

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



February 1, 2011

Advice Letter 3786-E

Jane K. Yura
Vice President, Regulation and Rates
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10B
P.O. Box 770000
San Francisco, CA 94177

**Subject: Modifications to PG&E's PV PPA Program RFO Protocol and
Appendices as Required by Resolution E-4368**

Dear Ms. Yura:

Advice Letter 3786-E is effective December 30, 2010.

Sincerely,

A handwritten signature in blue ink that reads "Julie A. Fitch".

Julie A. Fitch, Director
Energy Division



December 30, 2010

Advice 3786-E

(Pacific Gas and Electric Company ID U39 E)

Public Utilities Commission of the State of California

**Subject: Modifications to PG&E's PV PPA Program RFO Protocol and
Appendices As Required By Resolution E-4368**

Purpose:

Pacific Gas and Electric Company ("PG&E") hereby submits Advice Letter 3786-E in compliance with Ordering Paragraph ("OP") 11 of Resolution E-4368 (the "Resolution"). The Resolution approves with modification PG&E's Advice Letter 3674-E, the Implementation and Administration Details for the Power Purchase Agreement ("PPA") Portion of PG&E's Photovoltaic ("PV") Program.

Background:

In the Resolution, the Commission requested that PG&E submit a compliance filing by Tier 1 advice letter within 30 days of the effective date of the Resolution demonstrating compliance with the following Ordering Paragraphs:

OP 4: Pacific Gas and Electric Company shall remove the provision in its power purchase agreement solicitation protocols that limit the number of bids allowed by a single participant.

OP 5: Pacific Gas and Electric Company shall revise its eligibility protocols so that:

- a. A single project may be comprised of the aggregation of multiple sites to meet or exceed the one megawatt program eligibility threshold, provided that each system has a minimum 500 kilowatt Gross Power Rating;

- b. A project comprised of aggregated sites interconnects within a single p-node; and
- c. A minimum level of developer experience is required for participation in a power purchase agreement solicitation. Specifically: the independent power producer company and/or member of the project development team must have either completed or begun construction of solar project that is at least 500 kilowatts.

OP 7: Pacific Gas and Electric Company shall modify its solicitation protocols so that a Local Capacity Requirement designation will be used as a tie-breaker criterion when selecting projects through the power purchase agreement solicitation process.

OP 9: Pacific Gas and Electric Company shall modify section VIII of its solicitation protocols and use the same waiver of claims and limitation of remedies protocols used for its 2009 Renewables Portfolio Standard solicitation.

OP 10: Pacific Gas and Electric Company shall remove delivery term security provisions in its standard power purchase agreement for facilities three megawatts and smaller.

Updated PV PPA Program Request for Offers (“RFO”) Protocol and Appendices:

PG&E has made all modifications to the PV PPA Program RFO Protocol and Appendices as directed by the Resolution.

The Resolution also allows PG&E to “modify its solicitation protocol to require sellers to seek qualification as an RA resource in order to maintain eligibility to participate in the solicitation.”¹ PG&E has therefore modified its Protocol to require Participants to provide documentation on or before 2 weeks of the applicable resource adequacy forum deadline that they have made a request for full capacity deliverability status.

¹ Resolution E-4368, Page 23.

PG&E has also made the following modifications to the Protocol that were not specifically directed in the Ordering Paragraphs of the Resolution:

- 1) Schedule – Pursuant to PG&E’s discretion in the approved Protocol, the tentative schedule has been revised to accommodate this compliance filing and recent developments in the interconnection process and to provide additional time to conduct the offer evaluation.
- 2) Site Control – A participant having site control is a requirement of the Program. In order to make this demonstration, PG&E will require RFO Participants to attest to having site control. This update has been in done in consultation with the Independent Evaluator.
- 3) Contractual Deadlines – Following the issuance of Resolution E-4368, PG&E identified inadvertent errors in the ‘Construction Start Date’ and ‘Guaranteed Commercial Operation Date’ terms of the standard power purchase agreement for facilities less than three megawatts. These two terms require generating facilities to commence Construction within 12 months following PPA execution and to be commercially operable within 18 months following PPA execution, respectively. In order to be consistent with the approved standard power purchase agreement for facilities 3 to 20 MW as approved in D.10-04-052, these terms should require a generating facility to commence construction within 12 months and be commercially operable within 18 months following CPUC approval of an executed PPA. PG&E has made this correction to the standard power purchase agreement for facilities less than three megawatts.

To demonstrate compliance with the Resolution, PG&E is including its updated PV PPA Program RFO Protocol and Appendices as Attachment A to this Advice Letter. To clearly identify these changes, PG&E is also including the updated Protocol and Appendices red-lined against the version originally submitted in Advice Letter 3674-E as Attachment B. PG&E has also included as Attachment C a clean and red-lined version of the Construction Start Date and Guaranteed Commercial Operation Date terms of the standard power purchase agreement for facilities less than three megawatts.

Protests:

Anyone wishing to protest this filing may do so by sending a letter by **January 19, 2011**, which is 20 days from the date of this filing. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. Protests should be mailed to:

CPUC Energy Division
Attention: Tariff Unit, 4th Floor
505 Van Ness Avenue
San Francisco, California 94102

Facsimile: (415) 703-2200
E-mail: mas@cpuc.ca.gov and jnj@cpuc.ca.gov

Copies should also be mailed to the attention of the Director, Energy Division, Room 4004, and Honesto Gatchalian, Energy Division, at the address shown above.

The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to PG&E at the address shown below on the same date it is mailed or delivered to the Commission:

Pacific Gas and Electric Company
Attention: Jane K. Yura
Vice President, Regulation and Rates
77 Beale Street, Mail Code B10B
P.O. Box 770000
San Francisco, California 94177

Facsimile: (415) 973-6520
E-Mail: PGETariffs@pge.com

Effective Date:

PG&E requests that this advice filing become effective on **December 30, 2010**, the date of filing. PG&E submits this as a Tier 1 advice filing effective pending disposition.

Notice:

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list and the service lists for R.08-08-009, R.06-02-012, and A.09-02-019. Address changes to the General Order 96-B service list should be directed to e-mail PGETariffs@pge.com. For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov.

Send all electronic approvals to PGETariffs@pge.com. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs>.

A handwritten signature in black ink that reads "Jane Yura /ent". The signature is written in a cursive style.

Vice President - Regulation and Rates

cc: Service List for R.08-08-009
Service List for A.09-02-019
Service List for R.06-02-012
Paul Douglas – Energy Division
Sean Simon – Energy Division

Attachments

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY

ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 M)**

Utility type:

ELC GAS
 PLC HEAT WATER

Contact Person: Linda Tom-Martinez

Phone #: (415) 973-4612

E-mail: lmt1@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas
 PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **3786-E**

Tier: **1**

Subject of AL: **Modifications to PG&E's PV PPA Program RFO Protocol and Appendices As Required By Resolution E-4368**

Keywords (choose from CPUC listing): Compliance

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: Resolution E-4368

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL¹: _____

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for:

Confidential information will be made available to those who have executed a nondisclosure agreement: Yes No

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: _____

Resolution Required? Yes No

Requested effective date: **December 30, 2010**

No. of tariff sheets:

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected:

Service affected and changes proposed¹: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Tariff Files, Room 4005
DMS Branch
505 Van Ness Ave.,
San Francisco, CA 94102
jnj@cpuc.ca.gov and mas@cpuc.ca.gov

Pacific Gas and Electric Company
Attn: Jane Yura
Vice President, Regulation and Rates
77 Beale Street, Mail Code B10B
P.O. Box 770000
San Francisco, CA 94177
E-mail: PGETariffs@pge.com

Attachment A

**PV Program PPA RFO Protocol
and Appendices**



Solar Photovoltaic Program – Power Purchase Agreements (PV Program PPA)

2011 Request for Offers

February 2, 2011

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I. Introduction and Overview:

A. Overview

Pacific Gas and Electric Company (“PG&E”) is issuing the 2011 Solar Photovoltaic Program Power Purchase Agreement (“PV Program PPA”) Request For Offers (“RFO”) to procure up to 50 megawatts (“MW”) of Product¹ from new solar photovoltaic (“PV”) generating facilities with a 20-year term.

PG&E’s goal with respect to the Power Purchase Agreement (“PPA”) portion of its PV Program is to procure, over a five (5) year period, PPAs for 250 MW of PV Products as authorized by California Public Utilities Commission (“CPUC”) Decision (“D.”) 10-04-052 adopted on April 22, 2010.² PG&E is seeking Offers from PV facilities that are 1 to 20 MW in size for a contract term of 20 years. The generating facility producing the Product must be a new PV facility located in PG&E’s service territory and interconnected to PG&E’s electric system. Except as noted under the circumstances specified in the form PV Program PPAs, the generating facility must be commercially operable within 18 months following CPUC approval of an executed PV Program PPA.

PG&E’s goal with the 2011 PV Program PPA RFO is to procure 50 MW. However, if less than 50 MW of Offers are selected, then the remaining MW will be added to a future year’s solicitation, if any, along with the MW of any projects that were selected via the RFO but which do not come online.

In connection with Offers pursuant to this RFO, a seller offering the Product pursuant to this RFO (“Participant”) must submit the required information, as discussed in Section II.

B. Schedule

1. Schedule Overview

The RFO schedule is subject to change at PG&E’s sole discretion at any time. PG&E will endeavor to notify Participants of any schedule change via notification on the Company’s RFO website. As further described below, Participants are encouraged to register at the RFO website to receive notice of these and other RFO changes by electronic mail. PG&E will have no liability or responsibility to any Participant for any change in the schedule or for failing to provide notice of any change.

The expected schedule for this RFO is (all times are in Pacific Prevailing

¹ Product means the electricity generated by a Project (the eligible renewable energy resource described in an Offer), together with all capacity and ancillary products and services associated with the Project, and any other attributes required by the CPUC and/or the California Energy Commission (“CEC”) to count the electricity toward PG&E’s Renewables Portfolio Standard (“RPS”) requirements.

² Unless otherwise noted, all references to megawatts or MW in this RFO are to MW (AC).

Time (“PPT”):

Date/Time	Event
Ongoing	Participants may register online to receive notices regarding the RFO
February 2	PG&E issues RFO
February 8	Bidders’ Conference
March 2 1:00 P.M.	Deadline for Participants to submit Offers and to submit applications for interconnection. Offer evaluation begins.
March 22	Participants provide proof that interconnection applications have been deemed complete and that the Project has received a queue position
April 15	PG&E notifies Participants of Selected Offers
April 19	Participants with Selected Offers accept selection and continued participation in the RFO
June 3	Participants with Selected Offers provide proof that interconnection screens have been passed or studies completed ³
TBD	Participants provide documentation on or before 2 weeks of the applicable resource adequacy forum deadline that they have made the request for full capacity deliverability status
June 10 5:00 P.M.	Participants with Selected Offers submit signed PPAs
June 17	PG&E executes PPAs
July 15	Target Advice Letter Filing for executed PPAs

To be considered in this RFO, a Participant must submit to PG&E and the Independent Evaluator (“IE”)⁴ a complete Offer, in accordance with this RFO, no later than March 2, 2011 at 1:00 P.M.

³ See Section III “Information Regarding Interconnection to PG&E’s Electric System” for more information on screens and studies.

⁴ Wayne Oliver of Merrimack Energy Group, Inc. will be providing IE services for this RFO. His email address is waynejoliver@aol.com.

PG&E intends to seek CPUC approval of each PPA resulting from this RFO, and the PPAs will not be effective unless approved by the CPUC and any applicable review or appeal period has lapsed. As further described in Section II, one of the requirements in this RFO is that Participants do not make changes to the non-price terms and conditions in the form PV PPAs.

2. RFO Process

1. **Registration.** Participants may register online to receive announcements and updates about this RFO. Go to www.pge.com/rfo and click on RFO Bidder Registration. Alternatively, go directly to: <http://www.pge.com/b2b/energysupply/wholesaleelectricssolicitation/joinlist.shtml>.
2. **Bidders' Conference.** PG&E intends to hold a Bidders' Conference on February 8, 2011 to discuss this RFO. To register for this event, please complete the registration form and submit to PVProgram@pge.com. The registration form is available at: <http://www.pge.com/b2b/energysupply/wholesaleelectricssolicitation/PVRF/index.shtml>. Registration is required to attend this Bidders' Conference and companies will be limited to two attendees each.
3. **Offers Due.** Participant's Offer must be submitted by e-mail to both PG&E and the IE by March 2, 2011 at 1:00 P.M. PPT and must include all of the documents described in Section II.D, below. By responding to this RFO, the Participant agrees to be bound by all of the terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E.
4. **Participants' Interconnection Applications.** On or before March 22, 2011, each Participant must submit documentation required by Appendix D showing that its application for interconnection has been deemed complete and that the Participant has received an electric interconnection queue position from either PG&E or the California Independent System Operator ("CAISO"), as applicable.
5. **PG&E Selects Offers.** Participants whose Offers have been selected will be notified via email by PG&E by 5:00 P.M. PPT on April 15, 2011. PG&E will select Offers according to the evaluation criteria described below until the next-best Offer would cumulatively exceed 50 MW. Some of the next-best Offers beyond those selected may be placed on a waiting list to be selected in order of priority should any selected Offers fail to complete the RFO process. Participants whose Offers have been selected will be required to accept by April 19, 2011 of their selection and continued participation in this RFO
6. **Interconnection Screens or Studies Passed.** On or before June 3, 2011, Participants with selected Offers must provide documentation to PG&E that all

electric interconnection screens have been passed or studies completed, in accordance with Section III of this RFO Protocol.

7. Submittal of Signed PPA. PG&E will notify Participants whose Offers are accepted for execution by PG&E. By 5:00 P.M. PPT on June 10, 2011, Participants with accepted Offers must submit a signed PPA. If one or more selected Offers fail to pass interconnection requirements or submit signed a PPA as described above, PG&E will select the next-best Offer on the waiting list that does not cause the cumulative capacity of the RFO to exceed 50 MW. Waiting list Offers must have satisfied each of the interconnection requirements described above to be selected.
8. Execution and Regulatory Approval. PG&E intends to execute PPAs on or before June 17, 2011, and plans to submit executed Agreements to the CPUC for approval via a Tier 2 advice filing.

C. Disclaimers for Rejecting Offers and/or Terminating this RFO

This RFO does not constitute an offer to buy and creates no obligation to execute any PPA or to enter into a transaction under a PPA as a consequence of the RFO. PG&E shall retain the right at any time, in its sole discretion, to reject any Offer on the grounds that it does not conform to the terms and conditions of this RFO and reserves the right to request information at any time during the solicitation process. PG&E also retains the discretion, in its sole judgment, to: (a) reject any Offer on the basis that it does not provide sufficient ratepayer benefit or that it would impose conditions that PG&E determines are impractical or inappropriate; (b) formulate and implement appropriate criteria for the evaluation and selection of Offers; (c) negotiate with any Participant to maximize ratepayer benefits; (d) modify this RFO including, with the approval of the CPUC, the form PV PPAs as it deems appropriate to implement the RFO and to comply with applicable law or other decisions or direction provided by the CPUC; and (e) terminate the RFO should the CPUC not authorize PG&E to purchase Products in the manner proposed in this RFO. In addition, PG&E reserves the right to either suspend or terminate this RFO at any time for any reason whatsoever. PG&E will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to any Participant, whether submitting an Offer or not.

II. RFO Goals, Eligibility, and Evaluation Criteria:

In this RFO, PG&E is seeking eligible new PV generating resources that meet the specifications noted in “Eligibility Requirements” below. Optimal Offers will be those that best provide PG&E the opportunity to procure the Products that are compatible with PG&E’s requirements, and best meet the evaluation criteria specified in this section.

A. Eligibility Requirements

PG&E will consider all timely Offers, submitted pursuant to this RFO, from any

Participant whose Offer meets the following criteria:

1. The generating facility must be a new photovoltaic electric generating facility.
2. The generating facility must be located within PG&E's service territory.
3. The nameplate capacity of the generating facility must be no less than 1 MW and no greater than 20 MW. Participants may offer different size options for their project to enhance their opportunity for resource selection within the 50 MW target. Aggregation of facilities to meet the minimum 1 MW size requirement is not allowed, unless each aggregated facility is no less than 500 kW and the project comprised of the aggregated facilities interconnects within a single PNode⁵ and is owned by a single Participant.
4. The contract price must be no greater than \$246/MWh (prior to adjustment for time of delivery).

B. Other Requirements for Participation

Interconnection

The generating facility must be interconnected to PG&E's electric distribution or transmission system. The delivery point for a generating facility will be the PNode for the generating facility. Proof that the facility owner has submitted an interconnection application must be included with the initial Offer submission. For information on PG&E's and CAISO's interconnection procedures, see Section III.

By June 3, Participants will be required to provide confirmation the applicable interconnection studies are completed, as further discussed in Section III, below. If there are significant upgrades, Participants must provide evidence supporting a reasonable conclusion that the upgrades will be completed no less than 3 months prior to the expected commercial operation date for the Project. PG&E retains sole discretion, without liability to any Participant, to decide whether any necessary interconnection upgrades can reasonably be completed in this timeframe based upon the evidence submitted by a Participant.

Price

Participants must submit with their Offer their best and final price. Participants will not be given another opportunity to update pricing. Under no circumstance will PG&E allow a "price refresh" for any reason whatsoever. The price must be a single value in \$/MWh which will remain constant for the term of the agreement. Pricing may not be indexed or escalated over the term of the agreement. In addition, PG&E will not consider any Offer

⁵ The CAISO Tariff defines Pricing Node ("PNode") as "[a] single network Node or subset of network Nodes where a physical injection or withdrawal is modeled and for which a Locational Marginal Price is calculated and used for financial settlements."

whose pre-time of delivery (“TOD”) cost of energy exceeds \$246/MWh, the cost cap imposed by D.10-04-052.

The price submitted by Participant for an Offer must include, without limitation, the following: (a) all awards, subsidies, tax credits with respect to the Project, (b) all other benefits that Participants expects to apply, (c) any costs incurred by Participant, including any interconnection costs, (d) the acceptance of the non-price terms and conditions as-is in the form PV PPA, and (e) the assumption that the Product price will be adjusted in each hour of delivery by the energy payment allocation factors set forth in Appendix C of the Small PV PPA and in Section 4.3 of the Large PV PPA.

Site Control

Participants must attest to site control when their Offers are submitted to PG&E. Evidence of site control and attestation to site control for the term of the PPA must be demonstrated by the Participant as detailed in Appendix C. Examples of site control include: (1) ownership of the site, a leasehold interest, or a right to develop a site for the purpose of constructing a generating facility; (2) an option to purchase or acquire a leasehold site for purposes of constructing a generating facility; and (3) any other business relationship that, in the sole discretion of PG&E, amounts to the same right to develop property as provided in examples (1) or (2) above, between the Participant and another entity that has the right to sell, lease, or grant the right to possess or occupy the site for such a purpose.

Experience

A minimum level of developer experience is required for participation. Specifically, the Seller and/or a member of Seller’s project development team must have either completed or begun construction of a solar project that is at least 500 kW.

Form Agreements Terms and Conditions

Any successful Offers must be formalized by the execution of a final PPA based upon the applicable form PV PPA. PG&E has provided a form Small PV PPA and a form Large PV PPA in Appendices B1 and B2, respectively. The non-price terms and conditions of the form PV PPAs are non-negotiable. Under no circumstance will PG&E accept any Offer that makes changes to the terms and conditions of the form PV PPAs.

The delivery term of any Final Agreement will be 20 years. The period of 20 years will commence on the first date that the Participant delivers the Product to PG&E from the Project.

The form PV PPAs require a Participant to post security in the following amounts and time:

1 to less than 3 MW Offer	3 to 20 MW Offer
Project Development Security: \$20/kW within 30 days of the date conditions precedent are met.	Project Development Security: \$15/kW upon execution of the PPA. This amount will increase within 30 days once conditions precedent are met. Increased amounts are \$20/kW for projects with contract capacity less than 10 MW, \$35/kW for projects with contract capacity 10 MW or greater.
Delivery Term Security: Not required.	Delivery Term Security: an amount equal to six months of the contract price multiplied by the contract quantity in the first applicable contract year, due upon the commercial operation date.

Participation in Other Procurement Programs

Neither the Participant nor the owner of the site may participate in the California Solar Initiative Program (“CSI”) or Net Energy Metering tariff (“NEM”). The owner of the site will be required to sign the letter, attached here as Appendix E, acknowledging familiarity with CSI and NEM, and committing not to apply for either program with respect to the Offer’s generating facility from the date a PPA is executed by Participant and PG&E until the contract term ends.

If Participant’s Offer is selected in this RFO and Participant elects to continue to participate in the RFO, then Participant must agree not to offer or commit the Project that is subject of the selected Offer to any other party for a period of six (6) months from the date of PG&E’s notification of Offer Selection. Violation of such agreement will result in disqualification from the RFO without any liability to PG&E.

Confidentiality

Except with PG&E’s prior written consent, no Participant shall disclose its participation in this RFO (other than by attendance at any meeting held by PG&E with respect to the RFO, if any) or collaborate on, or discuss with any other Participant or potential Participant bidding strategies, the substance of any Offer(s), including without limitation the price or any other terms or conditions of any Offer(s), or whether an offer has been selected.

All information and documents in Participant’s Offer clearly identified and marked by Participant as “Proprietary and Confidential” on each page on which confidential information appears shall be considered confidential information. PG&E shall not disclose such information and documents to any third parties except for PG&E’s employees, agents, counsel, accountants, advisors, or contractors who have a need to

know such information and have agreed to keep such information confidential and except as provided below in this section. In addition, Participant's Offer will be disclosed to the IE.

Notwithstanding the foregoing, it is expressly contemplated that the information and documents submitted by Participant in connection with this RFO may be provided to the CPUC, its staff, and the Procurement Review Group ("PRG"), established pursuant to D. 02-08-071. PG&E retains the right to disclose any information or documents provided by Participant to the CPUC, the PRG, the California Energy Commission ("CEC") and to any other entity in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over PG&E at any time even in the absence of a protective order, confidentiality agreement or nondisclosure agreement, as the case may be, without notification to Participant and without liability or any responsibility of PG&E to Participant. PG&E cannot, however, ensure that the CPUC will afford confidential treatment to Participant's confidential information, or that confidentiality agreements or orders will be obtained from and/or honored by the PRG, the CEC, or the CPUC. By submitting an Offer, Participant agrees to the confidentiality provisions described in this section.

Treatment of confidential information by Participant discussed above continues to apply even after Offer is selected as a winning bid.

D.10-04-052 requires PG&E to develop confidentiality protocols to ensure that information given by Participants to PG&E through the interconnection or RFO process is not shared with PG&E's staff working on utility-owned PV Program generation. PG&E has developed a Code of Conduct to implement these confidentiality protocols, and all PG&E employees and consultants working on the PV Program are required to sign and abide by it. The Code of Conduct is posted on the RFO website at <http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/PVRFO/index.shtml>. PG&E will establish separate files on the Company computer system to manage the information for the PPA portion of the PV Program, with approved secure access only for the appropriate staff involved in this project. Staff working on the utility ownership RFO will not be given access to these files.

Changes to RFO

By responding to this RFO, each Participant agrees to be bound by all terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E.

C. Evaluation of Offers

Once Participants have met the minimum requirements for Site Control, Interconnection and Participant Experience, PG&E will use price as the primary factor in selecting

Offers. The other selection criteria will be Supplier Diversity and Local Capacity Requirements.

Pricing. PG&E will rank order all qualifying Offers in order of contract price, with the objective of selecting the lowest-cost Offers that do not exceed 50 MW cumulatively.

Supplier Diversity. It is the policy of PG&E that Women-, Minority-, and Disabled Veteran-owned Business Enterprises (“WMDVBEs”) shall have the maximum practicable opportunity to participate in the performance of Agreements resulting from this Solicitation. PG&E will evaluate whether an Offer will contribute to PG&E’s supplier diversity goals. The Supplier Diversity evaluation will take into account the Participant’s status as a WMDVBE and/or an intent or policy of subcontracting with WMDVBEs.

Local Capacity Requirements. If needed as a tie-breaker criterion when selecting Offers, PG&E will favor Offers that will be located in CAISO-identified local capacity requirement (“LCR”) areas because capacity installed in those areas should provide greater customer value than capacity installed elsewhere in the PG&E system.

D. Submission Deadline, Content, and Form of Offers

All indicative non-binding Offers must be received by PG&E in electronic form by March 2, 2011 no later than 1:00 p.m. (PPT) via email to PVProgram@pge.com. The IE must also be included in the email transmission. The IE’s email address is waynejoliver@aol.com. An acknowledgement of receipt of each Offer will be sent by PG&E via return email.

Electronic Documents: The electronic documents must be in a Microsoft Word (standard edition 2003 SP3) and/or Excel file (standard edition 2003 SP3), as specified. The Participant should not provide documents in other electronic formats and versions.

Telephonic, telegraphic, hardcopy or facsimile transmission of an Offer is not acceptable.

The following documents, which are located in the Appendices, must be completed and included with each Offer:

1. **Completed Offer Form (Appendix A)** providing key details of the Participant’s Offer. [Format: Microsoft Excel 2003]
2. **A Completed PV PPA (Appendix B1 or B2)** including only the Offer facility details and pricing. Mark-ups of the non-price terms and conditions are not permitted and will result in rejection of the Offer. There are two form Agreements: (a) Small PV PPA (Appendix B1) and (b) Large PV PPA (Appendix B2). For a generating facility rated less than 3 MW, use the Small PV PPA, and for a generating facility rated 3 MW and greater, use the Large PV PPA.

3. **Site Control Questionnaire and Attestation (Appendix C).** Participant must attest to site control.
4. **Demonstration of Interconnection Application Submission (Appendix D).** Participant must provide proof that an interconnection application has been submitted.
5. **Acknowledgement and Commitment of Site Owner Letter (Appendix E).** The owner of the site on which Participant's Project is proposed to be located must attest to familiarity with the CSI and NEM program alternatives. The Participant and the owner of the site must also commit not to apply for either program with respect to the Offer's generating facility from the date the Agreement is executed by Participant and PG&E until the contract term ends.
6. **Supplier Diversity Questionnaire (Appendix F).** Participant must complete the Questionnaire which requires the Participant to describe its status, if applicable, as a WMDVBE and its plans, if any, to engage in activities that support PG&E's supplier diversity goals.

III. Information Regarding Interconnection to PG&E's Electric System and Interconnection Screens

Many factors influence the feasibility and cost of interconnecting PV systems to an electric system. These factors include, but are not necessarily limited to, the size of the system, substation and circuit load and capability, voltage regulation and voltage flicker. A map identifying areas in PG&E's service territory where the likelihood of a successful interconnection to PG&E's system is relatively greater is posted at <http://www.pge.com/b2b/energysupply/wholesaleelectricsuppliersolicitation/PVRFO/>. This map is intended to assist Participants in identifying potential for PV systems. However, PG&E does not guarantee that conditions in these areas will remain the same or that property suitable for participation in this RFO is available. In addition, actual interconnection costs will be determined from further detailed studies which will consider a Participant's specific project location, size, and application date relative to PG&E's electric system and other projects in the same vicinity.

PG&E intends to update its map of locations prior to each annual PV PPA RFO, if necessary. The version of the map available at the website link above will always be the most current.

Distribution System Interconnections

Any application for interconnection to PG&E's distribution system must be directed to PG&E's Generation Interconnection Services at the email address gen@pge.com. Participants can also leave a message at 415-972-5676 to speak with a project manager. For additional information, go to the following site:

<http://www.pge.com/mybusiness/customerservice/nonpgeutility/generateownpower/wholesalegeneratorinterconnection/#thesmallgeneratorinterconnectionproceduresfortransmissionssysteminterconnectionstransmissionsgip>.

