously update such manuals so that, as of the Closing Date, such operating and maintenance manuals are substantively in their final form with any amendments made as necessary.

(b) Within three (3) months of the scheduled Closing Date, Seller shall supply to Buyer three (3) copies of final operation and maintenance manuals and drawings of the Work as-built plus five (5) CD-ROMs incorporating any changes made during testing and/or Commissioning of the Work.

(c) All operating and maintenance manuals and drawings of the Work as-built shall be in such detail as will enable Buyer to operate, maintain, dismantle, reassemble, adjust and repair all parts of the Work. Where the employment of Seller is terminated for default or in the case of Seller's Material Adverse Change prior to the Transfer of Possession and Control of Project to Buyer Date, Seller shall provide to Buyer such information including copy drawings and Draft Manuals as is reasonable and as is necessary for Buyer to complete, use and maintain the Work.

(d) The provision by Seller of the final operation and maintenance manuals and drawings of the Work as-built in accordance with the provisions of this Section shall be identified as a Milestone in Appendix C and the provisions of article 10 ("Project Schedule") shall apply.

Section 15.6 Buyer's Use of Drawings

(a) Drawings and information created by Seller for purposes of designing, developing, constructing, commissioning and operating the Project constitute "work made for hire," and Seller hereby transfers and assigns all rights in and to such drawings and information to Buyer.

(b) Drawings and information supplied by Seller that are not created by Seller specifically for or in connection with the Project, but that are necessary or useful for the operation and maintenance of the Project, the Work or any portion of them, may be used by Buyer for the purposes of completing, maintaining, operating, improving, adapting, renewing, enlarging, dismantling, re-assembly, adjusting and repairing the Work, and for any other legal purpose, pursuant to the license granted in paragraph 15.6(c).

(c) Seller grants to Buyer an irrevocable perpetual royalty free license to use all drawings and information for the foregoing purposes and Seller shall provide Buyer with copies of such drawings and information.

Section 15.7 Manufacturing Drawings

In the event of a Defect resulting in outage of the Plant in excess of two (2) days during the applicable Warranty Period, Seller shall immediately give Buyer full, unimpeded, and unqualified access to all information, documents, processes and operations, processes or operations so as to enable Buyer to satisfy itself that the Plant and Equipment shall in all respects be properly and timely repaired and/or replaced and so as to be in full compliance with the requirements of the Agreement.

Section 15.8 Errors in Drawings Supplied by Seller

(a) Seller shall be responsible for the accuracy, completeness and suitability of all drawings, samples, patterns, models, calculations or information submitted by Seller, Contractor any Subcontractor in connection with the Work. Notwithstanding Buyer's or Buyer's Representative's inspection or approval of drawings, samples, patterns, models, calculations or information submitted by Seller, Seller shall not be relieved of any responsibility or liability imposed on it by any provisions of the Agreement and shall be responsible for any errors, omissions or discrepancies therein.

(b) Seller shall bear any and all costs Seller or Buyer may incur as a result of delay in providing such drawings, samples, patterns, models, calculations or information or as a result of errors, omissions or discrepancies therein or for the correction thereof.

(c) Seller shall, at its sole cost and expense, carry out or cause to be carried out any alterations or remedial work necessitated by such errors, omissions or discrepancies for which it is responsible and modify the drawings, samples, patterns, models, calculations or information accordingly.

ARTICLE 16

SUSPENSION OF WORKS, DELIVERY OR ERECTION

Section 16.1 Order to Suspend

(a) Buyer may, at its sole option, upon not less than seven (7) days' prior written notice to Seller, suspend at any time (a) the performance of all or any portions of the Work, (b) delivery of a component of the Work, or (c) erection of any portion of the Work that has been delivered to the Site. Such notice shall specify the length of time that Buyer anticipates the Work shall be suspended.

(b) If the cumulative days of Work suspension totals One Hundred and Eighty (180) days, or if the Work is suspended four (4) or more separate times for a period of more than 45 days in any single instance or 180 days in aggregate, Seller may terminate this Agreement by thirty (30) days' written notice to Buyer unless the suspension is lifted within such 30-day period, and such termination shall be treated as a Buyer voluntary termination pursuant to Section 30.1(c) ("Voluntary Termination").

(c) Unless otherwise instructed by Buyer, Seller shall during any suspension affecting the progress of the Work on Site, maintain its staff, labor and equipment on or near the Site ready to proceed with the Work upon receipt of the further instructions of Buyer.

(d) If Buyer desires to extend the period of suspension for a longer time than that specified in the original notice given by Buyer, Buyer shall so notify Seller in writing and the same procedures described in article 10 ("Project Schedule") shall be followed to determine whether to actually extend the suspension and the amount of the costs and charges which shall be incurred as a result of any such extension.

Section 16.2 Protection of Work

(a) Seller shall, during such suspension, store, preserve, protect and otherwise secure each of the Work, Equipment and the Plant.

(b) If Buyer is unwilling or unable to receive any of the Equipment as a result of a suspension by Buyer under Section 16.1 (“Order to Suspend”), Seller shall, upon notice to Buyer and giving Buyer reasonable opportunity to designate a mutually acceptable destination, place such Equipment in storage. If any Equipment is placed into storage pursuant to this provision, delivery thereof shall not be deemed to occur until such Equipment is delivered to the Site or Buyer has notified Seller that it is prepared to accept delivery at some other location.

Section 16.3 Resumption of Work

(a) Following any suspension by Buyer under this article 16, after receipt of notice to resume progress of the Work, Seller shall examine the Work affected by the suspension. Seller shall, within twenty-one (21) calendar days after receipt of notice to resume the suspended Work, submit to Buyer a written report detailing any deterioration, nonconformities and losses to the Project or any portion thereof and a Change Order Proposal related to such damages, losses and deterioration. Seller shall, pursuant to a Change Order, correct, repair or replace any deterioration to, nonconformity in or loss of the Work that occurred during the suspension; provided, however, that no Change Order shall be required or issued for any deterioration, nonconformity or loss resulting from Seller’s negligence or wrongdoing during the period of suspension; and shall promptly resume performance on the suspended Work to the extent required in the notice.

(b) Any claims on the part of Seller for extensions of time in connection with a suspension shall be made in accordance with the appropriate provisions of this Agreement. Notwithstanding any other provision of this Agreement, no compensation or extension of time shall be granted to the extent that suspension results from Seller’s non-compliance with the terms of the Agreement.

Section 16.4 Change Order in Event of Suspension

(a) Seller may, at any time prior to thirty (30) days after receipt of notice to resume progress of the Work under Section 16.3 (“Resumption of Work”), notify Buyer of its request for a Change Order as a result of suspension by Buyer under Section 16.1 (“Order to Suspend”).

(b) Seller shall, within seven (7) Business Days following receipt of any notice from Buyer indicating Buyer’s intention to suspend the performance of all or any portion of the Work pursuant to Section 16.1 (“Order to Suspend”), deliver to Buyer an itemized account of the estimated charges and costs which Seller believes will be incurred by Buyer pursuant to as a result of such suspension. Seller shall make a good faith estimate of such charges and cost that will be accurate within a range of plus or minus five percent (5%). Following receipt of such estimate, Buyer shall have the right by written notice to Seller at any time prior to the effective date of suspension specified in Buyer’s suspension notice to either (i) revoke its decision to suspend performance, in which event Seller will not suspend performance of such Work, (ii) instruct Seller to suspend performance in accordance with the terms of Buyer’s suspension notice and to confirm that the charges and costs quoted by Seller are acceptable, or (iii) instruct Seller to suspend performance in accordance with the terms of Buyer’s suspension notice, with Buyer reserving the right to contest the charges and costs quoted by Seller.

- (c) In the event of such suspension, Seller shall, unless the notice requires otherwise:
- (i) Discontinue the Work on the date and to the extent specified in the notice;
 - (ii) Place no further orders or subcontracts for Equipment, Plant or services with respect to the suspended Work, other than to the extent required in the notice;
 - (iii) Promptly make every reasonable effort to obtain suspension, upon terms reasonably satisfactory to Buyer, of all orders, subcontracts and rental agreements to the extent they relate to performance of the Work suspended; and
 - (iv) Unless otherwise specifically stated in the notice, continue to protect and maintain the Work theretofore completed, including the Work suspended hereunder.

(d) As full compensation for any such suspension, Seller shall be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of Work, up to a maximum of one hundred and five percent (105%) of the estimate submitted by Seller pursuant to the Agreement hereof:

(i) If determined necessary by Buyer, a standby charge to Seller during the period of suspension of the Work, which standby charge shall be sufficient to compensate Seller for the reasonable costs of keeping, to the extent required in the notice, its personnel and equipment committed to the Work in a standby status;

(ii) Expenses reasonably and necessarily incurred by Seller in connection with storage of Equipment pursuant to Section 16.2 (“Protection of Work”), including preparation for and placement into storage, handling, transportation, storage, inspection, preservation, taxes and insurance and any necessary rehabilitation prior to installation; and

(iii) Reasonable costs associated with demobilization of Seller’s personnel and equipment to the extent such costs are not recovered by Seller in using such personnel and equipment on other projects during the standby period; and an equitable amount to reimburse Seller for the actual cost to Seller, if any, of maintaining and protecting that portion of the Work upon which activities have been suspended;

Buyer shall have the right, upon reasonable advance written notice to Seller, to inspect and audit Seller’ books and records in order to verify the accuracy of and/or to determine the amount of any cost-based reimbursement associated with any suspension of the Work.

(e) Seller shall not be entitled to be paid any additional amounts under this article 16 if and to the extent suspension is necessary by reason of default on the part of Seller or persons for whom Seller is responsible or for the proper execution or the safety of the Work, Equipment or Plant.

ARTICLE 17

PROJECT COMMENCEMENT AND COMPLETION

Section 17.1 Notice To Proceed

(a) Upon satisfaction or waiver by Buyer of each of the conditions in Section 17.1(b), Buyer shall issue to Seller the Notice to Proceed. Following issuance of the Notice to Proceed Seller shall proceed with developing the Project and performing the Work. Buyer shall provide at least three (3) Business Days' prior notice of its intention to issue the Notice to Proceed. At Buyer's option, Buyer may issue one or more limited notices to proceed prior to issuing the Notice to Proceed, pursuant to which Seller shall perform or cause to be performed certain development activities specified in any such limited notice to proceed.

(b) The obligation of Buyer to issue the Notice to Proceed to Seller is subject to the satisfaction or waiver by Buyer of all of the following conditions precedent:

(i) CCN and Governmental Approvals. Buyer's receipt of and satisfaction with the terms of the CCN and all Governmental Approvals;

(ii) Network Resource Integration. PacifiCorp Transmission shall have demonstrated to Buyer that the Project can be integrated with PacifiCorp Transmission's System as a network resource on or prior to May 1, 2012, 2013, or 2014.

(iii) Accounting Treatment. Buyer shall be satisfied that the accounting treatment relating to PacifiCorp's obligations under any Transaction Document or in connection with the Project will not result in the addition of liabilities to the balance sheet of PacifiCorp.

(iv) Appendices, Exhibits and Schedules. Each Appendix, Exhibit and Schedule to this Agreement shall be in final form and substance satisfactory to Buyer and Buyer's Representative, each in its sole discretion.

(v) Transaction Documents. Buyer shall have received the Transaction Documents, the Security Documents (including any Guaranty), and the Consents, (together with all amendments, supplements, schedules, and exhibits thereto), each of which shall (A) have been duly authorized, executed and delivered by each party thereto, (B) be in the form of the applicable form attached hereto (if such a form is attached) and otherwise in form and substance satisfactory to Buyer, and (C) be in full force and effect.

(vi) Officers' Certificates. Buyer shall have received the certificate of an Authorized Officer of Seller certifying that (A) each of the conditions precedent to the issuance of the Notice to Proceed has been satisfied (other than to the extent that the satisfaction of a condition is dependent on the judgment of Buyer) (B) that each of the conditions in Sections 3.2(b), 3.2(c) 3.2(d), 3.2(e), 3.2(f), 3.2(h) and 3.2(i) has been and will be satisfied as of the date of the issuance of the Notice to Proceed; and (C) each of the representations of Seller set forth in article 4 ("Representations and Warranties of Seller") is true and correct. The form of such aforementioned certificate is attached hereto as Exhibit E.

(vii) Security Documents; Filings. The Security Documents and all financing statements or other instruments with respect thereto, as may be necessary, shall have been duly filed or recorded in such manner and in such places as are required by Applicable Law to establish and perfect first priority Liens, in favor of Buyer, as granted pursuant to the Security Documents. Buyer shall have received either copies of all such documents (including copies of all acknowledgment copies of filed financing statements and all other recordings made pursuant hereto) or other evidence satisfactory to Buyer of the filing of all such financing statements and other recordings. All taxes (including, but not limited to, mortgage recording taxes and recording fees), fees, and other charges payable in connection therewith shall have been paid in full by Seller.

(viii) Record Searches. A search, made no more than thirty (30) days prior to the date of issuance of the Notice to Proceed, of the Uniform Commercial Code filing offices or other registers in each jurisdiction in which Seller is organized, has an office, or in which assets of Seller are located, as certified by an Authorized Officer of Seller, shall have revealed no filings, recordings or equivalent standard with respect to any of the Collateral (except such filings and recordings with respect to the Permitted Liens) in favor of any Person other than Buyer. A list of all of such filings and recordings or equivalent standard is set forth on Schedule 17.1(b)(xi). Buyer shall have received a copy of the search reports received as a result of such search.

(ix) Water Rights. Seller shall have provided a detailed attorneys' opinion addressed to Buyer evaluating and opining on the title of each of the Water Rights, together with all conveyance documents other supporting documentation related to the Water Rights, and Buyer shall be satisfied with the quality and marketability of title with respect thereto.

(x) Emission Reduction Credits. Buyer shall be satisfied with the form, substance and quantity of ERCs to provide for the lifetime operation of the Project.

(xi) Equipment. Buyer shall be satisfied with the Equipment and all anticipated storage plans with respect thereto.

(xii) Additional Matters. Buyer shall have received such other certificates, documents and instruments relating to the transactions contemplated hereby as may have been reasonably requested by Buyer, and all corporate or other organizational actions and other matters and all other documents (including all documents referred to herein and not appearing as exhibits hereto) and all legal matters in connection with such transactions shall be satisfactory in form and substance to Buyer.

Section 17.2 Time for Completion

Seller shall complete the Work and the Performance Tests in accordance with the Project Schedule and the terms of this Agreement. Without limiting the foregoing, Seller shall cause the Substantial Completion Date to occur no later than the Guaranteed Substantial Completion Date.

Section 17.3 Buyer's Request for Earlier Completion

Buyer may request completion of the Project earlier than the Guaranteed Substantial Completion Date and Seller shall make all commercially reasonable efforts to comply with such request.

Section 17.4 Delay in Completion

If Seller fails to meet the Substantial Completion Criteria by the Substantial Completion LD Commencement Date, Buyer shall be entitled to liquidated damages under article 24 ("Liquidated Damages").

ARTICLE 18

PERFORMANCE TESTING

Section 18.1 Performance Tests

Seller shall conduct or cause to be conducted the Performance Tests as soon as practicable in accordance with the Specifications, procedures and protocols of Appendix H and the other tests, procedures and protocols to be developed by the Parties. At least nine (9) months prior to the Guaranteed Substantial Completion Date, Seller shall deliver to Buyer a supplement to Appendix H further outlining the tests and procedures to be followed in conducting the Performance Tests criteria. Such supplement shall include, at a minimum, provisions addressing (a) testing procedures for each item of Equipment, (b) functional performance tests for starting up the Plant under different specified operating conditions and (c) any other activities that, in accordance with Prudent Industry Practices, should be included. Thereafter, the Parties shall promptly agree on modifications to such supplement so that Appendix H, as supplemented, is satisfactory to Buyer. Seller shall provide Buyer with notice when the Plant is ready for Performance Testing.

Section 18.2 Emissions Guarantee

Seller shall conduct the Performance Tests in accordance with Appendix H and, as a condition of Substantial Completion, shall demonstrate that emissions from the Project meet the Guaranteed Emissions. If the Guaranteed Emissions are not met, either in whole or in part, Seller shall, at its sole cost and expense, to diligently make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to achieve the Guaranteed Emissions. Seller shall notify Buyer upon completion of the necessary changes, modifications or additions, and Seller shall repeat the Performance Tests as necessary until the Guaranteed Emissions have been met. Nothing contained in this Section 18.2 shall relieve Seller of Seller's obligation to pay liquidated damages under this Agreement.

Section 18.3 Cost and Direction

(a) The Performance Tests shall be conducted by and under the direction of Seller. Buyer will cooperate with Seller's reasonable requests in connection with the Performance Tests, but shall not be required to provide any materials, electricity, fuel, water or stores.

(b) Seller shall provide all materials, electricity, fuel, water and stores, and all personnel necessary to supervise startup and the conducting of the Performance Tests and shall provide all necessary technical assistance and advice in connection with the Performance Tests. Except as approved by Buyer in writing, Seller shall not use personnel in excess of the normal contingent of Plant operations staff to operate the Plant during the performance tests. During training and conducting the Performance Tests Buyer's operating personnel shall be working under the technical direction and instruction of Seller and Seller shall be responsible for the accuracy of its instructions/directions provided to Buyer's operating personnel.

Section 18.4 Buyer's Right to Validate

Buyer and Buyer's Representative, in connection with the performance of this Agreement by Seller, shall have the right and opportunity to be present and observe the Performance Tests and shall have the right and opportunity in advance or during the Performance Tests to inspect and validate all meters, meter readings and other pertinent data necessary to verify the results of the Performance Tests. Buyer shall provide reasonable notice to Seller of any such observation and inspection, including the specific information desired and method of obtaining such information. Seller and Buyer shall coordinate such observation, inspection and validation so as not to interfere with the Performance Tests yet provide for a verifiable result. Buyer shall have the same rights with respect to any other Performance Tests conducted by Seller as set forth above.

Section 18.5 Additional Tests; Test Energy

(a) After the Substantial Completion Date with respect to the Work, Seller may, unless Buyer reasonably objects, make any additional tests which Seller considers desirable at their own risk and cost; provided, however,

(i) if such tests require any change in Buyer's dispatch schedule for the Project, then Seller shall reimburse Buyer for all costs and Claims associated with such change in dispatch;

(ii) if such tests damage the Project in any way, then Seller shall bear all costs of making good such damage and of all Claims resulting from such damage; and

(iii) if such test may cause the Project to no longer meet the Performance Guarantees, then Seller shall, at its sole cost, re-conduct the Performance Tests and compensate Buyer for all costs and Claims associated with reconducting the Performance Tests.

(b) Buyer shall have the exclusive right to all electric energy generated by the Plant during any Performance Tests.

Section 18.6 Timing

Seller shall give Buyer at least ninety (90) days' prior notice of the date on which the first Performance Tests will begin and at least five (5) days' prior notice of a change in the Performance Test schedule. Buyer may request that Seller conduct the Performance Tests at another time more convenient to Buyer, which request shall set forth the reasons therefor.

Section 18.7 Test Reports

(a) Seller shall deliver to Buyer a preliminary test report, including the test data sheets and calculated results for each Performance Test or retest (the “Preliminary Performance Test Report”), promptly after completion of each Performance Test, together with a notice to Buyer certifying completion of the Performance Tests in accordance with this Agreement and results of such Performance Tests. Promptly after receipt of such Preliminary Performance Test Report, Buyer and Seller shall consult concerning the results of such tests, and within three (3) days thereafter, Buyer shall (i) state it concurs with the results of the Performance Tests or (ii) state it disputes the results of the Performance Tests and stating in detail the reasons therefor.

Within fifteen (15) Business Days following completion of the Performance Tests, Seller shall provide to Buyer a final test report, including test data sheets and calculated results of each Performance Test or retest (the “Final Performance Test Report”) and a final notice to Buyer certifying completion of the Performance Tests. Within fifteen (15) days of receipt of such documentation from Seller, Buyer shall either (i) accept the Performance Test results or (ii) state it disputes the results of the Performance Tests and the reasons therefor. If Buyer disputes the accuracy of the Performance Tests results in the Final Performance Test Report, then Seller shall re-perform the applicable Performance Tests (or part thereof) in accordance with the procedures set forth in Appendix H. If the results of the re-test confirm the accuracy of the initial test, then Buyer shall pay the increased costs directly resulting from the re-test. If the results of the re-test do not confirm the accuracy of the initial test, then Seller shall pay for the costs of the re-test and any subsequent tests necessary to confirm compliance with all Performance Guarantees.

Section 18.8 Failure on Tests or Inspection

If after inspection, examination or witnessing the testing of any of the Work, Buyer decides, in its sole discretion, that such Work or any part thereof is defective or not in accordance with the Agreement, it may reject the said Work or part thereof by giving to Seller, within ten (10) days, notice of such rejection, stating therein the grounds upon which the said decision is based. Following any such rejection, Seller shall replace or repair the Equipment, the Plant or part thereof rejected and re-submit the same for test or inspection in accordance with this Clause. All expenses reasonably incurred by Buyer in attending or in consequence of such re-testing or inspection and Buyer’s or Buyer’s Representative’s attendance and that of entities providing finance in connection with the Project and their representatives’ attendance shall be deducted from the Purchase Price.

Section 18.9 Duty to Advise of Defects, Errors and Omissions in Plant and Equipment

Seller shall advise promptly Buyer forthwith upon it becoming aware of any design, engineering, manufacturing or other Defect, error or omission that might effect the Work and its operability, operational life and maintenance and warrants and represents that, prior to the acceptance of any certificate by Buyer or Buyer’s Representative and except in relation to such matters that have been notified to or by Buyer in Writing, there are no such Defects, errors and/or omissions to the best of its knowledge and belief.

ARTICLE 19

DEFECTS BEFORE TRANSFER OF POSSESSION AND CONTROL OF WORK

Section 19.1 Identification of Defects

(a) If, in respect of any part of the Work not already transferred and under control by Buyer, and in all cases prior to Closing, Buyer's Representative, at any time: (i) determines, in its sole discretion, that any Work done or Equipment or Plant supplied or materials used by Seller, Contractor or any Subcontractor is or are defective or otherwise not in accordance with the Agreement (each a "Defect"), or that any part thereof is defective or does not fulfill the requirements of the Agreement and (ii) as soon as reasonably practicable notifies Seller of the said decision, specifying particulars of the Defects alleged and of where the same are alleged to exist or to have occurred, then Seller shall with all speed, at its sole cost and expense, remedy the Defects so specified.

(b) If Seller fails to remedy such Defect, Buyer may take, at the sole cost and expense of Seller, such steps as may in all the circumstances be reasonably necessary or convenient to remedy such Defects. The cost of remedying such Defect may be deducted from any payment due under the Agreement and be recoverable as a debt.

Section 19.2 Replacement of Defects

All Equipment or Plant provided or Work done by Buyer to replace defective Equipment or Plant shall comply with the Agreement and shall be obtained at reasonable prices and where reasonably practicable under competitive conditions. Seller shall be entitled at its own expense to remove and retain all defective Equipment or Plant that Buyer may have replaced. Nothing contained in this Section shall affect any Claim by Buyer under article 32 ("Claims, Claim Notice and Dispute Resolution").

ARTICLE 20

NOTICE OF SUBSTANTIAL COMPLETION, NOTICE OF FINAL ACCEPTANCE AND TRANSFER OF CARE, CUSTODY AND CONTROL

Section 20.1 Notice of Substantial Completion of Work

(a) When the Work meets the Substantial Completion Criteria set forth in Appendix H, Seller shall so notify Buyer and provide Buyer a certificate of an Authorized Officer of Seller certifying that the Substantial Completion Criteria have been met and the date thereof (such notice and affidavit, the "Request for Substantial Completion").

(b) Within five (5) days after receipt of the Request for Substantial Completion, Buyer shall by notice ("Notice of Substantial Completion") either: (i) reject such Request for Substantial Completion and refuse to issue the Notice of Substantial Completion and state what Substantial Completion Criteria Seller failed to achieve; or (ii) accept the Request for Substantial Completion as given or with punch list items, and issue the Notice of Substantial Completion with Substantial Completion deemed to occur on the date set forth in said Request for Substantial Completion.

(c) If Buyer rejects the Request for Substantial Completion, Seller shall promptly provide to Buyer a plan and schedule for remedying the deficiencies specified in Buyer's rejection, shall carry out such plan at its own cost and expense, and, upon completion thereof, shall issue a new Request for Substantial Completion.

(d) The foregoing procedure shall apply again and successively thereafter until Substantial Completion Criteria have been achieved. Disputes as to whether Seller has achieved Substantial Completion shall be resolved pursuant to article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 20.2 Care, Custody and Control; Punch List Items

(a) Seller shall be responsible for care and custody, control and risk of loss of the Work and shall make good at Seller's own cost any loss or damage that may occur to the Work or any part thereof from any cause whatsoever until the Substantial Completion Date. Seller shall also be responsible for loss or damage thereto caused by the Contractor or any Subcontractor in the course of any work carried out under or the Project Documents or in connection with the Project until Final Acceptance. Seller hereby waives any and all claims or causes of action it might have now or in the future against Buyer, whether by way of affirmative action, offset, cross claim or otherwise, resulting from any negligence of Buyer for any loss or damage that may occur to the Work or any part thereof caused by Buyer in the course of any work carried out by Buyer in connection with the Project. Seller shall be liable for any loss or damage to any Materials.

(b) Care, custody and control of the Work shall be transferred to Buyer as of the Substantial Completion Date. Buyer shall begin to compile a preliminary punch list as the Work progresses (with Seller and Buyer in good faith mutually determining the Dollar value of such list). Buyer shall submit to Seller the completed preliminary punch list at least ten (10) Business Days prior to the anticipated Substantial Completion Date. Within five (5) Business Days following the Substantial Completion Date, Buyer shall issue to Seller a final punch list (the "Final Punch List"). After receipt thereof, Seller and Buyer shall mutually agree on the punch list items, the value related thereto and on a schedule for completion of such items. Buyer shall withhold from its Progress Payment at the Closing an amount equal to 1.5 times the agreed upon value of the Final Punch List, but shall make periodic pro-rata payments as Seller demonstrate completion of the items on the Final Punch List to Buyer. All of the items on the Final Punch List shall be completed expeditiously after the Substantial Completion Date. Buyer shall provide to Seller for such purpose reasonable access to the Work.

Section 20.3 Dispatch Coordination

During the startup, testing and commissioning of the Plant, Seller shall coordinate with Buyer's Representative and Buyer's operating personnel the orderly startup and shut-down of the Plant. Ninety (90) days prior to the initial startup of the Plant, Seller shall provide to Buyer a schedule of dispatch for the Plant during the commissioning period, including expected net plant output, duration of the commissioning activity and expected fuel usage. Within thirty (30) days of the initial startup of the Plant, Seller shall provide to Buyer an update to this schedule and thereafter on a weekly basis until Substantial Completion is achieved. Seller shall also provide 72 hours' advance notice to Buyer of the planned Plant dispatch profile including net plant output, duration of the commissioning period and expected fuel usage.

Section 20.4 Use Before Acceptance Date

Buyer shall not operate or assume control of all or a portion of the Work prior to the Substantial Completion Date; provided, however, that in no event shall Buyer be limited in its operation of any joint facilities or facilities adjacent to the Work or the Project except as may expressly be provided in the Construction Coordination Agreement.

Section 20.5 Title and Risk of Loss

(a) Risk of loss with respect to the Project and the Work shall remain with Seller until the Closing Date, whereupon the same shall pass to Buyer.

(b) The Equipment and Plant to be supplied pursuant to the Agreement shall become the property of Buyer at whichever is the earlier of the following times:

(i) the Closing Date;

(ii) when Seller becomes entitled to have the contract value of the Equipment and Plant in question included in an Interim Certificate of Payment, or

(iii) when the Equipment and Plant is appropriated for the purpose of the Project.

Seller shall indemnify and keep indemnified Buyer against any claims, losses or damage arising from any defect in title or encumbrances or charge upon any of the Equipment and Plant supplied pursuant to the Agreement.

Section 20.6 Marking of Equipment and Plant

(a) Where, prior to delivery, the property in Equipment and Plant passes to Buyer, Seller shall, so far as is practicable, set the Equipment and Plant aside and mark it as Buyer's property in a manner reasonably required by Buyer.

(b) Until the Equipment and Plant has been so set aside and marked, Buyer shall be entitled to withhold any interim Progress Payment to which Seller might otherwise be entitled.

(c) Seller shall permit Buyer at any time upon reasonable notice to inspect any Equipment or Plant which has become the property of Buyer and shall grant Buyer or procure the grant of access to Seller's premises for such purposes or any other premises where such Equipment and Plant may be located. Such inspection shall not constitute acceptance of the Equipment and Plant.

(d) All such Equipment and Plant shall be in the care and possession of Seller solely for the purposes of the Agreement and shall not be within the ownership or disposition of Seller.

(e) No Progress Payment or interim Certificate of Payment issued by Buyer shall prejudice its right to reject Equipment or Plant which is not in accordance with the Agreement. Upon any such rejection the property in the rejected Equipment or Plant shall immediately revert to Seller.

(f) Seller shall transfer title to the Work to Buyer at the earliest to occur of (i) when the Equipment and/or Materials are brought on the Site; (ii) the specific Equipment and/or Materials are included in a request for a Progress Payment; and (iii) when the Equipment and/or Materials are appropriated for use in the Project. Seller shall cause the Contractor to transfer the Work supplied and performed by the Contractor to Buyer (x) prior to the Closing, free and clear of all Liens other than (A) mechanics liens relating to the Work supplied and performed by the Contractor's Subcontractors that have not yet been paid and (B) amounts payable to Contractor's Subcontractors that are being disputed in good faith provided that the Contractor has posted a bond against such Liens with a bonding company or other surety reasonably acceptable to Buyer, and (y) upon the Closing, free and clear of all Liens. Seller shall indemnify and keep indemnified the Buyer against any claims, losses or damage arising from any defect in title or encumbrances or charge upon any of the Equipment and Plant supplied pursuant to this Agreement.

(g) Where, prior to delivery, the property in Equipment and Plant passes to Buyer, Seller shall, so far as is practicable, set the Equipment and Plant aside and mark it as Buyer's property in a manner reasonably required by Buyer. Until the Equipment and Plant has been so set aside and marked, Buyer shall be entitled to withhold any Progress Payment to which Seller might otherwise be entitled. Seller shall permit Buyer at any time upon reasonable notice to inspect any Equipment or Plant which has become the property of Buyer and shall grant Buyer or procure the grant of access to Seller's premises for such purposes or any other premises where such Equipment and Plant may be located. Such inspection shall not constitute acceptance of the Equipment and Plant.

(h) All such Equipment and Plant shall be in the care and possession of Seller solely for the purposes of the Agreement and shall not be within the ownership or disposition of Seller.

(i) With respect to any Lien or Claim relating to the Project other than Permitted Liens (i) arising through the Contractor or any Subcontractor, Seller agrees to cause the Contractor or Subcontractor to promptly remove or cause, or cause to be removed, any such Lien or Claim and (ii) Seller agrees promptly remove or cause, or caused to be removed, any such other Liens or Claims not covered by the immediately preceding clause (a).

(j) Ownership of the Non-Buyer Materials used in connection with the Work shall remain with Seller, the Contractor or the Subcontractors. Notwithstanding the transfer of title of the Work pursuant to Section 20.5 ("Title and Risk of Loss") the responsibility for care, custody and control thereof, together with the risk of loss or damage thereto shall remain with Seller until the Substantial Completion Date.

Section 20.7 Removal of Equipment

Prior to Final Acceptance, Seller shall remove from the Site all equipment, materials, temporary structures constructed by or on behalf of Seller or other items of any nature required for execution or completion of the Work, but excluding equipment, materials, appliances or other items intended to form or forming part of the Work. Prior to disposition of such items, Seller shall make a written offer to sell items to Buyer which Seller or any Contractor desires to sell. Seller shall leave the Site in good order and in neat and presentable condition. Any surplus items will become property of Buyer if not removed by Seller or its Contractor within thirty (30) days after Final Acceptance (or such later date contemplated in any completion and demobilization procedure mutually agreed by Buyer and

the Project Parties). All costs to dispose of any such items not removed by Seller within the thirty (30) days following Final Acceptance (or such later date contemplated in any completion and demobilization procedure mutually agreed by Buyer and the Project Parties) and which Buyer does not wish to keep shall be for the account of Seller. Prior to removing any equipment from the Site Seller shall provide to Buyer a detailed list of Seller Equipment to be removed. No equipment shall be Seller Equipment unless it is included in the then-current list approved pursuant to Section 12.1 (“Seller’s Equipment”).

Section 20.8 Notice of Final Acceptance of Work

Upon completion of all the criteria for Final Acceptance set forth in Appendix H, Seller shall give notice to Buyer by request for Final Acceptance, together with an affidavit that all requirements for Final Acceptance set forth in Appendix H have been met. Thereafter, the same procedures as specified in Section 13.1 (“Changes”) shall apply until Buyer issues notice to Seller accepting Seller’s request for Final Acceptance (“Notice of Final Acceptance”). Disputes as to whether Seller has achieved Final Acceptance shall be resolved pursuant to article 32 (“Claims, Claim Notice and Dispute Resolution”).

ARTICLE 21

CODES AND STANDARDS

Section 21.1 Comparable Quality

Appendix B sets forth all major systems/sub-systems/Equipment/components which will be supplied in performance of the Work. Notwithstanding the foregoing, the Parties recognize that Appendix B is not all inclusive and does not specify all Equipment/components required for Plant completion. Therefore, the Parties agree that for Equipment/components not specifically set forth in Appendix B, the quality standards of such unspecified Equipment/components shall be consistent with the requirements of article 14 (“Workmanship and Materials”).

ARTICLE 22

ENVIRONMENTAL MATTERS

Section 22.1 General

Seller shall prepare and submit to Buyer appropriate materials management and emergency response procedures covering any Regulated Materials Seller expects to be used in the completion and testing of the Work, which procedures shall be satisfactory to Buyer. Seller shall comply, and shall cause Contractor and all Subcontractors to comply, at all times with such materials management and emergency response procedures, all Environmental Laws and all Governmental Approvals applicable to the Work and the Site. No Regulated Materials and shall be improperly released, disposed of or buried on the Site.

Section 22.2 Release On-Site

Seller shall immediately notify Buyer and applicable Governmental Authorities of any Release by Seller or any Subcontractor of Regulated Materials at the Site which is reportable to Governmental Authorities under applicable Environmental Laws and take such emergency measures as are prudent and necessary to protect the environment consistent with the materials management and emergency response procedures referred to above and Applicable Law. Seller shall take all appropriate steps consistent with the materials management and emergency response procedures referred to above and Applicable Law for immediate containment of any such Release and Remediation of the affected area.

Section 22.3 Release Off-Site

In the event of a Release by Seller, the Contractor or any Subcontractor of a Regulated Material off the Site but related to the Work which is reportable to Governmental Authorities under applicable Environmental Laws, Seller shall be responsible for notifying all applicable federal, state and local regulatory agencies in accordance with Applicable Law or for causing such notification to occur by the party responsible for such action. To the extent required, Seller shall take all appropriate steps consistent with the materials management and emergency response procedures referred to above and Applicable Law for immediate containment of any such Release and Remediation of the affected area.

Section 22.4 Liability

To the extent any Release referred to in Section 22.2 (“Release On-Site”) and Section 22.3 (“Release Off-Site”) above is caused by an act or omission of Seller, the Contractor, or any Subcontractor, Seller shall be responsible for all Liabilities with respect to such Release and the indemnification provisions set forth in Section 26.1 (“Indemnification for Third Party Claims”) shall apply.

Section 22.5 Pre-existing Regulated Materials

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

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

(ii) the handling of any contaminated groundwater that might be extracted, including the prospective procurement of a UPDES permit in the event the contingency plan calls for such extracted water being discharged into an area that is subject to Clean Water Act jurisdiction; and

(iii) the final disposal of all Regulated Materials and contaminated materials encountered on the Site.

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

Section 22.6 Notice

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

ARTICLE 23

WARRANTIES OF WORK

Section 23.1 Warranties

(a) Seller warrants that, for the duration of the Warranty Period, the Work shall be (i) free from Defects in design, engineering, workmanship materials and operations, (ii) in accordance with the Agreement, and (iii) in compliance with Applicable Law. Seller further warrants that all Equipment and Plant shall be new and of standard quality, free of Defects and deficiencies in design, material, workmanship and title (the "Warranty").

(b) The Warranty shall not extend to Defects or deficiencies to the extent resulting from (i) operation by Buyer's personnel in a manner inconsistent with or contrary to instructions contained in the Operation and Maintenance Manuals, (ii) repairs or alterations by Buyer's personnel in a manner inconsistent with or contrary to instructions provided by Seller or as contained in the Operation and Maintenance Manuals provided by Seller, or (iii) normal wear and tear.

Section 23.2 Warranty Period

Subject to the provisions in this article 23, the Warranty shall remain in full force and effect regarding all phases of the Work for a period beginning on the Closing Date and ending eighteen (18) months thereafter (such period, the "Warranty Period"). In no event shall any Warranty terminate less than eighteen (18) months following the Closing Date.

Section 23.3 Repair of Defects

If Buyer or Seller discovers that the Work, or any portion thereof, fails to meet the Warranty, the it shall notify the other Party of such failure promptly upon discovery, along with the reasonable basis therefore. Upon receipt of such notice, or upon Seller's own discovery thereof, Seller shall promptly (i) cure such failure in accordance with the Warranty and (ii) perform such tests as Buyer may reasonably require to demonstrate the cure of such failure. Seller shall coordinate repairing, replacing or re-performing any of the Work with Buyer so as to minimize any adverse effects on the operation of the Project.

Section 23.4 Warranty Period Extension

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

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

Section 23.5 Contractor and Subcontractor Warranties

Seller will procure from the Contractor and each Subcontractor warranties with respect to services, Plant and Equipment provided by such entity for a period of no less than eighteen (18) months after the Closing Date and for a further eighteen (18) months after any warranty repair with respect to the subject of the repair. Seller shall obtain and maintain all such warranties in full force and effect.

Section 23.6 Delay in Remedying Defects

If any such Defect or damage is not remedied by Seller within a reasonable time or requires prompt remediation as a result of an emergency situation existing at the Site, Buyer may proceed to do the Work at Seller's risk and expense provided that it does so in a reasonable manner and notifies Seller of Buyer's intention so to do. All Costs incurred by Buyer shall be deducted from the Purchase Price or be paid by Seller to Buyer.

Section 23.7 Removal of Defective Work

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

Section 23.8 Further Tests

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

Section 23.9 Seller to Diagnose

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

Section 23.10 Latent Defects

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

(b) If any Latent Defect (as defined in Section 23.10(d)) shall appear in any part of the Work during the Latent Defects Liability Period, such Latent Defect shall be Repaired by Seller at Seller's option, with all possible speed and at Seller's sole cost expense, provided that the Latent Defect existed and would not have been disclosed by a reasonable examination conducted in accordance with Prudent Industry Practice prior to the expiration of the Defects Liability Period.

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

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

Section 23.11 Significant Defects

(a) Seller warrants and guarantees to Buyer that there will be no Significant Defects.

(b) Consequences of Significant Defects. In the event that a Significant Defect occurs, Seller shall make good the Significant Defect.

ARTICLE 24

LIQUIDATED DAMAGES

Section 24.1 General

The Parties agree that it is difficult or impossible to determine with precision the amount of damages that would be incurred by Buyer as a result of Seller's failure to timely complete the Project or to meet the Guaranteed Substantial Completion Date or Performance Guarantees. Accordingly, the Parties expressly agree that if Seller fails to timely complete the Project or to meet the Guaranteed Substantial Completion Date or the Performance Guarantees, any sums which would be payable under this article 24 because of such failures are liquidated damages and not a penalty, and are fair and reasonable and any such sums represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failures.

Section 24.2 Critical Milestone Guarantee Liquidated Damages

(a) The Project Schedule designates certain times as critical milestones (each a “Critical Milestone”) by which Seller represents that each such Critical Milestone will occur by its respective Target Date. While timely completion of each step in the Project Schedule is important to the success of the project, the occurrence of each Critical Milestone by its respective Target Date is of critical importance to completion of the Project in a timely manner consistent with Buyer’s vital business interests.

(b) The Parties agree that it will be very difficult to determine the cost to Buyer for late delivery of Critical Milestones; therefore, the Parties agree upon the amounts set forth below, as liquidated damages for such late delivery and not a penalty, as consideration for delay in delivery and the resulting loss of beneficial use of the Work associated with each Critical Milestone. Such amounts being Critical Milestones Liquidated Damages (“Critical Milestone LDs”).

(c) For each day of delay after the relevant Target Date in achieving any Critical Milestone, the amounts otherwise payable to Seller pursuant to this Agreement shall be reduced by \$[___] per day for each day of delay beyond the relevant Target Date in achieving any Critical Milestone (“Reduction Amount”).

(d) The Reduction Amount (i) shall arise independently with respect to each such delay and (ii) shall arise independently with respect to Late Substantial Completion LDs as defined in Section 24.3 (“Liquidated Damages for Delay in Substantial Completion”). At Buyer’s option and in its sole discretion, Buyer may either require Seller to pay to Buyer the Reduction Amount or may deduct the Reduction Amount from any monies subsequently payable to Seller.

Section 24.3 Liquidated Damages for Delay in Substantial Completion

If Seller fails to achieve Substantial Completion prior to the Substantial Completion LD Commencement Date, then commencing on the Substantial Completion LD Commencement Date, Seller shall pay Buyer liquidated damages, for each day until Seller achieves Substantial Completion, in an amount equal to (a) fifty thousand Dollars (\$50,000.00) per day if the Project is Dispatchable and (b) one hundred thousand Dollars (\$100,000.00) per day if the Project is not Dispatchable (collectively, “Late Substantial Completion LDs”).

Section 24.4 Liquidated Damages for Net Capacity and Net Heat Rate

Seller shall pay liquidated damages in accordance with the terms and conditions set forth in Section 14 of Appendix H as a result of the failure of the Work to achieve the Guaranteed Net Capacity, the Guaranteed Incremental Net Capacity or the Guaranteed Net Heat Rate and the Guaranteed Incremental Net Heat Rate in accordance with the Performance Guarantees. Seller shall be granted the Cure Period to allow remedial actions to be taken to achieve the Guaranteed Net Capacity and the Guaranteed Incremental Net Capacity or the Guaranteed Net Heat Rate and the Guaranteed Incremental Net Capacity, prior to Seller’s being liable for payment of the liquidated damages as provided in Section 14 of Appendix H.

Section 24.5 Liquidated Damages for Startup and Commissioning

If in connection with startup, commissioning and Performance Testing Seller exceeds ninety (90) Equivalent Starts and/or three hundred (300) Fired Hours per Combustion Turbine, then Seller shall pay to Buyer, in addition to any other Liquidated Damages, and amount equal to (a) Twelve Thousand Dollars (\$12,000) per Equivalent Start in excess of ninety (90) Equivalent Starts for either Combustion Turbine; plus (b) Three Hundred Dollars (\$300) per Fired Hour in excess of three hundred (300) Fired Hours for either Combustion Turbine.

Section 24.6 Calculations and Payments of Liquidated Damages

(a) Unless otherwise set forth in this article 24, all calculations with respect to amounts payable as liquidated damages under this article 24 shall be made by Seller and provided to Buyer within (i) in the case of Section 24.2 (“Critical Milestone Guarantee Liquidated Damages”) and Section 24.3 (“Liquidated Damages for Delay in Substantial Completion”), ten (10) Business Days after the final day of each month during which amounts become payable thereunder; and (ii) in the case of Section 24.4 (“Liquidated Damages for Net Capacity”) and Section 24.5 (“Liquidated Damages for Startup and Commissioning”), ten (10) Business Days after Buyer’s receipt of the Final Performance Test Report, but no later than ten (10) Business Days after the end of any applicable cure period. Buyer shall have the right to audit such calculations. Seller shall itemize such calculations and such calculations shall include supporting documentation as Buyer shall reasonably request and shall be in sufficient detail to permit Buyer to verify each calculation. Buyer shall notify Seller as soon as reasonably possible of any portion of the calculations with which Buyer disagrees.

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

ARTICLE 25

LIMITATIONS OF LIABILITY

Section 25.1 Duty to Mitigate

In all cases, but subject to any right or remedy which the Party may have under or by virtue of this Agreement, the Party establishing or alleging a breach of Agreement or a right to recover pursuant to any Article under this Agreement or a right to be indemnified in accordance with this Agreement shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that the Party can do so without unreasonable inconvenience or cost.

Section 25.2 Limitation of Buyer’s Liability

SUBJECT TO THE OBLIGATION OF SELLER TO PAY OR ALLOW LIQUIDATED DAMAGES TO BUYER UNDER THIS AGREEMENT, NEITHER SELLER NOR BUYER SHALL BE LIABLE TO THE OTHER BY WAY OF INDEMNITY OR BY REASON OF ANY BREACH OF THIS AGREEMENT OR OF STATUTORY DUTY OR BY REASON OF TORT (INCLUDING NEGLIGENCE BUT EXCLUDING ANY DAMAGES PAYABLE TO A THIRD PARTY CAUSED BY A TRESPASS OR NUISANCE FOR WHICH SELLER IS RESPONSIBLE PURSUANT TO THIS AGREEMENT) FOR ANY LOSS OF PROFIT OR INCOME, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF CONTRACTS OR FOR ANY

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

Section 25.3 Enforceability of Liquidated Damages

(a) Enforceability of Liquidated Damages. If the provisions for the payment of Liquidated Damages in this Agreement are held to be unenforceable, Seller agrees to pay to Buyer all actual damages suffered by Buyer due to the circumstances giving rise to the liability to pay Liquidated Damages (had they been enforceable) including loss of profit or income, loss of use, loss of production, loss of contracts and indirect and consequential damages but subject to the maximum amounts which would have been payable if the Liquidated Damages provisions had been enforceable.

(b) If, however, the provisions for the payment of Liquidated Damages in this Agreement are held to be unenforceable as a result of a claim, objection, defense, dispute or proceedings raised or brought by Seller as part of or during the hearing of which Seller argues that the said provisions are unenforceable on the grounds that such liquidated damages should be construed at law as and/or amount to a penalty as opposed to an argument or suggestion that Seller is not liable to pay Liquidated Damages pursuant to this Agreement, Seller expressly agrees to pay to Buyer all costs, losses and damages whatsoever (including loss of profit, loss of use and loss of production, loss of contracts and indirect and consequential damages) incurred or payable by Buyer arising from or in connection with the circumstances giving rise to the claim for the payment of Liquidated Damages which has been made by Buyer, WHICH PAYMENTS SHALL NOT BE SUBJECT TO ANY CAPS ON LIABILITY.

Section 25.4 Limitations on Liquidated Damages

(a) The aggregate amount of liquidated damages payable by Seller as Reduction Amounts under Section 24.2 (“Critical Milestone Guarantee Liquidated Damages”) shall not exceed, in the aggregate, an amount equal to 5% of the Purchase Price.

(b) The amount of liquidated damages payable by Seller for delays in achieving Substantial Completion under Section 24.3 (“Liquidated Damages for Delay in Substantial Completion”) shall not exceed, in the aggregate, an amount equal to 30% of the Purchase Price.

(c) The amount of liquidated damages payable by Seller attributable to failure to meet the Guaranteed Net Capacity pursuant to Section 24.4 (“Liquidated Damages for Net Capacity”) shall not exceed, in the aggregate, an amount equal to 15% of the Purchase Price.

(d) The amount of liquidated damages payable by Seller attributable to failure to meet the Guaranteed Net Heat Rate pursuant to Section 24.4 (“Liquidated Damages for Net Capacity”) shall not exceed, in the aggregate, an amount equal to 20% of the Purchase Price.

(e) The amount of liquidated damages payable by Seller attributable to failure to meet the startup and commissioning requirements pursuant to Section 24.5 (“Liquidated Damages for Startup and Commissioning”) shall not exceed, in the aggregate, an amount equal to 15% of the Purchase Price.

(f) The amount of liquidated damages under paragraphs (a) through (e) shall not exceed, in the aggregate, an amount equal to 50% of the Purchase Price.

(g) Without prejudice to or limitation of Seller's liabilities and obligations set forth under paragraphs (a) through (e), all of which shall be in excess of and not subject to the limitation contained in this paragraph (e), the aggregate liability of Seller to Buyer shall not exceed one hundred percent (100%) of the amount of Purchase Price.

In calculating the unexpended amounts of Seller's limitations of liability under this Section, no account shall be taken of any insurance proceeds payable to Seller (whether payable directly to Seller or payable to Seller through Buyer) under insurance coverage obtained by Buyer operate to reduce such unexpended limits of liability unless and to the extent that such proceeds are not paid due to circumstances beyond the control of Seller within a reasonable time following final determination in accordance with the relevant policy of insurance that they are payable. The limitations of liability set out in this Article shall not apply in relation to any failure by Seller to fulfill its obligations due to its gross negligence or willful misconduct under this Agreement.

ARTICLE 26

INDEMNIFICATION

Section 26.1 Indemnification for Third Party Claims

(a) Seller shall defend, indemnify and hold harmless Buyer, its shareholders and Affiliates, and their respective directors, officers, employees and agents, from and against all third party Claims and Liabilities for injury, including death, and property damage caused by, arising out of, or in connection with the performance by any Project Party of the Transaction Documents to the extent any of such Claims or Liabilities were caused by the negligence, gross negligence or willful misconduct of Seller, the Contractor, any Subcontractor, and its respective employees or agents.

(b) Buyer shall defend, indemnify and hold harmless Seller and its managers, officers, employees and agents, from and against all third party Claims and Liabilities for injury, including death, and property damage caused by, arising out of, or in connection with the performance of the Transaction Documents to the extent any of such Claims or Liabilities were caused by the negligence, gross negligence or willful misconduct of Buyer, its employees or agents.

(c) Either Party seeking indemnification under this Agreement (the "Indemnified Party") shall give notice to the Party required to provide indemnification hereunder (the "Indemnifying Party") promptly after the Indemnified Party has actual knowledge of any Claim as to which indemnity may be sought hereunder, and the Indemnified Party shall permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of any Claim or litigation resulting therefrom; provided that:

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

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

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

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

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

(e) Nothing in this Section 26.1 is intended to allow any Indemnified Party to be indemnified from and against any third party Claims and Liabilities caused by, arising out of, or in connection with the performance of this Agreement to the extent any of such Claims or Liabilities were caused by, arose out of, or were in any way incidental to or in connection with its own negligence or intentional misconduct.

Section 26.2 Title Indemnity and Liens

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

(b) Seller shall keep the Work free and clear of and shall promptly release or cause the release of all Liens, recorded notices, Claims for nonpayment and lis pendens filed of record by the Contractor or any Subcontractor.

(c) Seller shall (i) indemnify, defend, and hold harmless Buyer from all laborers', material men's and mechanics' Liens, or Claims made or filed upon the Work, or the property on which the Work is located on account of any labor performed or labor, services, equipment, and materials furnished by Seller's Subcontractors of any tier and all laborers, materialmen, mechanics, and other persons in connection with the work, and (ii) keep the work and said property free and clear of all liens or claims arising from the performance of any Work covered by this Agreement by Seller, its Subcontractors of any tier, and all laborers, materialmen, mechanics and other such persons.

(d) If any Lien arising out of this Agreement is filed before or after Work is completed, Seller, within ten (10) calendar days after receiving from Buyer written notice of such lien, shall obtain release or provide financial assurance satisfactory to Buyer to protect Buyer from or otherwise satisfy such lien. If Seller fails to do so, Buyer may take such steps and make such expenditures as in its discretion it deems advisable to obtain release of or otherwise satisfy any such lien or liens, and Seller

shall upon demand reimburse Buyer for all costs incurred and expenditures made by Buyer in obtaining such release or satisfaction.

(e) Seller's obligation to indemnify, defend and hold harmless Buyer from liens shall not in any way be rendered unenforceable, or altered, amended, eliminated or otherwise conditioned by any laws and regulations related to processing such liens. Buyer shall have no obligation to deliver a copy of any notice of claim or right to a lien to Seller or any other person or entity.

(f) If Seller shall default in discharging any Liens, Claims or encumbrances filed or asserted against the Work, Buyer shall promptly provide notice to Seller, and Seller shall then satisfy or defend any such Liens, Claims or encumbrances. If Seller either does not promptly satisfy such Liens, Claims or encumbrances or does not give Buyer reasons satisfactory to Buyer for not paying such Liens, Claims or encumbrances, within fifteen (15) days of Seller's receipt of such notice, Buyer shall have the right, at its option, after providing notice to Seller, to pay or settle such Liens, Claims or encumbrances by agreement, and Seller shall, within fifteen (15) days of request by Buyer, reimburse Buyer for all costs incurred by Buyer to discharge such Liens, Claims or encumbrances, including administrative costs, attorneys' fees and other expenses or Buyer shall have the right to deduct the amount of such costs from the amount payable to Seller. Seller shall have the right to contest any such Lien, Claim or encumbrance, provided that Seller first provide to Buyer financial assurances in amount, form and substance satisfactory to Buyer and otherwise complies with Applicable Law with respect to removal of Liens.

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

Section 26.3 Indemnity Period

Seller's obligation to indemnify Buyer consistent with the provisions of this article 26 shall continue after the closing in accordance with the following (collectively, the "Indemnity Period"):

(a) With respect to Claims and Liabilities brought by third parties, Seller's obligation to indemnify Buyer shall continue for a period of two years following the Closing Date.

(b) With respect to Claims and Liabilities relating to the title of the Site, Project, or the Work, Seller's obligation to indemnify Buyer shall continue indefinitely.

(c) With respect to all other Claims and Liabilities, Seller's obligation to indemnify Buyer shall continue for a period of eighteen months following the Closing Date.