Once at the site, scroll to the section titled “Connecting to PG&E’s Distribution System: under 60kV” to find the relevant information. As discussed briefly in this section and in further detail in the Wholesale Distribution Tariff (“WDT”), there are three application procedures. Given the size requirement of 1 to 20 MW in the RFO, only two of the application procedures are applicable, and they are: (1) The “Fast Track Procedure” for generators 2 MW in size that pass the “Screens” given in section 2.2 of Attachment E of the WDT, and (2) the “Study Process” for all generators 20 MW and under in size including those that do not qualify for the “Fast Track Procedure.” The WDT can be found at:

<http://www.pge.com/includes/docs/pdfs/shared/customerservice/nonpgeutility/electrictransmission/tariffs/WD%20Tariff%20-%20eTariff%20Baseline%20Version.pdf>

PG&E’s lead interconnection program manager for this RFO is William Chung (415-973-1350, mwcb@pge.com).

On or before June 3, 2011, a Participant must provide evidence that its Selected Offer has completed a system impact study or initial review, as applicable.

Resource Adequacy and Reform

Currently, PG&E’s WDT interconnection procedures do not include an option to interconnect under “full capacity” interconnection service. Under the existing “energy only” interconnection service offering, projects are not studied for deliverability, a prerequisite for qualification as a Resource Adequacy (“RA”) resource. PG&E, in coordination with Southern California Edison Company and San Diego Gas and Electric Company, plans to revise its WDT interconnection procedures to offer “full capacity” interconnection service. PG&E plans to develop the tariff adjustments needed to add this new service through a stakeholder process and plans to file changes in the first quarter of 2011.

Please refer to PG&E's WDT Interconnection Reform Principles Document (PDF, 54 KB).

For more information and to participate in the reform, please contact William Chung.

Each Participant shall submit its Project for study for full deliverability when the opportunity to do so becomes available so as to enable it to provide RA to the extent it is eligible to do so under the interconnection rules and procedures available to it. This may involve requesting a finding of full capacity deliverability in the appropriate forum after seller has initially applied for interconnection. **To maintain eligibility to participate in this RFO, Participants must provide documentation on or before 2 weeks of the applicable resource adequacy forum deadline that they have made the request for full capacity deliverability status.** Participant is responsible for funding commercially reasonable network upgrades required to provide full capacity deliverability, and should reflect that assumption in its Offer price.

Transmission System Interconnections

Any application for interconnection to PG&E's transmission system must be directed to the CAISO in accordance with the CAISO Tariff. For more information, visit the CAISO website at: <http://www1.caiso.com/docs/2002/06/11/2002061110300427214.html>. This website provides information for generator interconnection information for generators 20 MW or less.

Please note that the Small Generator Interconnection Process ("SGIP") will be impacted by the Federal Energy Regulatory Commission's recent order regarding the CAISO's Generator Interconnection Process. *See California Independent System Operator*, 133 FERC ¶ 61,223 (2010). The next window for applications is in March 2011.

On or before June 3, 2011, a Participant must provide evidence that its Selected Offer has a completed CAISO System Impact Study.

IV. Communications:

PG&E has established a website at <http://www.pge.com/b2b/energysupply/wholesaleelectricssolicitation/PVRFO/index.shtml> where Participants may register and where all PV Program PPA RFO documents, information, announcements and Q&As are posted and available to Participants.

To promote accuracy and consistency of the information provided to all Participants, PG&E discourages Participants from speaking directly with PG&E employees about this RFO. PG&E strongly prefers that all communications take the form of an e-mail directed to PVProgram@pge.com. With respect to matters of general interest raised by any Participant, PG&E may, without reference to the specific Participant raising such matter or initiating the inquiry, post responses on its website. PG&E may, in its sole discretion,

decline to respond to any email or other inquiry without liability or responsibility.

Any exchange of material information regarding this RFO between Participant and PG&E must be submitted to both PG&E and the Independent Evaluator, whose email address is waynejoliver@aol.com.

PG&E may elect to respond to inquiries or comments by individual Participants concerning purely procedural or administrative matters, but may also decline to do so in its sole discretion without liability or responsibility.

V. Submission of Signed PPAs

By submitting an Offer, Participant agrees, if its Offer is selected, to execute a definitive PPA consistent with the mark-up of the form PPA submitted with the Participant's Offer.

On or before June 10, 2011 at 5:00 P.M. PPT, eligible Participants must submit a signed PV PPA for each selected project meeting all RFO conditions both to PG&E at PVProgram@pge.com and the IE at waynejoliver@aol.com.

VI. Procurement Review Group Review

Following completion of the evaluation and rankings of Offers, PG&E will submit the results of the evaluation and its recommendations to its PRG. PG&E will consider any alternative recommendations proposed by the PRG. PG&E, in its sole discretion, shall determine whether any alternatives proposed by the PRG should be adopted. PG&E has no obligation to obtain the concurrence of the PRG with respect to any Offer.

PG&E assumes no responsibility for the actions of the PRG, including actions that may delay or otherwise affect the schedule for this solicitation, including the timing of the selection of Offers and the obtaining of Regulatory Approval.

VII. Regulatory Approval

The effectiveness of any executed PPA is expressly conditioned on PG&E's receipt of CPUC approval of such PPA.

VIII. Participant's Waiver of Claims and Limitations of Remedies

Except as expressly set forth in this Protocol, by submitting an Offer, Participant knowingly and voluntarily waives all remedies or damages at law or equity concerning or related in any way to the Solicitation, the Solicitation Protocol and/or any attachments to the Solicitation Protocol ("Waived Claims"). The assertion of any Waived Claims by Participant may, to the extent that Participant's Offer has not already been disqualified, automatically disqualify such Offer from further consideration in the Solicitation or otherwise.

By submitting an Offer, Participant agrees that the only forums in which Participant may assert any challenge with respect to the conduct or results of the Solicitation is in the proceeding related to the CPUC's Decision ("D.") 10-04-052 adopted on April 22, 2010, or through the alternative dispute resolution ("ADR") services provided by the CPUC pursuant to Resolution ALJ-185, August 25, 2005. The ADR process is voluntary in nature, and does not include processes, such as binding arbitration, that impose a solution on the disputing parties. However, PG&E will consider the use of ADR under the appropriate circumstances. Additional information about this program is available on the CPUC's website at the following link:

www.cpuc.ca.gov/PUBLISHED/Agenda_resolution/47777.htm.

Participant further agrees that other than through the ADR process, the only means of challenging the conduct or results of the Solicitation is a protest to an Advice Letter Filing seeking approval of one or more Agreements entered into as a result of the Solicitation, that the sole basis for any such protest shall be that PG&E allegedly failed in a material respect to conduct the Solicitation in accordance with this Protocol, and the exclusive remedy available to Participant in the case of such a protest shall be an order of the CPUC that PG&E again conduct any portion of the Solicitation that the CPUC determines was not previously conducted in accordance with the Solicitation Protocol. Participant expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs, and/or attorneys fees. Unless PG&E elects to do otherwise in its sole discretion during the pendency of such a protest or ADR process, the Solicitation and any related regulatory proceedings related to the Solicitation, will continue as if the protest had not been filed, unless the CPUC has issued an order suspending the Solicitation or PG&E has elected to terminate the Solicitation.

Participant agrees to indemnify and hold PG&E harmless from any and all claims by any other Participant asserted in response to the assertion of a Waived Claim by Participant or as a result of a Participant's protest to an advice letter filing with the CPUC resulting from the Solicitation.

Except as expressly provided in this Protocol, nothing herein including Participant's waiver of the Waived Claims as set forth above, shall in any way limit or otherwise affect the rights and remedies of PG&E. Nothing in this Protocol is intended to prevent any Participant from informally communicating with the CPUC or its staff regarding this Solicitation or any other matter.

IX. Termination of the RFO-Related Matters

PG&E reserves the right at any time, in its sole discretion, to terminate the RFO for any reason whatsoever without prior notification to Participants and without liability of any kind to or responsibility of PG&E or anyone acting on PG&E's behalf. Without limitation, grounds for termination of the RFO may include the assertion of any Waived Claims by a Participant or a determination by PG&E that, following evaluation of the Offers, there are no Offers that provide adequate ratepayer benefit.

PG&E reserves the right to change the Offer evaluation criteria for any reason, to terminate further participation in this process by any Participant, to accept any Offer or to enter into any definitive PPA, to evaluate the qualifications of any Participant, and to reject any or all Offers, all without notice and without assigning any reasons and without liability to PG&E or anyone acting on PG&E's behalf.

In the event of termination of the RFO for any reason, PG&E will not reimburse the Participant for any expenses incurred in connection with the RFO regardless of whether such Participant's Offer is selected, not selected, rejected or disqualified.

Unless earlier terminated, the RFO will terminate automatically upon the execution of one or more PPAs by selected Participants as described herein. In the event that no PPAs are executed, then the RFO will terminate automatically on 12 months after issuance of the RFO.

X. Participant's Representations and Warranties

Breach by any participant of the representations and warranties of the RFO Attachments is, in addition to any other remedies that may be available to PG&E under applicable law, grounds for immediate disqualification of such participant from participation in the RFO, and depending on the nature or severity of the breach, may also be grounds for terminating the RFO in its entirety.

Appendix A

Offer Form



Solar PV PPA Offer Sheet: Appendix A

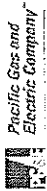
When entering contract quantity below, take into consideration the following:

- The contract quantity should be the expected output of the facility.
- Degradation should be taken into consideration when entering the contract quantity for each contract year.
- Contract quantity should be net amount of energy delivered, net of station use.
- For offers where there is aggregation of facilities, input the TOTAL contract quantity of the aggregated facilities. No more than 6 sites can be aggregated for a total no greater than 3 MW. The tab Aggregated Facilities must also be completed.

WARNING: Need to enter a contract capacity on the Product Description tab for the capacity factor below to calculate.

Contract Year	Contract Year Start Date (mm/dd/yyyy)	Contract Year End Date (mm/dd/yyyy)	Contract Quantity (MWh)	Capacity Factor (%)
1	01/01/2011	12/31/2011		
2	01/01/2012	12/31/2012		
3	01/01/2013	12/31/2013		
4	01/01/2014	12/31/2014		
5	01/01/2015	12/31/2015		
6	01/01/2016	12/31/2016		
7	01/01/2017	12/31/2017		
8	01/01/2018	12/31/2018		
9	01/01/2019	12/31/2019		
10	01/01/2020	12/31/2020		
11	01/01/2021	12/31/2021		
12	01/01/2022	12/31/2022		
13	01/01/2023	12/31/2023		
14	01/01/2024	12/31/2024		
15	01/01/2025	12/31/2025		
16	01/01/2026	12/31/2026		
17	01/01/2027	12/31/2027		
18	01/01/2028	12/31/2028		
19	01/01/2029	12/31/2029		
20	01/01/2030	12/31/2030		

Average = 0.00



Solar PV PPA Offer Sheet: Appendix A

Project Information

Offer Number: _____ Total Offers: _____ Bid ID: 11PVRFO_0

Full Legal Project Name: _____
 Address: _____ State: _____ Zip: _____
 City: _____
 Project Description: _____
 Longitude: _____ Latitude: _____

Enter Project Location Below:

System Characteristics

System Type: _____
 Gross Power Rating, MW AC: _____
 Solar Technology: _____
 Panel Manufacturer: _____
 Mounting: _____
 Installation Area, acre: _____

Guaranteed Milestones

Guaranteed Construction Start Date (mm, dd, yyyy): _____
 Guaranteed Commercial Operation Date (mm, dd, yyyy): January 1, 2011

Offer Characteristics

Product Price (\$/MWh, AC): _____
 Contract Capacity (MW, AC): _____
 Average Contract Quantity (MWh): 0.00
 Mutual Exclusivity (provide description): _____

In the event selection of the full amount of this Offer would result in excessance of the authorized annual solicitation amount, indicate whether Participant is willing to reduce the offer size at the same price

Contract Capacity Decrease Option	Step Down Increment (MW)	Lowered Contract Capacity (MW)
		0.0

Electrical Interconnection

Point of Interconnection: _____
 Interconnection Voltage Level: _____
 Interconnection Status: _____
 Queue Position Number (if assigned): _____
 Est. Direct Assignment Costs (Interconnection Facilities and Distribution Upgrades): _____
 Est. of Network Upgrade Cost: _____

Submission History

Est. Completion Date of Interconnection (mm, dd, yyyy): _____

Counterparty Information

Company Name: _____ Address: _____ City: _____ State: _____ Zip: _____
 Participant Name: _____
 Authorized Contact # 1: _____ Title of Contact # 1: _____
 Authorized Contact # 2: _____ Title of Contact # 2: _____
 Phone Number #1: _____
 All Number (Cell) #1: _____
 Fax #1: _____
 Email Address #1: _____
 Phone Number #2: _____
 All Number (Cell) #2: _____
 Fax #2: _____
 Email Address #2: _____

Site Control

Form of Site Control: _____ Date Obtained: _____
 Owner Name: _____
 Street Address: _____ City: _____ State: _____ Zip: _____

Brief Description of Generating Facility and All Components

Additional Comments

Acknowledgement of Non-Disclosure Terms and Conditions

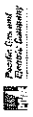
By selecting "Yes", Participant hereby acknowledges that it will abide by the confidentiality terms and conditions stated in Section II of the PV PPA RFO Protocol Document.

Electronic Signature: _____
 Select "Yes" to certify that typed name acts as electronic signature: _____

Acknowledgement of Waiver of Claims and Limitations of Remedies

By selecting "Yes", Participant hereby acknowledges Participant knowingly and voluntarily waives all remedies or damages at law or equity concerning or related in any way to the Solicitation as described in Section VIII of the PV PPA RFO Protocol Document.

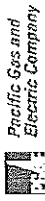
Electronic Signature: _____
 Select "Yes" to certify that typed name acts as electronic signature: _____



Solar PV PPA Offer Sheet: Appendix A

- Complete this tab for sites where there is a propagation of facilities. If you do not have a propagation of facilities, you do not need to complete this tab.
- Propagated facilities are those facilities that are located within 3 miles of a facility that is a propagation of facilities.
- Propagated facilities are those facilities that are located within 3 miles of a facility that is a propagation of facilities.

Project Information					System Characteristics					Site Contact					Risk Description of Ownership Facility and All Components		Additional Comments						
Facility Name	City	Zip	Longitude	Latitude	Project Description	Interconnection Point	System Type	Open Power Capacity, MW AC	Conduit Capacity, MW DC	Solar Technology	Panel Manufacturer	Mounting	Form of Site Control	Date Obtained	Contact Name	Phone	City	State	Zip				



Per CPUC Resolution E-4368, the IPP company and/or member of the project development team must have either completed or begun construction of solar project that is at least 500 kW.

Solar PV PPA Offer Sheet: Appendix A

Developer Experience

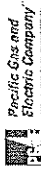
Developer Name: _____ Address: _____ City: _____ State: _____ Zip: _____

Authorized Contact # 1: _____ Title of Contact # 1: _____ Phone Number # 1: _____ Alt. Number (Cell) # 1: _____ Fax # 1: _____ Email Address # 1: _____

Authorized Contact # 2: _____ Title of Contact # 2: _____ Phone Number # 2: _____ Alt. Number (Cell) # 2: _____ Fax # 2: _____ Email Address # 2: _____

Developed Projects or Projects Under Construction

Key Team Members	Title	Full Legal Project Name	Solar Technology	Size (MW)	Commercial Operation Date	Address	City	State	Zip	Longitude	Latitude	Additional Information



Solar PV PPA Offer Sheet: Appendix A

When entering contract quantity below, take into consideration the following:

- The contract quantity should be the expected output of the facility.
- Degradation should be taken into consideration when entering the contract quantity for each contract year.
- Contract quantity should be net amount of energy delivered, net of station use.
- For offers where there is aggregation of facilities, input the TOTAL contract quantity of the aggregated facilities. No more than 6 sites can be aggregated for a total no greater than 3 MW. The tab Aggregated Facilities must also be completed.

WARNING: Need to enter a contract capacity on the Product Description tab for the capacity factor below to calculate.

Contract Year	Contract Year Start Date (mm/dd/yyyy)	Contract Year End Date (mm/dd/yyyy)	Contract Quantity (MWh)	Capacity Factor (%)
1	01/01/2011	12/31/2011		
2	01/01/2012	12/31/2012		
3	01/01/2013	12/31/2013		
4	01/01/2014	12/31/2014		
5	01/01/2015	12/31/2015		
6	01/01/2016	12/31/2016		
7	01/01/2017	12/31/2017		
8	01/01/2018	12/31/2018		
9	01/01/2019	12/31/2019		
10	01/01/2020	12/31/2020		
11	01/01/2021	12/31/2021		
12	01/01/2022	12/31/2022		
13	01/01/2023	12/31/2023		
14	01/01/2024	12/31/2024		
15	01/01/2025	12/31/2025		
16	01/01/2026	12/31/2026		
17	01/01/2027	12/31/2027		
18	01/01/2028	12/31/2028		
19	01/01/2029	12/31/2029		
20	01/01/2030	12/31/2030		

Average = 0.00

Appendix B1

Small PV PPA

**SMALL PHOTOVOLTAIC GENERATOR
POWER PURCHASE AGREEMENT
BETWEEN**

**_____ AND
PACIFIC GAS AND ELECTRIC COMPANY**

PACIFIC GAS AND ELECTRIC COMPANY, a California Corporation (“PG&E” or “Buyer”), and _____ (“Seller”) hereby enter into this Power Purchase Agreement (“Agreement”) dated as of _____ (the “Execution Date”). Seller and PG&E are sometimes referred to in this Agreement jointly as “Parties” or individually as “Party.” In consideration of the mutual promises and obligations stated in this Agreement and its appendices, the Parties agree as follows:

1. DOCUMENTS INCLUDED; DEFINED TERMS

This Agreement includes the following appendices, which are specifically incorporated herein and made a part of this Agreement.

Appendix A - Definitions

Appendix B - Initial Energy Delivery Date Confirmation Letter

Appendix C - Time of Delivery (“TOD”) Periods and Factors

Appendix D – Scheduling Requirements

Appendix E – Data and Weather Station Requirements

Appendix F - Counterparty Notification and Forecasting Requirements

Appendix G – Form of Letter of Credit (and Exhibit A – Sight Draft)

Appendix H – Facility Description

Appendix I – Dispute Resolution

2. SELLER’S GENERATING FACILITY, PURCHASE PRICES AND PAYMENT

2.1 Facility. This Agreement governs PG&E’s purchase of Product from the electrical generating facility or Aggregated Facilities (hereinafter referred to as the “Facility” or “Unit”) as described in this Section. Information describing the individual facilities comprising an Aggregated Facility is provided hereto as an attachment as necessary.

2.1.1 The Facility is located at the following site(s):

- a. _____ in _____ County, California.
- b. _____ in _____ County, California.
- c. _____ in _____ County, California.
- d. _____ in _____ County, California.

e. _____ in _____ County, California.

f. _____ in _____ County, California.

2.1.2 The Facility has a nameplate rating of ___ kilowatts (“kW”), at unity power factor at 60 degrees Fahrenheit at sea level and has a primary voltage level of ___ kilovolts (“kV”)(AC). Seller shall not modify the Facility to increase the nameplate rating without the prior written consent of PG&E, and in no event shall PG&E be obligated to receive or pay for, in any hour, any energy that exceeds the nameplate rating.

2.1.3 The Facility is connected to the PG&E electric system at _____ kV.

2.1.4 The Facility’s scheduled Commercial Operation Date is _____, which date may be extended as provided in Section 5.

2.1.5 A description of the Facility, including a summary of its significant components, a drawing showing the general arrangements of the Facility, and a single line diagram illustrating the interconnection of the Facility and loads with PG&E’s electric distribution system, is attached and incorporated herein as Appendix H. If the Facility is an Aggregated Facility, the description must encompass each component facility (by site) and include the gross power rating of each facility.

2.1.6 The name and address PG&E shall use to locate the electric service account(s) and premises used to interconnect the Facility with PG&E’s distribution systems is:

2.1.7 The obligations of Seller hereunder may be satisfied by one or more units participating as a single “Aggregated Facility” subject to the following.

2.1.7.1 An Aggregated Facility shall mean two or more facilities located on one or more contiguous or non-contiguous sites, each of which individual facilities is composed of units that are under common ownership of the Seller and each of which has a nameplate capacity of no less than 500 KWs, provided that all the facilities comprising the Aggregated Facility share a single resource ID (that is, are deemed to deliver to the same p-node.)

2.1.7.2 For the purposes of this Agreement, all references to “site” shall mean “sites” and all references to “Facility” shall mean the “Aggregated Facility,” when applied to an Aggregated Facility.

2.2 Transaction. During the Delivery Term of this Agreement, and as otherwise provided in Section 2.3, Seller shall sell and deliver, or cause to be delivered, and PG&E shall purchase and receive, or cause to be received, Energy produced by and Capacity Attributes provided from the Facility at the Delivery Point. PG&E shall pay Seller the Contract Price, set forth in Section 2.5, in accordance with the terms hereof. Seller agrees to sell to PG&E the Facility’s gross output in kilowatt-hours, net of Station Use and transformation and transmission losses to the Delivery Point, together with all Green Attributes and Resource Adequacy Benefits.

2.2.1 In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to PG&E under this Agreement (except with respect to energy delivered to PG&E in connection with scheduling Energy Deviations) or substitute any element of such Product.

2.2.2 PG&E shall have no obligation to receive or purchase Product from Seller prior to the Initial Energy Delivery Date, or after the end of the Delivery Term, except test energy during the Test Period as provided in Section 2.3.

2.2.3 The Parties agree that the execution and performance of the Parties under this Agreement shall satisfy PG&E's obligations, if any, under the Public Utility Regulatory Policies Act and its implementing regulations, i.e., 18 C.F.R. §292.303.

2.2.4 Seller shall purchase all energy required to serve the Facility's on-site load, net of station use, from PG&E pursuant to PG&E's applicable tariff.

2.3 Test Period. For the period prior to the Initial Energy Delivery Date and after the CAISO informs Seller in writing that Seller may deliver energy from the Facility to the CAISO Grid, which period shall not exceed ninety (90) consecutive days, Seller may deliver test energy to PG&E, which PG&E shall purchase and receive ("Test Period").

2.4 Delivery Term. The Seller shall deliver the Product from the Facility to PG&E for a period of twenty (20) Contract Years ("Delivery Term"), which shall commence on the first date on which energy is delivered from the Facility to PG&E ("Initial Energy Delivery Date") under this Agreement and continue until the end of the last Contract Year unless terminated by the terms of this Agreement. The Initial Energy Delivery Date shall occur after the Test Period only when all of the following conditions have been satisfied:

2.4.1 the Commercial Operation Date has occurred;

2.4.2 the Facility's status as an Eligible Renewable Energy Resource is demonstrated by Seller's receipt of certification from the CEC and is registered in WREGIS; and

2.4.3 the Conditions Precedent in Section 12.1 have been satisfied or waived.

As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix B on the Initial Energy Delivery Date

2.5 Contract Price Payment

2.5.1 Contract Price. The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year shall be _____ ("Contract Price").

2.5.2 TOD Periods and TOD Factors. The time of delivery periods ("TOD Periods") and the time of delivery factors ("TOD Factors") are specified in Appendix C.

2.5.3 Monthly TOD Payment. For each month, Buyer shall pay Seller for Delivered Energy in each TOD Period ("Monthly TOD Payment") the amount resulting from multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the Delivered Energy in each hour:

$$\text{MonthlyTODPayment} = \sum_{\text{hour}=1}^n \text{Contract Price} \$ * \text{TOD Factor} * \text{Delivered Energy MW}_{\text{hour}}$$

2.6 Test Period Payment. During the Test Period, Seller's full compensation for such Product shall be (a) the credits and other payments received by Buyer, as Seller's Scheduling Coordinator, as a result of test energy from the Facility delivered to the real-time market by Seller during the Test Period, including revenues associated with CAISO dispatches and (b) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Facility for, or attributable to, scheduling and deliveries from the Facility under this Agreement. PG&E shall promptly forward such revenues to Seller.

2.7 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Facility, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer.

2.8 Payment

2.8.1 Seller Data and Invoice. On or about the tenth (10th) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from the CAISO; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with this Section 2.

2.8.2 Buyer Payment. Buyer shall pay the undisputed amount of such invoices less the amount of any Forecasting Penalties (as applicable), on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

2.8.3 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 6.2, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 2.8.3 within twelve (12) months after the invoice is rendered or

any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

2.9 CAISO Charges.

2.9.1 Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer as a result of Seller's actions. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer's actions.

2.9.2 Buyer shall be responsible for all CAISO costs and charges with respect to scheduling and imbalances except as provided in Section 2.9.3 below. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits associated with the Energy generated from the Facility.

2.9.3 Forecasting Penalties.

2.9.3.1 In the event Seller does not in a given hour either: (a) provide the access and information required in Appendix E, Section 1; (b) comply with the installation, maintenance and repair requirements of Appendix E, Section 4; or (c) provide the forecast of Available Capacity required in Appendix D, Section 3, and the sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

2.9.3.2 The Performance Tolerance Band is five percent (5%) multiplied by Contract Capacity multiplied by one (1) hour ("Performance Tolerance Band").

2.9.3.3 The Forecasting Penalty shall be equal to one hundred fifty percent (150%) of the Contract Price for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 2.9.3 ("Forecasting Penalty").

2.10 Title and Risk of Loss. Title to and risk of loss related to the Energy produced from and Capacity Attributes provided by the Facility shall transfer from Seller to PG&E at the Delivery Point. Seller warrants that it will deliver to PG&E all Product from the Facility free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

2.11 Governmental Charges. Seller shall be responsible for paying all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product or the Transaction arising at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Facility. Buyer shall be responsible for paying all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point.

2.12 No Additional Incentives. Seller agrees that during the Term of this Agreement, Seller shall not seek additional compensation or other benefits with respect to the Facility pursuant to the Self-Generation Incentive Program as defined in CPUC Decision 01-03-073, the California Solar Initiative as defined in CPUC Decision 06-01-024, PG&E's net energy metering tariff, or programs that succeed or replace these programs, unless such program(s) are for a future product related explicitly to energy storage on the utility side of the meter. Seller may participate in other California ratepayer subsidized programs relating to energy production with respect to the Facility so long as such participation does not adversely affect Seller's delivery of Product or performance of its obligations under this Agreement.

3. GREEN ATTRIBUTES; RESOURCE ADEQUACY BENEFITS

3.1 Conveyance of Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

Further, “Green Attributes” also means any and all credits that satisfy the requirement to procure electricity from ERRs, pursuant to the California Renewables Portfolio Standard, that are directly attributable to electric production from the Facility. Seller represents that the Energy, Capacity Attributes, ancillary services and Green Attributes from the Facility have not been, nor will be, sold or used to satisfy any obligation other than PG&E’s California Renewables Portfolio Standard obligation.

3.2 WREGIS. Prior to the Initial Energy Delivery Date, Seller shall register the Facility in WREGIS and take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time. Subject to the Compliance Cost Cap, Seller warrants that it shall take all necessary steps to ensure the Renewable Energy Credits transferred to Buyer under this Agreement are tracked in WREGIS and transferred in a timely manner to Buyer through WREGIS for purposes of satisfying Buyer’s California Renewables Portfolio Standard Requirements, as may be amended or supplemented by the CPUC or CEC from time to time. Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. For purposes of this Section, the term “contract” has the same meaning as the term “Agreement” and the phrase “renewable energy credit” has the same meaning as the defined term “Renewable Energy Credit”.

3.3 Resource Adequacy Benefits. Seller conveys to PG&E all Resource Adequacy Benefits attributable to the physical generating capacity of Seller’s Facility. Seller shall comply with all applicable reporting requirements and take all reasonable actions and execute documents and instructions necessary to enable Buyer to secure Resource Adequacy Benefits, subject to the Compliance Cost Cap.