ARTICLE 27

INSURANCE

Section 27.1 Contractor's and Subcontractors' Insurance Coverage

Seller shall maintain and shall require and cause the Contractor and all Subcontractors, while performing work on the Site, to provide, pay for and continuously maintain in full force and effect with insurers having an A.M. Best Insurance Reports rating of A-:VII or better the following insurance coverages:

- (a) Employers' Liability insurance with a minimum limit of \$1,000,000.
- (b) Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 with \$3,000,000 annual aggregate to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the work performed under this Agreement.
- (c) Umbrella or Excess Liability insurance with minimum limits of \$10,000,000 per occurrence and \$10,000,000 annual aggregate to cover claims in excess of the underlying limits for Employer's Liability, General Liability, and Automobile Liability.
- (d) Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to Seller's vehicles whether owned, hired or non-owned, assigned to or used by Seller in the performance of the work.
- (e) Professional Liability insurance (Errors and Omissions) with a minimum single limit of \$1,000,000 to cover claims arising out of Consultant's professional services hereunder. This policy shall be maintained until one year after Buyer's acceptance of Consultant's work..
- (f) Transit and Installation insurance with a minimum single limit of \$500,000 to cover damage to property and other claims arising out of the loading, unloading, transportation, lifting, lowering, or other handling of such property.
- (g) For Commercial General Liability insurance, the policy shall include:
 - (i) Provisions or endorsements naming Buyer, its Board of Directors, officers and employees as additional insured;
 - (ii) Cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.
- (h) All policies, except professional liability and transit and installation, shall include provisions that such insurance is primary insurance with respect to the interests of Buyer and that any other insurance maintained by Buyer is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without:

(i) Ten (10) days' prior written notice to Buyer if canceled for nonpayment of premium

(ii) Thirty (30) days' prior written notice to Buyer if canceled for any other reason.

(iii) A certificate in a form satisfactory to Buyer certifying to the issuance of such insurance shall be furnished to Buyer and included at Exhibit H.

(i) Commercial general liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate.

(j) If requested by Buyer, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to Buyer.

(k) Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of any award and for such other length of time necessary to cover liabilities arising out of the work.

(l) Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the Work.

(m) Seller shall ensure that the Contractor and each and every Subcontractor maintains in full force and effect the insurance coverage and limits required under this Section 27.1 ("Contractor's Insurance") at all times on and after the commencement of the Work and continuing until the Closing Date, unless otherwise indicated herein. The coverage under Contractor's Insurance shall be primary to the extent of the Contractor's obligations to indemnify Seller and Buyer without regard to other insurance available to Buyer. Within thirty (30) days prior to the commencement of the Work at the Site, Seller shall provide Buyer applicable insurance certificates of such coverage completed by duly authorized representatives of the insurer certifying that (a) the coverages required hereunder are in effect, and (b) the coverages will not be canceled, nonrenewed or materially changed by endorsement or through issuance of other policies of insurance without thirty (30) days' prior notice to Seller and Buyer. The acceptance by Buyer of Seller's delivery of any certificate of insurance evidencing the insurance coverages and limits required hereunder shall not be deemed to constitute approval or agreement that (i) the insured party has satisfied the insurance requirements set forth herein or (ii) the insurance policies described in such certificates of insurance comply with such requirements.

(n) If Seller fails to require the Contractor and the Subcontractors to maintain the insurance required hereunder, Buyer shall have the right, but not the obligation, to purchase such insurance at Seller's expense.

(o) The Contractor's insurance carrier and the Subcontractors or Subcontractors' insurance carriers shall use commercially reasonable efforts to provide Seller and Seller will provide Buyer written notice of cancellation, termination or material alteration.

(p) Anything in this Agreement to the contrary notwithstanding, the occurrence of any of the following shall in no way relieve Seller from any of its obligations under this Agreement; (a) failure by the Contractor or any Subcontractor to procure the insurance required by this Agreement;

(b) failure by the Contractor or any Subcontractor to comply fully with any of the insurance provisions of this Agreement; (c) failure by the Contractor or any Subcontractor to secure such endorsements on the policies as may be necessary to carry out the terms and provisions of this Agreement; (d) the insolvency, bankruptcy or failure of any insurance company providing insurance to the Contractor or any Subcontractor; or (e) failure of any insurance company to pay any claim accruing under its policy.

(q) In the event that liability for any loss or damage is denied by the underwriter or underwriters in whole or in part due to the breach of said insurance by the Contractor or any Subcontractors, or for any other reason attributable to the Contractor or any Subcontractor, or if the Contractor or any Subcontractor fails to maintain any of the insurance herein required, then Seller shall defend, indemnify and hold Buyer harmless against all losses which would otherwise have been covered by said insurance.

Section 27.2 Buyer's Insurance

(a) Owner shall procure at its own expense and maintain in full force and effect during the life of this Contract, with responsible insurance companies authorized to do business in the State of Utah, the types and limits of insurance as set forth below. Such companies shall have an A.M. Best Insurance Reports rating of A:VII or better. Buyer, at its own cost, may purchase any additional insurance it believes necessary to protect its interests.

(b) **Builder's All-Risk Insurance.** Effective the earlier of 1) the point of groundbreaking at the Site or 2) the date of the first shipment of any Material, Equipment, supplies or other elements of the Work, Buyer shall obtain and thereafter at all times during performance of the Work, maintain Builder's All-Risk Insurance. Coverage shall remain in effect until replaced by permanent property insurance which will be placed by Buyer upon Final Completion. Such Builder's All-Risk Insurance shall insure as an insured, Seller, Contractor, their respective affiliates and Subcontractors of any tier, Buyer and its affiliates, and shall cover all property in the course of construction, including the Work, Materials and Equipment, miscellaneous equipment and furnishings (other than equipment covered under Seller's or Contractor's equipment floater), from physical loss or damage caused by perils covered by a Builder's All-Risk form or equivalent coverage. Such insurance shall include mechanical and electrical breakdown coverage during start-up and testing, and other operations of the Project prior to Final Completion. The limit of liability shall be the full replacement cost of the Work including primary cost of equipment plus freight. The required deductible for all such insurance shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000), except as noted below, and except during the Performance Testing, when the applicable deductibles shall be \$500,000 per occurrence, or in the case of turbine/generator units \$1,000,000 per occurrence. The Builder's All-Risk coverage shall not contain an exclusion for resultant damage caused by faulty workmanship, design or materials. Buyer and Seller agree, and Seller shall require Contractor and all Subcontractors to agree, to waive all rights of recovery against each other for damages caused by fire and/or other perils to the extent covered by the "All Risk" policy.

(c) The following additional coverages shall be provided:

(i) Flood coverage with a sublimit of \$25,000,000 per occurrence and in the aggregate, with a deductible of 5% of the values at risk at the time of loss, subject to a deductible of \$1,000,000;

(ii) Expediting expense with a sublimit of \$10,000,000 except \$5,000,000 for air-freight per loss;

(iii) Earthquake coverage with a sublimit of \$25,000,000 per occurrence and in the aggregate, with a deductible of 5% of the values at risk at the time of loss, subject to a deductible of \$1,000,000;

(iv) Coverage for Equipment and Material at laydown areas or temporary storage off of the actual construction site (including freight expense) with a sub-limit of \$25,000,000 per location. Should the values at risk at any location exceed this sublimit, Seller shall secure such additional coverage as may be required to insure the full values then at risk at its own cost;

(v) Removal of debris with a sublimit of 10% of Project value, subject to \$25,000,000 maximum per loss; and

(vi) Transit coverage with a \$15,000,000 limit for turbines and generators only and a \$5,000,000 limit for all other property including ocean and air transit if any Equipment is to be moved by vessel or aircraft, with sublimits sufficient to insure the full replacement value. Coverage shall protect the interest of Seller and of Buyer, and their directors, officers, employees and agents.

(d) Endorsements. Buyer's insurance policies shall be endorsed to provide that Seller, Contractor and its Subcontractors, and their respective officers, directors and employees shall be named as additional insured with a waiver of insurer's right of subrogation. In addition, Seller, Contractor and its Subcontractors shall be extended the benefit of any operating property insurance, including being named additional insured and a waiver of insurer's right of subrogation through Final Completion.

Section 27.3 Waiver of Rights

In regards to any property insurance maintained by any Party, each such Party shall waive all rights of recovery and subrogation against the other Party.

Section 27.4 Seller's Cooperation with Buyer

(a) Seller agrees to cooperate with and assist Buyer, as reasonably requested by Buyer, in Buyer's procurement of any insurance required by this Agreement or otherwise to be procured in connection with the Project.

(b) Seller agrees to provide such assistance and documentation as Buyer may request in connection with Claims Buyer may make under its insurance policies purchased in connection with the Project for damage or events that occur after the Effective Date and prior to the expiration of the applicable warranty period.

ARTICLE 28

FORCE MAJEURE

Section 28.1 Effect of Force Majeure

Neither Party shall be considered to be in default or in breach of its obligations under this Agreement to the extent that performance of such obligations is prevented by any event of Force Majeure arising after the date of this Agreement.

Section 28.2 Notice of Occurrence

If either Party considers that any event of Force Majeure has occurred which may affect performance of its obligations under this Agreement, it shall promptly notify the other Party thereof stating the full particulars and anticipated duration of the event and the performance obligations that will be affected by the event.

Section 28.3 Performance to Continue

Upon the occurrence of any event of Force Majeure, Seller shall use commercially reasonable efforts to continue to perform its obligations under this Agreement. Seller shall notify Buyer of the steps Seller proposes to take, including any reasonable alternative means for performance, which is not prevented by Force Majeure. Seller shall not take any such alternative steps unless directed so to do by Buyer pursuant to a Change Order. In any such case, Seller shall use reasonable efforts to mitigate all such costs and impacts on the schedule for performance and on the Guaranteed Substantial Completion Date.

Section 28.4 Termination in Consequence of Force Majeure

If circumstances of Force Majeure have occurred that have materially affected the Work and have continued for a period of forty-five (45) days in the aggregate, and there is a corresponding delay in the schedule for performance and the Guaranteed Substantial Completion Date of forty-five (45) days in the aggregate caused by the Force Majeure, then, notwithstanding that Seller may by reason thereof have been granted an extension of the schedule for performance and the Guaranteed Substantial Completion Date, by Change Order, Buyer shall be entitled to provide notice of its intent to terminate this Agreement upon thirty (30) days notice to Seller. If at the expiration of such thirty (30)-day period such Force Majeure shall still continue, Buyer may elect to terminate this Agreement.

Section 28.5 Risk of Loss

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

ARTICLE 29

DEFAULT

Section 29.1 Seller's Default

Seller shall be in default ("Seller Default") hereunder if:

(a) A Project Party fails in any material respect to comply with its obligations under the Transaction Documents; provided, however, that if all material adverse consequences of a breach of an obligation can be cured or remedied by Seller within a period of thirty (30) days after such breach, such breach shall not become a Seller Default until thirty (30) days after such breach;

(b) A Project Party assigns the Transaction Documents to which it is a party other than as permitted both hereunder and thereunder;

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

(d) any representation or warranty made by Seller for which an express remedy is not provided shall prove to have been false in any material respect as of the date made;

(e) any Judgment shall be entered against any Project Party (i) decreeing such Person's involuntary dissolution or split up or (ii) any (x) such Judgment shall award non monetary relief which results in a Material Adverse Change or (y) such Judgment shall award monetary damages in an amount of (I) \$_____ with respect to Seller or (II) with respect to Project Parties other than Seller, such Judgment shall award monetary damages in an amount that would cause a Material Adverse Change;

(f) as a result of an act or omission of any Project Party, any of the Security Documents shall for any reason cease to be in full force and effect, or shall cease to give Buyer the Liens, rights, powers and privileges purported to be created thereby in any material respect. At any time, as a result of an act or omission of any Project Party, Buyer shall fail to have a first priority perfected security interest in all the Collateral;

(g) a Material Adverse Change shall have occurred and be continuing, unless such Material Adverse Change is a result of an act or omission of Buyer; or

(h) Seller fails to pay liquidated damages to Buyer or to the Substantial Completion LD Delay Account when due, except to the extent such payments are being disputed in good faith.

Section 29.2 Buyer's Default

Buyer shall be in default ("Buyer's Default") hereunder if:

(a) Buyer fails to pay Seller any undisputed amount due Seller under article 2 ("Sale of Assets") or article 3 ("Terms for Progress Payments"), and fails to cure such default within ten (10) Business Days after receiving notice of default from Seller;

(b) Buyer has failed in any material respect to comply with its other material obligations under this Agreement; provided, however, that if all material adverse consequences of a breach of an obligation can be cured or remedied by Buyer within a period of thirty (30) Business Days after such breach, such breach shall not become a Buyer's Default until thirty (30) Business Days after such breach;

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

(d) any representation or warranty made by Buyer in this Agreement for which an express remedy is not provided shall have been false in any material respect as of the date made;

(e) any suspension of the Work requested by Buyer continues for more than thirty (30) days, and Buyer and Seller are unable to agree on a Change Order, unless such dispute is being resolved under article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 29.3 Removal of Seller's Equipment

Upon termination due to Buyer's default, Seller shall be entitled to remove during normal working hours all the Seller Equipment which are on the Site. Prior to removing any Seller Equipment from the Site Seller shall provide to Buyer a detailed list of Seller Equipment to be removed. No

equipment shall be Seller Equipment unless it is included in the then-current list approved pursuant to Section 12.1 (“Seller’s Equipment”).

Section 29.4 Remedies on Default

(a) Step-In Rights. During the occurrence and continuance of any Seller Default or occurrence of any event described in Section 30.1(b) (“Termination by Buyer”), and in addition to any other rights Buyer may have hereunder or at law or in equity, Buyer shall have the right, but not the obligation, take all actions necessary to perform any and all work and labor it deems necessary to complete, operate or maintain the Project in accordance with the terms of this Agreement, including causing Seller to vacate the Project and surrender possession of the Project and all proprietary information, Equipment, spare parts and other supplies located at the Project to Buyer. If Buyer at any time exercises its rights under this Section 29.4(a), Buyer shall be relieved of its obligations of payment during such time as it is exercising its right under this Section, and shall be entitled to recover all costs incurred by Buyer, plus 20% for general and administrative costs in connection with work performed during that time. Notwithstanding the foregoing, nothing set forth in this Section shall excuse Seller of its obligations to remedy its default and perform its obligations hereunder.

(b) Cure Rights. During the occurrence and continuance of any Seller Default or occurrence of any event described in Section 30.1(b) (“Termination by Buyer”) and upon receipt of any notice that Seller is in default of any of its obligations under any of the Project Documents, and in addition to any other rights Buyer may have hereunder or at law or in equity, Buyer shall have the right, but not the obligation, to cure any default of Seller under any Transaction Document. If Buyer at any time exercises its right under this Section 29.4(b), Buyer shall be relieved of its obligations of payment during such time as it is exercising its right under this Section. Notwithstanding the foregoing, nothing set forth in this Section shall excuse Seller of its obligations to remedy its default and perform its obligations hereunder.

(c) Buyer Rights Following Termination due to a Seller Default. Upon termination of this Agreement pursuant to Section 30.1(b) (“Termination by Buyer”), Buyer may, but shall not be obligated to:

(i) remove Seller from the Site with risk of loss of the Work transferring to Buyer. In addition, Buyer may, but shall not be obligated to, require Seller, at no additional cost to Buyer, to take all steps necessary or requested by Buyer to assign Seller’s rights and obligations under the Transaction Documents and Governmental Approvals identified by Buyer to Buyer and to transfer to Buyer all other property, whether tangible or intangible, in which Seller has rights which is necessary or desirable for the development, construction ownership or operation of the Project at Seller’s actual cost;

(ii) in addition to the foregoing, upon the occurrence and during the continuance of any Seller Default, Buyer may exercise all of its rights as a secured party, under the Security Documents or under applicable Law or otherwise (and all remedial provisions in the Security Documents are hereby incorporated by reference); and

(iii) pursue any and all remedies available at law or in equity.

ARTICLE 30

TERMINATION

Section 30.1 Termination by Buyer

(a) Buyer's Termination Right for Failure to Obtain the CCN. Buyer may elect to terminate this Agreement at any time prior to and including _____, without any further liability to Seller other than with respect to unpaid Progress Payments accruing prior to the date of such termination, in the event that Buyer does not reasonably expect to obtain or has not obtained the CCN on or prior to such date. In the event that (i) Buyer has not obtained the CCN prior to and including _____, and (ii) Buyer has not elected to terminate this Agreement, the provisions of article 16 ("Suspension of Works, Delivery or Erection") shall apply.

(b) Default Termination Rights. Upon the occurrence or continuation of a Seller Default, Buyer may elect to terminate this Agreement as follows:

(i) with respect to a Seller Default described in subsection 29.1 (c), immediately terminate this Agreement and remove Seller from the Site with risk of loss of the Work transferring to Buyer as provided in Section 29.4(c) hereof; and

(ii) with respect to a Seller Default described in any subsection other than subsection (c) of Section 29.1 ("Seller's Default"), after having given notice to Seller of such Seller Default and Seller's having failed to cure such Seller Default within the cure period specified in such subsection, or, if no cure period is specified, then fourteen (14) days after such notice, terminate this Agreement.

(c) Voluntary Termination. Following the achievement by Seller of the Notice to Proceed Milestone, Buyer may elect to terminate this Agreement at any time without cause upon not less than thirty (30) days' notice to Seller.

Section 30.2 Termination by Seller

(a) Default Termination Rights. Upon the occurrence or continuance of a Buyer Default, Seller may elect to terminate this Agreement as provided in this Section 30.2.

(i) with respect to a Buyer's Default described in Section 29.2(c), immediately terminate this Agreement; and

(ii) with respect to a Buyer's Default described in any subsection other than Section 29.2(c), after having given notice to Buyer of such default and Buyer having failed to cure such Buyer's Default within the cure period specified in such subsection, or, if no cure period is specified, then fourteen (14) Business Days after such notice, terminate this Agreement.

(b) Suspension Termination Rights. Seller may elect to terminate this Agreement due to Suspension of the Work as provided in Section 16.1(b) ("Order to Suspend").

Section 30.3 Procedures Following Termination by Seller or due to Force Majeure

(a) Upon any termination of this Agreement pursuant to Section 28.4 (“Termination in Consequence of Force Majeure”), Section 30.1(a) (“Buyer’s Termination Right for Failure to Obtain the CCN”), Section 30.1(c) (“Voluntary Termination”) or Section 30.2(a) (“Default Termination Rights”), the following provisions shall apply: (i) Buyer shall pay to Seller the amount, if any, by which the applicable termination amount set forth in Appendix I corresponding to the effective date of the termination (partial month to be appropriately pro-rated) exceeds the cumulative payments made by Buyer prior to such date; (ii) at Buyer’s option, title (to the extent not already transferred) and risk of loss to some or all of the Site and the Materials shall transfer to Buyer; and (iii) Buyer shall be responsible for, as applicable, any transportation, storage and insurance of and for the Materials for which Buyer has elected to take title.

(b) In addition to the foregoing, upon any such termination of this Agreement pursuant to Section 28.4 (“Termination in Consequence of Force Majeure”), Section 30.1(a) (“Buyer’s Termination Right for Failure to Obtain the CCN”), Section 30.1(c) (“Voluntary Termination”) or Section 30.2(a) (“Default Termination Rights”) the following provisions shall apply: Buyer may, but shall not be obligated to, at no additional cost to Buyer (i) require that Seller take all steps necessary or requested by Buyer to assign its rights and obligations under the Transaction Documents and Governmental Approvals identified by Buyer to Buyer and to transfer to Buyer all other property, whether tangible or intangible, in which Seller has rights which is necessary or desirable for the development, construction ownership or operation of the Project and (ii) exercise all of Seller’s rights including the right to request performance under and to enforce any and all rights to, the Collateral, as provided in the Security Documents (and all remedial provisions in the Security Documents are hereby incorporated by reference); and (iv) enter onto the Site and to remove all Materials for which it has elected to take title.

Section 30.4 Exclusivity

THE RIGHTS AND REMEDIES OF SELLER SET FORTH HEREIN FOR DEFAULT AND TERMINATION ARE EXCLUSIVE AND NO OTHER REMEDIES OF ANY KIND WHATSOEVER SHALL APPLY IN THE EVENT OF SUCH DEFAULT AND TERMINATION.

ARTICLE 31

TAXES

Section 31.1 Buyer’s Obligation

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

Section 31.2 Seller's Obligation

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

ARTICLE 32

CLAIMS, CLAIM NOTICE AND DISPUTE RESOLUTION

Section 32.1 Claims

(a) Submission of Claims

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

(ii) As soon as practicable after Claim notification, Seller shall submit the Claim to Buyer with all supporting information and documentation. Seller shall also respond promptly to all Buyer inquiries about the Claim and its basis.

(iii) Any Claim which is not disposed of by mutual agreement between the Parties shall be decided by Buyer, which shall provide a written decision to Seller. Such decision shall be final unless Seller, within thirty (30) days after such receipt of Buyer's decision, provides to Buyer a written protest, stating clearly and in detail the basis thereof, and such protest shall be resolved in accordance with Section 32.2 ("Dispute Resolution"). It is agreed that Seller's failure to protest Buyer's decision shall constitute a waiver by Seller of its Claim.

(iv) Seller shall continue its performance of this Agreement notwithstanding the submission of any Claim.

(b) Notification Prior to Incurring Costs. In any circumstances which might give rise to a claim pursuant to this Article, Seller shall, before incurring any cost or expense, first give Buyer every opportunity to determine whether the cost or expense should be incurred or whether any act or forbearance shall or might mitigate the cost of any such claim.

(c) Buyer's Liability to Pay Claims. Buyer shall not be liable to make payment in respect of any claim for an additional payment unless Seller has complied with each and all of the requirements of this article 32, whether as to the time within which claims must be made and/or information

provided or otherwise, it being acknowledged and agreed that the absence of complete compliance herewith will involve significant prejudice to Buyer.

Section 32.2 Dispute Resolution

All disputes in connection with this Agreement between Buyer and Seller or between Buyer and any Transaction Party shall be settled, if possible, by negotiation of Buyer Representative and Seller Representative. If the matter is not resolved by such negotiations, either party may, by giving written notice to the other party, cause the matter to be referred to a meeting of a Buyer Senior Procurement Representative and Seller's Management Representative. Such meeting shall be held within fifteen (15) days following the giving of the written notice. If the matter is not resolved by such negotiations, either party may, by giving written notice to the other party, cause the matter to be referred to a meeting of appropriate higher management representatives of the parties. Such meeting shall be held within thirty (30) days following the giving of the written notice. If the matter is not resolved within thirty (30) days after the date of the notice referring the matter to the appropriate high management or such later date as may be mutually agreed upon, the parties may then, subject to the terms of this Agreement, commence legal action in court of competent jurisdiction in order to resolve the dispute.

ARTICLE 33

ASSIGNMENT

Section 33.1 Assignment of Seller's Interests

Seller shall not assign any of its rights and obligations hereunder, except with Buyer's prior written consent.

ARTICLE 34

CONFIDENTIALITY

Section 34.1 Confidentiality

(a) It is understood that certain information may be exchanged among Buyer and Seller that the disclosing Party considers proprietary and confidential. Each Party agrees that it shall (and shall cause its Affiliates and its and their officers, directors, consultants, employees, legal counsel, agents and representatives (together with the Affiliates, the "Confidentiality Affiliates") to): (i) hold confidential and not disclose other than to its Confidentiality Affiliates having a reasonable need to know in connection with the permitted purposes hereunder, without the prior consent of the other Party, all confidential or proprietary written information which is marked confidential or proprietary or oral information or data which is reduced to writing within five (5) days of such disclosure and marked as confidential or proprietary (including sources of equity and/or other financing, development strategy, competitor information, cost and pricing data, warranties, technical information, research, developmental, engineering, manufacturing, marketing, sales, financial, operating, performance, business and process information or data, know how and computer programming and other software techniques) provided or developed by the other Party or its Confidentiality Affiliates in connection herewith or the Work ("Confidential Information"); and (ii) use such Confidential Information only for

the purposes of performing its obligations hereunder or where reasonably necessary to enjoy the benefits of this Agreement. In no event shall any Confidential Information be disclosed to any competitor of Seller or Buyer.

(b) The obligations contained in the preceding paragraph shall not apply, or shall cease to apply, to Confidential Information if or when, and to the extent that, such Confidential Information (i) was known to the receiving Party or its Confidentiality Affiliates prior to receipt from the disclosing Party or its Confidentiality Affiliates; (ii) was, or becomes through no breach of the receiving Party's obligations hereunder, known to the public; (iii) becomes known to the receiving Party or its Confidentiality Affiliates from other sources under circumstances not involving any breach of any confidentiality obligation between such source and the disclosing Party's or discloser's Confidentiality Affiliates or a third party; (iv) is independently developed by the receiving Party or its Confidentiality Affiliates; or (v) is required to be disclosed by law, governmental regulation or applicable legal process. Seller acknowledges that Buyer is subject to regulation as a public utility, and as such may be required to disclose all or substantially all information provided by Seller pursuant to this Agreement by order of state and federal regulators, and that such disclosure shall in no event be deemed a violation of this Section 34.1. As to Confidential Information that is not a trade secret under Applicable Law, the foregoing obligations shall expire three (3) years after the Closing Date.

(c) When required by the appropriate Governmental Authority, a Party may disclose the Confidential Information of the other Party to such Governmental Authority provided, however, that prior to making any such disclosure, such Party shall: (i) provide the owning Party with timely advance notice of the Confidential Information requested by such Governmental Authority and the intent of such Party to so disclose; (ii) minimize the amount of Confidential Information to be provided consonant with the interest of the owning Party, Seller, the Contractor, and each and every Subcontractor and the requirements of the Governmental Authority involved; and (iii) make every reasonable effort (which shall include participation by the owning Party, Seller, Contractor or any Subcontractor, as applicable in discussions with the Governmental Authority involved) to secure confidential treatment and minimization of the Confidential Information to be provided. In the event that efforts to secure confidential treatment are unsuccessful, the owning Party shall have the prior right to revise such information to minimize the disclosure of such Confidential Information in a manner consonant with its interest and the requirements of the Governmental Authority involved.

(d) Buyer's disclosure of Seller Drawings and Manuals to third parties in accordance with its obligations hereunder shall not be a breach of this article 34.

ARTICLE 35

MISCELLANEOUS PROVISIONS

Section 35.1 Notices, Consents and Approvals

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

(a) if to Seller, to:

with copies to:

or to such other person or address as Seller shall furnish to Buyer;

(b) if to Buyer, to:

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: _____

Tel: _____

Fax: _____

with copies, in connection with default notices, to:

or to such other person(s) or address(es) as Buyer furnishes to Seller from time to time.