3.4 Compliance Cost Cap. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term shall be capped annually at \$10,000.00 per MW of Contract Capacity and in the aggregate throughout the Delivery Term at \$20,000.00 per MW of Contract Capacity (collectively, the “Compliance Cost Cap”). In the event and to the extent that the Compliance Costs incurred by Seller exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap. Within sixty (60) days after the change, amendment, repeal, or enactment of Law after the Execution Date which Seller anticipates will cause it to incur Compliance Costs in excess of the Compliance Cost Cap, Seller shall provide to Buyer Notice with an estimate of the expected annual Compliance Costs caused by such change in Law. Within thirty (30) days of the delivery of such Notice, Buyer shall provide Seller Notice of (a) Buyer’s request for Seller to incur the Compliance Costs in excess of the Compliance Cost Cap, (b) Buyer’s initiation of Dispute Resolution under Appendix I, or (c) Buyer’s waiver of Seller’s performance of such obligations. The Parties shall agree on a reasonable allocation, as between Seller and Buyer, over the remaining Delivery Term of any such Compliance Costs that are incurred after the fifteenth (15th) Contract Year and that are expected to benefit the Facility beyond the Delivery Term of this Agreement. Any Compliance Cost reimbursement by Buyer to Seller shall be subject to CPUC approval, and the amount of such reimbursement shall not be paid by Buyer to Seller until such time as the CPUC has approved such payment. Seller shall be relieved from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the

Compliance Cost Cap and which give rise to the payment that is the subject of the above referenced CPUC approval until such time as the CPUC issued its approval of the reimbursement payment in final and non-appealable form.

4. REPRESENTATION AND WARRANTIES; COVENANTS

4.1 Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

4.1.1 it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

4.1.2 the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it;

4.1.3 this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

4.1.4 it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;

4.1.5 there is not pending or, to its knowledge, threatened against it or any of its affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and

4.1.6 it is acting for its own account, has made its own independent decision to enter into this Agreement, and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

4.2 General Covenants. Each Party covenants that throughout the Term of this Agreement:

4.2.1 it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

4.2.2 it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

4.2.3 it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.

4.3 Seller Representation and Warranty and Covenant. In addition to the representations and warranties specified in Sections 4.1 and 4.2, Seller makes the following additional representations and warranties as of the Execution Date:

4.3.1 Seller has not received an incentive under the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, or the California Solar Initiative, as defined in CPUC Decision 06-01-024.

4.3.2 Seller warrants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Facility in order to receive Resource Adequacy Benefits.

4.3.3 Covenant. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

4.3.4 The term "commercially reasonable efforts" as used in Section 4.3.3 of this Agreement shall not require Seller to incur Compliance Costs in excess of the Compliance Cost Cap.

5. GUARANTEED COMMERCIAL OPERATION DATE

5.1 Milestones. The Parties agree time is of the essence in regards to the Agreement. As such, the Parties also agree the Commercial Operation Date must be achieved in a timely fashion or Buyer will suffer damages. Seller shall comply with Buyer's reasonable request for any requested documentation to support the Seller's progress in achieving the Commercial Operation Date within twenty (20) Business Days of receipt of such request by Seller.

5.2 Milestone Report. Within thirty (30) days after the close of each month from the first month following the Execution Date until the Commercial Operation Date, Seller shall provide to Buyer a monthly progress report in a form provided by Buyer and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The monthly progress report shall indicate whether Seller has met or is on target to achieve Commercial Operation.

5.3 Construction Start Date. The Construction Start Date shall occur no later than three hundred and sixty (360) days after the Effective Date of this Agreement, provided that the Construction Start Date may be extended on a day-for-day basis for not more than one hundred and eighty (180) days:

5.3.1 if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Facility, but is unable to obtain such permits due to delays beyond Seller's reasonable control ("Permitting Delay");

5.3.2 if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to have the Facility physically interconnected to the PG&E system or CAISO Grid and to complete all electric system upgrades needed, if any, in order to interconnect the Facility to the PG&E system or CAISO Grid, but

fails to secure any necessary commitments from CAISO or PG&E for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"); or,

5.3.3 in the event of Force Majeure without regard to Transmission Delay or Permitting Delay provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

5.4 Guaranteed Commercial Operation Date Seller shall demonstrate Commercial Operation no later than five hundred and forty (540) days after the Effective Date of this Agreement (the "Guaranteed Commercial Operation Date"), provided that the Guaranteed Commercial Operation Date may be extended on a day-for-day basis for (a) any extension claimed by Seller pursuant to and in accordance with Section 5.3, and (b) Force Majeure occurring after the Construction Start Date, provided that the total number of such further extension days under this subpart (b) shall not exceed one hundred and eighty (180) days.

5.5 Permitted Extensions. If Seller claims Permitting Delay, Transmission Delay or Force Majeure in accordance with Section 5.3 or 5.4 (collectively or individually, "Permitted Extension(s)"), such extensions shall be concurrent, rather than cumulative, during any overlapping days. If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days Notice prior to the Construction Start Date or the Guaranteed Commercial Operation Date (as applicable), which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension; provided that in the case of a Force Majeure, if sixty (60) days is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure.

6. GENERAL CONDITIONS

6.1 Facility Care, Interconnection and Transmission Service. Seller shall execute a Small Generator Interconnection Agreement ("SGIA") with PG&E's Generation Interconnection Services Department and pay and be responsible for designing, installing, operating, and maintaining the Facility in accordance with all applicable laws and regulations and shall comply with all applicable PG&E, CAISO, CPUC and FERC tariff provisions, including applicable interconnection and metering requirements. Seller shall also comply with any modifications, amendments or additions to the applicable tariff and protocols. Prior to the Commercial Operation Date, Seller shall include updates on the status of the SGIA in Seller's monthly progress report provided pursuant to Section 5.2. During the Delivery Term, Seller shall arrange and pay independently for any and all necessary costs under any interconnection agreement with PG&E. To make deliveries to PG&E, Seller must maintain an interconnection agreement with PG&E in full force and effect.

6.2 Metering Requirements. All output from the Facility, or in the case of an Aggregated Facility, all output from each site composing the Facility, per the terms of this Agreement must be delivered through a single CAISO revenue meter per site and that meter must be dedicated exclusively to the Facility (or in the case of an Aggregated Facility, the portion of the Facility located on such site). All Product purchased under this Agreement must be measured by the Facility's CAISO revenue meter(s) to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Facility. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 2.8, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later

than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

6.3 Standard of Care. Seller shall: (a) maintain and operate the Facility and Interconnection Facilities, except facilities installed by PG&E, in conformance with all applicable Law and regulations and in accordance with Good Utility Practices, as defined by PG&E's Wholesale Distribution Tariff and the CAISO Tariff, as they may be amended, supplemented or replaced (in whole or in part) from time to time; (b) obtain any governmental authorizations and permits required for the construction and operation thereof; and (c) generate and perform services hereunder in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs and Good Utility Practices, as provided in clause (a) above. Seller shall reimburse PG&E for any and all losses, damages, claims, penalties, or liability PG&E incurs as a result of Seller's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of the Facility throughout the Term of this Agreement.

6.4 Access Rights. PG&E, its authorized agents, employees and inspectors shall have the right to inspect the Facility on reasonable advance notice (which in no case shall be less than three (3) Business Days) during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to PG&E by Law, or its tariff schedules, PG&E Interconnection Handbook and rules on file with the CPUC. In connection with the foregoing, PG&E, its authorized agents, employees and inspectors must (a) at all times adhere to all safety and security procedures as may be required by Seller, (b) not interfere with the operation of the Facility, and (c) unless waived in writing by Seller, be escorted by a representative of Seller. PG&E shall make reasonable efforts to coordinate its emergency activities with the safety and security department(s), if any, of the Facility operator. Seller shall keep PG&E advised of current procedures for communicating with the Facility operator's safety and security department(s).

6.5 Protection of Property. Each Party shall be responsible for protecting its own facilities from possible damage resulting from electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities and such other Party shall not be liable for any such damages so caused.

6.6 Performance Excuses.

6.6.1 PG&E Performance Excuse. PG&E shall not be obligated to accept or pay for Energy produced by or Capacity Attributes provided from the Facility during a Curtailment Period, or Force Majeure.

6.6.2 Seller Curtailment. Seller shall interrupt or reduce Energy deliveries from the Facility as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Curtailment Period.

6.7 Notices of Outages. Whenever possible, PG&E shall give Seller reasonable notice of the possibility that interruption or reduction of deliveries may be required and shall coordinate with Seller to mitigate the impact of such outages consistent with PG&E and CAISO Tariffs and the SGIA.

6.8 Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Facility reasonably necessary to permit Buyer to comply with such requirements, if any, subject to the Compliance Cost Cap.

7. PERFORMANCE ASSURANCE

7.1 Project Development Security. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

7.1.1 Project Development Security in the amount equal to \$_____ [amount equal to \$20/kw], and in the form of _____ [specify cash or Letter of Credit] from a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Section 12.1 are either satisfied or waived.

7.2 Liquidated Damages. Except for termination of this Agreement for failure of the Facility to achieve timely Commercial Operation as provided in Section 13.1.1, the amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. The Parties agree that Seller's forfeiture of the Project Development Security in connection with termination of the Agreement as provided in Section 13.1.1 shall be considered liquidated damages and not a penalty, in accordance with Section 9.

7.3 Termination of Project Development Security. If after the Commercial Operation Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security within five (5) Business Days.

7.4 Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security at the Interest Rate.

8. INDEMNITY

Each Party as indemnitor shall save harmless and indemnify the other Party and the directors, officers, employees, agents and representatives of such other Party against and from any and all loss and liability for injuries to persons including employees of either Party, and damages, including property of either Party, resulting from or arising out of: (a) the engineering, design, construction, maintenance, or operation of; or (b) the installation of replacements, additions, or betterments to the indemnitor's facilities. This indemnity and save harmless provision shall apply notwithstanding the active or passive negligence of the indemnitee. Neither Party shall be indemnified for liability or loss, resulting from its sole negligence or willful misconduct. The indemnitor shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity and shall pay all costs, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.

9. LIMITATION OF DAMAGES

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 8 (INDEMNITY), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES

RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

10. NOTICES

Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Whenever this Agreement requires or permits delivery of a “notice” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified below. A notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. All written notices shall be directed as follows:

To PG&E: Pacific Gas and Electric Company
Attention: Manager, Contract Management
245 Market Street, Mail Code N12E
San Francisco, CA 94177-0001

To Seller: _____

11. INSURANCE

11.1 General Liability Coverage.

11.1.1 Seller shall maintain during the performance hereof, “General Liability Insurance” of not less than \$1,000,000 or below of combined single limit or equivalent for bodily injury, personal injury, and property damage as the result of any one occurrence.

11.1.2 General Liability Insurance shall include coverage for Premises-Operations, Owners and Contractors Protective, Products/Completed Operations Hazard, Explosion, Collapse, Underground, Contractual Liability, and Broad Form Property Damage including Completed Operations.

11.1.3 Such insurance shall provide for thirty (30) days written notice to PG&E prior to cancellation, termination, alteration, or material change of such insurance.

11.2 Additional Insurance Provisions.

11.2.1 Evidence of coverage described above in Paragraph 11.1 shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by PG&E.

11.2.2 PG&E shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

11.2.3 Seller shall furnish the required certificates and endorsements to PG&E prior to commencing operation.

11.2.4 All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

Pacific Gas and Electric Company
Attention: Manager, Insurance Department
77 Beale Street, Room E280
San Francisco, CA 94105

12. **TERM OF AGREEMENT**

12.1 Conditions Precedent. The Term shall commence and all terms and conditions contained in this Agreement shall be in full force and effect, enforceable and binding in all respects, upon the occurrence of all of the following (“Conditions Precedent”):

12.1.1 This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;

12.1.2 CPUC Approval has been obtained for the terms, conditions and pricing of this Agreement;

12.1.3 The advice letter submitting this Agreement to the CPUC becomes effective in accordance with CPUC General Order 96-B or its successor order, or as otherwise provided by CPUC order.

12.2 Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 12.1.2 and 12.1.3 are not satisfied or waived in writing by both Parties on or before one hundred and eighty (180) days from the date on which Buyer files an advice letter submitting this Agreement to the CPUC, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

12.3 Term.

12.3.1 The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 12.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 13 of this Agreement (the “Term”); provided that this Agreement shall thereafter remain in effect (a) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security is released and/or returned as applicable (the “Satisfaction Date”) or (b) in accordance with the survival provisions set forth in Section 12.3.2 below.

12.3.2 Survival. Notwithstanding anything to the contrary in this Agreement, (a) all rights under Section 8 (Indemnity) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (b) all rights and obligations under Section 15 (Confidentiality) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years.

12.4 Binding Nature. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under: Appendix A; Sections: 2.2, 2.4, 4.1, 4.2, 4.3; and Articles: 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21 and , 22.

13. EVENTS OF DEFAULT. An “Event of Default” shall mean:

13.1 With respect to Seller, the occurrence of any of the following:

13.1.1 The Facility has not achieved Commercial Operation by the Guaranteed Commercial Operation Date, as extended by any Permitted Extensions;

13.1.2 Following the Commercial Operation Date, Seller has not sold or delivered Energy from the Facility to PG&E for a period of twelve (12) consecutive months, provided that the time period under this Section 13.1.2 shall be extended for up to an additional sixty (60) days if Seller is making diligent efforts to cure such failure to perform; or

13.1.3 Seller breaches the covenant set forth in Section 4.3.3 of the Agreement and fails to remedy or cure such failure to perform within thirty (30) days, provided during such period in lieu of the Contract Price, Buyer shall pay Seller for Delivered Energy based on the simple average overall Settlement Intervals in the cure period of the day-ahead Locational Marginal Price for the Existing Zone Generation Trading Hub associated with the current NP 15 zone.

13.2 With respect to either Party, the occurrence of any of the following:

13.2.1 If any representation or warranty in this Agreement made by the other Party is false or misleading in any material respect when made or when deemed made, or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within twenty (20) Business Days after Notice thereof from the non-breaching Party to the breaching Party;

13.2.2 Except for an obligation to make payment when due, upon the other Party’s failure to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure) if such failure is not remedied within forty-five (45) days after Notice of such failure is provided by the non-breaching Party to the breaching Party of such failure; or

13.2.3 If the other Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice of such failure is provided by the non-breaching Party to the breaching Party.

13.3 Rights upon Event of Default. If an Event of Default described in Section 13.1 or 13.2 has occurred and is continuing, the non-defaulting Party shall have the right to: (a) send notice, designating a day, no earlier than five days after such notice is deemed to be received (as provided in Section 10) and no later than 20 days after such notice is deemed to be received (as provided in Section 10), as an early termination date of this Agreement (“Early Termination Date”); (b) accelerate all amounts owing between the Parties; (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date; (d) withhold any payments due to the Defaulting Party under this Agreement; (e)

suspend performance; (f) exercise its rights to draw upon and retain Performance Assurance as provided in Section 7; and (g) exercise any other rights or remedies available at law or in equity against the other Party (including seeking monetary damages).

14. SCHEDULING

14.1 Scheduling Obligations. PG&E shall be Seller's designated Scheduling Coordinator (as defined by CAISO tariff). Specific scheduling duties and obligations of the Parties are identified in Appendix D.

14.2 EIRP Requirements. The Parties acknowledge that as of the Execution Date, the CAISO has not yet established protocols for scheduling solar power to permit solar projects to participate in EIRP. As soon as practicable, but not more than ninety (90) days after such protocols are finalized and made effective by the CAISO, Seller shall apply to have the Facility certified as a Participating Intermittent Resource and shall thereafter diligently pursue such process to completion, including negotiating and executing all necessary documents to become a Participating Intermittent Resource (defined by the CAISO Tariff). Seller shall provide Buyer with a copy of the notice from CAISO certifying the Facility as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. Subject to the Compliance Cost Cap, following certification and whenever applicable, Seller shall participate in and comply with EIRP as directed by Buyer or Third-Party SC and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during all hours of the Delivery Term.

14.3 Access to Data and Installation and Maintenance of Weather Stations. Seller shall comply with the data and weather station requirements identified in Appendix E.

14.4 Outage Notification. Seller shall comply with PG&E's Outage Notification Procedures.

15. CONFIDENTIALITY

15.1 Neither Party shall disclose the non-public terms or conditions of this Agreement to a third party, other than as follows: (a) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential; (b) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision 02-08-071, subject to a confidentiality agreement; (c) to the CPUC under seal for purposes of review; (d) for disclosure of those certain terms specified in and pursuant to subsection 15.4; (e) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (f); or (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC.

15.2 If a Party is required to disclose confidential information in order to satisfy an obligation pursuant to subsection 15.1(e) above ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (a) to notify the other Party prior to disclosing the confidential information and (b) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

15.3 The Parties agree that the confidentiality provisions are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their

Affiliates; provided however, that the confidentiality provisions shall govern confidential treatment of all information exchanged between the Parties as of and after the Execution Date.

15.4 Notwithstanding anything to the contrary contained herein, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, Delivery Term, Facility characteristics and location, Contract Capacity, anticipated Commercial Operation Date, Initial Energy Delivery Date, Delivery Point, and the net power rating of the Facility.

16. ASSIGNMENT

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to (a) its financing provider(s) or (b) an affiliate with equal or greater creditworthiness than the transferring Party, provided that any such assignee shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party, and provided further that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.

17. APPLICABLE LAW

17.1 This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

17.2 Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Buyer will require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term: (a) complete financial statements and notes to financial statements; and (b) financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter. Any information provided to Buyer pursuant to this Section 17.2 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

17.3 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

18. SEVERABILITY

If any provision in this Agreement is determined to be invalid, void or unenforceable by the CPUC or any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

20. MOBILE SIERRA

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

21. PREVAILING WAGE

21.1 Producer shall use reasonable efforts to ensure that all Electricians hired by Producer, and its contractors and subcontractors are paid wages at rates not less than those prevailing for electricians performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code. Nothing herein shall require Producer, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the Labor Code.

21.2 To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.14, subdivision (h).

22. GENERAL

The CPUC has reviewed and approved the form of this Agreement. No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both parties. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below.

[SELLER, a (*include place of formation and business type*)]

**PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A

Definitions

- 1.1. “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2. “Aggregated Facility” has the meaning set forth in Section 2.1.7.
- 1.3. “Available Capacity” means the capacity from the Facility, expressed in whole megawatts, that is available to generate Product.
- 1.4. “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday during the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party in each instance shall be the Party from whom the notice, payment or delivery is being sent.
- 1.5. “Buyer” has the meaning set forth in the Preamble.
- 1.6. “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.
- 1.7. “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO revenue meter.
- 1.8. “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.
- 1.9. “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case “CAISO Penalties” do not include the costs and charges related to Scheduling and imbalances as addressed in Section 2.9.3 of this Agreement.
- 1.10. “CAISO Tariff” means the CAISO FERC Electric Tariff, Fourth Replacement Volume Nos. I and II, as amended, supplemented or replaced in whole or in part from time to time.
- 1.11. “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bill 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions may be amended or supplemented from time to time.
- 1.12. “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

- 1.13. “CEC” means the California Energy Commission or its successor agency.
- 1.14. “Commercial Operation” means the Facility described in Section 2.1 is operating and is in compliance with applicable interconnection and system protection requirements and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement.
- 1.15. “Commercial Operation Date” means the date on which Seller provides written notification of Commercial Operation to the CAISO as required under the CAISO Tariff or California ISO Generator Interconnection Manual.
- 1.16. “Compliance Cost Cap” has the meaning set forth in Section 3.4.
- 1.17. “Compliance Costs” means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under Sections 3.2 (WREGIS), 3.3 (Resource Adequacy Benefits), 4.3.3 (Covenant), 6.8 (Greenhouse Gas Emissions Reporting), and 14.2 (EIRP Requirements), including but not limited to registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller's internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date.
- 1.18. “Conditions Precedent” has the meaning set forth in Section 12.1.
- 1.19. “Construction Start Date” means the later to occur of the date on which Seller delivers to Buyer (a) a copy of the Notice to Proceed that Seller has delivered to the engineering, procurement, and construction contractor for the Facility, and (b) for ground-mounted Projects, Notice that grading and site preparation for the Facility has commenced, and for a Facility mounted on buildings or structures, notice that similar physical material actions toward installation of the Facility have begun.
- 1.20. “Contract Capacity” shall mean [_____] MW (AC) net of all auxiliary loads and station electrical uses.
- 1.21. “Contract Price” has the meaning set forth in Section 2.5.1.
- 1.22. “Contract Year” means a period of twelve (12) consecutive months with the first Contract Year commencing on the first day of the month immediately following the Initial Energy Delivery Date and each subsequent Contract Year commencing on the anniversary of the Initial Energy Delivery Date.
- 1.23. “CPUC” means the California Public Utilities Commission, or successor entity.
- 1.24. “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- (a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and
 - (b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

For purposes of this section, a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings shall be deemed to satisfy the CPUC decision requirement.

- 1.25. “Curtailed Period” means the period of time during which there is any of the following: (a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any system emergency, as defined in the CAISO Tariff (“System Emergency”), (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected; (b) a curtailment directed by the CAISO due to over generation as defined in the CAISO Tariff, or a forecast or expectation of over generation, including, but not limited to, a request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (c) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (d) scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or (e) a curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.
- 1.26. “Day-Ahead Availability Notice” has the meaning set forth in Appendix D, Section 3(b).
- 1.27. “Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.
- 1.28. “Delivered Energy” means all Energy produced from the Facility and delivered to the Delivery Point as measured in MWh at the CAISO revenue meter of the Facility.
- 1.29. “Delivery Point” means the point of interconnection to the PG&E distribution system.
- 1.30. “Delivery Term” has the term set forth Section 2.4.
- 1.31. “Dispute Resolution” means the process set forth in Appendix I.
- 1.32. “Early Termination Date” has the meaning set forth in Section 13.3.
- 1.33. “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.
- 1.34. “Eligible Intermittent Resource Program” or “EIRP” means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

- 1.35. “Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in Public Utilities Code Sections 399.12 and California Public Resources Code Section 25741, as either code provision may be amended or supplemented from time to time.
- 1.36. “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 1.47, “Green Attributes,” the word “energy” shall have the meaning set forth in this definition.
- 1.37. “Energy Deviation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid (as defined in the CAISO Tariff) submitted for the Project for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and (b) Delivered Energy for the Settlement Interval.
- 1.38. “Execution Date” means the date set forth in the Preamble.
- 1.39. “Existing Zone Generation Trading Hub” has the meaning set forth in the CAISO Tariff.
- 1.40. “Facility” has the meaning set forth in Section 2.1.
- 1.41. “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.42. “Forecasting Penalty” has the meaning set forth in Section 2.9.3.3.
- 1.43. “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (a) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (b) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (c) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Force Majeure shall not be based on: (i) PG&E’s inability economically to use or resell the energy or capacity purchased hereunder; (ii) Seller’s ability to sell the energy, capacity or other benefits produced by or associated with the Facility at a price greater than the price set forth in this Agreement, (iii) Seller’s inability to obtain approvals of any type for the construction, operation, or maintenance of the Facility; (iv) Seller’s inability to obtain sufficient fuel to operate the Facility, except if Seller’s inability to obtain sufficient fuel is caused by an event of Force Majeure; (v) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure; (vi) a strike or labor dispute limited only to Seller, Seller’s affiliates, the engineering, procurement, and construction contractor or subcontractors thereof; or (vii) any equipment failure not caused by an event of Force Majeure.
- 1.44. “Forced Outage” means any unplanned reduction or suspension of the electrical output from the Facility resulting in the unavailability of the Facility, in whole or in part, in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of the Facility for operation, in whole or in part, for maintenance or repair that is not a scheduled maintenance outage and not the result of Force Majeure.
- 1.45. “Good Utility Practice” has the meaning set forth in the CAISO Tariff.

- 1.46. “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.
- 1.47. “Governmental Charges” has the meaning set forth in Section 2.11.
- 1.48. “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.
- 1.49. “Guaranteed Commercial Operation Date” has the meaning set forth in Section 5.4.
- 1.50. “Hour-Ahead Scheduling Process” has the meaning set forth in the CAISO Tariff.
- 1.51. “Integrated Forward Market Load Uplift Obligation” has the meaning set forth in the CAISO Tariff.
- 1.52. “Interconnection Facilities” has the meaning set forth in the CAISO Tariff.
- 1.53. “Initial Energy Delivery Date” has the meaning set forth in Section 2.4.
- 1.54. “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.

- 1.55. “Interest Payment Date” means the last Business Day of each calendar year.
- 1.56. “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.
- 1.57. “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.I5-519, or its successor publication.
- 1.58. “Law” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing.
- 1.59. “Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by (a) a U.S. commercial bank or (b) a U.S. branch of a foreign commercial bank with sufficient assets in the United States, as determined by Buyer, with either such bank having a Credit Rating of at least A from S&P or A2 from Moody’s, substantially in the form as contained in Appendix G to this Agreement.
- 1.60. “Locational Marginal Price” has the meaning set forth in the CAISO Tariff.
- 1.61. “Market Price Referent” means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c), as may be amended or modified from time to time.
- 1.62. “Monthly Forecast” has the meaning set forth in Appendix D, Section 3(a).
- 1.63. “Monthly TOD Payment” has the meaning set forth in Section 2.5.3.
- 1.64. “Notice” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).
- 1.65. “Outage Notification Procedures” means the procedures specified in Appendix F. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.
- 1.66. “Participating Intermittent Resource” has the meaning set forth in the CAISO Tariff.
- 1.67. “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.
- 1.68. “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security.

- 1.69. “Performance Tolerance Band” has the meaning set forth in Section 2.9.3.2.
- 1.70. “Permitted Extensions” means extensions to either of the Construction Start Date or Guaranteed Commercial Operation Date due to Permitting Delay, Transmission Delay, Force Majeure Construction Extension, as applicable, pursuant to Section 5.3 or 5.4.
- 1.71. “Permitting Delay” has the meaning set forth in Section 5.3.1.
- 1.72. “PG&E Wholesale Distribution Tariff” means the Pacific Gas and Electric Company FERC Electric Tariff First Revised Volume No. 4, as it may be amended, supplemented or replaced (in whole or in part) from time to time.
- 1.73. “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Facility, (b) cannot be reasonably conducted during Facility operations, and (c) causes the generation level of the Facility to be reduced by at least ten percent (10%) of the Available Capacity.
- 1.74. “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Facility is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Available Capacity.
- 1.75. “Producer” has the meaning set forth under the definition of “Seller.”
- 1.76. “Product” means the Energy, capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Facility, including, without limitation, renewable attributes, Renewable Energy Credits, Resource Adequacy Benefits, Capacity Attributes and Green Attributes.
- 1.77. “Project Development Security” is the collateral required of Seller, as specified and referred to in Section 7.1
- 1.78. “Renewable Energy Credit” has the meaning set forth in Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.
- 1.79. “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions 04-10-035 and 05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings 04-04-003 and 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.
- 1.80. “Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.
- 1.81. “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time during the Delivery Term.

- 1.82. "Satisfaction Date" has the meaning set forth in Section 12.3.1.
- 1.83. "Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator", of the CAISO Tariff, as amended from time to time.
- 1.84. "Scheduling and Logging system for the CAISO" or "SLIC" has the meaning set forth in the CAISO Tariff.
- 1.85. "Seller" has the meaning set forth in the Preamble. For the purposes of Section 21.1, the term "Producer" has the same meaning as the term "Seller".
- 1.86. "Settlement Interval" means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
- 1.87. "Settlement Interval Actual Available Capacity" means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.
- 1.88. "SGIA" means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and, as applicable, the CAISO governing the terms and conditions of Seller's interconnection with the Participating TO's transmission or distribution system, including any description of the plan for interconnecting to Participating TO's transmission or distribution system.
- 1.89. "Station Use" means energy consumed within the Facility's electric energy distribution system as losses, as well as energy used to operate the Facility's auxiliary equipment. The auxiliary equipment may include, but is not limited to, forced and induced draft fans, cooling towers, boiler feeds pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems, and sump pumps.
- 1.90. "Term" has the meaning provided in Section 12.3.1.
- 1.91. "Test Period" has the meaning set forth in Section 2.3.
- 1.92. "Third-Party SC" means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Facility pursuant to this Agreement.
- 1.93. "TOD Factors" has the meaning set forth in Section 2.5.2
- 1.94. "TOD Periods" has the meaning set forth in Section 2.5.2.
- 1.95. "Transaction" means the particular transaction described in its entirety in Section 2.2.
- 1.96. "Transmission Delay" has the meaning set forth in Section 5.3.2.
- 1.97. "Unit" has the meaning set forth in Section 2.1.
- 1.98. "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

APPENDIX B

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Small Photovoltaic Power Purchase Agreement dated _____ (“Agreement”) by and between Pacific Gas and Electric Company (“PG&E”) and _____ (“Seller”), this letter serves to document the parties further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and PG&E has received the Energy, as specified in the Agreement, as of this _____ day of _____, _____. This letter shall confirm the Initial Energy Delivery Date, as defined in the Agreement, as the date referenced in the preceding sentence.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below:

[SELLER]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Appendix C
Time of Delivery (“TOD”) Periods and Factors

Monthly Period	TOD PERIOD		
	1. Super-Peak	2. Shoulder	3. Night
A. June - September	A1	A2	A3
B. Oct. - Dec., Jan. & Feb.	B1	B2	B3
C. March – May	C1	C2	C3

Monthly Period Definitions. The Monthly Periods are defined as follows:

- A. June - September;
- B. October, November, December, January and February; and
- C. March - May.

TOD Period Definitions. The TOD Periods are defined as follows:

1. **Super-Peak** (5x8) = hours ending 13-20 (Pacific Prevailing Time (PPT)) Monday - Friday (*except* NERC Holidays) in the applicable Monthly Period.
2. **Shoulder** = hours ending 7 - 12, 21 and 22 PPT Monday - Friday (*except* NERC Holidays); and hours ending 7-22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.
3. **Night** (7x8) = hours ending 1-6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

“NERC Holidays” mean the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “NERC Holiday” remains on that Saturday. Notwithstanding anything to the contrary in this Section 4.2, NERC Holidays shall be calculated as “Shoulder” hours for all non-“Night” hours and any remaining hours shall be calculated as “Night” hours.

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June - September	2.20490	1.12237	0.68988
B. Oct. - Dec., Jan. & Feb.	1.05783	0.93477	0.76384
C. March – May	1.14588	0.84634	0.64235

APPENDIX D – SCHEDULING REQUIREMENTS

1. Designation of Scheduling Coordinator. At least ninety (90) days before the beginning of the Test Period Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller’s Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller’s Scheduling Coordinator. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly. Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Period and Delivery Term.

2. Buyer’s Responsibilities as Scheduling Coordinator. Buyer or Third-Party SC shall comply with all obligations as Seller’s Scheduling Coordinator under the CAISO Tariff and shall conduct all Scheduling in full compliance with the terms and conditions of this Agreement, the applicable CAISO Tariff, all requirements of EIRP (if applicable), and protocols and scheduling practices for the Day-Ahead Schedule or in the Hour-Ahead Scheduling Process.

3. Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller’s availability forecasts below shall include Facility availability and updated status of photovoltaic panels, inverters, transformers, and any other equipment that may impact availability. To avoid Forecasting Penalties set forth in Section 2.9.3 of this Agreement, Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including but not limited to automated forecast and outage submissions.

(a) Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer (“Monthly Forecast”).

(b) Daily Updates to the Forecast of Available Capacity. During each month of the Delivery Term, if the hourly Available Capacity for any hour differs by more than one (1) MW relative to the forecast for such hour provided for that day in the Monthly Forecast of Available Capacity, whether due to Forced Outage, Force Majeure or other cause, Seller or Seller’s agent shall provide a revised day ahead forecast of Available Capacity (the “Day-Ahead Availability Notice”) to Buyer or Third-Party SC (as applicable) via Buyer’s internet site, for each affected day no later than fourteen (14) hours before the beginning of the “Preschedule Day” (as defined by the WECC) for such affected day. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (1) Monday – Preschedule Day for Tuesday
- (2) Tuesday – Preschedule Day for Wednesday
- (3) Wednesday – Preschedule Day for Thursday

- (4) Thursday – Preschedule Day for Friday and Saturday
- (5) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, “Prescheduling Calendar.” Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller’s forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is more than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day-Ahead Schedules, then Seller must notify Buyer of such change by telephone (at Buyers’ discretion) and shall send a revised notice to Buyer’s internet site indicated in Appendix F, section 8. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

Day-Ahead Trading Desk
Primary Telephone: (415) 973-6222
Backup Telephone: (415) 973-4500

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, (i) until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Buyer and Seller and (ii) to the extent Seller’s failure contributes to an imbalance charge, Seller shall be subject to the Forecasting Penalties.

(c) Hourly Forecast of Available Capacity. During the Delivery Term, if the hourly Available Capacity for any hour differs by more than one (1) MW relative to the forecast for such hour in either the Monthly Forecast of Available Capacity or the Day-Ahead Availability Notice, whether due to Forced Outage, Force Majeure or other cause, Seller shall notify Buyer of such changes in Available Capacity as soon as reasonably possible, but no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit a schedule in the Hour-Ahead Schedules Process. Available Capacity changes after one (1) hour before the CAISO deadline for Hour-Ahead Scheduling Process, but before the CAISO Hour-Ahead Scheduling Process deadline, shall also be reported by Seller to Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage immediately following Seller Available Capacity notification to the CAISO via SLIC, if applicable and Seller shall follow PG&E’s Outage Notification Procedures. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These notices and changes to Available Capacity shall be communicated by telephone (at Buyer’s discretion) to Buyer’s Hour-Ahead Trading Desk and shall be sent to Buyer’s internet site indicated in Appendix F, section 8:

Hour-Ahead Trading Desk
Primary Telephone: (415) 973-4500

4. Replacement of Scheduling Coordinator.

(a) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller’s SC. These actions include (i) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (ii) causing the newly-designated SC to submit a letter to the CAISO accepting the

designation; and (iii) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(b) Buyer shall submit, or if applicable cause the Third-Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (i) thirty (30) days prior to the end of the Delivery Term or (ii) the date of any early termination of this Agreement.

5. Authorized Representative. Each Party shall provide Notice to the other Party of the person(s) authorized to schedule or dispatch order for the delivery of the Product or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such person(s) from time to time in its sole discretion by providing Notice.

6. Recording. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer's employees or representatives performing a Scheduling Coordinator function as provided in Appendix C and any representative of Seller. The Parties agree that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

APPENDIX E – DATA AND WEATHER STATION REQUIREMENTS

1. Data Access Requirements. Commencing on the first date on which the Facility generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the following data on a real-time basis and, if applicable, historical basis:

- (a) read-only access to meteorological measurements, inverter and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (f) of this list, and energy output information collected by the supervisory control and data acquisition (or SCADA) system for the Facility;
- (b) read-only access to the Facility's CAISO revenue meter and all Facility meter data at the Facility;
- (c) full, real time access to the Facility's Scheduling and Logging for the CAISO SLIC client application;
- (d) net plant electrical output at the CAISO revenue meter;
- (e) time-average data including 10-minute and hourly values of solar irradiance, air temperature, wind speed, wind direction, standard deviation of wind direction, barometric pressure and, if applicable, visibility in winter fog areas; and
- (f) an equation, updated on an ongoing basis to reflect the potential generation of the Facility as a function of solar irradiance, temperature, wind speed, and, if applicable, wind direction. Such equation shall take into account the expected availability of the facility.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Facility's monthly Settlement Interval Actual Available Capacity in a form provided by Buyer. Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report, in a form provided by Buyer. Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Appendix E, Section 1; provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

2. Validation. Buyer reserves the right to validate the data provided pursuant to Appendix E, Section 1 with information publicly available from NOAA and nearby weather stations and substitute such data for its settlement purposes if Seller's data is inconsistent with the publicly available data or is missing; provided that Buyer shall notify Seller promptly of Buyer's substitution of such data.

3. Data Availability. Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Appendix E, Section 1, which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

4. Installation, Maintenance and Repair.

(a) Seller, at its own expense, shall install and maintain one (1) stand-alone meteorological station at the Facility to monitor and report the meteorological data required in Appendix E, Section 1. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Appendix E, Section 1.

(b) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third Party SC (as applicable). Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(c) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(d) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of communication (i.e, cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail) until the telecommunications link is re-established.

5. Additional Information. Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller. Seller hereby voluntarily consents to allow PG&E, as a Participating Transmission Owner, to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide PG&E with written confirmation of such voluntary consent at least thirty (30) days prior to the Initial Energy Delivery Date.

6. Recorded Data At Initial Energy Delivery Date. No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide one (1) year, if available, but no less than two (2) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Facility. Such weather station shall provide, via remote access to Buyer, all data relating to (a) solar irradiance, air temperature, wind speed and direction, barometric pressure, and visibility in winter fog areas as applicable (forward scatter sensor) at the Facility, as well as time-average data including 10-minute and hourly values of irradiance, air temperature, wind speed, wind direction, standard deviation of wind direction, barometric pressure and visibility in winter fog areas as applicable; (b) elevation, latitude and longitude of the weather station; and (c) any other data that would be required for participation in the EIRP.

APPENDIX F -- COUNTERPARTY NOTIFICATION AND FORECASTING REQUIREMENTS

1. CAISO Approval of Outage(s). In accordance with the CAISO Tariff, Seller is responsible for securing CAISO approvals for Facility outages, including securing changes in its outage schedules when CAISO disapproves Seller's schedules or cancels previously approved outages. Seller shall communicate any CAISO-required changes to Buyer in a timely manner, in accordance with this Appendix F, Sections 7 and 8.

2. Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Facility for the following calendar year no later than August 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of January, June through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Facility must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the Facility during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

3. Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the provisions in this Appendix F, Sections 7 and 8. Seller shall notify Buyer in writing when the Facility is again capable of meeting its Contract Quantity on a pro rata basis using the same notification procedure as used with initial notice. Seller shall not substitute Energy from any other source for the output of the Facility during a Prolonged Outage.

4. Force Majeure. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. Seller shall not substitute Products from any other source for the output of the Facility during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Product that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

5. Communications with CAISO. In accordance with the CAISO Tariff, Seller shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide Buyer with copies of all outage plans and clearance requests submitted to CAISO, and shall promptly inform

Buyer of all clearance approvals and disapprovals and other communications with CAISO pertaining to the status of planned or in-progress Facility outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to Buyer upon request. If either Party receives information through CAISO regarding maintenance that will directly affect the Facility, it will provide this information promptly to the other Party.

6. Changes to Operating Procedures. Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increase cost of performance to Seller hereunder other than *de minimis* amounts.

7. Notification Requirements for Start-Up and Shutdown. Prior to paralleling to or after disconnecting from the electric system, Seller should always follow the balancing authority rules and notify your designated balancing authority control center as follows:

- (a) Call the balancing authority control center to parallel before any start-up
- (b) Call the balancing authority control center again with parallel time after start-up.
- (c) Call the balancing authority control center after any separation and report the separation time as well as the date and time estimate for return to service.

8. Submission of Available Capacity And Facility Outages. Seller shall:

(a) Submit information by posting to PG&E's Power Procurement Information Center, which is located at www.pge.com under "For My Business." After selecting "Wholesale Power" on the right side of the page, select "Electric Procurement" along the left banner. After selecting the Power Procurement Information Center icon in the middle of the page, you will be required to enter a username and password, which will be assigned to you by PG&E's Bilateral Settlements Group.

(b) If the website is unavailable, implement the procedures set forth below:

- 1) For all email correspondence, enter the following in the email subject field: Delivery Date Range, Contract Name, Email Purpose (For example: "dd/mm/yyyy - dd/mm/yyyy XYZ Company Facility #2 Daily Forecast of Available Capacity")
- 2) For Monthly and WECC Preschedule Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
- 3) For Daily Update to Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Day-Ahead Schedules, call primary phone 415.973.6222 or backup phone 415.973.4500 (if such an Update is required per Appendix D, section c). Also send email to DAenergy@pge.com.
- 4) For Hourly Update to Forecasts of Available Capacity, call PG&E's Hour-ahead Trading Desk at 415.973.4500 and email to RealTime@pge.com (if such an Update is required per Appendix D, section d).

- 5) For Facility outages, complete the specifics below and submit by email to DAenergy@pge.com and Bilat_Settlements@pge.com
- i. Email subject Field: dd/mm/yyyy – dd/mm/yyyy XYZ Company Facility #2 Outage Notification
 - ii. Email body:
 1. Type of Outage: Planned Outage, Forced Outage, Prolonged Outage
 2. Start Date and Start Time
 3. Estimated or Actual End Date and End Time
 4. Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted
 5. Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage required by the CAISO.

APPENDIX G

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary: Pacific Gas and Electric Company
77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

Applicant: [Insert name and address of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. “Pursuant to the terms of that certain Power Purchase Agreement (“PPA”), dated _____, between Beneficiary and **[insert name of Seller under the PPA]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the PPA]** under the PPA; or
 - B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the PPA]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended (without an amendment hereto) for a period of one (1) year from the Expiry Date or any future Expiry Date, unless **[insert name of Seller under the PPA]** has provided replacement security acceptable to Beneficiary, or Beneficiary has returned this Letter of Credit to **[insert name of Seller under the PPA]** prior to the Expiry Date.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ **[print or type name]**

Title: _____

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

APPENDIX H -- FACILITY DESCRIPTION

[Seller to complete pursuant to Section 2.1.5 of the Agreement.]

APPENDIX I – DISPUTE RESOLUTION

1. Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article Twelve. The lone exception to the foregoing is that either Party may seek an injunction in Superior Court in San Francisco, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting to, be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from the Referral Date. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be resolved by negotiation as set forth in Section 12.2 above, then either Party may initiate mediation, the first-step of a two-step dispute resolution process, which JAMS shall administer. As the first step, the Parties agree to mediate any controversy before a commercial mediator from the JAMS panel, pursuant to JAMS's then-applicable commercial mediation rules, in San Francisco, California. Either Party may initiate such a mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, or as extended by mutual agreement of the Parties, the mediation does not result in resolution of the dispute, then the Parties shall resolve such controversy through Arbitration by one retired judge or justice from the JAMS panel, which Arbitration shall take place in San Francisco, California, and which the Arbitrator shall administer by and in

accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the Arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an Arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

12.4 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994) and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law.

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(e) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

(f) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

Appendix B2

Large PV PPA

PV PROGRAM: Form of Power Purchase Agreement

Standard contract terms and conditions that “may not be modified” per CPUC Decision 07-11-025 are shown in shaded text.

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY

(as “Buyer”)

and

(as “Seller”)

Note 1: This Form of Power Purchase Agreement requires deliveries to PG&E in PG&E’s service territory.

Note 2: This Form of Power Purchase Agreement is available only for projects of 3 to 20 MW (AC).

POWER PURCHASE AGREEMENT

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APPENDICES

The following Appendices constitute a part of this Agreement and are incorporated into this Agreement by reference:

- Appendix I Form of Letter of Credit
- Appendix II Initial Energy Delivery Date Confirmation Letter
- Appendix III Milestones Schedule
- Attachment A Form of Monthly Progress Report
- Appendix IV Project Description Including Description of Site
- Appendix V Delivery Term Contract Quantity Schedule
- Appendix VI Commercial Operation Certification Procedure
- Attachment A Form of Certification
- Appendix VII GEP Damages Calculation
- Appendix VIII Notification Requirements for Available Capacity and Project Outages
- Appendix IX Certification of Third Party Agreement
- Appendix X Resource Adequacy
- Appendix XI Notices List
- Appendix XII Form of Consent to Assignment
- Appendix XIII Seller Documentation Condition Precedent
- Appendix XIV Form of Actual Availability Report
- Attachment A Form of Actual Availability Report

POWER PURCHASE AGREEMENT

PREAMBLE

This Power Purchase Agreement, together with the appendices and any other attachments referenced herein, is made and entered into between Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”), and [Seller], a [*include place of formation and business type*] (“Seller”), as of the Execution Date set forth on the signature page hereof. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Actual Availability Report” has the meaning set forth in Section 3.1(l)(i).

1.2 “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, the word “agreement” shall have the meaning set forth in this definition. For purposes of Section 3.1(k)(viii), the word “contract” shall have the meaning set forth in this definition.

1.4 “Arbitration” has the meaning set forth in Section 12.3.

1.5 “Available Capacity” means the capacity from the Project, expressed in whole megawatts, that is available to generate Product.

1.6 “Availability Workbook” has the meaning set forth in Appendix XIV.

1.7 “As-Available Product” means a Product for which, subject to the terms of this Agreement, (a) Seller is obligated to sell and deliver and (b) Buyer is obligated to purchase and receive, the Energy component of the Product from the Project whenever such Energy is capable of being generated from the Project.

1.8 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator,

administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

1.9 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

1.10 “Buyer” has the meaning set forth in the Preamble.

1.11 “Buyer’s Notice” has the meaning set forth in Section 3.9(e)(ii) or Section 11.1(b)(ii), as applicable.

1.12 “Buyer’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

1.13 “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

1.14 “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO revenue meter.

1.15 “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

1.16 “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case “CAISO Penalties” do not include the costs and charges related to Scheduling and imbalances as addressed in Section 4.5(b) of this Agreement.

1.17 “CAISO Revenues” means (a) the credits and other payments received by Buyer, as Seller’s Scheduling Coordinator, as a result of test energy from the Project delivered to the real-time market by Seller during the Test Period, including revenues associated with CAISO dispatches and (b) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Project for, or attributable to, scheduling and deliveries from the Project under this Agreement.

1.18 “CAISO Tariff means the CAISO FERC Electric Tariff, First Replacement Volume No. 1, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.19 “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code

Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.20 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

1.21 “CEC” means the California Energy Commission or its successor agency.

1.22 “CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has been constructed, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

1.23 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination or expiration of this Agreement.

1.24 “Commercial Operation” means the Project is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement.

1.25 “Commercial Operation Date” means the date on which Seller (a) notifies Buyer that Commercial Operation has commenced and (b) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix VI, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix VI hereto.

1.26 “Compliance Costs” means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under Sections 3.1(j) (Greenhouse Gas Emissions Reporting), 3.1(k) (WREGIS), 3.1(n) (Obtaining and Maintaining CEC Certification and Verification), 3.3 (Resource Adequacy), 3.4(b) (EIRP Requirements), and 10.2(b) (ERR), and under Appendix X (Resource Adequacy), including but not limited to registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller's internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date.

1.27 “Compliance Cost Cap” has the meaning set forth in Section 3.1(o).

1.28 “Condition Precedent” means each of, or one of, the conditions set forth in Section 2.4(a)(i) through (iv) and “Conditions Precedent” shall refer to all of the conditions set forth in Section 2.4(a)(i) through (iv).

1.29 “Construction Cure Period” has the meaning set forth in Section 3.9(c)(iv).

1.30 “Construction Start Date” means the later to occur of the date on which Seller delivers to Buyer (a) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (b) a written Certification substantially in the form attached hereto as Attachment A to Appendix VI.

1.31 “Contract Capacity” has the meaning set forth in Section 3.1(f).

1.32 “Contract Capacity Commitment” means the amount of the Contract Capacity that may be constructed pursuant to the material Governmental Approvals received or obtained by Seller as of the Guaranteed Construction Start Date (as may be extended pursuant to Section 3.9(c)(iii)).

1.33 “Contract Price” means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in Section 4.1.

1.34 “Contract Quantity” means the quantity of Delivered Energy expected to be delivered by Seller during each Contract Year as set forth in Section 3.1(e).

1.35 “Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Initial Energy Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Energy Delivery Date.

1.36 “Costs” means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace the Terminated Transaction; and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Transaction.

1.37 “CPUC” or “Commission or successor entity” means the California Public Utilities Commission, or successor entity.

1.38 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance

with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

For purposes of this section, a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings shall be deemed to satisfy the CPUC decision requirement.

1.39 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

1.40 “Cure” has the meaning set forth in Section 8.5(a).

1.41 “Curtailed Period” means the period of time during which there is any of the following: (a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any system emergency, as defined in the CAISO Tariff (“System Emergency”), (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected; (b) a curtailment directed by the CAISO due to over generation as defined in the CAISO Tariff, or a forecast or expectation of over generation, including, but not limited to, a request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (c) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (d) scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or (e) a curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

1.42 “Daily Delay Damages” means with respect to a Guaranteed Project Milestone, an amount equal to (a) the Project Development Security Amount posted as of the first date that Daily Delay Damages are payable under this Agreement with respect to such Guaranteed Project Milestone, divided by (b) one hundred and eighty (180).

1.43 “Damage Payment” means the dollar amount equal to (a) the amount initially posted as Project Development Security pursuant to Section 8.4(a)(ii), less (b) amounts collected by Buyer as Daily Delay Damages pursuant to Section 3.9(c)(iv).

1.44 “Day-Ahead Availability Notice” has the meaning set forth in Section 3.4(c)(iii)(C).

1.45 “Day Ahead Schedule” has the meaning set forth in the CAISO Tariff.

1.46 “Defaulting Party” means the Party that is subject to an Event of Default.

1.47 “Deficient Month” has the meaning set forth in Section 3.1(k)(v).

1.48 “Delivered Energy” means all Energy produced from the Project and delivered to the Delivery Point as measured in MWh at the CAISO revenue meter of the Project.

1.49 “Delivery Point” means the point at which Buyer receives Seller’s Product, as identified in Section 3.1(d).

1.50 “Delivery Term” has the meaning set forth in Section 3.1(c).

1.51 “Delivery Term Security” means the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.

1.52 “Disclosing Party” has the meaning set forth in Section 10.7.

1.53 “Disclosure Order” has the meaning set forth in Section 10.7

1.54 “Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to PG&E’s distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of Interconnection, as defined in the PG&E Wholesale Distribution Tariff, at the point where PG&E’s meter is physically located, and the first point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

1.55 “Distribution Upgrades” has the meaning set forth in the CAISO Tariff.

1.56 “DUNS” means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.

1.57 “Early Termination Date” has the meaning set forth in Section 5.2.

1.58 “Effective Date” means the date on which all of the Conditions Precedent set forth in Section 2.4(a) have been satisfied or waived in writing by both Parties.

1.59 “Electrical Losses” means all applicable losses, including, but not limited to, the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

1.60 “Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner’s electric system for receipt of Energy at the Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if the Participating TO’s electric system is not part of the CAISO Grid.

1.61 “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.

1.62 “Eligible Intermittent Resource Program” or “EIRP” means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

1.63 “Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

1.64 “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 1.90, “Green Attributes,” the word “energy” shall have the meaning set forth in this definition.

1.65 “Energy Deviation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the Final Hour Ahead Schedule (as defined in the CAISO Tariff) for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and (b) Delivered Energy for the Settlement Interval.

1.66 “Energy Investment Tax Credit” or “ITC” means the tax credit for “energy property” described in Section 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.67 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

1.68 “EPC Contractor” means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller’s; provided, however, that the Seller or the Seller’s affiliate(s) may serve as the EPC Contractor.

1.69 “Equitable Defenses” means any bankruptcy, insolvency, reorganization or other Laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

1.70 “Event of Default” has the meaning set forth in Section 5.1.

1.71 “Exclusivity Period” has the meaning set forth in Section 3.9(e) or Section 11.1(b)(i), as applicable.

1.72 “Execution Date” means the latest signature date found on the signature page of this Agreement.

1.73 “Executive(s)” has the meaning set forth in Section 12.2(a).

1.74 “Exempt Wholesale Generator” has the meaning provided in 18 CFR Section 366.1.

1.75 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.76 “Final Output Report” means the unabridged and unredacted final report provided to Buyer as set forth in Section 3.9(a)(vii) concerning the Energy producing potential of the Site, inclusive of anticipated Planned Outages and Forced Outages on an annual basis, prepared by a Licensed Professional Engineer who shall be retained by Seller. The Energy producing potential of the Site as reflected in the Final Output Report may be expressed on a calendar year by calendar year basis, if necessary to reflect adjustments in such potential over time due to any anticipated degradation of the photovoltaic panels.

1.77 “First Offer” has the meaning set forth in Section 3.9(e)(i) or Section 11.1(b)(i), as applicable.

1.78 “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:

(i) flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcanic eruption, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) except as set forth in subsection (b)(vii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); or

(iv) emergencies declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy, including Energy to be delivered pursuant to this Agreement; provided that, if a curtailment of the Project pursuant to this subsection (a)(iv) would also meet the definition of a Curtailment Period, then it shall be treated as a Curtailment Period for purposes of Section 3.1(i).

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project;

(iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure;

(v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(vi) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;

(vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project;

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; or

(ix) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

1.79 "Force Majeure Construction Extension" has the meaning set forth in Section 3.9(c)(iii)(A).

1.80 “Force Majeure Failure” means either Force Majeure Project Failure or Force Majeure Development Failure, as applicable.

1.81 “Force Majeure Development Failure” has the meaning set forth in Section 11.1(a)(ii).

1.82 “Force Majeure Project Failure” has the meaning set forth in Section 11.1(a)(i).

1.83 “Forced Outage” means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part from a Unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a Unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

1.84 “Forecasting Penalty” has the meaning set forth in Section 4.5(c)(iii), and “Forecasting Penalties” means more than one Forecasting Penalty.

1.85 “Gains” means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.86 “GEP Cure” has the meaning set forth in Section 3.1(e)(ii).

1.87 “GEP Damages” has the meaning set forth in Section 3.1(e)(ii).

1.88 “GEP Failure” means Seller’s failure to produce Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

1.89 “GEP Shortfall” means the amount in MWh by which Seller failed to achieve the Guaranteed Energy Production in the applicable Performance Measurement Period.

1.90 “Good Utility Practice” has the meaning provided in the CAISO Tariff.

1.91 “Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use and operation of the Project.

1.92 “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

1.93 “Governmental Charges” has the meaning set forth in Section 9.2.

1.94 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

1.95 “Guaranteed Commercial Operation Date” has the meaning set forth in Section 3.9(c)(iii)(B).

1.96 “Guaranteed Construction Start Date” has the meaning set forth in Section 3.9(c)(iii)(A).

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

- 1.97 “Guaranteed Energy Production” or “GEP” has the meaning set forth in Section 3.1(e).
- 1.98 “Guaranteed Project Milestones” are the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date set forth in 3.9(c)(iii).
- 1.99 “Hour Ahead” has the meaning set forth in the CAISO Tariff.
- 1.100 “Initial Energy Delivery Date” has the meaning set forth in Section 3.1(c).
- 1.101 “Initial Negotiation End Date” has the meaning set forth in Section 12.2(a).
- 1.102 “Interconnection Customer’s Interconnection Facilities” has the meaning set forth in the CAISO Tariff.
- 1.103 “Interconnection Facilities” has the meaning set forth in the CAISO Tariff.
- 1.104 “Interconnection Point” means *[Seller to identify the physical interconnection point of the Project]*,
- 1.105 “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.
- 1.106 “Interest Payment Date” means the last Business Day of each calendar year.
- 1.107 “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.
- 1.108 “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.
- 1.109 “JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.
- 1.110 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Sections 1.38 “CPUC Approval,” 1.94 “Green Attributes,” 10.2(b), “Seller Representations and Warranties” and 10.12 “Governing Law”, the term “law” shall have the meaning set forth in this definition.

1.111 “Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by (a) a U.S. commercial bank or (b) a U.S. branch of a foreign commercial bank with sufficient assets in the United States, as determined by Buyer, with either such bank having a Credit Rating of at least A from S&P or A2 from Moody’s, substantially in the form as contained in Appendix I to this Agreement.

1.112 “Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

1.113 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

1.114 “Manager” has the meaning set forth in Section 12.2(a).