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

Section 35.2 Entire Agreement

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

Section 35.3 Amendment; Waiver

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

Section 35.4 Successors and Assigns

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

Section 35.5 Third Party Beneficiaries

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

Section 35.6 Severability

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

Section 35.7 Further Assurances

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

Section 35.8 Publicity

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

Section 35.9 Independent Contractor

Seller is an independent contractor with respect to the Work, and each part thereof, and in respect of all work to be performed hereunder. Neither Seller, the Contractor, nor any Subcontractor, the employees of any of such entities, employed in connection with the Work shall be deemed to be agents, representatives, joint ventures, employees or servants of Buyer by reason of their performance

hereunder or in any manner dealt with herein. Neither Party shall perform any act or make any representation to any Person to the effect that Seller, or any of its agents, representatives, the Contractor or Subcontractors, is the agent of Buyer.

Section 35.10 Survival

The provisions of Articles 4 (“Representations and Warranties of Seller”), 12 (“Seller’s Equipment”), 23 (“Warranties”), 24 (“Liquidated Damages”), 25 (“Limitations of Liability”), 26 (“Indemnification”), 27 (“Insurance”), 32 (“Claims, Claim Notice and Dispute Resolution”), and 34 (“Confidentiality”), and Sections 6.2 (“Security”), 7.10 (“Contractor Drawings and Manuals”), 7.13 (“Intellectual Property Rights and Computer Program Licenses”), Section 7.22 (“Maintenance of Buyer’s Lien”), Section 7.25 (“Other Liens”), 7.29 (“Environmental Matters”), 7.30 (“Records and Accounts”), 7.33 (“Construction Coordination Agreement”), 9.1 (“Site Regulations”), 9.2 (“Site Security”), 9.9 (“Cleanup”), 15.6 (“Buyer’s Use of Drawings”), 15.7 (“Manufacturing Drawings”), 22.4 (“Liability”), 29.3 (“Removal of Seller’s Equipment”), and 35.11 (“Governing Law; Waiver of Jury Trial”) of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely, provided that the foregoing enumeration shall not be interpreted to bar survival of any other provision hereof which would otherwise be deemed to survive by operation of law.

Section 35.11 Governing Law; Waiver of Jury Trial

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

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

Section 35.12 Counterparts

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

Section 35.13 Captions

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

Section 35.14 Consent Agreements

Seller agrees to cooperate with Buyer's efforts to obtain on a timely basis such direct agreements, consents, opinions and related documents from Project Parties or any of Seller's counterparties to any Additional Project Document as may be reasonably requested by Buyer, its financing parties, or any entity that is Controlled by or is under common Control with Buyer.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

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

PACIFICORP,
as Buyer

By: _____

Print Name: _____

Title: _____

Attest:

By: _____

Print Name: _____

Title: _____

_____, **LLC,**
as Seller

By: _____

Print Name: _____

Title:

Attest:

By: _____

Print Name: _____

Title:

Appendix A

Site References
Legal Description

To be completed upon site selection

Appendix B
Scope of Supply
And
Technical Specifications

Appendix C
Project Schedule

Seller to Supply

APPENDIX D

Seller Submittals

APPENDIX D

Seller Submittals

Seller shall submit to Buyer drawings, plans, specifications, and other documents necessary to document the design engineering and construction of the Plant and the content of the Work, including but not limited to those items herein listed below. Additionally, Seller shall submit to the Buyer those drawings, plans, specifications, and other documents as required by the State of Utah or any other regulatory body or agency having authority over the Plant.

Ninety (90) days after the Notice To Proceed, the Seller shall provide to Buyer a schedule for submittal of such documents, which schedule shall (1) be consistent with the schedule for the Project and (2) provide Buyer with the greatest practicable opportunity to review such documents and make comments thereon within fourteen (14) days from the transmittal date or as mutually agreed upon provided that the comment period does not unduly affect the progress of the Work. Submittals shall be in duplicate.

Engineering Lists

- Equipment List
- Electrical Load List
- Master Drawing List
- Pipeline List
- Instrument List
- Recommended Spare Parts List

Engineering Specifications and Drawings

- Piping & Instrumentation Diagrams
- Plot/Site Plan
- Site Drainage Plans and Drawings
- Underground Utilities Drawings
- Fencing and Grounding Drawings
- Plant Communication System Drawings
- Security System Drawings
- Single Line Diagrams
- Three Line Diagrams
- Metering and Protection
- Switchyard Single Line, Three Line and Metering and Protection Design
- Fire Protection Scope/Overview
- Site Grading Plans

- Equipment Specifications for HRSGs, Condenser, Generator Step-Up and Auxiliary Transformers, Medium Voltage, 16 kV, HV Switchgear, Cooling Tower, Boiler Feed Pumps, Condensate Pumps, Water Treatment Equipment, Continuous Emissions Monitoring System and Circulating Water Pumps
- Plant Lighting Plans and Drawings

Construction

- Site Utilization Plan, including laydown,

Commissioning and Startup

- System Descriptions
- Commissioning Turn over Packages (M)
- Performance and Emissions Test Procedures
- Performance Test Results (M)
- Reports Required for Regulatory Compliance
- Review and comment on Buyer/Buyer's detailed operation and maintenance procedures.

Plans, Manuals, & Reports

- Design/Fabrication Quality Assurance Manual
- Witness Point Schedule (Appendix T of the APSA)
- Construction Quality Assurance Manual
- Major Equipment Inspection Plan
- Safety Manual
- Training Manuals
- Product Manuals
- Drug Testing Program
- Level 2 Schedule
- Commissioning Schedule
- Monthly Progress Reports

All specifications and drawings for the Project and submitted by Seller or Subcontractor to Seller hereunder shall include the following data:

Name:	PacifiCorp
Project Name:	Buyer's Power Plant
Spec. or drawing number, if applicable:	Seller or Subcontractor to Provide
Seller or Subcontractor's name:	Seller or Subcontractor
Revision Number and Date	Seller or Subcontractor to Provide

Buyer shall have the right to reasonably request other information and Seller shall use reasonable efforts to supply this information.

Documents submitted to Buyer are provided for information only. However, if Buyer identifies discrepancies or areas of non-conformance with the Agreement requirements, Buyer has the right to notify Seller of the discrepancy/non-conformance and require that the document be revised and resubmitted.

Except for those documents indicated with the notation "(M)" which shall be provided in hard copy format, Seller shall provide to Buyer electronic copies of the final revision (i.e. the last revision issued in the course of implementing the Work) of all engineering record drawings and specifications prepared by Seller or Subcontractors for this Project. Final Revision of balance of plant drawings will be provided in "executable" electronic format to the extent obtainable from the subcontractor. Seller will take commercially reasonable steps to obtain these "executable" electronic files at no cost to the Buyer, otherwise a proposal will be provided to Buyer within 90 days of Final Acceptance indicating the cost to provide. For the purposes of this Section, "record drawings and specifications" shall mean Engineering Lists, Engineering Specifications and Drawings, and Commissioning and Startup documents described in this appendix. In addition Seller shall reflect "as built" conditions to the below listed documents and provide to Buyer prior to Final Acceptance.

- Foundation Location Plans
- Building architectural drawings
- Underground utility drawings (includes underground piping)
- General arrangements and elevations
- Plot plans, site drainage, Municipal tie in points
- P&IDs
- Electrical single line drawings
- Electrical/I & C termination diagrams
- Function/control logic diagrams

Monthly Progress Report

A monthly meeting shall be held with the Buyer to review the Sellers Progress Report. The Monthly Progress Report shall address all aspects of the Plant through the Substantial Completion and shall include, but not be limited to the following:

- (a) An "Executive Summary" containing:
- A written summary of events and progress accomplished during the previous reporting period.

- Unresolved Changes.
 - Critical Concerns and Intended Actions.
- (b) An "Engineering Section" containing:
- A summary of activities, tasks and work completed during the reporting period.
 - A summary of Work activities planned for completion during the next reporting period.
 - A summary of Work activities in-progress, not completed in the current reporting period or planned to be completed in the next reporting period, with specific accomplishments, associated with these activities.
 - The progress report, from month to month, shall have continuity.
 - A summary of critical concerns and intended actions to resolve them.
- (c) An "Equipment and Material Procurement" section containing:
- Summary of major Procurement Activities in Progress.
 - Expediting Status.
 - Upcoming Equipment Witness Points
- (d) A "Construction Section" containing:
- A summary of activities, tasks and Work completed during the reporting period.
 - A summary of Work activities planned for completion during the next reporting period
 - A summary of Work activities in-progress, not completed in the current reporting period, as well as specific accomplishments associated with these activities.
 - Continuing activities shown shall be consistently reported through completion.
 - The progress report, from month to month, shall have continuity.
 - A summary of critical concerns and intended actions to resolve them, including planned action dates.
 - "S" curves indicating progress of key construction activities
- (e) A "Schedule Section":
- Will be updated on a monthly basis and will consider the aforementioned item b, c and d. An updated Level 2-time schedule will be provided (paper/electronic). Critical path analysis will also be provided.
- (f) A "Payment status Section"
- (g) A list and status of open items between Buyer and Seller including correspondence
- (h) Status of Seller Required Submittals
- (i) A listing of all Change Orders with pending/approved status
- (j) Monthly Safety Statistics for Sellers and Subcontractor activities

- (k) A list of the status of Seller permits
- (l) Sales Tax Expenditures Summary

Appendix E

Governmental Approvals

[Sample – to be replaced with site-specific approvals]

**SCHEDULE OF PERMITS AND GOVERNMENTAL APPROVALS:
APPROVALS, CERTIFICATES, PERMITS AND LICENSES - SAMPLE**

POWER PLANT

AGENCY	PERMIT/CITATION/APPROVAL	REASON REQUIRED	PERMIT IN NAME OF	PREPARE	OBTAIN	FEE PAYMENT
Federal						
US Army Corps of Engineers (USACE)	Nationwide Permits as required	Filling of wetlands, discharge to Utah Lake	Seller	S	S	S
US Army Corps of Engineers (USACE)	Streambed Alteration Permit	Altering of stream beds associated with waters of the US. Joint permit with State for installation of a discharge pipe in Lindon Hollow Creek	Seller	S	S	S
Federal Energy Regulatory Commission (FERC)	Public Utilities Regulatory Policies Act/IPP Review	To obtain benefits as a qualifying cogeneration facility as an independent power plant.	NA	NA	NA	NA
Federal Aviation Administration (FAA)	Notice of Proposed Construction or Alteration	Stack height which may affect navigable air space. (If Required)	Seller	S	S	S
National Park Service	Class I/II NAAQS Visibility Analysis	Demonstrate no impact to the air quality	Seller	S	S	S
US Fish and Wildlife Services (USFWS)	Threatened & Endangered Species Act Compliance Acknowledgment	Demonstrate no impact.	Seller	S	S	S
US Environmental Protection Agency- USEPA (Operations)	SPCC Plan	Spill Prevention Control and Countermeasure Plan	Buyer	B	B	B
EIA	Power Plant Registration ORIS Code	Registration of facility (Seller provides input, Buyer prepares)	Buyer	S/B	S	S
DOT (Construction)	Equipment and Materials Handling, Including Materials Disposal	Highway transportation for materials and equipment.	Contractor	C	C	C
DOT (Operation)	Equipment and Materials Handling, Including Materials Disposal	Highway transportation for materials and equipment.	Buyer	B	B	B

B = Buyer

S = Seller

C = Contractor

X/Y = X primary responsibility and Y to provide reasonable efforts to support X.

* Seller prepares all of its supporting documentations for the Work on behalf of Buyer.

**SCHEDULE OF PERMITS AND GOVERNMENTAL APPROVALS:
APPROVALS, CERTIFICATES, PERMITS AND LICENSES - SAMPLE**

POWER PLANT

AGENCY	PERMIT/CITATION/APPROVAL	REASON REQUIRED	PERMIT IN NAME OF	PREPARE	OBTAIN	FEE PAYMENT
State						
Utah Public Utilities Commission	Certificate of Convenience and Necessity	Establish the need for the resources	Buyer	B	B	B
DWQ	Flood Hazard Area/Stream Encroachment Permit	Development within a flood hazard area as designated by state.	Seller	S	S	S
DWQ	Permit to pump ground water	Concurrence by State regarding the transfer of water rights from Geneva and the assignment of these rights to deep well pumping using existing or new wells.	Seller	S	S	S
DWQ	State Pollutant Discharge Elimination System Permit (UPDES)	Wastewater discharge approval to a water body and for facility and stormwater discharges associated with industrial activity.	Seller	S	S	S
DWQ	Streambed Alteration Permit	Permit for installing a discharge pipe in the streambed – joint permit with ACOE. Administered by State	Seller	S	S	S
DWQ	Well Drilling Permit	Required for any well or boring including monitoring wells.	Seller	S	S	S
DAQ	Utah DAQ PSD Non-Applicability Review Permit	Approval to emit air pollutants under state and PSD permit.	Seller	S	S	S
DAQ	Utah DAQ Title V Permit	Operating Permit	Buyer	B	B	B
DAQ	DAQ AIRS Emission ID	Seller to provide input, Buyer to prepare	Buyer	S/B	B	B
DAQ, DEQ	Utah Hazardous Waste Disposal	Obtain an ID number for Site	Seller	S	S	S
DAQ	Utah DAQ/Emergency Episode Plan	Release of Hazardous Chemicals – includes RMP/PSM. Seller to provide input to preparation of risk management/Process Safety Management plans	Buyer	B	B	B
SERC	Hazardous Matter Inventory	Seller to provide input, Buyer to prepare	Buyer	S/B	B	B
DWQ	Utah DWQ Construction SWPP	Storm Water Plan to support construction	Seller	C/S	C	S
DWQ	Utah DWQ Operational SWPP	Storm Water Plan to support operations	Buyer	B/C	B	B

B = Buyer

S = Seller

C = Contractor

X/Y = X primary responsibility and Y to provide reasonable efforts to support X.

* Seller prepares all of its supporting documentations for the Work on behalf of Buyer.

**SCHEDULE OF PERMITS AND GOVERNMENTAL APPROVALS:
APPROVALS, CERTIFICATES, PERMITS AND LICENSES - SAMPLE**

POWER PLANT

AGENCY	PERMIT/CITATION/APPROVAL	REASON REQUIRED	PERMIT IN NAME OF	PREPARE	OBTAIN	FEE PAYMENT
State (Cont.)						
DWQ	Utah DWQ Groundwater Monitoring Plan	During Construction (Contractor prepare, Seller & Buyer provide input)	Seller	S/B/C	S	S
DWQ	Utah DWQ Groundwater Monitoring Plan	During Operation (Buyer Prepare/Seller provide input)	Buyer	S/B	B	B
DEQ (Construction)	Solid, Hazardous and Industrial Waste Stream	Establish the methods and means for storage, transportation, and disposal of solid, hazardous and industrial waste streams. SC = Subcontractor	Contractor/ Subcontractor	C & SC	C & SC	C & SC
DOT/OTHER (Construction)	Equipment and Materials Handling, Including Materials Disposal	Highway/road transportation, rail and river.	Contractor	C	C	C
DEP, DER	Variance for Noise During Construction	Construction noise not in compliance with code.	Seller	S	S	S
DEP, DER	Excavation Materials Disposal	Governmental Approval to dispose of excavated materials if in accordance with Contractor's Phase II Environmental Study – Appendix N.	Seller	C	S	C
DEP, DER (Construction)	Excavation Materials Disposal	Governmental Approval to dispose of excavated materials if (i) Not in accordance with Contractor's Phase II Environmental Study – Appendix N (ii) Affected by Geneva Steel Permit.	Seller	S/C	S	B
DEP, DER, WMD	Permit to Divert Surface or Subsurface Water		Seller	S	S	S
UDNR	Endangered Species Studies	Document Findings as part of Phase I Environmental	Seller	S	S	S
Historical Society (USHPO)	Confirmation of no Artifacts or Sites of Archaeological, Cultural or Historic Significance	Confirmation of no interference for construction.	Seller	S	S	S

B = Buyer

S = Seller

C = Contractor

X/Y = X primary responsibility and Y to provide reasonable efforts to support X.

* Seller prepares all of its supporting documentations for the Work on behalf of Buyer.

**SCHEDULE OF PERMITS AND GOVERNMENTAL APPROVALS:
APPROVALS, CERTIFICATES, PERMITS AND LICENSES - SAMPLE**

POWER PLANT

AGENCY	PERMIT/CITATION/APPROVAL	REASON REQUIRED	PERMIT IN NAME OF	PREPARE	OBTAIN	FEE PAYMENT
State (Cont.)						
Utah Labor Commission, Division of Safety	Certificate of Inspection	Need State signoff on completed HRSG & Auxiliary Boiler	Seller	C	C	C
Utah Labor Commission, Division of Safety	Permit to Operate Boilers	Need State signoff on completed HRSG & Auxiliary Boiler	Buyer	B/C	B	B
Utah Division of Occupational and Professional Licensing	Contractor License	Required to construct Lake Side Power Plant	Contractor	C	C	C
EPA/Utah Dept. of Public Safety/DEQ/Division of Environmental Response and Remediation/SERC/LERC	During Construction - Emergency Planning and Community Right to Know (MSDS, Emergency chemicals Inventory Form/Facility Emergency Response Plan)	Required for On-Site storage of chemicals, fuels, lubricants, etc. used during construction	Contractor	C	C	C
EPA/Utah Dept. of Public Safety/DEQ/Division of Environmental Response and Remediation/SERC/LERC	During Operation - Emergency Planning and Community Right to Know (MSDS, Emergency chemicals Inventory Form/Facility Emergency Response Plan)	Required for On-Site storage of chemicals, fuels, lubricants, etc. used during Operation	Buyer	B	B	B

B = Buyer

S = Seller

C = Contractor

X/Y = X primary responsibility and Y to provide reasonable efforts to support X.

* Seller prepares all of its supporting documentations for the Work on behalf of Buyer.

**SCHEDULE OF PERMITS AND GOVERNMENTAL APPROVALS:
APPROVALS, CERTIFICATES, PERMITS AND LICENSES - SAMPLE**

POWER PLANT

AGENCY	PERMIT/CITATION/APPROVAL	REASON REQUIRED	PERMIT IN NAME OF	PREPARE	OBTAIN	FEE PAYMENT
Local/County						
Local/County	Planning Board Plan of Development Approval	Review of Site Plan, Architectural Plans, Landscaping, access, Fire Protection, etc.	Seller	S	S	S
Town of Lindon	Sewer Extension Permit	Build, modify or extend sewer line.	Buyer	S	S	S
Town of Lindon	Potable Water Extension Permit	Build, modify or extend potable water line (if Required).	Buyer	S	S	S
Local/County	Soil Erosion & Sedimentation Control Plan Review	Plan required for projects that surface area of land.	Seller	S	S	S
Local/County	Provo County/Vineyard Conditional Use Permit	(If Required) Town of Vineyard indicates no further work – Industrial Zones	Seller	S	S	S
Local/County (Operation)	Preliminary and Final SPCC Plan	Plan for stored chemicals, ammonia oil, etc.	Buyer	B	B	B
Town of Vineyard	Variance for Noise During Construction	Construction noise not in compliance with Local Ordinances (if required).	Seller	S	S	S
Town of Vineyard	During Construction - Emergency Planning and Community Right to Know (MSDS, Emergency chemicals Inventory Form/Facility Emergency Response Plan)	Required for On-Site storage of chemicals, fuels, lubricants, etc. used during construction	Contractor	C	C	C
Town of Vineyard	During Operation - Emergency Planning and Community Right to Know (MSDS, Emergency chemicals Inventory Form/Facility Emergency Response Plan)	Required for On-Site storage of chemicals, fuels, lubricants, etc. used during Operation	Buyer	B	B	B
Local/County	Railroad Crossing Approvals	Access roads, underground/overhead piping, spurs, transmission lines.	Seller	C	C	C
Utility Company	Construction Water	Water supply during construction	Contractor	S	S	S

B = Buyer

S = Seller

C = Contractor

X/Y = X primary responsibility and Y to provide reasonable efforts to support X.

* Seller prepares all of its supporting documentations for the Work on behalf of Buyer.

**SCHEDULE OF PERMITS AND GOVERNMENTAL APPROVALS:
APPROVALS, CERTIFICATES, PERMITS AND LICENSES - SAMPLE**

POWER PLANT

AGENCY	PERMIT/CITATION/APPROVAL	REASON REQUIRED	PERMIT IN NAME OF	PREPARE	OBTAIN	FEE PAYMENT
Local/County (cont.)						
Utility Company	Construction Electricity	Power supply during construction. Onsite =C Offsite =S	Contractor	S	S	S
Utility Company	Construction Telephone	Telephone service during construction.	Contractor	C	C	C
Building Department	Construction/Building Permit	Authorization to construct.	Seller	C	C	S
Fire Dept & Police Dept (Construction)	Construction Security and Safety Procedures and Equipment	Approval of site procedures. (If Required)	Contractor	C	C	C
Police Dept & Traffic Department	Construction Equipment and Materials Handling, Including Materials Disposal	Street transportation and delivery for Contractor supplied equipment. – Heavy Hauls	Contractor	C	C	C
Police Dept & Traffic Department	Construction Personnel Parking and Transportation	Traffic management.	Contractor	C	C	C
Fire Dept and Emergency Management Dept	Approval for On-site Storage of Chemicals, Fuels, Lubricants, etc. used during construction	Approval to allow storage and usage.	Contractor	C	C	C
Building Department	Certificate of Occupancy	Occupancy of structures.	Seller	C/S	C/S	S
Building Department	Soil Erosion & Sedimentation Control Plan (for construction only activities)	Soil Erosion and Sedimentation Control Plan during construction.	Contractor	C	C	S
County Traffic Dept & Local Police Dept & Fire Dept	Construction Access Roads and Permanent Access Roads and/or Driveways	Site access.	Seller	S	S	S
Police Dept & Fire Dept	Permits for Signs and Fencing – Construction	Authorization to erect.	Seller	C	C	C

B = Buyer

S = Seller

C = Contractor

X/Y = X primary responsibility and Y to provide reasonable efforts to support X.

* Seller prepares all of its supporting documentations for the Work on behalf of Buyer.

**SCHEDULE OF PERMITS AND GOVERNMENTAL APPROVALS:
APPROVALS, CERTIFICATES, PERMITS AND LICENSES - SAMPLE**

POWER PLANT

AGENCY	PERMIT/CITATION/APPROVAL	REASON REQUIRED	PERMIT IN NAME OF	PREPARE	OBTAIN	FEE PAYMENT
Miscellaneous						
As Required **	Natural Gas Pipeline Permits	Includes ROWs, Easements, local, state and federal permits associated with construction and operation of a gas pipeline from either Questar or Kern Pipelines.	Seller	S	S	S
Kern/Questar/BPA **	Interconnection Agreement for gas Transportation Services	Interconnection with Kern or Questar or contract for services with BPA	Seller	S	S	S
PacifiCorp Transmission	Interconnection Study & Facilities Agreement	Interconnection of the Project to the transmission system. Seller pays for study fees.	Seller	S	S	S
PacifiCorp Transmission	Network Service Agreement	Buyer enters into Network Agreement with PacifiCorp Transmission to interconnect the generation into the PacifiCorp System	Buyer	B	B	B
As Required	Plant Policies and Procedures	Various policies and procedures which govern the operation and maintenance of the Plant. Some of these documents may be auditable by local or state agencies	Buyer	B	B	B

**** Seller to provide permits and scope indicated above in the event Buyer and Seller enter into a Change Order in accordance with Section 7.2 (a) of the Agreement**

B = Buyer
 S = Seller
 C = Contractor
 X/Y = X primary responsibility and Y to provide reasonable efforts to support X.
 * Seller prepares all of its supporting documentations for the Work on behalf of Buyer.

Appendix F:
Glossary of Terms
(Asset Purchase and Sale Agreement)

“Additional Project Documents” means any contract, agreement, letter of intent, understanding, or instrument related to the ownership, construction, testing, maintenance, repair, operation, financing or use of the Project entered into by the Seller and any other Person subsequent to the Effective Date and prior to the Closing Date; provided, however, that such contract or agreement shall not constitute an Additional Project Document if it (i) is entered into by the Seller in the ordinary course of business in connection with the procurement of goods or the performance of services related to the Work and (ii) can be readily replaced by other contracts or agreements having substantially similar terms and conditions.

“Affiliate” means with respect to any Person, any other Person who, directly or indirectly, Controls such first Person or is Controlled by said Person or is under common Control with said Person.

“Agreement” shall have the meaning set forth in the preamble hereof.

“Approval Order” shall mean the approval order, if any, to be issued by UDAQ to Seller in connection with the Project. “

“Applicable Law” means all applicable laws (including applicable Environmental Laws), statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of any Governmental Authority having the force and effect of law, and as to any Person, the certificate of incorporation and bylaws or other organizational or governing documents of such Person.

“Approved/Preferred Suppliers” shall mean suppliers identified in Appendix Q attached hereto.

“ASME” means American Society of Mechanical Engineers.

“Assignment and Security Agreement” means the Assignment and Security Agreement, to be entered into by and between the Buyer and the Seller.

“Authorized Officer” means for the Seller, any [SPECIFY TITLES]. No Person shall be deemed to be an Authorized Officer unless named on a certificate of incumbency of such Person delivered to the Buyer as set forth in this Agreement.

“Bankruptcy Code” means the United States Bankruptcy Code, as in effect from time to time.

“Base Reference Conditions” means those conditions set forth in Appendix H.

“Business Day” means any day other than a Saturday, Sunday or other day on which banks are authorized or required to be closed in Salt Lake City, Utah.

“Buyer” shall have the meaning set forth in the preamble hereof, and includes any of the Buyer’s successors and permitted assigns.

“Buyer Governmental Approvals” shall have the meaning set forth in Section 4.5 (“Governmental Approvals and Consents”).

“Buyer-Initiated Change” shall have the meaning set forth in Section 13.1 (“Changes”).

“Buyer Senior Procurement Representative” shall mean the designated representative from Buyer’s Procurement and Materials Planning Department responsible for the Project.

“Buyer’s Default” shall have the meaning set forth in Section 29.2 (“Buyer’s Default”).

“Buyer’s Drawings” or means all the drawings and information provided by the Buyer to the Seller under this Agreement or in connection with any Request for Proposals issued by Buyer in anticipation of this Agreement, other than any drawings and information provided by or through PacifiCorp Transmission.

“Buyer’s Representative” means the natural person designated as such by the Buyer pursuant to Section 8.5 (“Buyer’s Representative”).

“CCN” means a Certificate of Convenience and Necessity issued by the PSCU relating to the Project that is acceptable to the Buyer in its sole discretion.

“Change” means any alteration of the Work whether by way of addition, deletion, modification, substitution or omission as instructed by the Buyer but shall not include any instruction to the extent that such instruction is issued as a result of any breach by the Seller of this Agreement or otherwise to require the Seller to fulfill its obligations under this Agreement. Changes shall include but not be limited to changes to Scope of Work, Project Schedule, Payment Schedule, total price, changes total cost of ownership, performance, efficiency, reliability and any Specification or Work as defined in this Agreement. Re-performance of any Work required to rectify or recover Work that is necessary due to the Seller’s (or its Contractor’s or any Subcontractor’s) negligence or breach of this Agreement shall not constitute a Change.

“Change Order” means any order identified as a “Change Order” and issued to the Seller by the Buyer pursuant to Article 13 and Appendix J, substantially in the form set forth in Exhibit D.