1.115 “Milestones” means the key development activities required for the construction and operation of the Project, as set forth in Appendix III.

1.116 “Monthly Progress Report” means the report similar in form and content attached hereto as Attachment A to Appendix III.

1.117 “Monthly Period” has the meaning set forth in Section 4.2.

1.118 “Monthly TOD Payment” has the meaning set forth in Section 4.3.

1.119 “Moody’s” means Moody’s Investor Services, Inc., or its successor.

1.120 “MW” means megawatt (AC).

1.121 “MWh” means megawatt-hour.

1.122 “NERC” means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.

1.123 “NERC Holiday” has the meaning set forth in Section 4.2.

1.124 “Network Upgrades” has the meaning set forth in the CAISO Tariff.

1.125 “New Generation Facility” means a project that (a) has not previously been operational and able to produce and deliver Energy to another entity or (b) must be re-powered or expanded in order to deliver the Product pursuant to the terms set forth in this Agreement.

1.126 “NOAA” means National Oceanic and Atmospheric Administration or successor thereto.

1.127 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.128 “Notice,” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Appendix XI contains the names and addresses to be used for Notices.

1.129 “Notice to Proceed” means the notice provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin construction of the Project without any delay or waiting periods.

1.130 “Obligor” means the Party breaching the terms of this Agreement.

1.131 “Outage Notification Procedures” means the procedures specified in Appendix VIII, attached hereto. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.

1.132 “Participating Intermittent Resource” or “PIRP” has the meaning set forth in the CAISO Tariff.

1.133 “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.

1.134 “Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 10.12, Governing Law, the word “party” or “parties” shall have the meaning set forth in this definition.

1.135 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security.

1.136 “Performance Measurement Period” has the meaning set forth in Section 3.1(e).

1.137 “Performance Tolerance Band” shall be calculated as set forth in Section 4.5(c)(ii).

1.138 “Permitting Delay” has the meaning set forth in Section 3.9(c)(iii)(A).

1.139 “Permitted Extensions” means extensions to either of the Guaranteed Project Milestones due to Permitting Delay, Transmission Delay, Force Majeure Construction Extension, as applicable, to each Guaranteed Project Milestone pursuant to Section 3.9(c)(iii)(A) or (B), as applicable.

1.140 “Permit Failure” has the meaning set forth in Section 3.9(d).

1.141 “PG&E Wholesale Distribution Tariff” means the Pacific Gas and Electric Company FERC Electric Tariff First Revised Volume No. 4, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.142 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.

1.143 “Preamble” means the paragraph that precedes Article One: General Definitions to this Agreement.

1.144 “Preschedule Day” has the meaning set forth in Section 3.4(c)(iii).

1.145 “Product” means the Energy, capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project, including, without limitation, renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

1.146 “Production Tax Credit” or “PTC” means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.147 “Program Agreements” has the meaning set forth in Section 3.4(b).

1.148 “Project” means all of the Unit(s), the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including but not limited to the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described on Appendix IV. For purposes of Section 1.90, “Green Attributes,” the word “project” shall have the meaning set forth in this definition.

1.149 “Project Cure Period” has the meaning set forth in Section 3.9(c)(iv).

1.150 “Project Development Security” is the collateral required of Seller, as specified and referred to in Section 8.4(a).

1.151 “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Project is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Contract Capacity.

1.152 “Qualifying Facility” has the meaning provided in the Public Utility Regulatory Policies Act (“PURPA”) and in regulations of the FERC at 18 C.F.R. §§ 292.201 through 292.207.

1.153 “Qualifying Protocols” has the meaning set forth in Section 3.4(b).

1.154 “RA Capacity” means the maximum megawatt amount that the CAISO recognizes from a Project that qualifies for Buyer’s Resource Adequacy Requirements and is associated with the Project’s Capacity Attributes.

1.155 “Reductions” has the meaning set forth in Section 4.7(b).

1.156 “Referral Date” has the meaning set forth in Section 12.2(a).

1.157 “Remedial Action Plan” has the meaning provided in Section 3.9(c)(ii).

1.158 “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

1.159 “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

1.160 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.

1.161 “Revised Offer” has the meaning set forth in Section 3.9(e)(iii) or Section 11.1(b)(iii), as applicable.

1.162 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.163 “Satisfaction Date” has the meaning set forth in Section 2.5.

1.164 “Schedule” has the meaning set forth in the CAISO Tariff.

1.165 “Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of

undertaking the functions specified in “Responsibilities of a Scheduling Coordinator”, of the CAISO Tariff, as amended from time to time.

1.166 “SEC” means the U.S. Securities and Exchange Commission.

1.167 “Seller” has the meaning set forth in the Preamble. For the purposes of Section 3.1(m)(i), the term “Producer” has the same meaning as the term “Seller”.

1.168 “Seller Excuse Hours” means those hours during which Seller is unable to schedule or deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, or (c) Curtailment Period.

1.169 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

1.170 “Settlement Amount” means the amount in US\$ equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.

1.171 “Settlement Interval” means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).

1.172 “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.

1.173 “SGIA” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and, as applicable, the CAISO governing the terms and conditions of Seller’s interconnection with the Participating TO’s transmission or distribution system, including any description of the plan for interconnecting to Participating TO’s transmission or distribution system.

1.174 “SGIP” means the Small Generator Interconnection Procedures set forth in the PG&E Wholesale Distribution Tariff or CAISO Tariff, as applicable, and associated documents; provided that if the SGIP is replaced by such other successor procedures approved by FERC governing interconnection (a) to the Participating TO’s transmission or distribution system or (b) of generating facilities with an expected net capacity equal to or greater than the Project’s Contract Capacity, the term “SGIP” shall then apply to such successor procedure.

1.175 “Site” means the location of the Project as described in Appendix IV.

1.176 “System Emergency” has the meaning provided in Section 1.41, “Curtailed Period.”

1.177 “Term” has the meaning provided in Section 2.5.

1.178 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2 of this Agreement.

1.179 “Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

1.180 “Test Period” means the period of not more than ninety (90) consecutive days commencing on the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Project to the CAISO Grid and ending when Seller advises Buyer of the occurrence of the Initial Energy Delivery Date.

1.181 “Third-Party SC” means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement.

1.182 “TOD” means time of delivery of Delivered Energy from Seller to Buyer.

1.183 “TOD Factors” has the meaning set forth in Section 4.3(a).

1.184 “TOD Period” has the meaning set forth in Section 4.2.

1.185 “Transaction” means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.

1.186 “Transmission Delay” has the meaning set forth in Section 3.9(c)(iii)(A).

1.187 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point. For purposes of this Agreement the Transmission Provider is CAISO.

1.188 “Unit” means the *[insert technology, including any applicable model]* used to produce the Products, which are identified in Appendix IV for the Transaction entered into under this Agreement.

1.189 “WECC” means the Western Electricity Coordinating Council or successor agency.

1.190 “WREGIS” means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

1.191 “WREGIS Certificate Deficit” has the meaning set forth in Section 3.1(k)(v).

1.192 “WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

1.193 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of June 4, 2007, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.194 “Work” means (a) work or operations performed by a Party or on a Party’s behalf, and (b) materials, parts or equipment furnished in connection with such work or operations, including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”, and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties.

2.2 Interpretation

The following rules of interpretation shall apply in addition to those set forth in Section 10.13:

(a) The term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends.

(b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then existing at the applicable time to which such construction applies.

(c) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article One, unless otherwise specified.

(d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(e) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(f) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.

(g) All references to dollars are to U.S. dollars.

2.3 Authorized Representatives.

Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

2.4 Conditions Precedent.

(a) Conditions Precedent. Subject to Section 2.6 hereof, the Term shall not commence until the occurrence of all of the following:

(i) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;

(ii) CPUC Approval has been obtained for the terms, conditions and pricing of this Agreement;

(iii) The advice letter submitting this Agreement to the CPUC becomes effective in accordance with CPUC General Order 96-B or its successor order, or as otherwise provided by CPUC order; and

(iv) Buyer receives from Seller the documentation listed in Appendix XIII (Seller Documentation Condition Precedent).

(b) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 2.4(a)(ii) and (iii) are not satisfied or waived in writing by both Parties on or before one hundred and eighty (180) days from the date on which Buyer files an advice letter submitting this Agreement to the CPUC, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

2.5 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.4(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 2.4(b), Section 5.2 or Section 11 of this Agreement (the "Term"); provided that this Agreement shall thereafter remain in effect (i) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (the "Satisfaction Date") or (ii) in accordance with the survival provisions set forth in subpart (b) below.

(b) Notwithstanding anything to the contrary in this Agreement, (i) all rights under Section 10.5 (Indemnities) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (ii) all rights and obligations under Section 10.7 (Confidentiality) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years; and (iii) the right of first offer in Section 11.1 (b) shall survive the Satisfaction Date for two (2) years.

2.6 Binding Nature.

(a) Upon Execution Date. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

- (i) Sections 5.1(a)(iv)-(v), and 5.1(b)(v);
- (ii) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.6;
- (iii) Sections 5.2 through 5.7;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;
- (v) Sections 10.2, 10.6 through 10.8, and Sections 10.12 through 10.15; and
- (vi) Articles One, Two, Seven, Twelve and Thirteen.

(b) Upon Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is an As-Available Product.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right (i) to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Energy delivered to Buyer in connection with Energy Deviations or (ii) sell Product from the Project to a third Party other than in connection with Energy Deviations. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except during the Test Period. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or

charges imposed on or associated with the Product after its receipt at and from the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(c) Delivery Term. “Delivery Term” shall mean the period of twenty (20) Contract Years beginning on the first date that Seller delivers Product to Buyer from the Project (“Initial Energy Delivery Date”) in connection with this Agreement and continuing until the end of the twentieth Contract Year unless terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (A) the Commercial Operation Date has occurred; (B) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; (C) Seller shall have obtained the requisite CEC Certification and Verification for the Project; (D) all of the applicable Conditions Precedent in Section 2.4(a) of the Agreement have been satisfied or waived in writing, and (E) Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource to the extent such status is available at such time as the conditions in subsections (A) through (D) of this Section 3.1(c) are satisfied. If subsection (E) is applicable, Seller shall obtain such certification no later than one hundred twenty (120) days following the Commercial Operation Date. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the “Initial Energy Delivery Date Confirmation Letter” attached hereto as Appendix II on the Initial Energy Delivery Date. Eighteen (18) months prior to the anticipated conclusion of the Delivery Term, the Parties shall provide notice of their intentions with respect to the Project, including if desired, any proposed extension of this Agreement.

(d) Delivery Point. The Delivery Point shall be the Interconnection Point.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity. The Contract Quantity during each Contract Year is the amount set forth in the applicable Contract Year in the “Delivery Term Contract Quantity Schedule,” attached hereto as Appendix V, which amount is inclusive of outages. ***[Seller shall provide the Contract Quantity amount listed in its Offer on the worksheet in the Bid Offer Forms applicable to the Product. Such amounts should account for annual degradation of PV.]***

(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” means an amount of Delivered Energy, as measured in MWh, equal to the product of (x)(y), where (x) is one hundred sixty percent (160%) of the then-applicable Contract Quantities for the Performance Measurement Period, (y) is the difference between (I) and (II), with the resulting difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. Guaranteed Energy Production is described by the following formula:

Guaranteed Energy Production = (160% * Contract Quantity in MWh) * [(Hrs in Performance Measurement Period - Seller Excuse Hrs) / Hrs in Performance Measurement Period]

(B) If Seller has a GEP Failure, then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall promptly notify Seller of such failure. Seller may cure the GEP Failure by delivering to Buyer no less than ninety percent (90%) of the Contract Quantity over the next following Contract Year (“GEP Cure”). If Seller fails to generate sufficient Delivered Energy to make the GEP Cure for a given Performance Measurement Period, Seller shall pay GEP Damages, calculated pursuant to Appendix VII (GEP Damages Calculation), provided however that in lieu of paying GEP Damages, Seller shall have the one-time option to reduce the Contract Capacity to no less than seventy percent (70%) of the original Contract Capacity.

(I) In the event that the Contract Capacity is reduced pursuant to Sections 3.1(e)(ii)(B) above, (i) the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Schedule set forth in Appendix V shall be adjusted proportionately with such reduction, and (ii) the Guaranteed Energy Production shall be adjusted to one hundred sixty percent (160%) of the then-applicable Contract Quantities for the Performance Measurement Period, as described by the following formula:

Guaranteed Energy Production = (160% * adjusted Contract Quantity in MWh) * [(Hrs in Performance Measurement Period - Seller Excuse Hrs) / Hrs in Performance Measurement Period]

(II) Seller shall not incur or be subject to any liability, including but not limited to GEP Damages hereunder as a result of such one-time reduction in the Contract Capacity or adjusted Contract Quantities pursuant to Section 3.1(e)(ii)(B).

(III) The Parties agree that the damages sustained by Buyer associated with Seller’s failure to achieve the Guaranteed Energy Production requirement would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay GEP Damages.

(IV) After the GEP Cure period has run, if Seller has not achieved the GEP Cure, Buyer shall have forty-five (45) days to notify Seller of such failure. Within forty-five (45) days of the end of the GEP Cure period, Buyer shall provide Notice to Seller in writing of the amount of the GEP Damages, if any, which Seller shall pay within sixty (60) days of receipt of the Notice. If Seller does not pay the GEP Damages within the sixty (60) day time period, Buyer may, at its option, declare an Event of Default pursuant to Section 5.1(b)(vi)(A). If Buyer does not (1) notify Seller of the GEP Failure or (2) declare an Event of Default pursuant to Section 5.1(b)(vi), if Seller has failed to pay the GEP Damages, then Buyer shall be deemed to have waived its right to declare an Event of Default based on Seller’s failure with respect to the Performance Measurement Period which served as the basis for the notice of GEP Failure, GEP Damages, or default, subject to the limitations set forth in Section 5.1(b)(vi)(B).

(f) Contract Capacity. The generation capability designated for the Project shall be [_____] MW (AC) net of all auxiliary loads, station electrical uses, and Electrical Losses (the “Contract Capacity”). Throughout the Delivery Term, Seller shall sell and Schedule all Product produced by the Project (net of station use) solely to Buyer and Buyer shall purchase all Product produced by the Project; provided, however, that in no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds one hundred and ten percent (110%) of Contract Capacity.

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity or the anticipated output of the Project without Buyer’s prior written consent. The Project is further described in Appendix IV.

(ii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Section 10.6(b). Seller shall be deemed to have relinquished possession of the Project if after the Commercial Operation Date Seller has ceased work on the Project or ceased production and delivery of Product for a consecutive thirty (30) day period and such cessation is not a result of a Force Majeure event or direct action of Buyer.

(h) Interconnection Facilities.

(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any interconnection agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer’s Interconnection Facilities, including metering facilities to be maintained; and (C) comply with the procedures set forth in the SGIP and applicable agreements or procedures provided under the SGIP.

(ii) Coordination with Buyer. Seller shall (A) provide to Buyer copies of all material correspondence related thereto; and (B) provide Buyer with written reports of the status of the SGIA on a monthly basis. The foregoing shall not preclude Seller from executing an SGIA that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law.

(i) Performance Excuses.

(i) Seller Excuses. Seller shall be excused from achieving the Guaranteed Energy Production and the Capacity Factor for the applicable time period during Seller Excuse Hours.

(ii) Buyer Excuses. The performance of Buyer to receive or pay for the Product shall be excused only (A) during periods of Force Majeure, (B) by Seller’s failure to perform, or (C) during Curtailment Periods.

(iii) Curtailement. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Curtailement Period.

(iv) No Excuse. Except for a failure or curtailement resulting from a Force Majeure or during a Curtailement Period, the failure of electric transmission service shall not excuse performance with respect to either Party for the delivery or receipt of Energy to be provided under this Agreement.

(j) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any, subject to the Compliance Cost Cap.

(k) WREGIS. Seller shall, at its sole expense, but subject to the Compliance Cost Cap, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall comply with all Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in section 3.1(k)(viii); provided that Seller fulfills its obligations under Sections 3.1(k)(i) through (vii) below. In addition:

(i) Prior to the Initial Energy Delivery Date, Seller shall register the Project with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Project's metered data.

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 6, Buyer shall make an invoice payment for a given month in accordance Article 6 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.1(k). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 6.

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 6 and the Guaranteed Energy Production for the applicable Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller's obligations under this Section 3.1(k), if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(vii) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(k) after the Execution Date, the Parties promptly shall modify this Section 3.1(k) as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

(viii) Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(l) Access to Data and Installation and Maintenance of Weather Station.

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the following data on a real-time basis and, if applicable, historical basis:

(A) read-only access to meteorological measurements, inverter and transformer availability, any other facility availability information, all parameters necessary

for use in the equation under item (F) of this list, and energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project;

(B) read-only access to the Project's CAISO revenue meter and all Project meter data at the Site;

(C) full, real time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application;

(D) net plant electrical output at the CAISO revenue meter;

(E) time-average data including 10-minute and hourly values of total global horizontal irradiance or direct normal insolation, total global radiation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and, if applicable, visibility in winter fog areas; and

(F) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of solar insolation, temperature, wind speed, and, if applicable, wind direction. Such equation shall take into account the expected availability of the facility.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Project's monthly Settlement Interval Actual Available Capacity in the form set forth in Appendix XIV (Form of Actual Availability Report). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(l)(i); provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

(ii) Buyer reserves the right to validate the data provided pursuant to Section 3.1(l)(i) with information publicly available from NOAA and nearby weather stations and substitute such data for its settlement purposes if Seller's data is inconsistent with the publicly available data or is missing; provided that Buyer shall notify Seller promptly of Buyer's substitution of such data.

(iii) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 3.1(l)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(iv) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 3.1(l)(i) of this Agreement. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third Party SC (as applicable). Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(C) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(D) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of communication (i.e, cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail) until the telecommunications link is re-established.

(v) Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least thirty (30) days prior to the Initial Energy Delivery Date.

(vi) No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (A) total global horizontal irradiance or direct normal insolation, air temperature, wind speed and direction, precipitation, barometric pressure, visibility in winter fog areas as applicable (forward scatter sensor) and humidity at the Site, as well as time-average data including 10-minute and hourly values of irradiance or insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and visibility in winter fog areas as applicable; (B) elevation, latitude and longitude of the weather station; and (C) any other data that would be required for participation in the EIRP.

(m) Prevailing Wage.

(i) Producer shall use reasonable efforts to ensure that all Electricians hired by Producer, and its contractors and subcontractors are paid wages at rates not less than those prevailing for electricians performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code. Nothing herein shall require Producer, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the Labor Code.

(ii) To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.14, subdivision (h).

(n) Obtaining and Maintaining CEC Certification and Verification. Subject to the Compliance Cost Cap, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

(o) Compliance Cost Cap. Costs applicable to the Compliance Cost Cap are only those costs applicable under the term's definition (section 1.26) and are new costs associated with a change in law from the contract's execution date. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term shall be capped annually at \$10,000.00 per MW (AC) of Contract Capacity and in the aggregate throughout the Delivery Term at \$20,000.00 per MW (AC) of Contract Capacity (collectively, the "Compliance Cost Cap"). In the event and to the extent that the Compliance Costs incurred by Seller exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap. Within sixty (60) days after the change, amendment, repeal, or enactment of Law after the Execution Date which Seller anticipates will cause it to incur Compliance Costs in excess of the Compliance Cost Cap, Seller shall provide to Buyer Notice with an estimate of the expected annual Compliance Costs caused by such change in Law. Within thirty (30) days of the delivery of such Notice with the estimate, Buyer shall provide Seller Notice of (i) Buyer's request for Seller to incur the Compliance Costs in excess of the Compliance Cost Cap, (ii) Buyer's initiation of dispute resolution under Article 12, or (iii) Buyer's waiver of Seller's performance of such obligations. The Parties shall agree on a reasonable allocation, as between Seller and Buyer, over the remaining Term of any such Compliance Costs that are incurred after the fifteenth (15th) Contract Year and that are expected to benefit the Project beyond the Term of this Agreement. Any reimbursement by Buyer to Seller referenced above in this Section 3.1(o) shall be subject to CPUC approval, and the amount of such reimbursement shall not be paid by Buyer to Seller until such time as the CPUC has approved such payment. Seller shall be relieved from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap and which give rise to the payment that is the subject of the above reference CPUC approval until such time as the CPUC issued its approval of the reimbursement payment in final and non-appealable form.

3.2 Green Attributes.

Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

3.3 Resource Adequacy..

During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, from the Project to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe ("Resource Adequacy Requirements"). Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Subject to the Compliance Cost Cap, Seller agrees that during the Delivery Term Seller shall, at a minimum, comply with the terms set forth in Appendix X to enable Buyer to use all of the capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements.

3.4 Transmission and Scheduling. .

(a) Transmission.

(i) Seller's Transmission Service Obligations. As of the Test Period and during the Delivery Term:

(A) Seller shall arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement.

(B) Seller shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment to the Delivery Point.

(C) Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver Energy to the CAISO Grid.

(ii) Buyer's Transmission Service Obligations. As of the Test Period and during the Delivery Term,

(A) Buyer shall arrange and be responsible for transmission service at and from the Delivery Point.

(B) Buyer shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment from the Delivery Point.

(C) Buyer shall Schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Point.

(D) Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point.

(b) EIRP Requirements. The Parties acknowledge that as of the Execution Date, the CAISO has not yet established protocols for scheduling solar power to permit solar projects to participate in EIRP (“Qualifying Protocols”). As soon as practicable, but not more than ninety (90) days after Qualifying Protocols are finalized and made effective by the CAISO, Seller shall apply to have the Project certified as a Participating Intermittent Resource and shall thereafter diligently pursue such process to completion, subject to the Compliance Cost Cap, including negotiating and executing all necessary documents to become a Participating Intermittent Resource (each as defined by the CAISO Tariff and collectively, the “Program Agreements”). Seller shall provide Buyer with a copy of the notice from CAISO certifying the Project as a Participating Intermittent Resource as soon as practicable after Seller’s receipt of such notice of certification. Following certification and whenever applicable, Seller shall participate in and comply with EIRP as directed by Buyer or Third-Party SC and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during all hours of the Delivery Term, and Buyer, as Scheduling Coordinator, shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to assist Seller’s participation in and compliance with EIRP and such additional protocols, to the extent such actions are at *de minimis* cost to Buyer.

(c) Scheduling Coordinator. Buyer shall act as the Scheduling Coordinator for the Project. In that regard, Buyer and Seller shall agree to the following:

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the beginning of the Test Period Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller’s Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller’s Scheduling Coordinator. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Period and Delivery Term.

(ii) Buyer's Responsibilities as Scheduling Coordinator. Buyer or Third-Party SC shall comply with all obligations as Seller's Scheduling Coordinator under the CAISO Tariff and shall conduct all Scheduling in full compliance with the terms and conditions of this Agreement, the applicable CAISO Tariff, all requirements of EIRP (if applicable), and protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff.

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include Project availability and updated status of photovoltaic panels, inverters, transformers, and any other equipment that may impact availability. To avoid Forecasting Penalties set forth in Section 4.5(c)(ii), Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including but not limited to automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of September 1 of the first Contract Year or forty-five (45) days before the first day of the first Contract Year of the Delivery Term, if applicable, and (II) September 1 of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for an average day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(C) Daily Forecast of Available Capacity. During each month of the Delivery Term, Seller or Seller's agent shall provide a binding day ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or Third-Party SC (as applicable) via Buyer's internet site, as provided in Appendix VIII, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. The current industry standard Preschedule Day timetable in the WECC is as follows:

(1) Monday - Preschedule Day for Tuesday

- (2) Tuesday - Preschedule Day for Wednesday
- (3) Wednesday - Preschedule Day for Thursday
- (4) Thursday - Preschedule Day for Friday and Saturday
- (5) Friday - Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, "Prescheduling Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW (AC) as of a time that is more than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day-Ahead Schedules, then Seller must notify Buyer of such change by telephone and shall send a revised notice to Buyer's Internet site set forth in Appendix VIII. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW (AC), and any other necessary information.

Day-Ahead Trading Desk
Primary Telephone: (415) 973-6222
Backup Telephone: (415) 973-4500

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, (I) until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Buyer and Seller and (II) to the extent Seller's failure contributes to an imbalance charge, Seller shall be subject to the Forecasting Penalties set forth in Section 4.5(c)(ii).

(D) Hourly Forecast of Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW (AC) or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit Hour-Ahead schedules to the CAISO. Available Capacity changes after one (1) hour before the CAISO deadline for Hour-Ahead Schedules, but before the CAISO Hour-Ahead deadline, shall also be reported by Seller to Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW (AC), and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall (I) use commercially reasonable efforts to notify Buyer of such outage immediately following Seller Available Capacity notification to the CAISO via SLIC and Seller shall follow the Outage Notification Procedures in Appendix VIII of this Agreement. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Project during or after the end of such outage. These notices and changes to Available Capacity shall be

communicated by telephone to Buyer's Hour-Ahead Trading Desk and shall be sent to Buyer's internet site as set forth in Appendix VIII:

Hour-Ahead Trading Desk
Primary Telephone: (415) 973-4500

(iv) Replacement of Scheduling Coordinator.

(A) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller's SC. These actions include (I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(B) Buyer shall submit, or if applicable cause the Third- Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (I) thirty (30) days prior to the end of the Delivery Term or (II) the date of any early termination of this Agreement.

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to construction, ownership and/or operation of the Project).

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Utility Practices.

(c) Reliability Standard. Seller agrees to abide by (i) CPUC General Order No. 167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities", and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner.

3.6 Metering.

All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to

retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification..

(a) CAISO Approval of Outage(s). Seller is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Seller's schedules or cancels previously approved outages. Seller shall communicate any CAISO-required changes to Buyer in a timely manner, in accordance with the provisions set forth in Appendix VIII.

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with the Annual Forecast of Available Capacity procedure set forth in Appendix VIII no later than August 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of January, June through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

(c) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the provisions in Appendix VIII. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis using the same notification procedure as used with initial notice. Seller shall not substitute Energy from any other source for the output of the Project during a Prolonged Outage.

(d) Force Majeure. Within two (2) Business Days of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of

a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. Seller shall not substitute Products from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

(e) Communications with CAISO. Seller shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide Buyer with copies of all outage plans and clearance requests submitted to CAISO, and shall promptly inform Buyer of all clearance approvals and disapprovals and other communications with CAISO pertaining to the status of planned or in-progress Project outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to Buyer and the Participating Transmission Owner upon request. If either Party receives information through CAISO or directly from the Participating Transmission Owner regarding maintenance that will directly affect the Project, it will provide this information promptly to the other Party.

(f) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7 or 3.8 or Appendix VIII. Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increase cost of performance to Seller hereunder other than *de minimis* amounts.

3.8 Operations Logs and Access Rights..

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice (which no case shall be less than three (3) Business Days) visit the Project during normal business hours for purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. In connection with the foregoing, Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller; (ii) not

interfere with the operation of the Project; and (iii) unless waived in writing by Seller, be escorted by a representative of Seller. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

3.9 New Generation Facility.

(a) Seller, at no cost to Buyer, shall be responsible to:

(i) Design and construct the Project.

(ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the Participating Transmission Owner for the Interconnection Facilities to Schedule and deliver the Product.

(iii) Acquire all permits and other approvals necessary for the construction, operation, and maintenance of the Project.

(iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project.

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any changes in the Project and provide to Buyer specifications and design drawings of any such changes.

(vi) Within fifteen (15) days after the close of each month from the first month following the Execution Date until the Commercial Operation Date, provide to Buyer a Monthly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The Monthly Progress Report shall indicate whether Seller has met or is on target to meet the Milestones.

(vii) Provide to Buyer a copy of the Final Output Report, and any updates thereafter for the time period beginning on the Effective Date and ending on the last day of the first Contract Year.

(b) Buyer shall have the right, but not the obligation, to:

(i) Notify Seller in writing of the results of the review within thirty (30) days of Buyer's receipt of all specifications for the Project, including a description of any flaws perceived by Buyer in the design.