“Claim” means any indemnity, demand, demand letter, claim, cause of action, notice of noncompliance or violation, or other proceeding relating to the Project.

“Clean Water Act” shall mean the Federal Water Pollution Control Act, 33 U.S.C. §§1531 et seq., as amended, and the Utah Water Quality Act, Utah Code 19-5-101 et seq.

“Closing” shall mean the Closing identified in Section 2.3 (“Closing”).

“Closing Date” shall mean the Closing Date identified in Section 2.3 (“Closing”).

“Collateral” means all property and interests in property (including the Site and intangible property) now owned or hereafter acquired by the Seller prior to the Closing

Date, including any property or interest in or upon which a Lien has been or is purported or intended to have been granted to the Buyer under any of the Security Documents.

“Computer Program” means a sequence of instructions, data, or equations in any form, and explanations thereof, intended to cause a computer, a control data processor or the like to perform any kind of operations. Computer Programs may at times be referred to herein generally as software or firmware.

“Computer Program License” means the license to use certain Computer Programs as contemplated by Section 7.13 (“Intellectual Property Rights and Computer Program Licenses”).

“Condemnation Proceeding” shall have the meaning set forth in Section 7.31 (“Condemnation, Eminent Domain, Casualty Events”).

“Confidential Information” shall have the meaning set forth in Section 34.1 (“Confidentiality”).

“Confidentiality Affiliates” shall have the meaning set forth in Section 34.1(a) (“Confidentiality”).

“Consents” means all authorizations and approvals required to be obtained by Seller or Buyer, as the case may be, under the Transaction Documents, each of which shall be delivered to Buyer or Seller, as the case may be, prior to or at the Closing or as required under this Agreement.

“Construction Coordination Agreement” means the document to be entered into between the Seller and the Buyer, substantially in the form attached hereto as Appendix S.

“Construction/Site Manager” shall mean a representative of Seller designated as such pursuant to Section 7.14 (“Seller’s Representatives”).

“Contingent Obligation” means, with respect to any Person, (i) any indemnity or similar obligation of such Person under any agreement or instrument and (ii) any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the owner of such primary obligation against loss in respect thereof.

“Contractor Drawings and Manuals” means all drawings and information developed by the Contractors and provided to the Seller in connection with the Contractor’s and any Subcontractor’s obligations under the Primary Construction Contracts as set forth in Appendix D.

“Contractor Guaranties” means the collective guarantees provided by any Equipment supplier, Subcontractor, or Contractor in connection with the Work and the Plant.

“Contractor” means the primary contractor engaged by Seller to perform the Work or construct the Plant pursuant to the EPC Contract.

“Contractors’ Insurance” shall have the meaning assigned in Section 28.1 (“Effect of Force Majeure”).

“Control” means the possession or ownership, directly or indirectly, of the following: (a) in the case of a corporation, 50% or more of the outstanding voting securities thereof; (b) in the case of a limited liability company, partnership, limited partnership or venture, manager, managing member or general partner status and the right to 50% or more of the distributions therefrom (including liquidating distributions); (c) in the case of a trust or estate, trustee, successor trustee or alternate trustee, or 50% or more of the beneficial interest therein; (d) in the case of any entity, 50% or more of the economic or beneficial interest therein; or (e) in the case of any entity, the power or authority, through the ownership of voting securities, by agreement or otherwise, to direct the management, activities or policies of the entity.

“Costs” means, insofar as each of the following is directly related to the Project, (i) the wages, salaries and related payroll burdens, direct and applied material costs, related handling and transportation charges, travel, outside services and other direct expenses, plus the applicable mark-up for allocated overheads and (ii) general and administrative expenses as set forth in Appendix J and not already included in the immediately preceding clause (i). All such Costs shall be recorded and applied consistent with GAAP.

“Critical Milestone” shall have the meaning set forth in Section 24.2(a) (“Critical Milestone Guarantee Liquidated Damages”).

“Cure Period” means a period of 12 months following the Substantial Completion Date.

“Default Security” shall have the meaning set forth in Section 6.2 (“Security”).

“Defect” means any defect in design, materials, Plant, manufacture or workmanship which adversely affects the operation, use or performance of the Work or any part thereof, or causes any increase in costs of maintenance or operation or any decrease in life expectancy or efficiency.

“Deferred Governmental Approvals” means, as of any date, all Governmental Approvals, other than the Buyer Governmental Approvals, (i) the procurement of which is not a Milestone that is scheduled to have occurred on or before such date and (ii) as to which there is a reasonable expectation on the part of a Seller that such Governmental Approvals will be obtained in the ordinary course of business and the failure to procure such Governmental Approvals on or before such date would not result in a Material Adverse Change.

“Deposit Account Control Agreement” means the Deposit Account Control Agreement to be entered into by and among the Buyer, the Seller and a banking or other financial institution acceptable to the Buyer.

“Dispatchable” means that the Project (i) is in a condition of readiness to generate power as demonstrated by, the most recent Preliminary Performance Test Report not disputed by the Buyer, (ii) has attained (x) at least 90% of the 1x1 Net Capacity but is otherwise meeting the Guaranteed Emissions and (y) 110% of the heat rate set forth in Section 3, Case 3 of Appendix H for purposes of calculating liquidated damages under Section 17.3 (“Buyer’s Request for Earlier Completion”), (iii) the Project can be operated in accordance with Prudent Industry Practice and all applicable Requirements of Law, including the Emissions Approvals and (iv) the “Functional Tests” identified in the Substantial Completion Criteria shall have been performed based on the Project operating in a 1x1 configuration and such tests shall have demonstrated that the 1x1 Net Capacity achieved the Substantial Completion Criteria that would be applicable to the Project when operating in a 1x1 configuration.

“Dollars” and the “\$” symbol means the lawful currency of the United States of America.

“Draft Manuals” shall have the meaning assigned in Section 7.10(d) (“Contractor Drawings and Manuals”).

“Effective Date” means the date of this Agreement first above written.

“Emissions Approvals” means the air emissions permits, if any, required for construction and operation of the Plant, including those Governmental Approvals identified in Appendix E, as “Emissions Approvals.”

“Emission Reduction Credits” means emission reduction credits to be used as emission offsets for the Project that are registered in the State Emissions Registry by UDAQ pursuant to Section R-307-403-8 of the Utah Administrative Code more specifically set forth on Appendix M.

“Environmental Health and Safety Program” means a corporate program maintained by or on behalf of the Seller that (i) provides a safe and healthful working environment for all employees, (ii) promotes the commitment to achievement of safety and health excellence, (iii) encourages employee and management involvement, (iv) is designed to prevent occupational injuries, illness, and damages to equipment, property, and the environment through implementation of cost effective safety and health plans that meet applicable Requirements of Law and consensus standards relating thereto including ASME, ANSI, NEC, and NFPA and is based on standards no less stringent than the Buyer’s own safety and health policies.

“Environmental Law” means any federal, state or local law including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements having the force and effect of law relating to (i) the discharge or disposal of any substance into the air, soil or water, including pollutants, water pollutants or process waste water, (ii) storage, emissions transportation or disposal of any Regulated Material, (iii) the environment or hazardous substances, all as amended from time to time, (iv) land use requirements pertaining to Regulated Materials, including

laws requiring environmental impact studies or other similar evaluations, and (v) environmental issues pertaining to the development, construction or operation of the Project.

“EPC Contract” means the Engineering, Procurement and Construction Contract, to be entered into between the Seller and Contractor, in form and substance acceptable to the Buyer, in its sole discretion.

“Equipment” means the equipment relating to the Project as described in Appendix B, and, where indicated in Appendix B, manufactured or provided by Approved/Preferred Suppliers.

“Equivalent Operating Hours” or “EOH” means the number of hours of operation equivalent to continuous loading at rated capacity, including actual operating hours adjusted for loading plus a set number of equivalent hours for each start/stop, rapid start/stop, water/steam injection, and all other adjustments pursuant to this Agreement all as set forth in Appendix H.

“Equivalent Starts” shall have the meaning assigned thereto in the technical documentation issued by the manufacturer of the Gas Turbines.

“Final Acceptance” means the completion of all items set forth as conditions of Final Acceptance in Appendix H and completion of the Final Punch List.

“Final Payment” means the final payment of the Purchase Price made upon Final Acceptance.

“Final Performance Guarantees” means the (i) Guaranteed Net Heat Rate and the Guaranteed Incremental Net Heat Rate and (ii) Guaranteed Net Capacity and the Guaranteed Incremental Net Capacity that are required to be demonstrated during the Performance Tests as a condition to Final Acceptance, all set forth in Appendix H.

“Final Performance Test Report” shall have the meaning set forth in Section 18.7(b) (“Timing”).

“Final Punch List” means the list of items and schedule for completion of the Project required to be completed by the Seller following the Substantial Completion Date, which list shall be issued to the Seller by the Buyer no later than five (5) Business Days after the Substantial Completion Date, all in accordance with Section 20.2 (“Care, Custody and Control; Punch List Items”).

“Fired Hours” means the time, rounded up to the next whole hour, from the opening of the natural gas supply valve to a Combustion Turbine and natural gas begins to flow, until such valve is closed and natural gas no longer flows.

“Force Majeure” means an event not reasonably anticipated as of the date of this Agreement, which is not within the reasonable control of the party affected thereby, could not have been avoided by the exercise of due diligence or operation in accordance with Prudent Industry Practices, is not the result of the failure to act or the negligence of such party, and which by the exercise of due diligence, the affected party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor. To the extent that such event satisfies the test set forth in the preceding sentence, Force Majeure includes: acts of God, fire, flood, explosion, civil disturbance, sabotage,

terrorism, hurricanes, tornadoes, lightning, earthquakes, war, action or restraint by court order or public or Governmental Authority; provided that none of the following constitute Force Majeure: (i) strikes or labor disturbances occurring at the Site or Contractor's facilities, except to the extent such strikes or labor disturbances at the Site or Contractor's facilities are directly related to strikes or labor disturbances that are simultaneously disrupting other business operations in the geographic region covered by the WECC; (ii) shortages (real or perceived) of labor available for on-site Work; (iii) delay or failure by the Seller to obtain any Governmental Approval, all of which should have been anticipated by the Seller in connection with Seller's reply to the RFP, other than the delay or failure to obtain Governmental Approvals occasioned by (x) revocation, stay, or similar action by a Governmental Authority of a Governmental Approval after issuance thereof by a Governmental Authority, (y) the failure of a Governmental Authority to comply with rules, procedures or Requirements of Law applicable to such Governmental Authority or (z) another Force Majeure; or (iv) economic hardship including lack of money or credit and changes in exchanges rates (v) utility interruptions; (vi) shipping accidents or unavailability of preferred shipping methods.

"GAAP" means United States generally accepted accounting principles. "Gas Turbines" or "GTs" means the gas turbines described in Appendix B to this Agreement.

"Governmental Approval" means any authorization, approval, consent, waiver, exception, variance, order, publication, license, filing, registration, ruling, permit, tariff, certification, exemption and other action, requirement by or with, and notice to and declarations of or with, any Governmental Authority that are required in connection with the development, construction, ownership and operation of the Project.

"Governmental Authority" means any supranational, federal, state or other political subdivision thereof, having jurisdiction over the Seller, the Buyer, the Project or this Agreement, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

"Guaranteed Emissions" means the emissions guarantees when fired on natural gas in accordance with [*insert applicable Equipment manufacturer's specification*], adjusted to Base Reference Conditions, all in accordance with the Performance Tests all as more fully described in Appendix H.

"Guaranteed Net Capacity" means the continuous steady-state full load Plant net electrical power output produced when operating in a 2x1 configuration (two Gas Turbines operating at full load at normal firing temperatures with the steam produced by the heat recovery steam generators (HRSG) supplied to the steam turbine generator), with no duct firing in the HRSGs, corrected to the Base Reference Conditions as specified in Section _____ in Appendix H while meeting the emissions requirements under Section 12.2 ("Seller's Equipment on Site"). The net power output is the electrical power measured at the generator terminals, minus the Plant's auxiliary power consumption of the Equipment, including the transformer and isophase bus losses, fired with natural gas fuel in accordance with [*insert Equipment manufacturer's gas fuel specification*], corrected to the Base Reference Conditions.

“Guaranteed Net Heat Rate” means the net heat rate of the Plant when operated at the “Guaranteed Net Capacity”, as further specified in Appendix H.

“Guaranteed Substantial Completion Date” means May 1, 2012, 2013, or 2014 as specified by Bidder..

“Guaranty” means that certain Guaranty, if required by Buyer pursuant to Section 6.2 (“Security”), by and among Buyer, Seller, and Guarantor under which Guarantor guarantees each and every obligation of Seller under the Transaction Documents.

“Guarantor” means an entity meeting the credit criteria set forth in Section 6.1 (“Credit Requirements”) that guarantees, pursuant to a Guaranty acceptable to Buyer in its sole discretion, each and every obligation of Seller under the Transaction Documents.

“ID Tag” shall have the meaning set forth in Section 9.2 (“Site Security”).

“Indemnified Party” shall have the meaning set forth in Section 26.1 (“Indemnification for Third Party Claims”).

“Indemnifying Party” shall have the meaning set forth in Section 26.1 (“Indemnification for Third Party Claims”).

“Indemnity Period” shall have the meaning set forth in Section 26.3 (“Indemnification for Third Party Claims”).

“Indebtedness” means, with respect to any Person, without duplication, (i) all obligations of such Person for borrowed money, or with respect to deposits or advances of any kind, (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid (other than trade payables incurred in the ordinary course of business consistent with past practice), (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, (v) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding obligations of such Person to creditors for raw materials, inventory, services and supplies incurred in the ordinary course of such Person’s business), (vi) all lease obligations of such Person capitalized on the books and records of such Person, (vii) all obligations of others secured by a Lien on property or assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (viii) all obligations of such Person under interest rate or currency hedging transactions (valued at the termination value thereof, other than forward or spot foreign currency exchange contracts entered into in the ordinary course of business consistent with past practice), (ix) all letters of credit issued for the account of such Person (excluding letters of credit issued for the benefit of suppliers to support accounts payable to suppliers incurred in the ordinary course of business) and (x) all guarantees and arrangements having the economic effect of a guarantee of such Person of any Indebtedness of any other Person.

“Intellectual Property” means all patents, trademarks, copyrights, drawings and all computer software including the Computer Programs whether or not subject to statutory registration or protection, that are owned, used, filed by or licensed to the Seller for the Project.

“Interface” means those physical interconnections and interfaces at the Site described in Appendix B.

“Judgment” means any judgment, order, award, injunction, writ or decree of any Governmental Authority.

“Late Payment Rate” means an amount equal to the Prime Rate of Interest plus 500 basis points.

“Latent Defects” has the meaning set forth in Section 23.10 (“Latent Defects”).

“Latent Defects Liability Period” means the period which is five years calculated from the Substantial Completion date, subject in each case to Section 23.10 (“Latent Defects”).

“Lead Electrical” shall mean a representative of Seller designated as such pursuant to Section 7.14 (“Seller’s Representatives”).

“Lead Mechanical” shall mean a representative of Seller designated as such pursuant to Section 7.14 (“Seller’s Representatives”).

“Letter of Credit” shall mean an irrevocable standby letter of credit in a form reasonably acceptable to Buyer, naming Buyer as the party entitled to demand payment and present draw requests thereunder, which letter of credit:

(1) is issued by 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:

- (a) “A2” or higher from Moody’s; or
- (b) “A” or higher from S&P;

(2) on the terms provided in the letter of credit, permits Buyer to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits Buyer to draw upon a U.S. branch;

(4) permits Buyer to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;

(5) permits Buyer to draw the entire amount available thereunder if such letter of credit is not increased, replaced or replenished as and when provided in Section 6.2 (“Security”);

(6) is transferable by Buyer to any party to which Buyer may assign this Agreement; and

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

“Liabilities” means all Claims including those relating to Environmental Laws, demands, damages, losses, liabilities or judgments, including all interest, penalties, fines and other sanctions, and any reasonable costs or expenses in connection therewith, including attorneys’ and consultants’ fees and expenses.

“Lien” means any mortgage, pledge, security interest, encumbrance, option, defect, lien, charge or other similar right of any Person of any kind, including any lien or charge arising by statute or other law.

“Material Adverse Change” means any change in condition that actually has, or is reasonably likely to have, a significant adverse effect on (i) the Buyer’s ability to own, control, or operate the Project (financial or otherwise), (ii) the Project’s ability to operate and deliver energy to the System, (iii) the Seller’s ability, the Contractor’s ability, any Subcontractor’s ability or the Guarantors’ ability, to perform its respective obligations in accordance with the Transaction Documents to which it is, respectively, a party, (iv) the Contractor’s and any Subcontractor’s ability to perform its respective obligations in accordance with the Transaction Documents, (v) the validity, perfection and enforceability of the Liens granted to the Buyer under the Security Documents, (vi) the ability of the Buyer to enforce any of the Secured Obligations or any of its material rights and remedies under the Transaction Documents; or (vii) Seller fails to meet the requirements of Section 6.1 (“Credit Requirements”).

“Materials” means the Intellectual Property, the Equipment and other equipment, machinery, apparatus, materials, articles and things of all kinds to be provided and incorporated into the Project by the Seller and the Contractors under this Agreement (including spare parts to be supplied hereunder) other than Non-Buyer Materials.

“Member” means each Person to whom Membership Interests have been issued, as identified on Schedule 4.2.

“Membership Interests” shall have the meaning set forth in Section 4.2(a) (“Capital Structure”).

“Merit Shop” shall mean the construction philosophy which encourages open competition and a free-market approach that awards contracts to the lowest cost responsible bidder based solely on merit as determined by the Contractor, regardless of labor affiliation.

“Milestone” means a milestone for the development and construction of the Project as so designated on the list of schedule milestones set forth on Appendix I.

“Milestone Dates” means the date opposite each Milestone on or prior to which each such Milestone is anticipated to be achieved.

“MW” means megawatt.

“Necessary Governmental Approvals” means, as of any date, all Governmental Approvals, required under Requirements of Law in connection with (i) the due execution, delivery and performance by any Project Party of the Transaction Documents to which it

is a party and (ii) the development, construction, operation and ownership of the Project as contemplated by the Transaction Documents on or prior to such date.

“Non-Buyer Materials” means any equipment, machinery, apparatus, materials, articles and things of all kinds that are not permanently incorporated into the Project.

“Notice of Final Acceptance” shall have the meaning set forth in Section 20.8 (“Notice of Final Acceptance of Work”).

“Notice of Request for Progress Payment” shall mean a Notice of Request for Progress Payment in the form attached hereto as Exhibit A.

“Notice to Proceed” means the Notice to Proceed to be issued in accordance with Section 17.1 (“Notice to Proceed”) in the form attached hereto as Exhibit C.

“OEM” means the original manufacturer of any Equipment comprising a portion of the Project.

“OEM Certified” means that the Equipment in question is certified by the manufacturer thereof as new and clean, not in need of repair, carrying full manufacturer’s warranties and guarantees applicable to newly-manufactured equipment of that type, and all reliability and design technical notices have been implemented.

“1x1 Net Capacity” means the continuous steady-state full load Plant net electrical power output produced when operating in a 1x1 configuration (one Gas Turbine operating at full load at normal firing temperatures with the steam produced by one heat recovery steam generator (HRSG) supplied to the steam turbine generator, with no duct firing in the such HRSG, corrected to the Base Reference Conditions as specified in Section 3, Case 3 of Appendix H while meeting the emissions requirements under Section 18.2 (“Emissions Guarantee”). The net power output is the electrical power measured at the generator terminals, minus the Plant’s auxiliary power consumption of the Seller’s supplied equipment and facilities, including the transformer and isophase bus losses, fired with natural gas fuel in accordance with [*insert Equipment manufacturer’s specifications*], corrected to the Base Reference Conditions.

“Substantial Completion LD Commencement Date” means the calendar day immediately following the Guaranteed Substantial Completion Date.

“PacifiCorp Hazard Communication Program” shall mean Buyer’s hazard communication program designated as such.

“PacifiCorp Transmission” means PacifiCorp, an Oregon corporation, acting in its transmission function capacity and any successor thereto.

“PacifiCorp Transmission Interconnection Agreement” means the interconnection agreement between the Seller and PacifiCorp Transmission that is in conformance with the requirements of PacifiCorp’s Open Access Transmission Tariff filed with the Federal Energy Regulatory Commission (or any successor thereto), as the same may be amended.

“Parties” shall have the meaning set forth in the preamble hereof.

“Performance Curves” means the performance correction curves described in Appendix H to this Agreement, as the same shall be adjusted to reflect the capability of

the Plant expressed in terms of capacity as of the Substantial Completion Date and in terms of capacity and heat rate for the Performance Tests.

“Performance Guarantees” means the (i) Guaranteed Emissions, (ii) Guaranteed Net Heat Rate and (iii) Guaranteed Net Capacity that are required to be demonstrated during the Performance Tests as a condition to Substantial Completion, all set forth in Appendix H.

“Performance Test” or “Performance Tests” means the tests specified in Appendix H.

“Permitted Liens” means the Liens set forth in subsections 7.27(a) through 7.27(e), inclusive (“Contingent Obligations”).

“Permits” has the meaning set forth in Section 7.36 (“Permits”).

“Person” means any natural person, corporation, general or limited partnership, limited liability company, firm, joint venture, estate, association, trust, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

“Plant” means the combined-cycle electric generating facility, to be located on the Site and to be constructed in accordance with this Agreement, as described more fully in Appendix B.

“Preliminary Performance Test Report” shall have the meaning set forth in Section 18.7(a) (“Test Reports”).

“Primary Construction Contracts” means the EPC Contract, any contract or agreement between the Contractor and any Subcontractor, and all agreements and documents referenced therein.

“Prime Rate” means the rate per annum (rounded upwards to the nearest 1/100th of 1% per annum) equal to the rate of interest which JP Morgan Chase in New York, New York or its successor announces from time to time as its “prime lending rate” or equivalent rate or if such rate is not available, another rate published as the “prime rate” as agreed by the Buyer and a Seller, with each change in such rate to be effective on the day on which such change is effective.

“Progress Payment Date” means the date on which a Progress Payment becomes due as set forth in Section 3.1(a) (“Terms”). [USE ONLY IF PROGRESS PAYMENT OPTION IS CHOSEN]

“Progress Payments” means (i) any amounts advanced to the Seller or made available by the Buyer pursuant to the Initial Development Funding Letter Agreement and (ii) the amount (in thousands of Dollars) set forth under the column heading entitled “SV Pymt (\$) Monthly” on Appendix I. [USE ONLY IF PROGRESS PAYMENT OPTION IS CHOSEN]

“Progress Report” shall have the meaning set forth in Section 10.8 (“Progress Reports”).

“Project” means (i) the Plant, (ii) the Site, and (iii) those certain tangible and intangible rights and assets required to own and operate the Plant (including without

limitation Project Water Rights and Emission Reduction Credits), all in accordance with the Project Documents, all Requirements of Law and Prudent Industry Practices following construction of the Plant in accordance with the Specifications and upon the Plant having attained the Performance Guarantees.

“Project Documents” means once executed and in full force and effect, the Primary Construction Contracts, the PacifiCorp Interconnection Agreement and any Additional Project Document.

“Project Engineer” shall mean a representative of Seller designated as such pursuant to Section 7.14 (“Seller’s Representatives”).

“Project Manager” shall mean a representative of Seller designated as such pursuant to Section 7.14 (“Seller’s Representatives”).

“Project Party” means each of the Seller, the Contractor, any Subcontractor, and the Guarantor.

“Project Schedule” means the Project schedule contained in Appendix F, and any modification thereof made pursuant to this Agreement.

“Project Water Rights” means the Water Rights necessary and sufficient to operate the Project consistent with the Specifications, providing not less than _____ acre-feet of water annually.

“Prudent Industry Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry in the geographic region covered by the WECC, or its successor for gas-fired combined cycle electric generation facilities which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result in a cost-efficient manner consistent with good business practices and reliability criteria, safety considerations and expediency. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others but, rather, to be acceptable industry practices, methods or acts for gas-fired combined cycle electric generating facilities in the geographic region covered by the WECC.

“PSCU” means the Public Service Commission of Utah.

“Purchase Price” shall have the meaning set forth in Section 2.2 (“Purchase Price”).

“Real Property” means all real property and interests in real property required in connection with the Project, other than the Water Rights.

“Reduction Amount” shall have the meaning set forth in Section 24.2(c) (“Critical Milestone Guarantee Liquidated Damages”).

“Regulated Materials” means any substance, material, or waste which is now or hereafter becomes listed, defined, or regulated in any manner by any United States federal, state or local law and includes any oil, petroleum, petroleum products and polychlorinated biphenyls.

“Release” with respect to any Regulated Materials and includes any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Regulated Materials.

“Remediation” includes any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Regulated Material, any actions to prevent, cure or mitigate any Release of any Regulated Material, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Regulated Material.

“Required Change Order” shall have the meaning set forth in Section 13.1 (“Change”).

“RFP” has the meaning assigned in the Recitals hereof.

“Safety Manager” shall mean a representative of Seller designated as such pursuant to Section 7.14 (“Seller’s Representatives”).

“Scope of Work” means the scope of work presented by Buyer by Seller in response to the RFP, on which the Purchase Price is based.

“Secured Obligations” means those obligations of the Seller secured by the Liens granted in favor of the Buyer pursuant to the Security Documents.

“Security Documents” means (i) the Deposit Account Control Agreement, (ii) the Assignment and Security Agreement and (iii) any other documents or filings determined by Buyer, in its sole discretion, to be necessary to grant or maintain the Liens granted by the Seller under the Assignment and Security Agreement that would affect the validity, perfection and enforceability thereof or for the exercise by the Buyer of its rights and remedies to enforce such Liens.

“Seller” shall have the meaning set forth in the preamble hereof, and includes any of the Seller’s successors and permitted assigns.

“Seller Default” means any of the events specified in Section 31.1 (“Buyer’s Obligation”).

“Seller-Initiated Change Order” shall have the meaning set forth in Section 13.1 (“Change”).

“Seller’s Representative” means the natural person designated as such by the Seller.

“Significant Defect” means a single or recurring Defect which occurs at any time within two years of Substantial Completion which results in the cessation of operation of the Plant or will not, unless corrected, allow the Buyer to operated the Plant within air quality or other emission limits or within parameters required to comply with any Requirements of Law for a period of either three (3) consecutive days or an aggregate of five (5) days in the case of a recurring Defect.

“Site” means the premises on which the Project is to be located in _____ Utah, together with all easements appurtenant thereto or required for the operation of the Facility, the legal description of all of which is set forth on Appendix A.

“Specifications” means the specifications for the Works set forth in Appendix B and Appendix H and any modifications thereof made pursuant to the terms hereof.

“[STATE ORGANIZATIONAL LAW]” shall have the meaning assigned in Section 4.3(b) (“Authority; Execution and Delivery; Enforceability”).

“Startup or Commissioning Manager” shall mean a representative of Seller designated as such pursuant to Section 7.14 (“Seller’s Representatives”).