(ii) Inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable notice.

(c) Construction Milestones.

(i) Milestones. The Parties agree time is of the essence in regards to the Agreement. As such, the Parties also agree certain Milestones must be achieved in a timely fashion or Buyer will suffer damages. Seller shall provide Buyer with any requested documentation to support the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

(ii) Remedial Action Plan. If Seller misses three (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan (“Remedial Action Plan”), which is outlined in the Monthly Progress Report and requires Seller to provide a detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, then subsection (iv) below shall apply.

(iii) Guaranteed Project Milestones. “Guaranteed Project Milestones” are as follows:

(A) The Construction Start Date shall occur no later than _____ (the “Guaranteed Construction Start Date”); provided that the Guaranteed Construction Start Date may be extended on a day for day basis for not more than three hundred sixty (360) days:

(I) if Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Project, but is unable to obtain such permits due to delays beyond Seller’s reasonable control (“Permitting Delay”);

(II) if Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to have the Project physically interconnected to the CAISO Grid and to complete all Electric System Upgrades needed, if any, in order to interconnect the Project to the CAISO Grid, but fails to secure any necessary commitments from CAISO or the Participating Transmission Owner for such interconnection and upgrades due to delays beyond Seller’s reasonable control (“Transmission Delay”);

(III) in the event of Force Majeure (“Force Majeure Construction Extension”) without regard to Transmission Delay or Permitting Delay; provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer’s written request.

Notwithstanding the foregoing, if Seller claims Permitting Delay and Transmission Delay, such extensions cannot cumulatively exceed three hundred sixty (360) days and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(B) Seller shall have demonstrated Commercial Operation per the terms of Appendix VI no later than eighteen (18) months after the Effective Date of this Agreement, (the “Guaranteed Commercial Operation Date”), provided that (I) the Guaranteed Commercial Operation Date may be extended on a day for day basis equal to any extension claimed by Seller pursuant to and in accordance with Section 3.9(c)(iii)(A), and (II) the Guaranteed Commercial Operation Date may be extended further on a day for day basis for Force Majeure occurring after the Construction Start Date provided that the total number of such further extension days shall not exceed three hundred sixty (360) days.

(C) If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days Notice prior to original date of the applicable Guaranteed Project Milestone, which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension; provided that in the case of a Force Majeure Construction Extension, if sixty (60) days in impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(iv) Cure Period and Delay Damages.

(A) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date. If (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions or Force Majeure after Construction Start Date or (II) the Construction Start Date occurs after the Guaranteed Construction Start Date after giving effect to Permitted Extensions, then Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (1) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions for up to a total of sixty (60) days (“Project Cure Period”); or (2) the Construction Start Date occurs after the Guaranteed Construction Start Date after giving effect to Permitted Extensions for up to a total of sixty (60) days (“Construction Cure Period”). The Parties agree that Buyer’s receipt of Daily Delay Damages shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 5.1 and (y) not limit Buyer’s right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer’s default right pursuant to Section 5.2.

(B) Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to Seller’s delay in achieving either of the Guaranteed Project Milestones would be difficult or impossible to predict with certainty, and (II) the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller’s failure to meet the Guaranteed Construction Start Date only if Seller meets the Guaranteed Commercial Operation

Date (as may be extended by Permitted Extensions) as provided further in Section 8.4(c) of this Agreement. For sake of certainty, Buyer shall retain all Daily Delay Damages drawn (or which Buyer is entitled to draw) as a result of Seller's failure to meet the Guaranteed Commercial Operation Date and the Guaranteed Construction Start Date (both as may be extended by Permitted Extensions), if Seller fails to meet the Guaranteed Commercial Operation Date (as may be extended by Permitted Extensions).

(d) Resize of Project Due to Permit Failure.

(i) If Seller has not received or obtained by the Guaranteed Construction Start Date (as may be extended pursuant to this Agreement) final and non-appealable material Governmental Approvals required for the construction of the Project with the Contract Capacity set forth in Section 3.1(f), after using commercially reasonable efforts to do so (including, but not limited to, timely filings with all applicable Governmental Authorities and timely payment of any required fees) ("Permit Failure"), Seller shall make a Contract Capacity Commitment on the Guaranteed Construction Start Date (as may be extended), equal to, at a minimum, seventy percent (70%) of the initial Contract Capacity set forth in Section 3.1(f), provided that such amount shall also be the maximum amount of the generation capacity permitted under the final and non-appealable material Governmental Approvals that Seller has received as of the Guaranteed Construction Start Date (as may be extended) and may not be under one (1) MW (AC), and provided further that for a period of two (2) years from any such resizing pursuant to this Section 3.9(d), Seller must offer Buyer a Right of First Offer for any Products from the Project up to the initial Contract Capacity set forth in Section 3.1(f) as further provided in Section 3.9(e), below. Seller shall provide Notice of such Contract Capacity Commitment to Buyer no later than ten (10) Business Days following the Guaranteed Construction Start Date.

(ii) In the event that the Contract Capacity is reduced pursuant to Sections 3.9(d)(i) above, the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Schedule attached hereto shall be adjusted proportionately with such reduction.

(iii) In the event that the Contract Capacity and Contract Quantity are reduced pursuant to Sections 3.9(d)(i) and (ii), the revised Contract Capacity and Contract Quantity shall be used to determine Seller's performance under the Agreement, including but not limited to the amount of Guaranteed Energy Production under Section 3.1(e) and the amount of Delivery Term Security required under Section 8.4.

(iv) If the final Contract Capacity is less than the initial Contract Capacity due to a resize of the project pursuant to Section 3.9(d)(i), then Seller shall forfeit a proportional share of the Project Development Security on a percent-for-percent basis.

(e) Right of First Offer.

(i) If Seller resizes the Project due to Permit Failure, then for a period of two (2) years from the date on which Seller Notifies Buyer of the Contract Capacity Commitment ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates

shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project in excess of the Contract Capacity Commitment, up to the initial Contract Capacity set forth in Section 3.1(f), to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the “First Offer”) and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer’s management approval and CPUC Approval (“Buyer’s Notice”), and then the Parties shall have not more than ninety (90) days from the date of Buyer’s Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller’s documented incremental costs in overcoming the Permit Failure.

(iii) If Buyer rejects or fails to accept Seller’s First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. Seller’s certificate shall be in substantially the form of Appendix IX. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the “Revised Offer”) in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller’s Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price.

The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year shall be as follows:

Contract Year	Contract Price (\$/MWh)
1-20	_____/MWh

4.2 TOD Periods.

The time of delivery periods (“TOD Periods”) specified below shall be referenced by the following designations:

Monthly Period	TOD PERIOD		
	1. Super-Peak	2. Shoulder	3. Night
A. June - September	A1	A2	A3
B. Oct. -Dec., Jan. & Feb.	B1	B2	B3
C. Mar. – May	C1	C2	C3

Monthly Period Definitions. The Monthly Periods are defined as follows:

- A. June - September;
- B. October, November, December, January and February; and
- C. March - May.

TOD Period Definitions. The TOD Periods are defined as follows:

1. **Super-Peak** (5x8) = hours ending 13-20 (Pacific Prevailing Time (PPT)) Monday - Friday (*except* NERC Holidays) in the applicable Monthly Period.
2. **Shoulder** = hours ending 7 - 12,21 and 22 PPT Monday - Friday (*except* NERC Holidays); and hours ending 7-22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.
3. **Night** (7x8) = hours ending 1-6,23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

“NERC Holidays” mean the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “NERC Holiday” remains on that Saturday. Notwithstanding anything to the contrary in this Section 4.2, NERC Holidays shall be calculated as “Shoulder” hours for all non-”Night” hours and any remaining hours shall be calculated as “Night” hours.

4.3 TOD Factors and Monthly TOD Payment.

(a) TOD Factors. In accordance with all other terms of this Article Four, the Contract Price for Delivered Energy shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified TOD Periods in which Delivered Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June - September	2.20490	1.12237	0.68988
B. Oct. -Dec., Jan. & Feb.	1.05783	0.93477	0.76384
C. Mar. – May	1.14588	0.84634	0.64235

(b) Monthly TOD Payment. For each month, Buyer shall pay Seller for Delivered Energy in each TOD Period (“Monthly TOD Payment”) the amount resulting from multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the Delivered Energy in each hour:

$$MonthlyTODPayment = \sum_{hour=1}^n Contract\ Price\$ * TOD\ Factor * Delivered\ Energy\ MW_{hour}$$

4.4 Excess Delivered Energy.

In any Contract Year, if Seller delivers Delivered Energy in excess of one hundred twenty percent (120%) of the annual Contract Quantity amount, the Contract Price for such Energy in excess of such one hundred twenty percent (120%) shall be adjusted to be seventy-five percent (75%) of the applicable Contract Price.

4.5 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller’s failure to perform any covenant or obligation set forth in this Agreement. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties, incurred by Seller because of Buyer’s actions.

(b) Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling and imbalances except as provided in Section 4.5(c) below. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller’s and Buyer’s respective responsibilities for payment for imbalance and congestion charges and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(c) Forecasting Penalties.

(i) Subject to Force Majeure, in the event Seller does not in a given hour either (A) provide the access and information required in Section 3.1(l)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(l)(iv); or (C) provide the forecast of Available Capacity required in Section 3.4(c)(iii), and the sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

(ii) The Performance Tolerance Band is five percent (5%) multiplied by Contract Capacity multiplied by one (1) hour.

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to one hundred fifty percent (150%) of the Contract Price for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.5(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.

4.6 Test Period Payments.

During the Test Period Seller's full compensation for Product sold to Buyer shall be the CAISO Revenues for the Delivered Energy, which revenues Buyer shall forward promptly to Seller.

4.7 Additional Compensation.

(a) To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to Electric System Upgrades contemplated in Section 3.1(h)(i).

(b) To the extent that during the Delivery Term Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or Congestion Revenue Rights (as defined in the CAISO Tariff), whether due to any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the Product (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer less any costs incurred by Seller in connection with such Reductions; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions less any costs incurred by Seller in connection with such Reduction and Seller shall retain the Reductions.

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

5.1 Events of Default.

An “Event of Default” shall mean,

(a) with respect to a Party that is subject to the Event of Default, the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written Notice is received by the Party failing to make such payment;

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.2(b), becomes false or misleading in any material respect during the Delivery Term; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.2(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b) shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading.

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within forty-five (45) days after Notice from the Non-Defaulting Party, which time period shall be extended if the Defaulting Party is making diligent efforts to cure such failure to perform, provided that such extended period shall not exceed forty-five (45) additional days;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project;

(ii) failure by Seller to meet the Guaranteed Construction Start Date as extended by any Permitted Extensions, and after the applicable cure period has expired due solely to Seller’s inability to obtain, after the use of commercially reasonable efforts, any of the following in time to achieve the Guaranteed Construction Start Date: (A) permits necessary to construct or operate the Project, or (B) an SGIA that provides for the Project being physically interconnected to the CAISO Grid or the Participating Transmission Owner’s distribution system, and for the completion of any necessary Electric System Upgrades;

(iii) failure by Seller to meet the Guaranteed Commercial Operation Date as extended by any Permitted Extensions, and after the applicable cure period has expired due solely to Seller's inability to achieve, after the use of commercially reasonable efforts, by the Guaranteed Commercial Operation Date either the physical interconnection of the Project to the CAISO or any necessary Electric System Upgrades;

(iv) failure by Seller for any reason other than those explicitly provided in Sections 5.1(b)(ii) and (iii) above and Section 1.1(a)(ii) to meet either of the Guaranteed Project Milestones as may be extended by Permitted Extensions and in each case after the applicable cure period has expired;

(v) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement and such failure is not cured within any applicable cure period;

(vi) failure by Seller to achieve the Guaranteed Energy Production requirement as set forth in Section 3.1(e)(ii) of this Agreement as follows:

(A) after the one (1)-year GEP Cure period Seller has failed to cure the GEP Failure and has failed to pay GEP Damages in the time period set forth in Section 3.1(e)(ii); or

(B) if, after any Performance Measurement Period the cumulative GEP Shortfall for all Performance Measurement Periods occurring during the Delivery Term equals or exceeds two times the Contract Quantity (as may be adjusted pursuant to Sections 3.9(d) and 3.1(e)(ii)); provided, however, that if all or a portion of the GEP Shortfall during an applicable Performance Measurement Period is principally caused by a non-Force Majeure major equipment malfunction, breakdown, or failure resulting in a reduction of Energy production of the Project by at least fifty percent (50%) of the Contract Quantity in one or both years of the Performance Measurement Period, as applicable, and such malfunction, breakdown, or failure was not caused by Seller and could not have been avoided through the exercise of Good Utility Practice, such failure shall be excluded from the cumulative GEP Shortfall for purposes of this subsection.

5.2 Remedies.

If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date");

(b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;

- (c) (i) collect the Damage Payment in accordance with Section 5.8 below, if the Event of Default arose under Sections 5.1(b)(ii) or Section 5.1(b)(iii), or (ii) collect the Termination Payment for any other Event of Default;
- (d) withhold any payments due to the Defaulting Party under this Agreement;
- (e) suspend performance;
- (f) exercise its rights pursuant to Section 8.3 to draw upon and retain Performance Assurance;
- (g) demand payment for damages due to Buyer's unexcused failure to take delivery or pay for Product; and
- (h) exercise any other rights or remedies available at Law or in equity to the extent otherwise permitted under this Agreement.

Notwithstanding anything to the contrary contained herein, Seller may exercise the rights or remedies set forth in Sections 5.2(e), (g), and (h) without terminating this Agreement.

5.3 Calculation of Termination Payment.

(a) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Product, (c) at the same Delivery Point, (d) for the remaining Delivery Term, and (e) any other commercially reasonable manner. Regardless of the method chosen by the Non-Defaulting Party to calculate the Settlement Amount, the Settlement Amount must still be reasonable under the circumstances.

(b) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.

(c) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the

Termination Payment is due to the Non- Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

5.5 Disputes With Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.6 Rights And Remedies Are Cumulative.

The rights and remedies of a Party pursuant to this Article Five shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Duty to Mitigate.

Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

5.8 Damage Payment for Failure to Achieve Guaranteed Dates.

The Parties agree that the Damage Payment to be paid by Seller for an Event of Default arising under Section 5.1(b)(ii) or Section 5.1(b)(iii) associated with Seller's failure to achieve the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date shall be considered liquidated damages and not a penalty, in accordance with Section 7.1.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies.

On or about the tenth (10th) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Sections 4.3 and 4.4, as adjusted pursuant to Section 4.5 (CAISO Charges) (which may include charges incurred in preceding months), and, if applicable, Section 4.6. Buyer shall pay the undisputed amount of such invoices less the amount of any Forecasting Penalties (as applicable), on or before the later

of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices.

In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN.

UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information.

If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

8.2 Seller Financial Information

If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end

of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

8.3 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty days of the delivery of the Project Development Security or Delivery Term Security, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non- Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Performance Assurance

(a) Project Development Security; Delivery Term Security. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of \$ *[insert dollar amount equal to \$15/kw multiplied by the capacity of the Project as reflected in Seller's Offer]* and in the form of *[specify cash or Letter of Credit]* within five (5) Business Days following the Execution Date of this Agreement until Seller posts Project Development Security pursuant to Section 8.4(a)(ii) below with Buyer.

(ii) Project Development Security pursuant to this Section 8.4(a)(ii) in the amount set forth in Sections 8.4(a)(ii)(A)-(B), below, as applicable, in the form of *[specify cash or Letter of Credit]* from a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Section 2.4 are either satisfied or waived until Seller posts Delivery Term Security pursuant to Section 8.4(a)(iii) below with Buyer; provided that if Buyer collects or is entitled to collect Daily Delay Damages from Seller during the Construction Cure Period for failure to achieve the Guaranteed Construction Start Date (after giving effect to Permitted Extensions), Seller agrees that within ten (10) Business Days following the end of the Construction Cure Period it shall replenish the Project Development Security by an amount equal to the encumbered Project Development Security; provided further that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Project Development Security posted pursuant to this Section 8.4(a)(ii);

(A) For Projects with a Contract Capacity of less than 10 MW (AC), \$ *[insert dollar amount equal to \$20/kw, multiplied by the capacity of the Project as reflected in Seller's Offer]*; or

(B) For Projects with a Contract Capacity of 10 MW (AC) or greater, *[insert dollar amount equal to \$35/kw, multiplied by the capacity of the Project as reflected in Seller's Offer]*.

(iii) Delivery Term Security pursuant to this Section 8.4(a)(iii) in the amount of \$ *[insert dollar amount equal to six months of the Contract Price multiplied by the Contract Quantity in the first applicable Contract Year]* and in the form of *{specify cash, Letter of Credit or Guarantee}* from the Commercial Operation Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) toward the Delivery Term Security posted pursuant to this Section 8.4(a)(iii).

Except as provided in Section 5.2(c)(i), the amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. Except as specifically provided for in this Section 8.4(a), Buyer acknowledges that Seller shall not be required to post any additional security.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security posted by Seller for Daily Delay Damages until such time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). If Seller has met the Guaranteed Commercial Operation Date, then the Project Development Security returned shall include amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date. The Project Development Security (or portion thereof)

due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) toward the Delivery Term Security posted pursuant to Section 8.4(a)(iii).

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security or Delivery Term Security, as applicable, at the Interest Rate; provided that, such interest shall be retained by Buyer until Seller posts the Delivery Term Security pursuant to Section 8.4(a)(iii). Upon Seller's posting of the Delivery Term Security, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix XI (Notices List). After Seller posts the Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for such Delivery Term Security.

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller promptly after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including but not limited to payments pursuant to Section 4.5 (CAISO Charges), Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting)

(f) Adjustment of Security Amounts for Project Resizing. The required amount of Delivery Term Security shall be proportionally and automatically adjusted in connection with any resizing of the Project under Sections 3.1(e)(ii), and Buyer shall promptly return to Seller the unused portion of Delivery Term Security in connection with any such adjustment.

8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall cure such default by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within ten (10) Business Days after Buyer receives Notice of such refusal (all of which is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight.

(b) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Product or the Transaction arising at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller’s payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party’s exemption is lost or reduced, each Party’s responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

ARTICLE TEN: MISCELLANEOUS

10.1 Recording.

Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer’s employees or representatives performing a Scheduling Coordinator function as provided in Section 3.4(c) and any representative of Seller. The Parties agree that any such recordings will be retained in confidence, secured from improper access, and

may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

10.2 Representations and Warranties.

(a) **General Representations and Warranties.** On the Execution Date, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to perform its obligations under this Agreement, except for (A) CPUC Approval in the case of Buyer, and (B) all permits necessary to install, operate and maintain the Project in the case of Seller;

(iii) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(ix) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

(b) Seller Representations and Warranties. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(c) The term “commercially reasonable efforts” as used in Section 10.2(b) of this Agreement shall not require Seller to incur Compliance Costs in excess of the Compliance Cost Cap.

10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and the Transaction; and

(iii) it shall perform its obligations under this Agreement and the Transaction in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it.

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer’s ability to rely on the Project in order to satisfy its Resource Adequacy Requirements; and

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements applicable to an Interconnection Customer (as defined in the CAISO Tariff) and shall take any other necessary action, including but not limited to payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the Commercial Operation date or as soon as practicable thereafter.

10.4 Title and Risk of Loss.

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person or entity arising prior to or at the Delivery Point.

10.5 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, or (ii) Seller's operation and/or maintenance of the Project, including, without limitation, any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point, including, without limitation, any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors, or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.5(a) and 10.5(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.6 Assignment.

(a) General Assignment. Except as provided in Sections 10.6(b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing and except as provided in Section 10.6(b), consent shall not be required for an assignment of this Agreement where the assigning Party remains subject to liability or obligation under this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, and (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior written notice of the assignment.

(b) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project (including any tax equity or lease financing) without the prior written consent of the Buyer; provided that the financing provider(s), enter(s) into a Consent to Assignment substantially in the form attached hereto as Appendix XII under which such financing provider(s) shall agree that upon exercising its rights to assume the Agreement, it shall be bound by the terms and conditions hereof; and provided further that Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including without limitation attorneys' fees. In connection with the foregoing, Buyer endeavors to negotiate such Consent to Assignment with Seller's financing provider(s) in good faith.

(c) Notice of Change in Control. Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates', Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.6 is void.

10.7 Confidentiality

Confidentiality Notification: If checked, Seller has waived its right to notification in accordance with Section 10.7(b).

(a) Neither Party shall disclose the non-public terms or conditions of this Agreement to a third party, other than as follows:

(i) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential,

(ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement,

(iii) to the CPUC under seal for purposes of review,

(iv) for disclosure of those certain terms specified in and pursuant to Section 10.8 of this Agreement;

(v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or

(vi) in order to comply with *any* applicable regulation, rule, or order of the CPUC, CEC, or the FERC.

(b) If a Party is required to disclose confidential information in order to satisfy an obligation pursuant to subsection (a)(v) above ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (y) prohibited from complying with a Disclosure Order or (z) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(c) The Parties agree that the confidentiality provisions under this Section 10.7 are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Section 10.7 shall govern confidential treatment of all information exchanged between the Parties as of and after the Effective Date.

10.8 RPS Confidentiality

Notwithstanding Section 10.7(a) of this Agreement, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, Delivery Term, Project location, Contract Capacity, anticipated Commercial Operation Date, Contract Quantity, and Delivery Point.

10.9 Audit.

Each Party has the right, at its sole expense and during normal working hours, after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to

verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Insurance.

Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage.

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers' Liability insurance shall not be less than \$1,000,000 for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, with no alterations to the coverage form.

(ii) The limit shall not be less than \$3,000,000 each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(iv) Coverage shall:

(A) by "Additional Insured" endorsement add as insured PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller (Insurance Services Office Form CG2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket

endorsement;”

(B) be endorsed to specify that the Seller’s insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it; and

(C) include a severability of interest clause.

(c) Business Auto.

(i) Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 “any auto”.

(ii) The limit shall not be less than \$1,000,000 each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) Professional Liability Insurance.

(i) Errors and Omissions Liability insurance appropriate to the Seller’s profession. Coverage shall be for a professional error, act or omission arising out of the scope of services shown in the Agreement, including coverage for bodily injury, property damage, and consequential financial loss.

(ii) The limit shall not be less than \$2,000,000 per claim,

(iii) Coverage shall:

(A) be endorsed to specify that the Seller’s insurance is primary and that any Insurance or self-insurance maintained by PG&E shall not contribute with it; and

(B) be endorsed to specify that the selection of counsel, paid for by the insurer, to defend PG&E and its officers, directors, agents, and employees against covered or potentially covered claims shall be by mutual consent of PG&E and insurer.

(e) Additional Insurance Provisions.

(i) Before commencing performance of the Work, Seller shall furnish PG&E with certificates of insurance and endorsements of all required insurance for Seller.

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to PG&E.

(iii) PG&E uses a third party vendor, Exigis, to confirm and collect insurance documents. The process starts with the PG&E Contract Administrator submitting negotiated insurance terms in the Exigis website. An e-mail will be generated from

“Exigis.com” that will include a login, password, and link to the web-portal requesting specific information from the vendor. Vendor provides insurance broker information, which will trigger an e-mail to the insurance broker. The insurance broker provides insurance information and sends pdf or fax of insurance documents to Exigis. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to bind coverage on its behalf, and submitted through the Exigis website at: <https://prod1.exigis.com/pge> Helpline: 1 (888) 280-0178

Certificate Holder:
Pacific Gas and Electric Company
c/o Exigis

(iv) Reviews of such insurance may be conducted by PG&E on an annual basis and, in addition, PG&E may inspect the original policies or require complete certified copies at any time.

(v) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(f) Form And Content.

(i) All policies or binders with respect to insurance maintained by Seller shall:

(A) waive any right of subrogation of the insurers hereunder against PG&E, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy; and

(B) with respect to any additional insured, provide that such insurance will not be invalidated by any action or inaction of each such insured and will insure each such insured regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured.

10.11 Access to Financial Information.

The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller’s financial information. Buyer will require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

(a) Complete financial statements and notes to financial statements; and

(b) Financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter.

Any information provided to Buyer pursuant to this Section 10.11 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

10.12 Governing Law.

This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

10.13 General.

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.15. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.14 Severability.

If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

10.15 Counterparts.

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to

deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10.16 Mobile Sierra.

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in United States Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

ARTICLE ELEVEN: TERMINATION EVENT

11.1 Force Majeure Termination Event]

(a) Force Majeure Failure. Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following:

(i) if after the Commercial Operation Date, the Project fails to deliver at least forty percent (40%) of the Contract Quantity (as may be adjusted pursuant to Sections 3.1(e)(ii) or 3.9(d)) to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project (“Force Majeure Project Failure”); provided that:

(A) if the Project may be capable of resuming normal production, then Seller shall be entitled to an additional period of time (not to exceed six (6) months) to remedy the Force Majeure if within forty-five (45) days of receipt of Notice from Buyer that a Force Majeure Project Failure has occurred, Seller presents Buyer with a plan for mitigation of the effect of the Force Majeure which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer’s written acknowledgement of such plan, and Seller diligently pursues such mitigation plan throughout said additional period; or

(B) if the Project is destroyed or rendered inoperable by a Force Majeure caused by a catastrophic natural disaster, upon Buyer’s written request to Seller, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and provide Buyer a copy of the engineer’s report, at no cost to Buyer.

(ii) if prior to the Construction Start Date or Commercial Operation Date, as applicable, Seller is unable, due solely to a Force Majeure event, to achieve the Construction Start Date or place the Project into Commercial Operation by either of the Guaranteed Milestones, after applicable extensions or cure periods have run, as set forth in

Sections 3.9(c)(iii) and (iv) (in either case a “Force Majeure Development Failure”); provided that in the event of a Force Majeure caused by a catastrophic natural disaster, upon Buyer’s written request to Seller, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and provide Buyer a copy of the engineer’s report, at no cost to Buyer.

(b) Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then for a period of two (2) years from the date on which Buyer Notifies Seller of such termination (“Exclusivity Period”), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the “First Offer”) and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer’s management approval and CPUC Approval (“Buyer’s Notice”), and then the Parties shall have not more than ninety (90) days from the date of Buyer’s Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller’s documented incremental costs in overcoming the Force Majeure event.

(iii) If Buyer rejects or fails to accept Seller’s First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. Seller’s certificate shall be in substantially the form of Appendix IX. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the “Revised Offer”) in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller’s Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE TWELVE: DISPUTE RESOLUTION

12.1 Intent of the Parties.

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article Twelve. The lone exception to the foregoing is that either Party may seek an injunction in Superior Court in San Francisco, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

12.2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting to, be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from the Referral Date. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Arbitration Initiation.

If the dispute cannot be resolved by negotiation as set forth in Section 12.2 above, then the Parties shall resolve such controversy through Arbitration. The Arbitration shall be

adjudicated by one retired judge or justice from the JAMS panel. The Arbitration shall take place in San Francisco, California, and shall be administered by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within one hundred and twenty (120) days of service of the Referral Date.

12.4 Arbitration Process.

At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994) and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law.