“Subcontractor” means any Person, other than the Contractors, retained by the Seller to perform a part of a Seller’s obligations under any Transaction Document.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or Controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or Controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or Control any director, managing member, manager, general partner, trustee or other controlling Person or member of such entity's governing body of such limited liability company, partnership, association or other business entity.

“Substantial Completion” means the Plant demonstrates the Substantial Completion Criteria.

“Substantial Completion Criteria” shall have the meaning set forth in Appendix H.

“Substantial Completion Date” means the date on which Substantial Completion is demonstrated.

“Supplier” means any supplier of Equipment or Materials which (i) has a right to place a Lien on the Project and (ii) provided notice of such right to Seller.

“System” means the electric transmission sub-station and distribution facilities owned, operated or maintained by PacifiCorp Transmission, which shall include, after construction and installation of the Project, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to complete the Project, all as set forth in the PacifiCorp Transmission Interconnection Agreement.

“Target Date” means a date on which a Critical Milestone is to occur, as set forth in the Project Schedule.

“Tax” or “Taxes” means any United States federal, state or local income tax, ad valorem tax, excise tax, sales tax, use tax, franchise tax, real or personal property tax, transfer tax, gross receipts tax or other tax assessment, fee, levy or other governmental charge, together with and including any and all interest, fines, penalties, assessments and additions to the Tax resulting from, relating to, or incurred in connection with any of the foregoing or any contest or dispute thereof.

“Time for Completion” means that period between the Effective Date and the Substantial Completion Date.

“Title Company” means _____, or such other title company acceptable to the Buyer, in its sole discretion.

“Title Policy” means a title insurance policy issued by Title Company covering the Real Property interests comprising the Property to be transferred by Seller at Closing.

“Total Plant Capacity” means the Guaranteed Net Capacity. “Transaction Documents” means, once executed and in full force and effect, each of the following agreements: this Agreement, the Project Documents, the Security Documents and the Consents. “UDAQ” means the Division of Air Quality of the Utah Department of Environmental Quality.

“Unidentified Project Problem” shall have the meaning set forth in Section 10.8 (“Progress Reports”).

“UPDES” means Utah Pollutant Discharge Elimination System and all Requirements of Law relating thereto.

“UST” means underground storage tanks.

“Water Rights” means the water rights acquired for use in connection with the Project and acceptable to the Buyer, designated by the Buyer as “Project Water Rights.”

“WECC” means the Western Electricity Coordinating Council. “Witness Point Events” shall have the meaning set forth in Section 14.3 (“Inspection”).

“Witness Point Schedule” shall have the meaning set forth in Section 14.3 (“Inspection”).

“Work” means the Materials to be supplied and the entire works and services to be performed, or caused to be performed, by the Seller under this Agreement, together with any modifications thereto in accordance with the terms hereof.

“Year” means a calendar year.

Appendix G
(Reserved)

APPENDIX H

Substantial Completion, Final Acceptance, Performance Guarantees and Performance Tests

Appendix H

Performance Tests and Minimum Standards

1. Substantial Completion Criteria
2. Final Acceptance Criteria
3. Performance Guarantees
4. Performance Liquidated Damages

Section 1
Substantial Completion Criteria

The Parties recognize that the terms “Capacity”, “capacity”, “Power” and “power” are utilized interchangeably in this Appendix H and agree that such terms are synonymous as used herein.

Substantial Completion Criteria

The Plant will be deemed ready for Substantial Completion when all of the following have occurred:

1. The Plant is substantially and materially complete and has been fully designed, constructed and equipped in accordance with the Agreement (except as provided in the Final Punch List).
2. All Governmental Approvals can be assigned or transferred in accordance with Article 2 of this Agreement.
3. All Equipment and systems are operational in accordance with this Agreement, including its Appendices.
4. All Owner-specified Performance, Commissioning and Functional Tests as detailed in Appendix B have been successfully completed.

For the purposes of conducting Functional Tests , a “Start” shall be deemed to be the initiation of the start sequence. All activities required for these startup and shutdown tests shall be performed through the Plant's Distributed Control System (“DCS”) with the exception of any normally expected and routine action taken by an operator. The Plant's DCS shall control, or shall cause to be controlled, all Equipment necessary for the safe and reliable operation of the Plant with the exception of Equipment normally controlled manually.

Section 2

Final Acceptance Criteria

Final Acceptance Criteria

The Plant will be deemed ready for Final Acceptance when all of the following has occurred:

1. Substantial Completion has occurred and (i) Seller has demonstrated Guaranteed Net Capacity or has paid the applicable liquidated damages as provided in Section 4 of this Appendix H, (ii) Seller has demonstrated the Guaranteed Incremental Net Capacity or has paid the applicable liquidated damages as provided in Section 4 of this Appendix H (iii) Seller has demonstrated Guaranteed Net Heat Rate or has paid the applicable liquidated damages as provided in Section 4 of this Appendix H and (iv) Seller has demonstrated Guaranteed Incremental Net Heat Rate or has paid the applicable liquidated damages as provided in Section 4 of this Appendix H.
2. The additional Functional Tests specified in Appendix B have been successfully completed:
3. Record drawings have been delivered to the Buyer in accordance with the Agreement.
4. Final Punch List items have been completed and any warranty problems are being diligently pursued by Seller and or its Contractors.
5. The Plant has demonstrated the Guaranteed Average Equivalent Availability of ninety two percent (92%) during the 168 hour test pursuant to Appendix B to the Agreement.
6. The Relative Accuracy Test (“RATA”) results have been submitted to the Utah Department of Air Quality.

Section 3

Performance Guarantees

3. Performance Guarantees (to be adjusted based on CT used)

3.1 Thermal Performance Guarantees

**2 x 1 Guaranteed Thermal Performance
Table 1 -Base Reference Conditions**

	CASE 1	CASE 2
Load Level	BASE	BASE
Plant Equipment Condition	New & Clean	New & Clean
Ambient Temperature, °F	95	95
Ambient Relative Humidity , %	20	20
Barometric Pressure, psia	Bidder to Provide	Bidder to Provide
Fuel Type	Natural Gas	Natural Gas
Fuel Heating Value – Btu/lbm (LHV)	20,401	20,401
Fuel Composition	See note 8	See note 8
Fuel Temperature at Test Boundary, °F	Bidder to Provide	Bidder to Provide
Generator Power Factor	Bidder to Provide	Bidder to Provide
System Frequency, Hz	60	60
HRSG Blowdown, %	0	0
Evaporative Cooler Status, On/Off	On	On
Duct Burner Status, On/Off	Off	On
Power Augmentation, On/Off	Off	On

Table 2 - Guaranteed Performance Data

Net Capacity, kW		(see note 6)
Net Heat Rate, Btu/kWh (LHV)		(see note 6)
Water Consumption (gpm)		

NOTES:

1. The Guaranteed Performance Data must be verified in strict accordance with the provisions of ASME PTC-46, “Performance Test Code on Overall Plant Performance”.
2. Net Heat Rate is the fuel input rate (in Btu/hr) on a lower heating value (LHV) basis, divided by the net power in kW.
3. The Guaranteed Performance Data for both the capacity and heat rate testing is based on the application of 0.5% test tolerance for capacity and heat rate. No other uncertainty, dead band, or test tolerance shall be applied.

4. Performance is based on new and clean condition. The above guaranteed values shall be those as determined by the Performance Test, without any allowance for degradation of the Equipment.
5. Fuel gas must comply with OEM Gas Fuel Specification, which identifies the allowable ranges of fuel gas constituents and the upper limits of contaminants.
6. Performance guarantees for duct fired and power augmented operation (Case 2) are defined on an incremental basis. Guarantee values represent the incremental heat input required for GT power augmentation and HRSG duct firing, divided by the incremental capacity obtained.
7. Regulated fuel gas pressure to be supplied at the plant boundary at a minimum pressure of 525 psig at a temperature no greater than 105°F at the Lake Side property. At the Currant Creek site, the minimum pressure is 525 psig and the temperature 80°F

1 x 1 Estimated Thermal Performance

Table 1 -Base Reference Conditions

	CASE 3
Load Level	BASE
Operation Mode	1x1
Plant Equipment Condition	New & Clean
Ambient Temperature, °F	95
Ambient Relative Humidity , %	20
Fuel Type	Natural Gas
Fuel Heating Value – Btu/lbm (LHV)	20,401
Generator Power Factor	0.9
System Frequency, Hz	60
HRSG Blowdown, %	0
Evaporative Cooler Status, On/Off	On
Duct Burner Status, On/Off	Off
Power Augmentation, On/Off	Off

Table 2 - Estimated Performance Data

Net Capacity, kW	_____
Net Heat Rate, Btu/kWh (LHV)	_____

NOTES:

1. The Guaranteed Performance Data must be verified in strict accordance with the provisions of ASME PTC-46, "Performance Test Code on Overall Plant Performance".
2. Net Heat Rate is the fuel input rate (in Btu/hr) on a lower heating value (LHV) basis, divided by the net power in kW.
3. The Guaranteed Performance Data for both the capacity and heat rate testing is based on the application of +/-0.5% test tolerance for capacity and heat rate. No other uncertainty, dead band, or test tolerance shall be applied.
4. Performance is based on new and clean condition. The above guaranteed values shall be those as determined by the Performance Test, without any allowance for degradation of the Equipment.
5. Fuel gas must comply with OEM Gas Fuel Specification, which identifies the allowable ranges of fuel gas constituents and the upper limits of contaminants.
6. Performance guarantees for duct fired and power augmented operation (Case 2) are defined on an incremental basis. Guarantee values represent the incremental heat input required for GT power augmentation and HRSG duct firing, divided by the incremental capacity obtained.
7. Regulated fuel gas pressure to be supplied at the plant boundary at a minimum pressure of 525 psig at a temperature no greater than 105°F at the Lake Side property. At the Currant Creek site, the minimum pressure is 550 psig and the temperature 80°F

3.2 Guaranteed Air Emissions

REFERENCE CONDITIONS		
Fuel Type	Natural Gas	Natural Gas
Mode	Combined Cycle	Combined Cycle
Ambient Temperature Range, °F	-16 to 105	52 to 105
Gas Turbine Load (%)	OEM Min to Base	Base
Injection – Power Augmentation	Off	Off
Duct Burner maximum heat input (MMBtu/hr, LHV)	Off	Seller Supplied
EMISSIONS DATA		
NO _x (ppmvd @ 15% O ₂)	Permit Limits	Permit Limits
CO (ppmvd @ 15% O ₂)	Permit Limits	Permit Limits
VOC as CH ₄ (ppmvd @ 15% O ₂)	Permit Limits	Permit Limits
Particulate (lbm/hr) (front and back half)	Permit Limits	Permit Limits
NH ₃ Slip (ppmvd @ 15% O ₂)	Permit Limits	Permit Limits

Stack tests will be performed in accordance with the reference test methods set forth in the Air Permit. To the extent the specific test methods are not set forth in the Approval Order, then for the purposes of demonstrating the guaranteed air emissions, such air emissions shall be demonstrated by performing testing at the exhaust stack in accordance with the following United States Environmental Protection Agency (USEPA) Test Methods.

3.3 Guaranteed Sound Emissions

FAR FIELD SOUND LEVEL GUARANTEE

Plant sound emissions shall be in compliance with all applicable Requirements of Law which shall take into account baseline data from the existing plant. In the absence of a more stringent regulatory noise requirement the Seller will meet the requirements specified in Section 1.2.5 of Appendix B to the Agreement.

Appropriate corrections, in accordance with the OEM's Sound Test Procedure Principles document and recognized industry standards, shall be made to the operating plant far field sound level measurements.

Section 4
Performance Liquidated Damages

1. General

Liquidated damages will be calculated for performance which fails to achieve the Performance Guarantees (i.e. less than Guaranteed Net Capacity; less than Guaranteed Incremental Net Capacity, greater than Guaranteed Net Heat Rate, greater than Guaranteed Incremental Heat Rate). Heat rates are in Higher Heating Value (HHV).

The following liquidated damage rates shall apply for deficient performance:

- Guaranteed Net Capacity (“GNCLD”) \$750.00/kW
- Guaranteed Incremental Net Capacity (“GINCLD”) \$250.00/kW
- Guaranteed Net Heat Rate (“GNHRLD”) \$300.00/Btu/kWh/kW
- Guaranteed Incremental Net Heat Rate (“GINHRLD”) \$75.00/Btu/kWh/kW

2. Definitions

8. Final Test Value shall mean the measured Performance Test values which are corrected to the Base Reference Conditions, without any allowance for degradation of the Equipment.

Test Tolerance (“TT”) is expressed as the decimal 0.005, applicable to the net capacity, net incremental capacity, net heat rate and the incremental heat rate. The subscript letters “C”, “IC”, “HR” and “IHR” represent net capacity, incremental net capacity, net heat rate and incremental net heat rate respectively, in the following equations.

C_t = The Final Test Value of net capacity when the Plant is operating on Guarantee Fuel, in kilowatts.

IC_t = The Final Test Value of incremental net capacity when the Plant is operating on Guarantee Fuel, in kilowatts.

HR_t = The Final Test Value of net heat rate when the Plant is operating on Guarantee Fuel, in Btu/kWh, HHV.

IHR_t = The Final Test Value of incremental net heat rate when the Plant is operating on Guarantee Fuel, in Btu/kWh, HHV.

C_g = The Guaranteed Net Capacity when the Plant is operating on Guarantee Fuel (Note 1), in kilowatts.

ICg= The Guaranteed Incremental Net Capacity when the Plant is operating on Guarantee Fuel (Note 1), in kilowatts.

HRg= The Guaranteed Net Heat Rate when the Plant is operating on Guarantee Fuel (Note 1), in Btu/kWh, HHV.

IHRg= The Guaranteed Incremental Net Heat Rate when the Plant is operating on Guarantee Fuel (Note 1), in Btu/kWh, HHV.

Note 1: These values are the guaranteed values shown in Section 3.1 above.

3. Calculation of Liquidated Damages Relative to Net Capacity

$$(C_g - [C_t \times (1+TT)]) \times \text{GNCLD} = A$$

The liquidated damage amount relative to net capacity shall equal the value of A if A is positive. If A is negative, no liquidated damages are applicable.

4. Calculation of Liquidated Damages Relative the Incremental Net Capacity

$$(IC_g - [IC_t \times (1+TT)]) \times \text{GINCLD} = B$$

The liquidated damage amount relative to incremental net capacity shall equal the value of B if B is positive. If B is negative, no liquidated damages are applicable

5. Calculation of Liquidated Damages Relative to Net Heat Rate

$$([HR_t \times (1 - TT)] - HR_g) \times \text{GNHRLD} \times C_g = C$$

The liquidated damage amount relative to net heat rate shall equal the value of C if C is positive. If C is negative, no liquidated damages are applicable.

6. Calculation of Liquidated Damages Relative to the Incremental Net Heat Rate

$$([IHR_t \times (1 - TT)] - IHR_g) \times \text{GINHRLD} \times IC_g = D$$

The liquidated damage amount relative to Incremental net heat rate shall equal the value of D if D is positive. If D is negative, no liquidated damages are applicable.

Appendix I

Progress Payment
And
Cancellation Schedule

Seller to Supply

APPENDIX J

Change Order Costing

APPENDIX J CHANGE ORDER COSTING

1. Unless otherwise agreed between the Parties or in this Appendix J, pricing and payments for Change Orders shall be based on mutually agreeable terms and conditions which will be on a fixed price basis.

2. Sellers shall be compensated by Buyer only on a time and material basis in connection with (a) the APSA and (b) activities which are directed by Buyer and for which Buyer and Seller cannot agree upon a firm, fixed price, schedule adjustments or other terms and conditions. Such time and material work shall be based on the following costing procedure:

2.1 Seller's personnel shall be billed at the then current published field service rates and project home office rates attached to this Appendix J. Seller shall provide revised rate sheets within the first 30 days of each new year.

2.2 Buyer shall pay Seller a mark-up of six percent (6.0%) (the "Mark Up") on third-party purchases (including Contractor and Subcontractor purchases), including materials, rental of equipment, and labor (including: craft labor, Site construction management, Site supervision and commissioning, field engineering, Site administration).

2.3 Seller shall provide Buyer with a reasonable breakdown of costs and time to support compensation and/or adjustments to the Schedule and any other adjustments to the terms and conditions of the Agreement in connection with Change Orders performed on a time and material basis.

3. Seller shall be entitled to request adjustments to the Schedule and the Guaranteed Substantial Completion Date equal to the amount of time incurred by Seller in performing the Work taking into account adjustments to the Project or to the methods or sequence of performing the Work (all as determined by Buyer) that can be reasonably taken by Seller. For Change Orders which Seller request an adjustment to the schedule or Guaranteed Substantial Completion Date, Seller will provide adequate justification of how the change order impacts the critical path of the Project Schedule.

Seller "Internal" Rates - 2007

Project Manager:	\$XXX.XX per hour
Senior Engineer:	\$ XXX.XX per hour
Engineer:	\$ XXX.XX per hour
Drafter/Cad Operator:	\$ XX.XX per hour
Administrative support:	\$ XX.XX per hour
Travel expenses - at cost	

Contractor Rates - 2004

Appendix K

(Reserved)

APPENDIX L
FINAL WAIVER AND RELEASE OF LIEN

APPENDIX L
SELLER FINAL WAIVER AND RELEASE OF LIEN

In consideration of the receipt by Seller of the final payment of \$_____ in immediately available funds from Buyer, Buyer shall be fully and completely released from all claims for payment for Work performed and materials provided under the Agreement, which the undersigned has or may have as Seller arising out of the Work performed by the undersigned, pursuant to the Agreement. The undersigned further acknowledges that such payment, together with all payments heretofore made constitutes full payment of all amounts due to the undersigned for Work performed and materials provided under the Agreement, including all amounts due for extra Work.

The undersigned further states and represents that all bills, payrolls, expenses, costs, payroll and other employee related taxes, claims and other indebtedness incurred in connection with the Work performed under the Agreement have been paid in full; and further agrees to defend Buyer from and against all claims against Buyer pursuant to Section 26.2 (“Title Indemnity and Liens”) of the Agreement for labor and material furnished by Contractor or any of its Subcontractors including liens of subcontractors, labors, and equipment and material suppliers arising from claims for payment for the Work performed under or in connection with the Agreement.

Seller

Name:

Title:

Date:

Appendix M

Project Water Rights
and
Emissions Reductions Credits

Seller to Supply If Applicable

Appendix N

Pre-Existing Regulated Materials

To be provided upon identification of Site

Appendix O

(Reserved)

Appendix P

(Reserved)

APPENDIX Q
APPROVED VENDORS LIST

Approved Vendors List

Equipment / Construction Package	Approved Subcontractors / Equipment Suppliers
Steam Turbine	<i>Toshiba (TBD)</i> GE Mitsubishi Siemens Alstom
Combined Main Stop and Control Valve/Actuator	Rexroth
Combined Reheat Valve Actuator	Rexroth
Gland Steam Condenser	Southern Heat Exchanger ITT Industries Struthers Industries Krueger Engineering & Mfg. Co.
Gland Steam Exhauster	Gardner Denver The New York Blower Co. Chicago Blower Co. or Equivalent
Main Oil Cooler	Tranter PHE (E) Southern Heat Exchanger ITT Industries GEA Ecoflex (E) Alfa Laval
Oil Conditioner	Kaydon TORE
Oil Mist Eliminator	Burgess-Miura Co. (E) Koch-Otto York
Actuator	Limitorque - Preferred Rotork
Steam Turbine Generator	GE Siemens Alstom <i>Toshiba (TBD)</i>
Turbine Supervisory Instrumentation Unit	Bently Nevada
Position Switch	Namco Co.
Position Transmitter	M-System
Flow Indicator	Yokogawa Electric Co.
Purity Analyser	Yokogawa PacifiCorp Standard
Solenoid Valve	Asco, Co.
Positioner	Fisher Co.
Instrument Valve	Swagelok, Co. - Preferred Whitey Co. - Preferred Valves
Instrument Fittings	Swagelok, Co. - Preferred Whitley Co.
Control Valve	Fisher Co. - Preferred
I/P Converter	Yokogawa
Instrument Rack/Generator	E-One - PacifiCorp Standard
Seal Oil Gauge Panel	E-One - PacifiCorp Standard
Hydrogen Gas Measuring Rack	E-One - PacifiCorp Standard
Generator Condition Monitor	E-One, GCMX - PacifiCorp Standard
H2 Gas Dryer	LectroDryer
Combustion Turbine (GE Siemens
Generator	GE Siemens
Cooling Tower	SPX (Marley) GEA Midwest Towers, Inc International Cooling Tower

Equipment / Construction Package	Approved Subcontractors / Equipment Suppliers
HRSGs	Deltak Corporation Nooter/Ericksen Vogt Power Alstom
HRSB Duct Burners	Coen Forney John Zink
SCR and CO Systems	Peerless Mfg. Hitachi Vector
SCR Catalyst	Cormetech Hitachi (aka BHK) Argillon (formerly Siemens)
CO Catalyst	Engelhard EmeraChem
Auxiliary Boiler	Babcock & Wilcox Nebraska
Boiler Feed Pumps and Motors	KSB, Inc. - Preferred Sulzer Pumps Weir Pumps Ltd.
Condensate Pumps and Motors	Flowserve Johnston Pump Company Weir Pump Company Sulzer Pumps Goulds Pumps KSB
Circulating Water Pumps and Motors	Flowserve Johnston Pumps Weir Pump Company Sulzer Pumps Goulds Pumps
Condenser, Wet Surface	Alstom Graham TEI Yuba Holtec International SPX (Marley)
Condenser, Air Cooled (ACC)	SPX (Marley) GEA
Heat Exchangers, Plate & Frame	Alfa Laval APV Graham Tranter
Water Treatment Systems (Demin)	Graver Water Co. Hungerford & Terry, Inc. US Filter GE Water Technologies (Glegg) Water and Power Technologies Ecolochem
Oil Water Separators	Anderson Great Lakes Environmental Highland Tank PS International (E)
Air Compressors	Atlas Copco – Preferred Ingersoll Rand Gardner Denver Sullair Cooper/Joy Industries Dresser

Equipment / Construction Package	Approved Subcontractors / Equipment Suppliers
Air Dryers	Kemp Atlas Copco - Preferred Ingersoll Rand Pneumatic Productions Corporation Sullair GDI Deltech
Fuel Gas Treatment	Anderson Separator/Clark Reliance/National Filtration Burgess Manning Flowtronex Gas Packagers GTS Energy Hanover Smith Oil & Gas Systems Peerless Total Energy Resources Tran-Am Universal Compressors
Miscellaneous Horizontal Pumps	Aurora Pumps Flowserve Goulds Pumps Peerless Aurora Sulzer Johnston KSB
Pumps, Vertical	Aurora Pumps Goulds Pumps Flowserve Johnston
Vacuum Pumps	Graham Manufacturing Nash Nitech
Sump Pumps (Submersible)	Aurora Pumps Flygt Corporation Warman Nagel Goulds Flowserve Johnston Pumps
Pumps, Fire Water	Peerless ITT Allis Chalmers Pump Aurora Pumps Fairbanks Morse
Steam Conditioning Valves (attemporators)	CCI Emerson/Fisher-Rosemount Con-Tek
Fire Protection System	F. E. Moran Delta Fire Protection – Salt Lake City -Preferred Grinnell Fire Protection McDaniel Fire System Shambaugh S&S Sprinkler Dooley Tackaberry Securiplex International Fire Protection
GSU Transformers and Unit Auxiliary Transformers	ABB Alstom GE/Prolec - Preferred VA Tech Waukesha – Preferred

Equipment / Construction Package	Approved Subcontractors / Equipment Suppliers
Switchgear	GE – Preferred 4160V Square D – Preferred 480V Powell (Only if part of package) Cutler-Hammer – 4160V and 480V
Motor Control Centers	Powell (Only if part of package) Allen Bradley – Preferred for 480V MCC, 4160V MCC Cutler-Hammer – Preferred for 480V MCC, 4160V MCC
Variable Frequency Drives	Allen-Bradley Safronics Cutler-Hammer Danfoss
Isolated Phase Bus Duct	ABB Calvert Delta-Unibus - Preferred GE Canada - Preferred Hitachi
Non Segregated Phase Duct	Calvert Square D Delta-Unibus - Preferred Powell - Preferred
Power Control and Instrumentation Cables	BICC Rockbestos Supernaut Tamaqua Pirelli Okonite - Preferred Furon/Dekoron Rome Southwire - Preferred Belden – Communication Cable Preferred Kerite
High and Medium Voltage Cable	Pirelli Okonite - Preferred Rome Kerite
Distributed Control System	Emerson Ovation - PacifiCorp Standard
Continuous Emissions Monitoring System	KVB Enertec DAHS Software; and PacifiCorp specified instruments – PacifiCorp Standard
Chemical Feed Systems	Liquitech, Inc. Neptune JCI Wadsworth Pumps Flowtronex Milton Roy/LMI or Micro Pump – Preferred Nalco Johnson March Systems, Inc. Sentry Equipment
Water Sample Panel	Delphi Control Systems Johnson March Systems Sentry Equipment Corp. Waters Equipment Co.
Instrumentation Analytical Measurements	
Chromatographs	ABB Daniel (Natural Gas) EG&G Rosemount
Conductivity	Yokogawa – PacifiCorp Standard
Oxygen	Orbisphere/Hach or Yokogawa – PacifiCorp Standard
Silica	Hach – PacifiCorp Standard
Sodium	Orion – PacifiCorp Standard

Equipment / Construction Package	Approved Subcontractors / Equipment Suppliers
pH Probe	Yokogawa – PacifiCorp Standard
Vibration	Bentley Nevada – PacifiCorp Standard
Chlorinators	Advance Capital Controls Fischer & Porter Wallace & Tieman
Computers (Flow)	Daniel Omni Fisher
Controllers, Field Mounted, Pneumatic	Fisher
Flame Supervisory Systems	Fireye Forney Honeywell Allen Bradley Iris (E)
Indicators Manometers	Dwyer – preferred Meriam
Indicators Press/Receiver Gauge	Ashcroft – Preferred (Except in the case of pre-packaged equipment)
PLC	Allen Bradley - PacifiCorp Standard (Except in the case of pre-packaged equipment) Control Logix or SLC 5/05 (Ethernet Version)
Transmitters, Electronic	
Differential Pressure	Rosemount - PacifiCorp Standard (Except in the case of pre-packaged equipment)
Level Measurement	
Capacitance, Etc.	Drexelbrook Fisher
Displacement	Fisher
Process Radar	Rosemount Ohmart-Vega
Custody Transfer/Radar/Displacement	Enraf Saab
Radioactive	Kay-Ray Ohmart-Vega Texas Nuclear
Ultrasonic	Endress & Hauser Inc. Kistler Morse Magnetrol Millitronics
TDR	Magnetrol Rosemount – preferred
Magnetic Flow	Rosemount – preferred
Mass Flow	ABB/Bailey Rosemount – preferred
Pressure	Foxboro Honeywell Yokogawa Rosemount – preferred
Target Meter	Foxboro Hersey Measurement
Temperature	Foxboro Moore Industries Fisher-Rosemount – preferred Honeywell Yokogawa
Turbine	Daniel Foxboro

Equipment / Construction Package	Approved Subcontractors / Equipment Suppliers
Transmitters, Pneumatic	
Differential Pressure	Fisher – preferred
Level Displacement	Fisher Magnetrol
Pressure	Fisher Foxboro
Target Meter	Foxboro
Temperature	Fisher-Rosemount Foxboro
UPS	Best SCI
Valves and Regulators	
Actuators, Diaphragm	Fisher – PacifiCorp Standard (Except in the case of pre-packaged equipment)
Actuators, Piston	Automax Bettis Contromatics George-Fischer Hills-MC Canna Neles-Jamesbury Posacon Valtek Vanton Whitey XACT
Control Valves – ON/OFF or Throttling Ball	Fisher – preferred Atwood & Morrill (E) Copes Vulcan Masonellan Neles-Jamesbury TYCO (E) Valve Technologies Watts WKM
Positioners, Electric	Limitorque, MX – Preferred Fisher-Rosemount Auma
Butterfly/ECC Disk	AMRI Continental Durco Fisher-Rosemount Masonellan Moisten Neles-Jamesbury Valtek
Valves, Butterfly <24-inch	Bray Valves & Controls Dezurik Flowseal Henry Pratt Co. Jamesbury Keystone Valve KSB-AMRI
Valves, Butterfly >24-inch	Atwood & Morrill Dezurik Flowseal Grinnell Corp. Henry Pratt Co. Keystone Valve Watts

Equipment / Construction Package	Approved Subcontractors / Equipment Suppliers
Valves, Globe	Atwood & Morrill Edwards Newco Valves Pacific Valves Whitey Yarway
Valves, Cast Steel	Atwood & Morrill Crane Edwards Pacific Valves Tyco Velan Valve Co. WM Powell Co.
Control Valves, Severe Duty, (Bypass, Recirculation, Drum level control, ACC spargers)	CCI – PacifiCorp Standard
Valves, Forged Steel	Edwards Valves, Inc. Conval, Inc. Dresser Industrial Valve Yarway Velan Valve Corp Vog Newco Bonney Forge
Valves, High Pressure	Atwood & Morrill Crane Edwards Pacific Valves Tyco Velan Valve Co.
Valves, Knifegate	Warman Dezurik Newcon Clarkson
Valves, Check	APCO Crane Edward Valves Pacific Valves Stockham Valves & Fittings Yarway/Tyco
Globe / Cage (No Split Body) 300#	Collins Instrument (Plastic) Fisher Masoneilan Samson Valke Control Component, Inc. (CCI)
Miniature / Special	Collins Instrument Research Controls Whitey
Pinch, Weir, Diaphragm	ASAHI Fisher-Rosemount Grinnell Red Valve RKL
Plug	Durco Tufline
Regulators	Air Service Fisher-Rosemount Process Service Cashco

Equipment / Construction Package	Approved Subcontractors / Equipment Suppliers
Strainers, Automatic Flushing	Hayward Strainers Hellan SP Kinney Engineers
Valves, Ball	ITT Engineered Valves Mogas Neles Jamesbury NIBCO, Inc Stockham Valves & Fittings Whitey
Relief or Safety Valves	Consolidated – PacifiCorp Standard for Steam Service Crosby Ferris Dresser
Installation Hardware	
Boxes or Cabinets – Instrument and Junctions Metal	Appleton Hoffman – preferred
Boxes or Cabinets – Instrument and Junctions Fiberglass or Plastic	Hoffman – preferred Stahlin
Cable Tray and Tubing Support Tray Metal	B-Line OBO Betterman PW
Cable Tray and Tubing Support Tray Nonmetallic	Channel Way Enduro Fibergrate Seagate Stahlin
Instrument Manifolds and Valving Assemblies	Anderson Greenwood PGI Rosemount
Tubing Metal	Dekoron Thermoelectric
Tubing NonMetallic	Dekoron Thermoelectric
Fittings (Compression) Metal	Gyrolok Swagelok – Preferred
Fittings (Compression) Non-metallic	JACO (Kynar)
Fittings (Compression) Valves, Metal	Anderson Greenwood Hoke PGI Whitey - Preferred
Wire Signal	Alpha Belden Dekoron
Wire Thermocouple	Dekoron
Other	
Expansion Joints	Bachmann Industries Effox Pathway Wahlco Engineered Products
Fluid Couplings	Voith
Pipe, Circulating Water	Ameron La Barge Pipe McAbee Construction Northwest Pipe Company Dixie Southern
Pipe, Fabricated LP	Bendtec International Piping Systems McAbee Construction Team Industries

Equipment / Construction Package	Approved Subcontractors / Equipment Suppliers
	Scott Process
Pipe, Supports	Froneck Lisega Bergen PTP
Tanks, Field Erected	CBI Columbian Tank Matrix Pittsburgh Tank Fisher Tank HMT, Inc
Tanks, Shop Fabricated	Arrow Tanks Eaton Modern Welding Palmer Dixie Southern
Equipment/Construction Package	Approved Subcontractors
Fittings (Compression) Metal	Gyrolok Swagelok- preferred Nonmetallic JACO (Kynar)
Fittings (Compression) Valves, Metal	Anderson Greenwood Hoke PGI Whitey - preferred
Tubing NonMetallic	Dekoron Thermoelectric
Wire Signal	Alpha Belden Dekoron
Wire Thermocouple	Dekoron
Protective Relaying Devices and Systems	Schweitzer Engineering Labs, Inc.300 Series - Preferred
Lockout Relays	Electroswitch - PacifiCorp Standard
Test Switches	ABB - Preferred States
Revenue Meters	Landis & Gyr 2510 - PacifiCorp Standard

Appendix R

Price Options

Appendix S

Construction Coordination Agreement

CONSTRUCTION COORDINATION AGREEMENT

BETWEEN

PACIFICORP

AND

TABLE OF CONTENTS

	Page
ARTICLE I Definitions; Headings	1
1.1 Definitions.....	1
ARTICLE II Term and Governing Provisions.....	1
2.1 Term.....	1
2.2 Governing Provisions.....	2
ARTICLE III Construction Interfaces	2
3.1 Construction Control.....	2
3.2 [NAME]’s Access to PacifiCorp’s Area.....	2
3.3 PacifiCorp Access to the Construction Area.	3
3.4 Project Schedule and Coordination of PacifiCorp Support.	3
3.5 Unit 1 and PacifiCorp’s Area Control.	3
3.6 Restrictions During Construction.	3
3.7 Transportation Routes and Lay-Down Areas.	4
3.8 Transition from Construction to Operation.....	4
ARTICLE IV Construction Damage	5
4.1 Construction Damage.....	5
ARTICLE V Shutdowns	6
5.1 Scheduled Shutdowns of Unit 1.....	6
5.2 Unscheduled Shutdowns of Unit 1.	7
5.3 Testing and Initial Firing of Combustion Turbines.	8
ARTICLE VI Notices and Miscellaneous Provisions	8
6.1 Notices, Consents and Approvals	8
6.2 Entire Agreement	9
6.3 Amendment; Waiver.....	9
6.4 Successors and Assigns.....	10
6.5 Third Party Beneficiaries	10
6.6 Severability	10
6.7 Further Assurances.....	10
6.8 Publicity	10

6.9	Independent Contractor.....	10
6.10	Survival.....	11
6.11	Governing Law; Waiver of Jury Trial	11
6.12	Counterparts.....	11
6.14	Costs and Expenses.....	11
6.14	No Waiver.....	12
6.15	Liquidated Damages.	12

Exhibit “A” – Glossary of Defined Terms

Exhibit “B” – Common Facilities [TBD]

Exhibit “C” – Site Plan Designation of Construction Area [TBD]

Exhibit “D” – Security Requirements [TBD]

CONSTRUCTION COORDINATION AGREEMENT

THIS CONSTRUCTION COORDINATION AGREEMENT (“Agreement”) is made and entered into as of the Effective Date (as defined below), by and between PacifiCorp, an Oregon corporation (“PacifiCorp”), and _____, a _____ [limited liability company] (“[NAME]”) (PacifiCorp and [NAME] are individually referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, PacifiCorp is an investor owned electric utility company subject to regulation by the Public Service Commission of Utah;

WHEREAS, PacifiCorp owns, operates and maintains Unit 1 at its generation facility located in _____, Utah.

WHEREAS, [NAME] desires to construct Unit 2, to be located adjacent to Unit 1 at the Facility;

WHEREAS, PacifiCorp and [NAME] have entered into an [Asset Purchase and Sale Agreement (“APSA”) / Engineering, Procurement and Construction Contract (“EPC Contract”)] providing for the [purchase / construction] by PacifiCorp of Unit 2;

WHEREAS, there is a need to coordinate the activities of [NAME] and its contractor(s) and subcontractors during construction of Unit 2 to avoid potential interference with the operation of Unit 1 and the construction of Unit 2;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereto agree as follows:

ARTICLE I Definitions; Headings

1.1 Definitions

Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as Exhibit “A”, which also contains rules as to usage that shall be applicable herein.

ARTICLE II Term and Governing Provisions

2.1 Term.

The Term of this Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to provisions hereof, shall continue in effect until PacifiCorp has accepted the [APSA/EPC CONTRACT] or has achieved Final Acceptance as provided in the [APSA/EPC CONTRACT].

2.2 Governing Provisions.

As a matter of general priority, in the event of any conflict between the provisions of this Agreement or the [APSA/EPC CONTRACT], the provisions of the [APSA/EPC CONTRACT] shall govern. Disputes related to the matters to be performed pursuant to this Agreement and not involving the [APSA/EPC CONTRACT] or work performed by or at the direction of the [APSA/EPC CONTRACT], shall nonetheless be governed by [Article 32 / 31 (“Claims, Claim Notice and Dispute Resolution”)] in the [APSA/EPC CONTRACT].

ARTICLE III Construction Interfaces

3.1 Construction Control.

Except as provided in the [APSA/EPC CONTRACT], until the Substantial Completion Date [NAME] and its contractors shall be responsible for and have sole control over the construction of Unit 2, except for interconnections with Unit 1 and the Common Facilities. Beginning on the Substantial Completion Date, PacifiCorp shall have control over the Facility in accordance with the terms and conditions of the [APSA/EPC CONTRACT]. The [NAME] shall coordinate with PacifiCorp all activities to be performed under the [APSA/EPC CONTRACT] pursuant to this Agreement, particularly if such activities may require taking Unit 1 off-line or have a substantial possibility of causing an outage at Unit 1.

[NAME] shall be responsible for erecting a temporary and movable construction fence (the “Construction Fence”) on the Site for the purpose of separating the Unit 2 construction area (the “Construction Area”), which is initially depicted by the cross-hatched area on Exhibit “C” attached hereto, from the rest of the Facility, including Unit 1, the switchyard and the Common Facilities. The Construction Fence may be moved and relocated as necessary with the prior written consent of PacifiCorp following the completion of certain phases of construction for the purpose of accessing other areas of the Facility, all as set out in the Project Schedule. During the Term, [NAME] will be in control of the Construction Area and will maintain a separate gate for access to the Construction Area. At the time of Substantial Completion, the Construction Area will be reduced to [NAME]’s staging and laydown area and separate gate, and shall not include any Facilities necessary for operation of Unit 1, Unit 2 or the Common Facilities.

[NAME] shall at all times utilize and cause its contractors, subcontractors, personnel and other persons allowed at any part of the Facility by Contractor to utilize only [NAME]’s separate gate to the Construction Area.

3.2 [NAME]’s Access to PacifiCorp’s Area.

[NAME] shall provide PacifiCorp with reasonable notice of its need to access PacifiCorp’s Area for performance of work activities associated with the Common Facilities. [NAME] and PacifiCorp shall agree on a schedule for the performance of all work activities in PacifiCorp’s Area consistent with the Project Schedule. PacifiCorp

shall arrange for any safety instruction and workplace policy training deemed appropriate by PacifiCorp for [NAME]'s personnel prior to [NAME]'s personnel being allowed in PacifiCorp's Area. PacifiCorp shall arrange for escorts for [NAME]'s personnel accessing PacifiCorp's Area to the extent PacifiCorp reasonably deems such escorts necessary. In the event [NAME] needs to work on a system that could be used by PacifiCorp for the operation of Unit 1, [NAME] shall provide PacifiCorp with written notice and receive authorization from PacifiCorp that the system has been deactivated before commencing work on the system and [NAME] shall notify PacifiCorp once it completes work on the system so PacifiCorp can inspect and reactivate the system in accordance with PacifiCorp's Tagging and Safety Program.

3.3 PacifiCorp Access to the Construction Area.

At all times prior to the Substantial Completion Date [NAME] shall provide PacifiCorp and PacifiCorp's personnel access to the Construction Area upon PacifiCorp's request. [NAME] and PacifiCorp shall agree on a schedule for the performance of work activities by PacifiCorp's personnel in the Construction Area. PacifiCorp's personnel shall comply with [NAME]'s published safety program requirements while in the Construction Area. [NAME] may arrange for escorts for any PacifiCorp personnel accessing the Construction Area to the extent [NAME] reasonably deems such escorts necessary. The above notwithstanding, PacifiCorp may access the Construction Area without notice for the purpose of carrying out activities required for the operation of Unit 1 or responding to an Emergency.

3.4 Project Schedule and Coordination of PacifiCorp Support.

[NAME] shall (a) schedule all activities that will require or may result in the shutdown of or inability to dispatch Unit 1, and all Work activities performed on or affecting the Common Facilities in accordance with the Project Schedule, (b) notify PacifiCorp in writing of such schedule(s) at the earliest practicable time, and (c) update such schedules in writing as necessary. [NAME] shall not undertake the foregoing Work activities until PacifiCorp has agreed in writing with such schedule and plan for performing the identified Work.

3.5 Unit 1 and PacifiCorp's Area Control.

PacifiCorp shall have sole control over the operation of Unit 1 and the remainder of PacifiCorp's Area at all times.

3.6 Restrictions During Construction.

- (a) Except as otherwise provided in this Agreement, [NAME] shall perform or cause to be performed all construction activities with respect to Unit 2 in a manner that will avoid interference with PacifiCorp's operation of Unit 1.
- (b) [NAME] shall restrict construction workers and other personnel not employed by PacifiCorp from access to PacifiCorp's Area except as authorized in advance by PacifiCorp's Representative. Upon the reasonable request of [NAME],

PacifiCorp shall authorize access to PacifiCorp's Area for the purpose of undertaking activities necessary to integrate Unit 2 into the Common Facilities, and after the Substantial Completion Date to perform any work activities required under the [APSA/EPC CONTRACT], in accordance with the Project Schedule and the Work plan required under Section 3.4 above.

3.7 Transportation Routes and Lay-Down Areas.

[NAME] shall designate adequate transportation routes and lay-down areas for the construction work and materials for Unit 2.

3.8 Employee Discipline.

[NAME] shall adopt and enforce policies for disciplining construction employees if the employees' actions affect or are likely to affect Unit 1 or the Common Facilities other than as provided in the Work plan and in Section 3.4 above. Without limiting the provisions of the [APSA/EPC CONTRACT], any construction employee found to have violated Unit 1's security requirements regarding escorting and physical access to certain PacifiCorp's Areas described in the attached Exhibit "D" shall, at the request of PacifiCorp be assigned to work outside PacifiCorp's Area and shall be disciplined to the full extent permissible under [NAME]'s project labor agreement (if any), including without limitation terminated at PacifiCorp's request.

3.9 Security and Safety Requirements.

In addition to the requirements of [APSA/EPC CONTRACT] [NAME] shall, consistent with good and generally accepted construction practices, undertake all commercially reasonable efforts to protect any and all parallel, converging and intersecting electric lines and poles, telephone lines and poles, highways, waterways, railroads, sewer lines, natural gas pipelines, drainage ditches, culverts, Unit 1 existing facilities and any and all property of others related to the Facility, and shall indemnify PacifiCorp from any and all Claims with respect to [NAME]'s actions or failures to act in connection with such facilities and property in connection with the Work.

3.8 Transition from Construction to Operation.

(a) PacifiCorp shall provide oversight and consent of activities necessary for the connection of the Unit 2 systems with the Common Facilities and the activities necessary for the commissioning and Startup of Unit 2 as provided in the [APSA/EPC CONTRACT]. PacifiCorp shall provide [NAME] and its employees and contractors with reasonable controlled access to all Common Facilities, including the control room, to enable [NAME] and its contractors to interconnect Unit 2 with the Common Facilities, all in accordance with the Work Project Schedule, and upon receipt of notice from [NAME].

(b) Prior to Substantial Completion of Unit 2, PacifiCorp shall provide [NAME] with on-staff operating personnel for Startup, testing (including Performance Testing) and operation of Unit 2 in accordance with the [APSA/EPC CONTRACT]. The

operating personnel shall perform this work under the supervision and direction of [NAME]. [NAME] shall remain responsible and liable for the actions of the on-staff operating personnel while under the supervision, direction and control of [NAME].

- (c) In accordance with the [APSA/EPC CONTRACT], all work performed by [NAME] and materials stored within the boundaries of the Facility during the construction, tie-in related work and work on the distributed control system in the existing control room shall comply with PacifiCorp's Tagging and Safety Program.

ARTICLE IV Construction Damage

4.1 Construction Damage.

In the event any activities undertaken in connection with the development, construction, commissioning or testing of Unit 2 cause any physical damage ("Construction Damage") to Unit 1, to the Common Facilities or to any portion of PacifiCorp's Area:

- (a) [NAME] shall be responsible for the full cost of rebuilding, restoring and/or repairing all Construction Damage.
- (b) [NAME] shall promptly, and in any event no later than one (1) day after the date on which the Construction Damage occurred, consult with PacifiCorp regarding the extent of the Construction Damage and possible approaches to remedying the Construction Damage.
- (c) [NAME] shall promptly, and in any event no later than five (5) days after the date on which the Construction Damage occurred, submit to PacifiCorp a detailed written proposal for rebuilding, restoring or replacing, at [NAME]'s expense, such Construction Damage.
- (d) PacifiCorp shall promptly evaluate any proposal submitted by [NAME] for, rebuilding, restoring or replacing, at [NAME]'s expense, such Construction Damage.
- (e) If PacifiCorp determines that [NAME] possesses the demonstrated qualifications and capability to timely perform the remedial actions set out in the proposal, PacifiCorp will cooperate with [NAME] to promptly undertake the rebuilding, restoration or replacement of the Construction Damage set out in the proposal to PacifiCorp's satisfaction, subject to such terms, conditions and restrictions as PacifiCorp may deem appropriate to ensure that the proposed activities comply with PacifiCorp's safety programs and practices and that the remedial actions will not result in further damage or loss of generation with respect to Unit 1 operations.

- (f) If PacifiCorp concludes that [NAME] lacks the demonstrated qualifications and capability or otherwise is not in a position to timely perform the remedial actions set out in the proposal, if [NAME] does not agree with PacifiCorp's terms, conditions and restrictions described in paragraph (d) above, or if [NAME] does not promptly undertake such remedial actions, then PacifiCorp shall be entitled to promptly commence repairs to any Construction Damage to Unit 1 or the Common Facilities at [NAME]'s sole expense.
- (g) In the event that [NAME] does not reimburse PacifiCorp for any cost of rebuilding, restoration or replacement activities related to the Construction Damage incurred by PacifiCorp (including without limitation the reasonable cost of PacifiCorp's consultants and internal personnel and resources) within thirty (30) days of PacifiCorp's invoice for the same, then PacifiCorp may set off any amounts owing to PacifiCorp from [NAME] from the next Progress Payment (as defined in the [APSA/EPC CONTRACT]);
- (h) Nothing in this Article IV is intended to be nor shall operate as a limitation on PacifiCorp's right or ability to recover damages from [NAME] pursuant to the [APSA/EPC CONTRACT], this Agreement or otherwise at law or in equity.

ARTICLE V Shutdowns

5.1 Scheduled Shutdowns of Unit 1.

The Parties recognize that Unit 1 must be temporarily shut down for interconnection of Unit 2 to the Common Facilities and for other defined construction-related activities as identified in the Project Schedule. All scheduled shutdowns shall be scheduled, to the extent possible, during weekends and holiday periods.

IN NO EVENT SHALL ANY SCHEDULED SHUTDOWNS BE SCHEDULED DURING THE MONTHS OF JUNE, JULY, AUGUST OR SEPTEMBER, except and to the extent that Unit 1 has scheduled maintenance outages scheduled during such period.

[NAME] shall schedule and provide to PacifiCorp, at least 7 days prior to any necessary shutdown, written notice of the next upcoming outage and of any proposed changes to the outage periods set out in the Project Schedule.

[NAME] shall coordinate with PacifiCorp to balance the need to reduce these shutdown periods and to utilize other times of economic shutdown of Unit 1 to perform the required work under the [APSA/EPC CONTRACT] with the need to utilize these shutdown periods to perform work activities that have a reasonable probability of causing an unplanned shutdown of Unit 1.

5.2 Unscheduled Shutdowns of Unit 1.

- (a) [NAME] shall be responsible for conducting its development, construction, commissioning, testing and startup activities in a manner that minimizes the impact of Unit 2 construction on the operation of Unit 1.
- (b) In the event activities performed by [NAME] or its contractors causes Unit 1 to experience an unscheduled shutdown or loss of power generation capability (each an “Unscheduled Shutdown”), [NAME] shall be liable to PacifiCorp for all damages incurred by PacifiCorp in connection with such Unscheduled Shutdown. Damages associated with an Unscheduled Shutdown shall include, without limitation, (i) \$12,000, multiplied by the OEM’s equivalent start ratio for the affected unit(s) per Unscheduled Shutdown occurrence, (ii) the cost of all physical damage to any Unit 1 equipment that is demonstrated to have occurred due to the Unscheduled Shutdown, and (iii) the cost of replacement power (“Replacement Power Costs”) for the period of the Unscheduled Shutdown.
- (c) Replacement Power Costs shall be calculated as follows, and shall be payable whether or not PacifiCorp actually purchases replacement power for the applicable period as liquidated damages for the lost generation portion of damages only:

- (i) If an Unscheduled Shutdown occurs during Work scheduled pursuant to Section 5.2(e)(i) while Unit 1 is operating, replacement power costs shall be calculated as the product of **(1) the Dow Jones SP15 Daily Firm On-Peak Index for the day of delivery, expressed in \$/MWh, multiplied by (2) the provided Hourly Scalar for each hour, multiplied by (3) the loss factor of 1.112, plus (4) the basis of \$13/MWh** during each hour or portion of hour of the Unscheduled Shutdown, **minus (5) Unit 1’s incremental cost of generating power (i.e., the product of a given plant’s then effective net heat rate multiplied by midpoint of the Kern River, Opal Plant Platt’s Daily Gas Index at the time of the Unscheduled Shutdown expressed in units of \$/mmBtu)**

$$\text{_____} = \text{Market Price} - \text{Incremental Cost}$$

$$\text{Replacement Power} = (1 \times 2 \times 3 + 4) - 5$$

- (d) After an Unscheduled Shutdown of Unit 1, any such future work that is to be performed by [NAME] or its contractors of the same or similar nature to that which caused the Unscheduled Shutdown shall proceed as follows:
 - (i) PacifiCorp and [NAME] shall develop a plan designed to accomplish the necessary work in a manner that will avoid reoccurrence of the Unscheduled Shutdown.

- (ii) Such work plan shall provide that such work may, at PacifiCorp's election:
 - (1) be rescheduled to begin within, and end not less than five (5) hours before the end of, a subsequent Off-Peak Hourly Periods, during which Unit 1 may continue to operate; or
 - (2) PacifiCorp may elect to schedule a shutdown of Unit 1 during any subsequent Off-Peak Hourly Periods and such work may be performed during such shutdown beginning within, and ending no less than two (2) hours before the end of, such Off-Peak Hourly Periods.
- (e) PacifiCorp shall provide [NAME] with not less than eight (8) hours' advance notice (to be confirmed in writing) of any election to schedule a shutdown of Unit 1 pursuant to Section 5.2(d)(ii)(2).
- (f) Nothing in this Article V is intended to be nor shall operate as a limitation on PacifiCorp's right or ability to recover damages from [NAME] pursuant to the [APSA/EPC CONTRACT], this Agreement or otherwise at law or in equity.

5.3 Testing and Initial Firing of Combustion Turbines.

[NAME] shall conduct testing and initial firing of the Unit 2 combustion turbine generator during Off-Peak Hourly Periods.

ARTICLE VI
Notices and Miscellaneous Provisions

6.1 Notices, Consents and Approvals

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

if to [NAME], to:

with copies to:

or to such other person or address as [NAME] shall furnish to PacifiCorp;

if to PacifiCorp, to:

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: _____

Tel: _____

Fax: _____

with copies, in connection with default notices, to:

or to such other person(s) or address(es) as PacifiCorp furnishes to [NAME] from time to time.

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

6.2 Entire Agreement

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

6.3 Amendment; Waiver

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

6.4 Successors and Assigns

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

6.5 Third Party Beneficiaries

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

6.6 Severability

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

6.7 Further Assurances

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

6.8 Publicity

Except as required by law, [NAME] agrees that they will not issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to the Project, or to this Agreement without first consulting with and obtaining the prior consent of PacifiCorp, which consent shall not be unreasonably withheld or delayed. Except as required by law, PacifiCorp agrees that it will not issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to this Agreement without first consulting with and obtaining the prior consent of [NAME], which consent shall not be unreasonably withheld or delayed. To the extent reasonably possible, the releasing Party will accommodate the concerns of the other Party. This requirement does not, however, restrict [NAME] from identifying its involvement in the Project in its marketing of products and services to others.

6.9 Independent Contractor

[NAME] is an independent contractor with respect to the Work, and each part thereof, and in respect of all work to be performed hereunder. Neither [NAME], the contractor, nor any subcontractor, the employees of any of such entities, employed in connection with the Work shall be deemed to be agents, representatives, joint ventures, employees or servants of PacifiCorp by reason of their performance hereunder or in any manner dealt with herein. Neither Party shall

perform any act or make any representation to any Person to the effect that [NAME], or any of its agents, representatives, the Contractor or subcontractors, is the agent of PacifiCorp.

6.10 Survival

The provisions of Article 4 (“Construction Damage”), Article 5 (“Shutdowns”), and Sections 2.2 (“Governing Provisions”), 3.1 (“Construction Control”), 3.3 (“PacifiCorp Access to the Construction Area”), 3.9 (“Security and Safety Requirements”), 6.9 (“Independent Contractor”) and 6.11 (“Governing Law; Waiver of Jury Trial”) of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely, provided that the foregoing enumeration shall not be interpreted to bar survival of any other provision hereof which would otherwise be deemed to survive by operation of law.

6.11 Governing Law; Waiver of Jury Trial

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

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

6.12 Counterparts

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

6.13 Captions

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

6.14 Costs and Expenses.

All Parties have jointly drafted this Agreement. Presumptions regarding the interpretation of documents against the persons drafting same shall not apply to this Agreement. Each Party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and, except as set forth herein, to its performance and compliance with all

agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants. In the event of default hereunder, the Parties agree that the defaulting Party shall pay the fees, expenses and disbursements of counsel for the non-defaulting Party in enforcing this Agreement.