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(e) The arbitrator shall have the authority to grant dispositive motions prior to

the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

(f) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

ARTICLE THIRTEEN: NOTICES

Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, as provided in Appendix VIII, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Notices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

[SELLER, a (include place of formation and business type)]

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX I

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary: Pacific Gas and Electric Company

Applicant: [Insert name and address of Applicant]

77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “Pursuant to the terms of that certain Power Purchase Agreement (“PPA”), dated _____, between Beneficiary and **[insert name of Seller under the PPA]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the PPA]** under the PPA; or

B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the PPA]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended (without an amendment hereto) for a period of one (1) year from the Expiry Date or any future Expiry Date, unless **[insert name of Seller under the PPA]** has provided replacement security acceptable to Beneficiary, or Beneficiary has returned this Letter of Credit to **[insert name of Seller under the PPA]** prior to the Expiry Date.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ [print or type name]

Title: _____

Exhibit A SIGHT DRAFT

TO

[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
 NAME AND TITLE

APPENDIX II

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between _____ (“Buyer”) and _____ (“Seller”), this letter (“Initial Energy Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and Buyer has received the Product, as specified in the Agreement, as of this ____ day of _____, _____ (the “Initial Energy Delivery Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Seller represents to Buyer that it has been granted status as an [Exempt Wholesale Generator] [Qualifying Facility]. Additionally Seller provides the following FERC Tariff information for reference purposes only:

Tariff: Dated: Docket Number:

IN WITNESS WHEREOF, each Party has caused this Initial Energy Delivery Date Confirmation Letter to be duly executed by its authorized representative as of the date of last signature provided below:

[SELLER]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX III

MILESTONES SCHEDULE

Identify Milestone	Date for Completion

[To be completed by Buyer and Seller]

APPENDIX III- Attachment A

**FORM OF MONTHLY
PROGRESS REPORT**

**Monthly Progress Report
of**

(“Seller”)

**provided to
Pacific Gas and Electric Company
(“Buyer”)**

[Submittal Date]

1 Instructions

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement by and between _____, (“Seller”) and Pacific Gas and Electric Company dated _____, (the “Agreement”).

In addition to the Remedial Action Plan requirement set forth in Section 3.9(c) of the Agreement, Seller shall review the status of each Milestone of the construction schedule (the “Schedule”) for the Units and related Project and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

- (i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Units or related Project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.
- (ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Units or related Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Monthly Construction Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

For the purpose of this report, “EPC Contractor” means the contractor responsible for engineering, procurement and construction of the Project, including Seller if acting as contractor, and including all subcontractors.

2 Executive Summary

2.1 Major activities completed

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Project (provide details in subsequent sections of this report):

- 2.1.1 [Insert Milestones from Appendix III, if needed]
- 2.1.2 Financing
- 2.1.3 Governmental Approvals
- 2.1.4 Site Control
- 2.1.5 Design and Engineering
- 2.1.6 Major Equipment Procurement
- 2.1.7 Construction
- 2.1.8 Interconnection
- 2.1.9 Startup Testing and Commissioning

2.2 Major activities recently performed

Please provide a summary of the major activities performed for each of the following aspects of the Project since the previous report (provide details in subsequent sections of this report):

- 2.2.1 [Insert Milestones from Appendix III, if needed]
- 2.2.2 Financing
- 2.2.3 Governmental Approvals
- 2.2.4 Site Control
- 2.2.5 Design and Engineering
- 2.2.6 Major Equipment Procurement
- 2.2.7 Construction
- 2.2.8 Interconnection
- 2.2.9 Startup Testing and Commissioning

2.3 Major activities planned but not completed

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Project:

- 2.3.1 [Insert Milestones from Appendix III, if needed]
- 2.3.2 Financing
- 2.3.3 Governmental Approvals
- 2.3.4 Site Control
- 2.3.5 Design and Engineering
- 2.3.6 Major Equipment procurement
- 2.3.7 Construction
- 2.3.8 Interconnection
- 2.3.9 Startup Testing and Commissioning

2.4 Major activities expected during the current month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Project (provide details in subsequent sections of this report):

- 2.4.1 Milestones
- 2.4.2 Financing
- 2.4.3 Governmental Approvals
- 2.4.4 Site Control
- 2.4.5 Design and Engineering
- 2.4.6 Major Equipment procurement
- 2.4.7 Construction
- 2.4.8 Interconnection
- 2.4.9 Startup Testing and Commissioning

3 Milestones

3.1 Milestone schedule

Please list all Milestones specified in Appendix III and state the current status of each.

Milestone	Milestone Date Specified in the Agreement	Status (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
-----------	---	--

3.2 Remedial Action Plan (if applicable)

Provide a detailed description of Seller’s course of action and plan to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date using the outline provided below.

- 3.2.1 Identify Missed Milestone
- 3.2.2 Explain plans to achieve missed Milestone
- 3.2.3 Explain plans to achieve subsequent Milestones
- 3.2.4 Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Milestones

4 Financing

Please provide the schedule Seller intends to follow to obtain financing for the Project. Include information about each stage of financing.

Activity (e.g., obtain \$xx for yy stage from zz)	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

5 Project Schedule

Please provide a copy of the current version of the overall Project schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for Governmental Approvals, design and engineering, procurement, construction, interconnection and testing.

6 Governmental Approvals

6.1 Environmental Impact Review

Please provide information about the primary environmental impact review for the Project. Indicate whether dates are expected or actual.

Agency [e.g., the lead agency as required under the California Environmental Quality Act (CEQA)]

Date of application/submission ___/___/___ (expected / actual)

Date application/submission deemed complete by agency ___/___/___ (expected / actual)

Date of initial study (if applicable) ___/___/___ (expected / actual)

Process (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report)

Date of Notice of Preparation ___/___/___ (expected / actual)

Date of Draft ND/MND/EIR ___/___/___ (expected / actual)

Date Notice of Determination filed at OPR or County Clerk ___/___/___ (expected / actual)

6.2 Federal, State, Regional, County or Local Governmental Approvals

Please describe each of the major Governmental Approvals to be obtained by Seller and the status of each:

Agency / Approval

e.g.,
California Energy Commission (CEC) /
Application for Certification (AFC)

[name] County / Conditional Use Permit (CUP) for possible delay, etc.

Status Summary

e.g., dates of application / hearing / notice / etc.
(note whether dates are anticipated or actual);
major activities (indicate whether planned, in
progress and/or completed); primary reasons

6.3 Governmental Approval activities recently performed

Please list all Governmental Approval activities that occurred since the previous report.

6.4 Governmental Approval activities expected during the current month

Please list all Governmental Approval activities that are expected to occur during the current month.

6.5 Governmental Approval Notices received from EPC Contractor

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from Governmental Agencies.

7 Site Control

7.1 Table of Site Control schedule

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Project Site (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

7.2 Site Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

7.3 Site Control activities expected during the current month.

Please explain in detail the site control activities that are expected to be performed during the current month.

8 Design and Engineering

8.1 Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

8.2 Design and engineering activities recently performed

Please explain in detail the design and engineering activities that were performed since the previous report.

8.3 Design and engineering activities expected during the current month

Please explain in detail the design and engineering activities that are expected to be performed during the current month.

9 Major Equipment Procurement.

9.1 Major equipment to be procured

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		___/___/___ (expected / actual)	___/___/___ (expected / actual)
		___/___/___ (expected / actual)	___/___/___ (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

9.2 Major Equipment procurement activities recently performed

Please explain in detail the major equipment procurement activities that were performed since the previous report.

9.3 Major Equipment procurement activities expected during the current month.

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

10 Construction

10.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		___/___/___ (expected / actual)
		___/___/___ (expected / actual)

10.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

10.3 Construction activities expected during the current month

Please explain in detail the construction activities are expected to be performed during the current month.

10.4 EPC Contractor Monthly Construction Progress Report.

Please attach a copy of the Monthly Construction Progress Reports received since the previous report from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

11 Interconnection

11.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

11.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

11.3 Interconnection activities expected during the current month

Please explain in detail the interconnection activities that are expected to be performed during the current month.

12 Startup Testing and Commissioning

12.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

12.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

12.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

13 Safety and Health Reports

13.1 Accidents

Please describe all Project-related accidents reported since the previous report.

13.2 Work stoppages

Please describe all Project-related work stoppages from that occurred since the previous report.

Please describe the effect of work stoppages on the Project schedule.

14 Certification

I, _____, on behalf of and as an authorized representative of [_____], do hereby certify that any and all information contained in this Seller’s Monthly Construction Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Units as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

FACILITY DESCRIPTION

Facility name: _____

Facility Site name: _____

Facility physical address: _____

Total number of Units at the facility (committed and not committed to Buyer)

Technology Type: _____

Substation:

The term “Site” as defined in the Agreement means the following parcel description upon which the facility is located:

The nameplate capacity of the Project is _____.

The Units utilized as generation assets as part of the Project is described below:

[INSERT MAP]

APPENDIX V

DELIVERY TERM CONTRACT QUANTITY SCHEDULE

[To be completed by Seller]

Contract Year	Contract Quantity

APPENDIX VI

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

**[To be developed by Buyer and Seller and to include Form Certification set forth in
Appendix VI Attachment A]**

APPENDIX VI - Attachment A

FORM OF CERTIFICATION

This certification (“Certification”) is delivered by _____ (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

[To be developed by Buyer and Seller]

APPENDIX VII

GEP DAMAGES CALCULATION

In accordance with the provisions in Section 3.1(e)(ii), GEP Damages means the liquidated damages payment due by Seller to Buyer, calculated as follows:

$$[(A-B)X(C-D)]$$

Where:

A = the Guaranteed Energy Production for the Performance Measurement Period, in MWh

B = Sum of Delivered Energy over the Performance Measurement Period, in MWh

C= Replacement Price for the Performance Measurement Period, in \$/MWh, reflecting the sum of (a) the simple average of the simple average of the Day Ahead Integrated Forward Market hourly price, as published by the CAISO, for the Existing Zone Generation Trading Hub, in which the Project resides, plus (b) \$50/MWh

D = the unweighted Contract Price specified in Section 4.1 for the Performance Measurement Period, in \$/MWh

The Parties agree that in the above calculation of GEP Damages, the result of “(C-D)” shall not be less than \$20/MWh. and shall be no greater than seventy five percent (75%) of the Contract Price (in \$/MWh) set forth in Section 4.1.

APPENDIX VIII

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR START-UP AND SHUTDOWN

Prior to paralleling to or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify your designated balancing authority control center as follows:

- Call the balancing authority control center to parallel before any start-up
- Call the balancing authority control center again with parallel time after start-up.
- Call the balancing authority control center after any separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PROJECT OUTAGES

1. Submit information by posting to PG&E's Power Procurement Information Center, which is located at www.pge.com under "For My Business." After selecting "Wholesale Power" on the right side of the page, select "Electric Procurement" along the left banner. After selecting the Power Procurement Information Center icon in the middle of the page, you will be required to enter a username and password, which will be assigned to you by PG&E's Bilateral Settlements Group.
2. If the website is unavailable, implement the procedures set forth below:
 - a. **For all email correspondence, enter the following in the email subject field: Delivery Date Range, Contract Name, Email Purpose (For example: "dd/mm/yyyy - dd/mm/yyyy XYZ Company Project #2 Daily Forecast of Available Capacity")**
 - b. For Annual Forecasts of Available Capacity, email to DAenergy@pge.com and [Bilat Settlements@pge.com](mailto:BilatSettlements@pge.com).
 - c. For Monthly and WECC Preschedule Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
 - d. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Day-Ahead Schedules, call primary phone 415.973.6222 or backup phone 415.973.4500. Also send email to DAenergy@pge.com.

- e. For Hourly Forecasts of Available Capacity, call PG&E's Hour-ahead Trading Desk at 415.973.4500 and email to RealTime@pge.com.
- f. For project outages, complete the specifics below and submit by email to DAenergy@pge.com and Bilat Settlements@pge.com
 - i. Email subject Field: dd/mm/yyyy - dd/mm/yyyy XYZ Company Project #2 Outage Notification*
 - ii. Email body:*
 - 1. Type of Outage: Planned Outage, Forced Outage, Prolonged Outage*
 - 2. Start Date and Start Time*
 - 3. Estimated or Actual End Date and End Time*
 - 4. Date and time when reported to PG&E and name(s) of PG&E contacted*
 - 5. Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage required by the CAISO.*

APPENDIX IX

CERTIFICATION OF THIRD PARTY AGREEMENT

[To be developed by Buyer and Seller]

APPENDIX X

RESOURCE ADEQUACY

1. Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to, the following:
 - A. Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CAISO and/or CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the Interconnection Point; and
 - B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.
2. Seller shall comply with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff as may be changed from time to time, including but not limited to the following:
 - A. Taking all actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity;
 - B. Coordinating with Buyer on the submission to the CAISO of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff;
 - C. Complying with the dispatch requirements applicable to the Project's resource type, as set forth in Section 40 of the CAISO Tariff; and
 - D. Complying with the applicable reporting requirements, such as submitting Supply Plans to the CAISO.
3. RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Interconnection Point for the Project.

APPENDIX XI

NOTICES LIST

Name: *[Seller's Name]*, a *[include place of formation and business type]* ("Seller")

Name: Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E")

All Notices: *[Seller to complete]*

All Notices:

Delivery Address:

Delivery Address:

Street:

77 Beale Street, Mail Code N12E

City: State: Zip:

San Francisco, CA 94105-1702

Mail Address: (if different from above)

Mail Address:

P.O. Box 770000, Mail Code N12E

San Francisco, CA 94177

Attn:

Attn: CandiceChan (CWW9@pge.com)

Director, Contract Mgmt & Settlements

Phone:

Phone: (415) 973-7780

Facsimile:

Facsimile: (415) 973-5507

DUNS:

DUNS:

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

Attn: Amol Patel (AxPx@pge.com)

Manager, Bilateral Settlements

Phone:

Phone: (415) 973-6510

Facsimile:

Facsimile: (415) 973-2151

Scheduling:

Scheduling:

Attn:

Attn: Kevin F. Coffee (kfcl@pge.com)

Phone:

Phone: (415) 973-7631

Facsimile:

Facsimile: (415) 973-0400

Payments:

Payments:

Attn:

Attn: Amol Patel (AxPx@pge.com)

Manager, Bilateral Settlements

Phone:

Phone: (415) 973-6510

Facsimile:

Facsimile: (415) 973-2151

Wire Transfer:

BNK:
ABA:
ACCT:

Credit and Collections:

Attn:

Phone:
Facsimile:

With additional Notices of an Event of Default to Contract Manager:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

BNK:
ABA:
ACCT:

Credit and Collections

Attn: David Medrano
(D6MD@pge.com)
Manager, Credit Risk Management

Phone: (415) 973-9099
Facsimile: (415) 973-4071

Contract Manager:

Attn: Chad Curran (CRCq@pge.com)
Manager, Contract Management
Phone: (415) 973-6105
Facsimile: (415) 972-5507

With additional Notices of an Event of Default to:

PG&E Law Department
Attn: Renewables Portfolio Standard attorney
Phone: (415) 973-4377
Facsimile: (415) 972-5952

APPENDIX XII

FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

**THIS FORM IS SUBJECT TO GOOD FAITH NEGOTIATION WITH SELLER'S
FINANCING PROVIDERS.**

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2 ____], between PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”), and [_____] , as collateral agent (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”). PG&E, Seller, and the Financing Provider shall each individually be referred to a “Party” and collectively as the “Parties”.

Recitals

A. Pursuant to that certain Power Purchase Agreement dated as of _____, 2 _____ (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between PG&E and Seller, PG&E has agreed to purchase energy from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, PG&E has agreed to enter into this Consent and Agreement for the benefit of Seller.

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

2. Consent. Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the [Security Agreement] of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).

3. Limitations on Assignment. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the

Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) executes and delivers to PG&E a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as PG&E may reasonably request, and (e) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a "Financing Default"), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

"Permitted Transferee" means any person or entity who is reasonably acceptable to PG&E. Financing Provider may from time to time, following the occurrence of a Financing Default, notify PG&E in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider's rights under the Financing Documents, and PG&E shall, within thirty (30) business days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if PG&E shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a "Permitted Transferee".

4. Cure Rights.

(a) Notice to Financing Provider by PG&E. PG&E shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an "Event of Default") to Seller (a "Default Notice"), provide a copy of such Default Notice to Financing Provider pursuant to Section 9(a) of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a) above, PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement "Additional Cure Period" means (i) with respect to a monetary default, ten (10) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) Failure by PG&E to Deliver Default Notice. If neither PG&E nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider's applicable cure period shall begin on the date on which notice of an Event of Default is delivered to Financing Provider by either PG&E or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in PG&E's ability to terminate the Assigned Agreement (in each case only if both PG&E and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of PG&E to deliver any Default Notice shall not waive PG&E's right to take any action under the Assigned Agreement and will not subject PG&E to any damages or liability for failure to provide such notice.

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving notice of an Event of Default from PG&E or Seller, whichever is received first, Financing Provider shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) days; provided, however, that Financing Provider shall provide a written notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that PG&E shall have the right to set off or deduct from payments due to Seller each and every amount due PG&E from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action PG&E may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that PG&E makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Financing Provider releases PG&E from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that PG&E may agree with Seller to modify or amend the Assigned Agreement, and that PG&E is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases PG&E from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. PG&E shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [_____], as depositary agent,

to ABA No. [____], Account No. [____], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, PG&E and Financing Provider agrees that each such payment by PG&E to such depository agent of amounts due to Seller from PG&E under the Assigned Agreement shall satisfy PG&E's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

(a) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile or other electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties, at the address set forth below:

If to Financing Provider:

Name: _____
Address: _____

Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

If to PG&E:

Name: _____
Address: _____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

(b) No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of PG&E, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under the [loan agreement] and [security agreement].

(c) No Modification. This Consent and Agreement is neither a modification of nor an amendment to the Assigned Agreement.

(d) Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

(e) No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

(f) Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

(h) Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

(i) Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all parties hereto.

IN WITNESS WHEREOF, each of PG&E and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

PACIFIC GAS AND ELECTRIC COMPANY
(PG&E)

By: _____

Name: _____

Title: _____

[_____]

(Financing Provider), as collateral agent

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from PG&E to Financing Provider the next business day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned.

[_____] **[name of Seller]**

By: _____

Name: _____

Title: _____

APPENDIX XIII
SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer, pursuant to the terms of Section 2.4(a)(iv) of the Agreement, all of the following documentation at least two (2) Business Days prior to the Execution Date:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, "Charter Documents") as in effect on the Execution Date.
2. A certificate signed by an authorized officer of Seller, dated the Execution Date, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of the Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms) satisfactory to Buyer.
5. Evidence of CEC Certification and Verification (pre-certification) satisfactory to Buyer.
6. A copy of the most recent financial statements (which may be unaudited) from Seller together with a certificate from the Chief Financial or equivalent officer of Seller, dated the Execution Date, to the effect that, to the best of such officer's knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.

APPENDIX XIV

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(1)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix XIV.

- (a) Availability Workbook. Seller shall (i) collect the measurement data, listed in (b) below, in one (1) or more Microsoft Excel Workbooks (the “Availability Workbook”) provided in a form and naming convention approved by Buyer and (ii) electronically send the Availability Workbook to an address provided by Buyer. The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all generators as measured by such generator’s internal turbine controller.
- (b) Log of Availability. The Availability Workbook shall be created on a single, dedicated Excel worksheet and shall be in the form of Attachment A to this Appendix XIV.

APPENDIX XIV

Attachment A

Form of Actual Availability Report

[Seller]’s Actual Availability Report

All amounts are in MWs

<u>Settlement Interval No.</u>	<u>Date</u>	<u>HE1</u>	<u>HE2</u>	<u>HE3</u>	<u>HE4</u>	<u>HE5</u>	<u>HE6</u>	<u>HE7</u>	<u>HE8</u>	<u>HE9</u>	<u>HE10</u>	<u>HE11</u>	<u>HE12</u>	<u>HE13</u>	<u>HE14</u>	<u>HE15</u>	<u>HE16</u>	<u>HE17</u>	<u>HE18</u>	<u>HE19</u>	<u>HE20</u>	<u>HE21</u>	<u>HE22</u>	<u>HE23</u>	<u>HE24</u>
1	mm/dd/yyyy																								
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Date/Time of Submittal _____

Appendix C

Site Control Questionnaire and Attestation

PV Program PPA Request for Offers

Full Legal Project Name:

Project Location:

Street Address:

City, State, Zip:

Description of land control and whether the project is consistent with local land use zoning ordinances.

- a. If you have site control, how is it exercised, e.g. ownership, leasehold interest, site option, etc. Documents demonstrating site control and ability to operate project as proposed will be required prior to contract execution.
- b. Is the project consistent with local land use zoning ordinances, including General Plans? If the project requires zoning changes or variances, describe the plan to obtain approval of the zoning changes.
- c. Describe plans to obtain project support from local land use authorities including whether the project needs any specific planning commission, city council or board or supervisor approvals.
- d. Is the project consistent with local General Plan Energy Plan Elements?
- e. Is the project consistent with the Williamson Act Contract? If not, describe how the Williamson Act Contract will be cancelled or terminated.

Provide the following information regarding the site.

- a. Include map showing site location and key project facilities.
- b. Provide at least one of the following sets of information for GIS mapping:
 - i. County Assessor's parcel number for the proposed site; or
 - ii. Coordinates and parcel size

Site Control Attestation

Participant hereby represents, warrants and covenants that:

1. Participant has site control of the site where the project is located or will be located, which is: [\[insert project address\]](#);
2. Participant is the entity that will execute the PPA with PG&E if PG&E enters into a PPA with the Participant as a result of the Solar PV PPA RFO;

PV Program PPA Request for Offers

3. Participant will promptly notify PG&E in writing of any changes in the status of the Participant's site control; and
4. Execution and delivery of this attestation are within Participant's powers and have been duly authorized by all necessary action.

"Site control" has the meaning set forth in section II.B of the PV PPA RFO Protocol Document dated February 2, 2011.

Very Truly Yours,

By: _____
Authorized Signature

Name: [print or type name]

Title: _____

Appendix D

Demonstration of Interconnection Application Submission

PV Program PPA Request for Offers

Full Legal Project Name:

Project Location:

Street Address:

City, State, Zip:

Please provide copies of documents proving that applicable electric distribution or transmission interconnection applications have been filed.

If available at time of initial Offer submission, provide the following:

1. List the transmission/distribution point of interconnection. (i.e. switchyard or substation, with primary equipment listed; interconnecting voltages and interconnecting transmission or distribution lines; bus configuration: collector bus, ring bus, breaker and a half).
 - i. What is the approximate distance from your site to the point of interconnection?
 - ii. If applicable, is the applicable study complete?
 - iii. If applicable, provide a proposed interconnection plan including any existing or future approvals and agreements. Describe anticipated upgrades, including new distribution or transmission lines for interconnection. Please include major milestones necessary to achieve Commercial Operation.

Appendix E

Acknowledgement and Commitment of Site Owner

PV Program PPA Request for Offers

Full Legal Project Name (“Participant”):

Project Location:

Street Address:

City, State, Zip:

Full Legal Name of Site Owner (“Site Owner”):

Business Address of Site Owner:

Street Address:

City, State, Zip:

Subject: Acknowledgement of Site Owner Regarding Alternate Program
Availability – California Solar Initiative and Net Energy Metering
Programs

Pacific Gas and Electric Company:

[Insert Site Owner’s full legal name] owns the real property located at [Insert complete Property address][, and leases or intends to lease all or a portion of the Property to [Insert Participant’s s legal name].]

[Site Owner] avows that it is informed of and has investigated the benefits offered by, alternative government-sponsored solar generation subsidy programs such as the California Solar Initiative (“CSI”) and the Net Energy Metering (“NEM”) programs.

[Site Owner] further acknowledges that if Pacific Gas and Electric Company (“PG&E”) executes a power purchase agreement with [Participant] as part of PG&E’s 2010 PV Program PPA RFO and receives California Public Utilities Commission approval of that power purchase agreement, then [Participant] will install a solar photovoltaic electric generating facility, including solar panels and other ancillary equipment (“solar photovoltaic electric generating facility”), on a defined portion of the Property, and will exclusively sell to PG&E, pursuant to the power purchase agreement, the entire output of the solar photovoltaic electric generating facility, including all attributes related thereto.

Finally, [Site Owner] asserts that it has not participated in, nor submitted any claim for receipt of funds under, the CSI or the NEM programs for the solar photovoltaic electric generating facility, and that if PG&E selects [Participant] as part of PG&E’s 2010 PV Program PPA RFO and receives California Public Utilities Commission approval of the power purchase agreement, [Site Owner] will be precluded from participating in either the CSI or the NEM programs for the solar photovoltaic electric generating facility for the entire term of the power purchase agreement.

PV Program PPA Request for Offers

Execution of this letter agreement by [Site Owner] does not prevent [Site Owner] from participating in the CSI or NEM programs for other projects, other than the solar photovoltaic electric generating facility, including other projects on the same Property.

Very Truly Yours,

[Insert Site Owner's full legal name]

By: _____

Name: _____

Title: _____

Date: _____

Appendix F

Supplier Diversity Questionnaire

PV Program PPA Request for Offers

Please answer the questions below about the Participating Company (or Leading Participant in the case of a Team of Participants).

- Is Participant a certified California woman, minority or disabled veteran business enterprise (WMDVBE)?
- If so, please identify the certifying agency:
- If your company is woman, minority or service disabled veteran-owned but not certified by the CPUC or Department of General Services, does your company hold a Women’s Business Enterprise National Council (WBENC), National Minority Supplier Development Council (NMSDC) or United States Small Business Administration 8(a) certification. Please provide certification number and expiration date.
- Does Participant commit to PG&E's Supplier Diversity Program which can be found at <http://www.pge.com/b2b/purchasing/supplierdiversity/>?
- Does Participant intend to use WMDVBE suppliers in Participant's materials and services supply chain?
- Does your company have a supplier diversity program? If so, describe efforts your company has made to increase business with WMDVBE firms (i.e. does your company have a policy statement, participate in outreach activities, promote diverse firm subcontracting, publicize contract opportunities, provide certification assistance, etc.?). Please provide examples.
- If your company has a supplier diversity program, does your company mentor WMDVBE suppliers? Please provide examples.

If Participant is not a WMDVBE supplier, and if Participant intends to use WMDVBE suppliers to support its PV PPA project if its Offer is executed, then Participant shall list in the table below a plan for how the total cost of each PV PPA project proposed would be split among those WMDVBE subcontracts. Please provide a separate table for each Offer submitted, if more than one. Where applicable, Participant shall also indicate names of subcontractors that may perform those categories of work. Include all potential spend from subcontractor relationships and partnerships.

Component	Planned Spend % by Category	Supplier Names
Installation	%	
Engineering	%	
Major Equipment (modules, inverters, transformers, switchgear)	%	
Other Materials	%	
Freight, Delivery and Logistics	%	
Other (please specify below)	%	
Total Planned WMDVBE Spend as a % of Total Program Spend (%)	%	

PV Program PPA Request for Offers

- If you used the "Other" category, please define what materials and services these firms will provide.
- How much was your company's overall spend with WMDVBE firms over your total purchasing spend in the U.S. in 2010 (%)?
- Please describe in detail how you will assist PG&E in reaching its enterprise-wide diversity spend goal (WMDVBE participation) of 30% in 2011.

Attachment B

Redline of PV Program PPA RFO Protocol and Appendices



Solar Photovoltaic Program – Power Purchase Agreements (PV Program PPA)

2011 Request for Offers

February 2, 2011
~~[Date of RFO Launch]~~

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I. Introduction and Overview:

A. Overview

Pacific Gas and Electric Company (“PG&E”) is issuing the ~~2010~~2011 Solar Photovoltaic Program Power Purchase Agreement (“PV Program PPA”) Request For Offers (“RFO”) to procure up to 50 megawatts (“MW”) of Product¹ from new solar photovoltaic (“PV”) generating facilities with a 20-year term.

PG&E’s goal with respect to the Power Purchase Agreement (“PPA”) portion of its PV Program ~~PPA~~ is to procure, over a five (5) year period, PPAs for 250 MW of PV Products as authorized by California Public Utilities Commission (“CPUC”) Decision (“D.”) 10-04-052 adopted on April 22, 2010.² PG&E is seeking Offers from PV facilities that are 1 to 20 MW in size, for a contract term of 20 years. The generating facility producing the Product must be a new PV facility located in PG&E’s service territory and interconnected to PG&E’s electric system. Except as noted under the circumstances specified in the form PV Program PPAs, the generating facility must be commercially operable within 18 months ~~of the Effective Date~~ following CPUC approval of an executed PV Program PPA.