6.14 No Waiver.

Except as otherwise provided herein, no provision of this Agreement may be waived except in writing. No failure by either Party to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof. Any waiver at any time by a Party of its right with respect to default under this Agreement, or the respect to other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

6.15 Liquidated Damages.

TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE UNDER THIS AGREEMENT IS AGREED BY THE PARTIES TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION OF SUCH DAMAGES, AND NOT A PENALTY.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

By [NAME]:

Title:

By:

Title:

**EXHIBIT A TO
CONSTRUCTION COORDINATION AGREEMENT
Glossary of Defined Terms**

Except as otherwise defined in the body of this Agreement, of which this Exhibit is a part, capitalized terms shall have the meanings set forth below:

- (1) “Action” shall mean any lawsuit, action, proceeding, investigation or complaint before any Governmental Authority, mediator or arbitrator.
- (2) “Agreement” shall have the meaning given to it in the Recitals of this Agreement.
- (3) “[APSA/EPC CONTRACT]” shall have the meaning set forth in the Recitals.
- (4) “PacifiCorp’s Area” means the entirety of the Site that is not included in the Construction Area, as the same may exist from time to time.
- (5) “Claims” shall have the meaning set forth in the [APSA/EPC CONTRACT].
- (6) “Common Facilities” means those tangible assets, contracts, and permits owned by PacifiCorp in connection with Unit 1 and utilized in common by PacifiCorp and [NAME] for the construction, startup, commissioning and operation of Unit 2, identified on Exhibit “B”.
- (7) “Construction Area” shall have the meaning given to it in Section 3.2 of this Agreement
- (8) “Construction Damage” shall have the meaning given to it in Section 4.1 of this Agreement.
- (9) “Construction Fence” shall have the meaning given to it in Section 3.2 of this Agreement.
- (10) “Effective Date” has the meaning set forth in the [APSA / EPC Contract]
- (11) “Emergency” means any situation which is likely to impose an immediate threat of injury to any Person or of material property damage or material economic loss to all or any part of the Facility.
- (12) “Facility” or “Facilities” shall mean the combined generation facility consisting of Unit 1, Unit 2 and the Common Facilities, and all energy producing equipment and auxiliary equipment, fuel storage and handling facilities and equipment, electrical transformers, interconnection facilities and metering facilities, as may be required for receipt of fuel and for delivery of electricity, and all other improvements related solely to the Units and located on the Site.
- (13) ”Governmental Authority” means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county or other political subdivision.

- (14) “NERC” shall mean the North American Electric Reliability Council, and any successor entity.
- (15) “Off-Peak Hourly Period” means those periods of time measured by hours ending 0100 through 0600 and hours ending 2300 through 2400 Monday through Saturday, and all hours on Sunday and NERC Holidays.
- (16) “PacifiCorp” shall have the meaning set forth in the Recitals..
- (17) “PacifiCorp’s Area” shall have the meaning given to it in Section 3.2 of this Agreement.
- (18) “Party” shall have the meaning given to it in the Recitals of this Agreement.
- (19) “Performance Testing” shall have the meaning given to it in the [APSA/EPC CONTRACT].
- (20) “Person” means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or Governmental Authority.
- (21) “Prudent Industry Practice” shall have the meaning given to it in the [APSA/EPC CONTRACT].
- (22) “Project Schedule” shall have the meaning given to it in the [APSA/EPC CONTRACT].
- (23) “Replacement Power Costs” shall have the meaning given to it in Section 5.2(b) of this Agreement.
- (24) “Shutdown Periods” shall have the meaning given to it in Section 6.1 of this Agreement.
- (25) “Site” means the real property on which the Facilities are located.
- (26) “Substantial Completion” and “Substantial Completion Date” shall have the meanings given to them in the [APSA/EPC CONTRACT] and shall be the time at which PacifiCorp takes possession and control over the constructed Unit 2 pursuant to the terms of the [APSA/EPC CONTRACT].
- (27) “Tagging and Safety Program” shall mean that tagging and safety program in effect and maintained by PacifiCorp at the Facility from time to time and provided to [NAME].
- (28) “Term” shall have the meaning given to it in Section 2.1 of this Agreement.
- (29) “Unit” shall mean an individual generating facility consisting of the gas turbine, heat recovery system generator, steam turbine, auxiliary boilers and other associated facilities and equipment not included as Common Facility.
- (30) “Unit 1” means the power plant located in _____, Utah, owned by PacifiCorp and the related facilities, real property and property rights related thereto including all necessary permits and licenses, but excluding the Common Facilities.

- (31) “Unit 2” means the proposed power plant to be located in _____ under development by [NAME] adjacent to Unit 1 and the related facilities, real property and property rights related thereto including all necessary permits and licenses, but excluding the Common Facilities.
- (32) “Unscheduled Shutdown” shall have the meaning given to it in Section 6.2(b) of this Agreement.
- (33) “Work” shall have the meaning set forth in the [APSA/EPC Contract].

Rules as to Usage

- 1. The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.
 - (i) The singular includes the plural and vice versa;
 - (ii) Reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
 - (iii) Reference to a Person in a particular capacity excludes such Person in any other capacity;
 - (iv) Any gender reference includes the other gender;
 - (v) Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
 - (vi) References used in any Article, Section, Schedule, Exhibit or clause refer to this agreement;
 - (vii) “Hereunder,” “hereof,” “hereto,” “herein,” and words of similar import are references to this Agreement as a whole not any particular part of provision hereof or thereof;
 - (viii) “Including” (“include”) means including without limiting the generality of any description preceding such term;
 - (ix) Relative to any period of time, “from” means “from and including,” “to” means “to but not including,” and “through” means “through and including;” and

- (x) Reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

**EXHIBIT B TO
CONSTRUCTION COORDINATION AGREEMENT**

Common Facilities

**EXHIBIT C
CONSTRUCTION COORDINATION AGREEMENT**

Site Plan Designation of Construction Area

**EXHIBIT D
CONSTRUCTION COORDINATION AGREEMENT**

Security Requirements

Appendix T

Witness Point Schedule

APPENDIX T

WITNESS POINT SCHEDULE

In accordance with Section 14.3 of the Agreement, Seller shall provide Buyer and Buyer's Representative with at least fourteen (14) days' advance notice of the following pre-mechanical completion shop operations:

1. Combustion and Steam Turbine/Generators
 - a. Overspeed test and vibration measurement on bladed combustion turbine rotors and on bladed HP, IP and LP steam turbine rotors
 - b. Check key clearances during CT & ST manufacture as defined in the [OEM] Project Inspection & Test Shop Program
 - c. Inspect CT & ST generator stator casings prior to welding and brazing operations if such operations are still outstanding
 - d. Insulation tests, field rotation tests & HV tests on generator stators
 - e. Overspeed test, vibration measurement, insulation resistance measurement & HV test on generator rotor assemblies
 - i. 120% over-speed test during high speed balance (new field). Used field at 110%. High speed balance conducted at 3600 rpm.
 - f. Check key clearances during assembly of generators as defined in the [OEM] Project Inspection & Test Shop Program
 - g. Hydrostatic tests on HP & IP steam turbine casings and live steam valves
2. For Transformers
 - a. Winding Inspection and core inspection (before windings are nested and before windings are installed on the core).
 - b. Pre-tanking inspection, and the tanking of the core-and-coil assembly.
 - c. Testing
 - d. Final Inspection before shipment.

FORM OF NOTICE OF REQUEST FOR PROGRESS PAYMENT

[_____, 20__]*

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

Ladies and Gentlemen:

Reference is made to the Asset Purchase and Sale Agreement, dated as of _____, as amended, as further amended, restated, supplemented or otherwise modified from time to time (the “*Agreement*”) between PacifiCorp, an Oregon corporation (the “*Buyer*”) and _____, LLC, a _____ limited liability company (the “*Seller*”) and together with the Buyer, collectively, the “*Parties*”). Capitalized terms used herein but not otherwise defined shall have the respective meanings set forth in the Agreement.

1. The Seller hereby irrevocably requests payment of a Progress Payment on the date (which is a Business Day) and in the aggregate amount indicated below (the “*Requested Progress Payment*”):

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

2. Pursuant to Section 3.2(g) of the Agreement, the undersigned, an Authorized Officer of Seller, hereby certifies on behalf of the Sellers that:

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

* Must be submitted not less than 30 days prior to the date Sellers expect to be paid (*i.e.*, payment, net 30 days). See Agreement, § 3.1(a) (Procedures).

[†] Must correspond with Progress Payment Number identified on Appendix I of the Agreement.

[‡] Must correspond with Progress Payment Amount identified opposite Progress Payment Number on Appendix I.

(b) As of the date of this request and as of the date of the Requested Progress Payment, (i) the representations and warranties made by Seller in each Transaction Document to which it is a party (other than representations and warranties which expressly speak only as of a different date) are true and correct in all material respects, (ii) to Seller's knowledge, the representations and warranties made by each Project Party other than the Sellers in the Transaction Documents (other than representations and warranties which expressly speak only as of a different date) are true and correct in all material respects and (iii) Schedule 4.12 (d) to the Agreement [together with the certified addendum attached hereto as Annex 1] complies with the requirements of the Agreement.[§].

(c) As of the date of this request and as of the date of the Requested Progress Payment (i) no circumstance, event or condition exists which either immediately or with the passage of time or the giving of notice, or both, permits Seller to withhold payment to Contractor or any Subcontractor under any Primary Construction Contract; (ii) no breach, violation or default has occurred and is continuing under (A) this Agreement (B) any Contractor Guaranty; (C) any Consent or (D) the Security Documents and (iii) to the extent not already set forth in this paragraph 2(c), no circumstance, event or condition exists which either immediately or with the passage of time or the giving of notice, or both, permits the Sellers' counterparty to terminate any Transaction Document.

(d) As of the date of this request and as of the date of the Requested Progress Payment, no action, suit, proceeding or investigation by or before any Governmental Authority or any arbitrator is pending or to the Seller's knowledge threatened against or affecting a Project Party or the Project which would result in a Material Adverse Change [other than _____].**

(e) As of the date of this request and as of the date of the Requested Progress Payment, no Material Adverse Change has occurred [other than _____].^{††}

(f) As of the date of this request and as of the date of the Requested Progress Payment, except with respect to the Deferred Governmental Approvals, all Necessary Governmental Approvals have been obtained and are in full force and effect.

(g) As of the date of this request and as of the date of the Requested Progress Payment, each Additional Project Document, together with all amendments, supplements, and exhibits thereto and the ancillary documents relating thereto has been delivered to you prior to the date hereof or are attached hereto and each such Additional Project Document (i) has been duly authorized, executed and delivered by each Person

[§] Attach addendum to Schedule 4.12 (d) if necessary.

^{**} Insert if any action, suit, proceeding or investigation has been threatened by the Buyer. See Section 3.2(e) of the Agreement.

^{††} Insert if any Material Adverse Change is the result of an act or omission by the Buyer. See Section 3.2(f) of the Agreement.

that is a party thereto, (ii) is in full force and effect, and (iii) has become subject to the Lien of the Security Documents.

3. The commercial invoice of Seller properly substantiating the amounts requested to be paid in connection with the Requested Progress Payment is attached hereto as Annex 2.

4. The Progress Report is attached hereto as Annex 3.^{##}

(a) The Requested Progress Payment set forth in paragraph 1 of this request will be applied for the purposes specified in the Progress Report.

(b) The Project is proceeding in accordance with the Schedule.

(c) As of the date hereof, Seller has reviewed the Work to the extent performed or rendered and the Materials, Equipment or supplies that have been delivered for which the Requested Progress Payment is being requested, and the amounts which have been paid or are to be paid are proper.

(d) No work shown in Progress Report has been paid for from the proceeds of Progress Payment made prior to the date hereof.

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

[THE NEXT PAGE IS THE SIGNATURE PAGE]

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

Very truly yours,

By: _____
Name:
Title:

Annex 1 to Exhibit A

ADDENDUM TO SCHEDULE 4.12 (d) TO AGREEMENT

Annex 2 to Exhibit A

COMMERCIAL INVOICE

PROGRESS REPORT

PAYMENT INSTRUCTIONS

Payee

Amount

Wire Instructions

FORM OF NOTICE TO PROCEED

_____, 200_

SELLER
Street
City, State Zip Code

Attention: _____

This Notice to Proceed is delivered pursuant to that certain Asset Purchase and Sale Agreement, dated as of _____, 200_, (as further amended, restated, supplemented or otherwise modified from time to time, the “*Agreement*”) by and among PacifiCorp, an Oregon corporation (the “*Buyer*”), _____, a _____ (“*Seller*”). Capitalized terms used herein but not otherwise defined shall have the respective meanings set forth in the Agreement.

1. Buyer hereby acknowledges that each of the conditions precedent set forth in Sections 17.1(b) of the Agreement has been satisfied or waived.

2. Pursuant to, and in accordance with, Section 17.1(a) of the Agreement, Buyer hereby issues this Notice to Proceed to Seller.

Very truly yours,

PacifiCorp,
an Oregon corporation

By: _____

Name:

Title:

cc: Buyer's cc's
Seller's cc's

Exhibit C

(Credit Matrix is attached to 2012 RFP)

Exhibit D

D1 - CHANGE ORDER REQUEST FORM

D2 - CHANGE ORDER NOTICE FORM

D3 - CHANGE ORDER FORM

EXHIBIT D1
CHANGE ORDER REQUEST FORM



CHANGE ORDER REQUEST

[Seller/Contractor]:

Change Request No.: *

[Agreement/Contract] No.:

Date: **

Date of [Agreement/Contract]: *****

Pursuant to Article 13 (Change Orders), the following change is requested and modifies the [Agreement/Contract] as follows:

Adjustment to Scope of Work

Adjustment to Project Schedule

Adjustment to Pricing

[Seller/Contractor]

PACIFICORP

By _____
Authorized Signature

By _____
Authorized Signature

Name

Name

Title

Title

Date

Date

EXHIBIT D2
CHANGE ORDER NOTICE FORM



CHANGE NOTICE

[Seller/Contractor]

Change Notice No.: *

[Agreement/Contract] No.:

Date: **

Date of [Agreement/Contract]: *****

Pursuant to Article 13 (Change Orders), we are issuing this form to notify you of a change to the [Agreement/Contract] as follows:

Adjustment to Scope of Work

Adjustment to Project Schedule

Adjustment to Pricing

PACIFICORP

By _____
Authorized Signature

By _____
Authorized Signature

Name

Name

Title

Title

Date

Date

EXHIBIT D3
CHANGE ORDER FORM





CHANGE ORDER

[Seller/Contractor]:

Change Order No.: *

[Agreement/Contract] No.:

Date: **

Date of [Agreement/Contract]: *****

Pursuant to Article 13 (Change Orders), this Change Order is issued to modify the [Agreement/Contract] as follows:

Adjustment to Scope of Work

Adjustment to Project Schedule

Adjustment to Pricing

Existing Price \$ _____

Adjustment due to Change Order No. \$ _____

Total Adjusted Price \$ _____

The above adjustment sets forth the total compensation for performing the work described in this Change Order, and any effect this Change Order has on the performance of any other work under the [Agreement/Contract].

Except as provided herein, all other terms of the [Agreement/Contract] remain in full force and effect.

PACIFICORP

By _____
Authorized Signature

By _____
Authorized Signature

Name

Name

Title

Title





FORM OF
CERTIFICATE OF AUTHORIZED OFFICER OF
[SELLER], LLC
(A [_____] Limited Liability Company)

The undersigned, as a _____ of [Seller], a [_____] limited liability company (“Seller”), does hereby certify, represent and warrant that:

1. The undersigned is a duly authorized _____ of Seller, and as such is familiar with the matters set forth below.
2. The undersigned acknowledges that Buyer is relying on this certificate (this “Certificate”) in connection with the issuance of the Notice to Proceed under the Asset Purchase and Sale Agreement, dated as of _____, 200__ as amended, restated, supplemented or otherwise modified from time to time, between Seller and PacifiCorp, an Oregon corporation (the “Agreement”) and the consummation of the transactions described therein.
3. Attached hereto as Exhibit “A” are true, correct and complete copies of all environmental reports, assessments and audits, including reports, assessments and audits relating to air and emissions, prepared by or on behalf of Seller in connection with the Project.
4. Attached hereto as Exhibit “B” are true, correct and complete copies of all agreements, contracts or other instruments providing for the sale, lease, transfer or other disposition of the Site (including any options). To the extent such agreements have not been executed on or prior to the date hereof, true, correct and complete copies of all drafts of such agreements are attached hereto as Exhibit “B”.
5. Attached hereto as Exhibit “C” is Seller’s Disclosure Letter, as updated and modified to reflect such information required to be set forth thereon as of the date hereof.
6. The copies of the Transaction Documents delivered pursuant to Section 17.1(b) of the Agreement, and as identified on, and attached hereto as, Exhibit “D”, are true, correct and complete copies of such documents, and such Transaction Documents are in full force and effect and no term or condition thereof has been amended from the form thereof delivered to Buyer, or waived. Seller and the other parties to the Transaction Documents attached hereto as Exhibit “D” have performed or complied with all agreements and conditions contained in such Transaction Documents and any agreements or documents referred to therein required to be performed or complied with by each of them on or before the issuance of the Notice to Proceed. Subject to the foregoing, neither Seller nor any such other party to such Transaction Documents is in default in the performance or compliance with any of the terms or provisions thereof.
7. All conditions precedent to the issuance of the Notice to Proceed have been satisfied or have been waived by Buyer in writing (other than to the extent the satisfaction of a condition is dependent on the judgment of Buyer).

8. As of the date hereof and as of the date of the issuance of the Notice to Proceed, Seller has achieved (i) all of the Milestones with Milestone Dates prior to the date hereof.

9. The representations and warranties made by Seller in each Transaction Document to which it is a party (other than representations and warranties which expressly speak only as of a different date) are true and correct in all material respects and will be true and correct on and as of the date of the issuance of the Notice to Proceed, (ii) to Seller's knowledge, the representations and warranties made by each Project Party other than Seller in the Transaction Documents (other than representations and warranties which expressly speak only as of a different date) are true and correct in all material respects and will be true and correct on and as of the date of the issuance of the Notice to Proceed.

10. As of the date hereof and as of the date of the issuance of the Notice to Proceed, (i) no circumstance, event or condition exists which either immediately or with the passage of time or the giving of notice, or both, permits Seller to withhold payment under any Primary Construction Contract; (ii) no breach, violation or default has occurred and is continuing under (A) the Agreement (B) any Contractor Guaranty; (C) any Consent or (D) the Security Documents and (iii) to the extent not already set forth in this paragraph 10, no circumstance, event or condition exists which either immediately or with the passage of time or the giving of notice, or both, permits Seller's counterparty to terminate any Transaction Document.

11. As of the date hereof and as of the date of the issuance of the Notice to Proceed, no action, suit, proceeding or investigation by or before any Governmental Authority or any arbitrator is pending or to Seller's knowledge threatened against or affecting a Project Party or the Project which would result in a Material Adverse Change.

12. As of the date hereof and as of the date of the issuance of the Notice to Proceed, no Material Adverse Change has occurred.

13. As of the date hereof and as of the date of the issuance of the Notice to Proceed, except with respect to the Deferred Governmental Approvals, all Necessary Governmental Approvals have been obtained and are in full force and effect.

14. Schedule 17.1(b)(vii) to the Agreement lists all filings or recordings or equivalent standard made under the Uniform Commercial Code in each jurisdiction in which Seller was formed, have an office or in which assets of either Seller are located. There are no such filings or recordings with respect to any of the Collateral (except such filings and recordings with respect to Permitted Liens) in favor of any Person other than Buyer. Attached hereto as Exhibit "E" are copies of the search reports or equivalent standard received as a result of such search.

15. Attached hereto as Exhibit "F" are the insurance certifications and certificates that comply with the requirements of Section 27 of the Agreement.*

Capitalized terms used herein and not otherwise defined herein are used herein with the meanings ascribed thereto in the Agreement.

* To be attached, if required.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, I have executed and delivered this Certificate this ____ day of _____, 2004.

[Seller], LLC
a [_____] limited liability company

By: _____
Name: _____
Title: _____

ENVIRONMENTAL REPORTS, ASSESSMENTS, AUDITS

1. *[Seller, please list and attach]*
2. *[others]*

**AGREEMENTS, CONTRACTS OR OTHER INSTRUMENTS PROVIDING FOR THE
SALE, LEASE, TRANSFER OR OTHER DISPOSITION OF THE SITE (INCLUDING
ANY OPTIONS)**

1. *[Seller, please list and attach]*

SELLERS' DISCLOSURE LETTER

TRANSACTION DOCUMENTS

1. Asset Purchase and Sale Agreement and Waiver
2. EPC Contract*
3. Construction Coordination Agreement*
4. Assignment and Security Agreement
5. Deposit Account Control Agreement
6. UCC-1 Financing Statements
7. Guaranty*
8. [*others*]

RECORD SEARCHES

INSURANCE CERTIFICATES*

* To be attached, if required pursuant to the Agreement.

PacifiCorp
Letter Of Credit Language

The following are the terms and conditions required by PacifiCorp when establishing a Letter Of Credit

- PacifiCorp must approve the issuing bank.
- Applicant (Supplier) name appearing in the Letter Of Credit and Agreement must be EXACTLY the same.
- If issuing bank is located outside USA it must be confirmed by US bank approved by PacifiCorp
- It is to be an irrevocable standby Letter Of Credit in favor of PacifiCorp.
- Drafts are payable at sight.
- The expiry date must be no earlier than 12 months from issuance.
- Partial drawings are permitted.
- The LOC is available by PacifiCorp's draft (s) at sight when accompanied by a copy of an invoice and one of the two following statements and signed by a representative of PacifiCorp, reading as follows:
 1. We hereby certify that Applicant has violated the terms of the Purchase Agreement dated _____
 2. Applicant has not renewed or provided a satisfactory security deposit to Beneficiary within 10 days of expiration of the Letter Of Credit no. XXXXX, dated XXXX
- Invoice (s) in excess of the amount of this Letter Of Credit are acceptable; however payment is not to exceed the aggregate amount of this letter of credit.
- In all events the issuing bank will fund the draw of the beneficiary within 24 hours of presentment.
- The LOC will provide for the beneficiary to deliver the required documents to fund the draw by either mail or courier with the address of the issuing bank stated as the point of delivery.

Planning Consents

To be completed upon site selection

Insurance Certificates

To be completed upon site selection

PARTIAL RELEASE AND CERTIFICATE OF PROGRESS PAYMENT

With reference to that certain Asset Purchase and Sale Agreement, Contract No. _____, dated _____, _____ (“Agreement”), by and between PacifiCorp (“Buyer”) and [Seller], (“Seller”).

Seller hereby certifies, represents, and warrants that, each of its contractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with Seller’s work related to the Agreement up to the date of this progress payment.

Seller further certifies, represents and warrants that it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by it in connection with Seller’s work related to the Contract up to the date of this progress payment.

In consideration of \$ _____ as payment for all work relating to this progress payment, Seller hereby unconditionally remises, releases and forever discharges Buyer’s premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of Primary Contractor’s work relating to the Contract up to the date of this progress payment.

The foregoing shall not relieve Contractor of its other obligations arising from its work performed relating to the Contract, which by their nature survive completion of this portion of the work, including, without limitation, warranties, guarantees and indemnities.

Executed this ____ day of _____, _____.

Seller: _____

By: _____

Title: _____

PARTIAL RELEASE AND CERTIFICATE OF PROGRESS PAYMENT

With reference to that certain EPC Contract, Contract No. _____, dated _____, _____, as amended, between [Company/Seller] (“Company”) and [Contractor], (“Primary Contractor”).

The Primary Contractor hereby certifies represents, and warrants that, each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with the Contractor’s work related to the Contract up to the date of this progress payment.

Primary Contractor further certifies, represents and warrants that it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by it in connection with the Contractor’s work related to the Contract up to the date of this progress payment.

In consideration of \$ _____ as payment for all work relating to this progress payment, the Primary Contractor hereby unconditionally remises, releases and forever discharges [_____] premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of Primary Contractor’s work relating to the Contract up to the date of this progress payment.

The foregoing shall not relieve Contractor of its other obligations arising from its work performed relating to the Contract, which by their nature survive completion of this portion of the work, including, without limitation, warranties, guarantees and indemnities.

Executed this ____ day of _____, _____.

Primary Contractor: _____

By: _____

Title: _____

PARTIAL RELEASE AND CERTIFICATE OF PROGRESS PAYMENT

With reference to that certain EPC Contract, Contract No. _____, dated _____, _____, by and between [PacifiCorp/Seller] and [Contractor], (“Primary Contractor”) and related to which the undersigned party, [Subcontractor] (“Subcontractor”), has performed certain work for Primary Contractor.

Subcontractor hereby certifies, represents, and warrants that it has received full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing project and/or used in connection with its work related to the Contract up to the date of this progress payment.

Subcontractor further certifies represents, and warrants that, each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with the Subcontractor’s work related to the Contract up to the date of this progress payment.

Subcontractor further certifies, represents and warrants that it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by it in connection with the Subcontractor’s work related to the Contract up to the date of this progress payment.

In consideration of \$ _____ as payment for all work relating to this progress payment, the Subcontractor hereby unconditionally remises, releases and forever discharges [_____]’s premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of Subcontractor’s work relating to the Contract up to the date of this progress payment.

The foregoing shall not relieve Subcontractor of its other obligations arising from its work performed relating to the Contract, which by their nature survive completion of this portion of the work, including, without limitation, warranties, guarantees and indemnities.

Executed this ____ day of _____, _____.

Subcontractor: _____

By: _____

Title: _____

PARTIAL RELEASE AND CERTIFICATE OF PROGRESS PAYMENT

With reference to that certain EPC Contract, Contract No. _____, dated _____, _____, by and between [PacifiCorp/Seller] and [Contractor], (“Primary Contractor”) and related to which the undersigned party, [Supplier] (“Supplier”), has supplied materials for Primary Contractor or subcontractors of Primary Contractor.

Supplier hereby certifies, represents, and warrants that it has received full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing project and/or used in connection with its work related to the Contract up to the date of this progress payment.

The Supplier further certifies represents, and warrants that, each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with the Supplier’s work related to the Contract up to the date of this progress payment.

Supplier further certifies, represents and warrants that it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by it in connection with the Supplier’s work related to the Contract up to the date of this progress payment.

In consideration of \$ _____ as payment for all work relating to this progress payment, the Supplier hereby unconditionally remises, releases and forever discharges [_____’s] premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of Supplier’s work relating to the Contract up to the date of this progress payment.

The foregoing shall not relieve Supplier of its other obligations arising from its work performed relating to the Contract, which by their nature survive completion of this portion of the work, including, without limitation, warranties, guarantees and indemnities.

Executed this ____ day of _____, _____.

Supplier: _____

By: _____

Title: _____