PG&E’s goal with the ~~2010~~2011 PV Program PPA RFO is to procure 50 MW. However, if less than 50 MW of Offers are selected, then the remaining MW will be added to a future year’s solicitation, if any, along with the MW of any projects that were selected via the RFO but which do not come online.

In connection with Offers pursuant to this RFO, a seller offering the Product pursuant to this RFO (“Participant”) must submit the required information, as discussed in Section II.

B. ~~Expected~~ Schedule

1. Schedule Overview

The RFO schedule is subject to change at PG&E’s sole discretion at any time. PG&E will endeavor to notify Participants of any schedule change via notification on the Company’s RFO website. As further described below, Participants ~~may~~ are encouraged to register at the RFO website to receive notice of these and other RFO changes by electronic mail. PG&E will have no liability or responsibility to any Participant for any change in the schedule or for failing to provide notice of any change.

The expected schedule for this RFO is (all times are in Pacific Prevailing Time (“PPT”)):

¹ Product means the electricity generated by a Project (the eligible renewable energy resource described in an Offer), together with all capacity and ancillary products and services associated with the Project, and any other attributes required by the CPUC and/or the California Energy Commission (“CEC”) to count the electricity toward PG&E’s Renewables Portfolio Standard (“RPS”) requirements.

² Unless otherwise noted, all references to megawatts or MW in this RFO are to MW (AC).

Pacific Gas and Electric Company
PV Program PPA Request for Offers

Date/Time	Event
Ongoing	Participants may register online to receive notices regarding the RFO
Following CPUC approval of advice letter <u>February 2</u>	PG&E issues RFO
+2 weeks from issuance of RFO ³ <u>February 8</u>	Bidders' Conference
+4 weeks from issuance of RFO <u>March 2</u> 1:00 P.M. PPT	Deadline for Participants to submit Offers and to submit applications for interconnection. <u>Offer evaluation begins.</u>
+5 weeks from issuance of RFO	Offer Evaluation begins
+7 weeks from issuance of RFO 5:00 P.M. PPT	PG&E notifies Participants of Selected Offers
+2 weeks from Selection of Offers <u>March 22</u>	Participants with Selected Offers provide proof that interconnection applications have been deemed complete and that the project <u>Project</u> has received a queue position
+7 weeks from Selected Offers <u>April 15</u>	<u>PG&E notifies</u> Participants with <u>of</u> Selected Offers provide proof that interconnection screens have been passed or studies completed ⁴
+8 weeks from Selected Offers <u>April 19</u>	Participants with Selected Offers submit signed PV PPAs <u>accept selection and continued participation in the RFO</u>
+1 week after submission of signed PPAs <u>June 3</u>	PG&E executes Final Agreements <u>Participants with Selected Offers provide proof that interconnection screens have been passed or studies completed</u> ³

³ ~~This and all subsequent dates in this schedule are contingent upon final approval by the CPUC of an advice letter filing describing this PV Program PPA RFO Protocol.~~

⁴ ~~See Section III "Information Regarding Interconnection to PG&E's Electric System" for more information on screens and studies.~~

³ See Section III "Information Regarding Interconnection to PG&E's Electric System" for more information on screens and studies.

Pacific Gas and Electric Company
PV Program PPA Request for Offers

+5 weeks after submission of signed PPAs TBD	PG&E submits Final Agreements Participants provide documentation on or before 2 weeks of the applicable resource adequacy forum deadline that they have made the request for Regulatory Approval full capacity deliverability status
<u>June 10</u> <u>5:00 P.M.</u>	<u>Participants with Selected Offers submit signed PPAs</u>
<u>June 17</u>	<u>PG&E executes PPAs</u>
<u>July 15</u>	<u>Target Advice Letter Filing for executed PPAs</u>

To be considered in this RFO, a Participant must submit to PG&E and the Independent Evaluator (“IE”)⁵⁴ a complete Offer, in accordance with this RFO, no later than March 2, 2011 at 1:00 P.M. ~~PPT 4 weeks from issuance of RFO.~~

PG&E intends to seek CPUC approval of each ~~Final Agreement~~ PPA resulting from this RFO, and the ~~Agreements~~ PPAs will not be effective unless approved by the CPUC and any applicable review or appeal period has lapsed. As further described in Section II, one of the requirements in this RFO is that Participants may do not make changes to the non-price terms and conditions in the form PV PPAs.

2. RFO Process

- Registration. Participants may register online to receive announcements and updates about this RFO ~~or any other PG&E RFO.~~ Go to www.pge.com/rfo and click on RFO Bidder Registration. Alternatively, go directly to: <http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/joinlist.shtml>.
- Bidders’ Conference. PG&E intends to hold a Bidders’ Conference on ~~2 weeks from issuance of RFO~~ February 8, 2011 to discuss this RFO. To register for this event, please complete the registration form and submit ~~attendees’ and company name~~ to PVProgram@pge.com. The registration form is available at: <http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/PVRFO/index.shtml>. Registration is required to attend this Bidders’ Conference and companies will be limited to two attendees each.
- Offers Due. Participant’s Offer must be submitted by e-mail to both PG&E and the IE by ~~4 weeks from issuance of RFO,~~ March 2, 2011 at 1:00 p.m.M. PPT and must include all of the documents described in Section II.D., below. By responding to this RFO, the Participant agrees to be bound by all of the terms,

⁵⁴ Wayne Oliver of Merrimack Energy Group, Inc. will be providing IE services for this RFO. His email address is waynejoliver@aol.com.

conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E.

4. Participants' Interconnection Applications. On or before March 22, 2011, each Participant must submit documentation required by Appendix D showing that its application for interconnection has been deemed complete and that the Participant has received an electric interconnection queue position from either PG&E or the California Independent System Operator ("CAISO"), as applicable.
5. 4. PG&E Selects Offers. ~~PG&E expects to select Offers by 7 weeks from issuance of RFO.~~ Participants whose Offers have been selected will be notified via email by PG&E by 5:00 ~~p~~P.~~m~~M. PPT on ~~7 weeks from issuance of RFO.~~April 15, 2011. PG&E will select Offers according to the evaluation criteria described below until the next-best Offer would cumulatively exceed 50 MW. Some of the next-best Offers beyond those selected may be placed on a waiting list to be selected in order of priority should any selected Offers fail to complete the RFO process. Participants whose Offers have been selected will be required to accept by April 19, 2011 of their selection and continued participation in this RFO
- ~~5. Participants' Interconnection Applications. If PG&E notifies Participant that its Offer(s) has been selected, and the Participant wants to continue to participate in the RFO, then the Participant must, within 2 weeks of Offer selection, submit documentation required by Appendix D showing that its application for interconnection has been deemed complete and Participant has received an electric interconnection queue position from either PG&E or the California Independent System Operator ("CAISO"), as applicable.~~
6. Interconnection Screens or Studies Passed. On or before ~~the date 7 weeks from the selection of an Offer, Participant~~June 3, 2011, Participants with selected Offers must provide documentation to PG&E that all electric interconnection screens have been passed or studies completed, in accordance with Section III of this RFO Protocol.
7. Submittal of Signed PPA. PG&E will notify Participants whose Offers are accepted for execution by PG&E. By 5:00 P.M. PPT ~~of the date 8 weeks from the selection of an Offer, on June 10, 2011,~~ Participants ~~whose selected Offers have met each of the conditions and eligibility requirements described above~~with accepted Offers must submit ~~a signed PPAs~~a PPA. If one or more selected Offers fail to pass interconnection requirements or submit signed ~~PPAs~~a PPA as described above, PG&E will select the next-best Offer on the waiting list that does not cause the cumulative capacity of the RFO to exceed 50 ~~MWs~~MW. Waiting list Offers must have satisfied each of the interconnection requirements described above to be selected.
8. Execution and Regulatory Approval. ~~PG&E will notify Participants whose Offers are accepted for execution by PG&E.~~ PG&E intends to execute ~~Final Agreements~~

~~1 week after submission of signed PPAs, PPAs on or before June 17, 2011, and will plans to~~ submit executed Agreements to the CPUC for approval via a Tier ~~1~~2 advice filing ~~within 5 weeks of the submission of signed PPAs.~~

C. Disclaimers for Rejecting Offers and/or Terminating this RFO

This RFO does not constitute an offer to buy and creates no obligation to execute any ~~Final Agreement~~PPA or to enter into a transaction under a ~~Final Agreement~~PPA as a consequence of the RFO. PG&E shall retain the right at any time, in its sole discretion, to reject any Offer on the grounds that it does not conform to the terms and conditions of this RFO and reserves the right to request information at any time during the solicitation process. PG&E also retains the discretion, in its sole judgment, to: (a) reject any Offer on the basis that it does not provide sufficient ratepayer benefit or that it would impose conditions that PG&E determines are impractical or inappropriate; (b) formulate and implement appropriate criteria for the evaluation and selection of Offers; (c) negotiate with any Participant to maximize ratepayer benefits; (d) modify this RFO including, with the approval of the CPUC, the form PV PPAs as it deems appropriate to implement the RFO and to comply with applicable law or other decisions or direction provided by the CPUC; and (e) terminate the RFO should the CPUC not authorize PG&E to purchase Products in the manner proposed in this RFO. In addition, PG&E reserves the right to either suspend or terminate this RFO at any time for any reason whatsoever. PG&E will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to any Participant, whether submitting an Offer or not.

II. RFO Goals, Eligibility, and Evaluation Criteria:

In this RFO, PG&E is seeking eligible new PV generating resources that meet the specifications noted in “Eligibility Requirements” below. Optimal Offers will be those that best provide PG&E the opportunity to procure the Products that are compatible with PG&E’s requirements, and best meet the evaluation criteria specified in this section.

A. Eligibility Requirements

PG&E will consider all timely Offers, submitted pursuant to this RFO, from any Participant whose Offer meets the following criteria:

1. The generating facility must be a new photovoltaic electric generating facility.
2. The generating facility must be located within PG&E’s service territory.
3. The nameplate capacity of the generating facility must be no less than 1 MW and no greater than 20 MW. Participants may offer different size options for their project to enhance their opportunity for resource selection within the 50 MW target. Aggregation of facilities to meet the minimum 1 MW size requirement is not allowed, unless ~~the energy goes through a single CAISO~~

~~revenue meter~~ each aggregated facility is no less than 500 kW and the project comprised of the aggregated facilities interconnects within a single PNode⁵ and is owned by a single Participant.

4. The contract price must be no greater than \$246/MWh (prior to adjustment for time of delivery).

B. Other Requirements for Participation

Interconnection

The generating facility must be interconnected to PG&E's electric distribution or transmission system, ~~delivering through a single CAISO revenue meter~~. The delivery point for a generating facility will be the PNode for the generating facility. Proof that the facility owner has submitted an interconnection application must be included with the initial Offer submission. For information on PG&E's and CAISO's interconnection procedures, see Section III.

~~Within 7 weeks from the selection of an Offer, By June 3,~~ Participants will be required to provide confirmation the ~~first 9 "Fast Track"~~ applicable interconnection ~~screens have been passed or~~ studies are completed, ~~as applicable and~~ as further discussed in Section III, below. If there are significant upgrades, Participants must provide evidence supporting a reasonable conclusion that the upgrades will be completed no less than 3 months prior to the expected commercial operation date for the Project. PG&E retains sole discretion, without liability to any Participant, to decide whether any necessary interconnection upgrades can reasonably be completed in this timeframe based upon the evidence submitted by a Participant.

Price

Participants must submit with their Offer their best and final price. Participants will not be given another opportunity to update pricing. Under no circumstance will PG&E allow a "price refresh" for any reason whatsoever. The price must be a single value in \$/MWh which will remain constant for the term of the agreement. Pricing may not be indexed or escalated over the term of the agreement. In addition, PG&E will not consider any Offer whose pre-time of delivery ("TOD") cost of energy exceeds \$246/MWh, the cost cap imposed by D.10-04-052.

The price submitted by Participant for an Offer must include, without limitation, the following: (a) all awards, subsidies, tax credits with respect to the ~~generating facility~~ Project, (b) all other benefits that Participants expects to apply, (c) any costs incurred by Participant, including any interconnection costs, (d) the acceptance of the

⁵ The CAISO Tariff defines Pricing Node ("PNode") as "[a] single network Node or subset of network Nodes where a physical injection or withdrawal is modeled and for which a Locational Marginal Price is calculated and used for financial settlements."

non-price terms and conditions as-is in the form ~~Agreement~~[PV PPA](#), and (e) the assumption that the ~~product~~[Product](#) price will be adjusted in each hour of delivery by the energy payment allocation factors set forth in Appendix C of the Small PV PPA and in Section 4.3 of the Large PV PPA.

Site Control

[Participants must attest to site control when their Offers are submitted to PG&E.](#)

Evidence of site control [and attestation to site control for the term of the PPA](#) must be demonstrated by the Participant ~~when the Offer is submitted to PG&E~~[as detailed in Appendix C](#). Examples of site control include: (1) ownership of the site, a leasehold interest, or a right to develop a site for the purpose of constructing a generating facility; (2) an option to purchase or acquire a leasehold site for purposes of constructing a generating facility; and (3) any other business relationship that, in the sole discretion of PG&E, amounts to the same right to develop property as provided in examples (1) or (2) above, between the Participant and another entity that has the right to sell, lease, or grant the right to possess or occupy the site for such a purpose.

Offers **Experience**

~~Participants are limited to a maximum of five (5) Offers per RFO. PG&E will execute no more than 20 MW of Offers per Participant per RFO.~~

[A minimum level of developer experience is required for participation. Specifically, the Seller and/or a member of Seller's project development team must have either completed or begun construction of a solar project that is at least 500 kW.](#)

Form Agreements Terms and Conditions

Any successful Offers must be formalized by the execution of a ~~Final Agreement~~[final PPA](#) based upon the applicable form PV PPA. PG&E has provided a form Small PV PPA and a form Large PV PPA in Appendices B1 and B2, respectively. The non-price terms and conditions of the form PV PPAs are non-negotiable. Under no circumstance will PG&E accept any Offer that makes changes to the terms and conditions of the form PV PPAs.

The delivery term of any Final Agreement will be 20 years. The period of 20 years will commence on the first date that the Participant delivers the Product to PG&E from the ~~generating facility~~[Project](#).

The form PV PPAs require a Participant to post security in the following amounts and time:

1 to less than 3 MW Offer	3 to 20 MW Offer
Project Development Security: \$20/kW	Project Development Security: \$15/kW

<p><u>within 30 days of the date conditions precedent are met.</u></p>	<p>upon execution of Agreement<u>the PPA</u>. This amount will increase <u>within 30 days</u> once conditions precedent are met. Increased amounts are \$20/kW for projects with contract capacity less than 10 MW, \$35/kW for projects with contract capacity 10 MW or greater.</p>
<p>Delivery Term Security: \$150/kW<u>Not required.</u></p>	<p>Delivery Term Security: an amount equal to six months of the contract price multiplied by the contract quantity in the first applicable contract year, <u>due upon the commercial operation date.</u></p>

Participation in Other Procurement Programs

Neither the Participant nor the owner of the site may participate in the California Solar Initiative Program (“CSI”) or ~~net energy metering~~Net Energy Metering tariff (“NEM”). The owner of the site will be required to sign the letter, attached here as Appendix E, acknowledging familiarity with CSI and NEM, and committing not to apply for either program with respect to the Offer’s generating facility from the date a ~~Final Agreement~~PPA is executed by Participant and PG&E until the contract term ends.

If Participant’s Offer is selected in this ~~Solicitation~~RFO and Participant elects to continue to participate in the ~~Solicitation~~RFO, then Participant must agree not to offer or commit the Project that is subject of the selected Offer to any other party for a period of six (6) months from the date of PG&E’s notification of Offer Selection. Violation of such agreement will result in disqualification from the RFO without any liability to PG&E.

Confidentiality

Except with PG&E’s prior written consent, no Participant shall disclose its participation in this RFO (other than by attendance at any meeting held by PG&E with respect to the RFO, if any) or collaborate on, or discuss with any other Participant or potential Participant bidding strategies, the substance of any Offer(s), including without limitation the price or any other terms or conditions of any Offer(s), or whether an offer has been selected.

All information and documents in Participant’s Offer clearly identified and marked by Participant as “Proprietary and Confidential” on each page on which confidential information appears shall be considered confidential information. PG&E shall not disclose such information and documents to any third parties except for PG&E’s employees, agents, counsel, accountants, advisors, or contractors who have a need to know such information and have agreed to keep such information confidential and except as provided below in this section. In addition, Participant’s Offer will be disclosed to the IE.

Notwithstanding the foregoing, it is expressly contemplated that the information and documents submitted by Participant in connection with this RFO may be provided to the CPUC, its staff, and the Procurement Review Group (“PRG”), established pursuant to D. 02-08-071. PG&E retains the right to disclose any information or documents provided by Participant to the CPUC, the PRG, the California Energy Commission (“CEC”) and to any other entity in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over PG&E at any time even in the absence of a protective order, confidentiality agreement or nondisclosure agreement, as the case may be, without notification to Participant and without liability or any responsibility of PG&E to Participant. PG&E cannot, however, ensure that the CPUC will afford confidential treatment to Participant’s ~~Confidential Information~~ confidential information, or that confidentiality agreements or orders will be obtained from and/or honored by the PRG, the CEC, or the CPUC. By submitting an ~~offer~~ Offer, Participant agrees to the confidentiality provisions described in this section.

Treatment of confidential information by Participant discussed above continues to apply even after Offer is selected as a winning bid.

D.10-04-052 requires PG&E to develop confidentiality protocols to ensure that information given by Participants to PG&E through the interconnection or RFO process is not shared with PG&E’s staff working on utility-owned PV Program generation. PG&E has developed a Code of Conduct to implement these confidentiality protocols, and all PG&E employees and consultants working on the PV Program are required to sign and abide by it. The Code of Conduct is posted on the RFO website at <http://www.pge.com/rfeb2b/energysupply/wholesaleelectricsuppliersolicitation/PVRFO/index.shtml>. PG&E will establish separate files on the Company computer system to manage the information for the PPA portion of the ~~Solar~~ PV program Program, with approved secure access only for the appropriate staff involved in this project. Staff working on the utility ownership RFO will not be given access to these files.

Changes to RFO

By responding to this RFO, each Participant agrees to be bound by all terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E.

C. Evaluation of Offers

Once ~~Sellers~~ Participants have met the minimum requirements for Site Control ~~and~~, Interconnection and Participant Experience, PG&E will use price as the primary factor in selecting Offers. The ~~only~~ other ~~criteria~~ selection criteria will be Supplier Diversity and Local Capacity Requirements.

Pricing. PG&E will rank order all qualifying Offers in order of contract price, with the objective of selecting the lowest-cost Offers that do not exceed 50 MW cumulatively.

Supplier Diversity. It is the policy of PG&E that Women-, Minority-, and Disabled Veteran-owned Business Enterprises (“WMDVBEs”) shall have the maximum practicable opportunity to participate in the performance of Agreements resulting from this Solicitation. PG&E will evaluate whether an Offer will contribute to PG&E’s supplier diversity goals. The Supplier Diversity evaluation will take into account the Participant’s status as a WMDVBE and/or an intent or policy of subcontracting with WMDVBEs.

Local Capacity Requirements. If needed as a tie-breaker criterion when selecting Offers, PG&E will favor Offers that will be located in CAISO-identified local capacity requirement (“LCR”) areas because capacity installed in those areas should provide greater customer value than capacity installed elsewhere in the PG&E system.

D. Submission Deadline, Content, and Form of Offers

All indicative non-binding Offers must be received by PG&E in electronic form by ~~4 weeks from issuance of RFO~~ March 2, 2011 no later than 1:00 p.m. (PPT) via email to PVProgram@pge.com. The IE must also be included in the email transmission. The IE’s email address is waynejoliver@aol.com. An acknowledgement of receipt of each Offer will be sent by PG&E via return email.

Electronic Documents: The electronic documents must be in a Microsoft Word (standard edition 2003 SP3) and/or Excel file (standard edition 2003 SP3), as specified. The Participant should not provide documents in other electronic formats and versions.

Telephonic, telegraphic, hardcopy or facsimile transmission of an Offer is not acceptable.

The following documents, which are located in the Appendices, must be completed and included with each Offer:

1. **Completed Offer** ~~Cover Sheet~~ Form (Appendix A) providing key details of the Participant’s Offer. [Format: Microsoft Excel 2003]
2. **A** ~~Mark-up of the applicable~~ Completed PV PPA (Appendix B1 ~~and~~ or B2) including only the Offer facility details and pricing. Mark-ups of the non-price terms and conditions are not permitted and will result in rejection of the Offer. There are two form Agreements: (a) Small PV PPA (Appendix B1) and (b) Large PV PPA (Appendix B2). For a generating facility rated less than 3 MW, use the Small PV PPA, and for a generating facility rated 3 MW and greater, use the Large PV PPA.

3. ~~Evidence of Site Control~~ Questionnaire and Attestation (Appendix C). Participant must ~~provide proof of~~ attest to site control.
4. **Demonstration of Interconnection Application Submission (Appendix D).** Participant must provide proof that an interconnection application has been submitted.
5. ~~Site Acknowledgement~~ and Commitment of Site Owner Letter (Appendix E). The owner of the site on which Participant's ~~generating facility~~ Project is proposed to be located must attest to familiarity with the CSI and NEM program alternatives. The Participant and the owner of the site must also commit not to apply for either program with respect to the Offer's generating facility from the date the Agreement is executed by Participant and PG&E until the contract term ends.
6. **Supplier Diversity Questionnaire (Appendix F).** Participant must complete the Questionnaire which requires the Participant to describe its status, if applicable, as a WMDVBE and its plans, if any, to engage in activities that support PG&E's supplier diversity goals.

III. **Information Regarding Interconnection to PG&E's Electric System and Interconnection Screens**

Many factors influence the feasibility and cost of interconnecting PV systems to an electric system. These factors include, but are not necessarily limited to, the size of the system, substation and circuit load and capability, voltage regulation and voltage flicker. A map identifying areas in PG&E's service territory where the likelihood of a successful interconnection to PG&E's system is relatively greater is posted at <http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/PVRFO/>. This map is intended to assist Participants in identifying potential for PV systems. However, PG&E does not guarantee that conditions in these areas will remain the same or that property suitable for participation in this RFO is available. In addition, actual interconnection costs will be determined from further detailed studies which will consider a Participant's specific project location, size, and application date relative to PG&E's electric system and other projects in the same vicinity.

PG&E intends to update its map of locations prior to each annual PV PPA RFO, if necessary. The version of the map available at the website link above will always be the most current.

Distribution System Interconnections

Any application for interconnection to PG&E's distribution system must be directed to PG&E's Generation Interconnection Services at the email address_gen@pge.com. Participants can also leave a message at 415-972-5676 to speak with a project manager. For additional information, go to the following site: <http://www.pge.com/mybusiness/customerservice/nonpgeutility/generateownpower/whol>

[esalegeneratorinterconnection/#thesmallgeneratorinterconnectionproceduresfortransmissionssysteminterconnectionstransmissionsgip.](#)

Once at the site, scroll to the section titled “~~The Small Generator Interconnection Procedures for Connecting to PG&E’s Distribution Interconnections (Distribution SGP) System: under 60kV~~” to find the relevant information. As discussed briefly in this section and in further detail in the Wholesale Distribution Tariff (“WDT”), there are ~~3~~three application procedures. Given the size requirement of 1 to 20 MW in the RFO, only ~~2~~two of the application procedures are applicable, and they are: (1) The “Fast Track Procedure” for generators 2 MW in size that pass the “Screens” given in section 2.2 of Attachment E of the WDT, and (2) the “Study Process” for all generators 20 MW and under in size including those that do not qualify for the “Fast Track Procedure.” The WDT can be found at:

http://www.pge.com/includes/docs/pdfs/b2b/newgenerator/wholesalegenerators/wdt.pdf.s_hared/customerservice/nonpgeutility/electrictransmission/tariffs/WD%20Tariff%20-%20eTariff%20Baseline%20Version.pdf

[PG&E’s lead interconnection program manager for this RFO is William Chung \(415-973-1350, mwcb@pge.com\).](#)

~~Within 7 weeks from the date an Offer is selected,~~ On or before June 3, 2011, a Participant must provide evidence that its Selected Offer has ~~passed the first 9 screens in the Fast Track Process, or has received a~~ completed a system impact study or initial review, as applicable.

Resource Adequacy and Reform

Currently, PG&E’s WDT interconnection procedures do not include an option to interconnect under “full capacity” interconnection service. Under the existing “energy only” interconnection service offering, projects are not studied for deliverability, a prerequisite for qualification as a Resource Adequacy (“RA”) resource. PG&E, in coordination with Southern California Edison Company and San Diego Gas and Electric Company, plans to revise its WDT interconnection procedures to offer “full capacity” interconnection service. PG&E plans to develop the tariff adjustments needed to add this new service through a stakeholder process and plans to file changes in the first quarter of 2011.

Please refer to PG&E’s WDT Interconnection Reform Principles Document (PDF, 54 KB).

For more information and to participate in the reform, please contact William Chung.

Each Participant shall submit its Project for study for full deliverability when the opportunity to do so becomes available so as to enable it to provide RA to the extent it is eligible to do so under the interconnection rules and procedures available to it. This may involve requesting a finding of full capacity deliverability in the appropriate forum after seller has initially applied for interconnection. To maintain eligibility to participate in this RFO, Participants must provide documentation on or before 2 weeks of the applicable resource adequacy forum deadline that they have made the request for

full capacity deliverability status. Participant is responsible for funding commercially reasonable network upgrades required to provide full capacity deliverability, and should reflect that assumption in its Offer price.

Transmission System Interconnections

Any application for interconnection to PG&E's transmission system must be directed to the CAISO in accordance with the CAISO Tariff. For more information, visit the CAISO website at: <http://www1.caiso.com/docs/2002/06/11/2002061110300427214.html>. This website provides information for generator interconnection information for generators 20 MW or less.

Please note that the Small Generator Interconnection Process ("SGIP") will be impacted by the Federal Energy Regulatory Commission's recent order regarding the CAISO's Generator Interconnection Process. See California Independent System Operator, 133 FERC ¶ 61,223 (2010). The next window for applications is in March 2011.

~~Within 7 weeks from the date an Offer is selected,~~ On or before June 3, 2011, a Participant must provide evidence that its Selected Offer has a completed CAISO System Impact Study.

IV. Communications:

PG&E has established a website at <http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/PVRFO/index.shtml> where Participants may register and where all PV Program PPA RFO documents, information, announcements and Q&As are posted and available to Participants.

To promote accuracy and consistency of the information provided to all Participants, PG&E discourages Participants from speaking directly with PG&E employees about this RFO. PG&E strongly prefers that all communications take the form of an e-mail directed to PVProgram@pge.com. With respect to matters of general interest raised by any Participant, PG&E may, without reference to the specific Participant raising such matter or initiating the inquiry, post responses on its website. PG&E may, in its sole discretion, decline to respond to any email or other inquiry without liability or responsibility.

Any exchange of material information regarding this RFO between Participant and PG&E must be submitted to both PG&E and the Independent Evaluator, whose email address is waynejoliver@aol.com.

PG&E may elect to respond to inquiries or comments by individual Participants concerning purely procedural or administrative matters, but may also decline to do so in its sole discretion without liability or responsibility.

V. Submission of Signed PPAs

By submitting an Offer, Participant agrees, if its Offer is selected, to execute a definitive ~~Agreement~~PPA consistent with the mark-up of the form PPA submitted with the Participant's Offer ~~(the "Final Agreement")~~.

~~Within 8 weeks of the selection of an Offer,~~On or before June 10, 2011 at 5:00 P.M. PPT, eligible Participants must submit a signed PV PPA for each selected project meeting all RFO conditions both to PG&E at PVProgram@pge.com and the IE at waynejoliver@aol.com.

VI. Procurement Review Group Review

Following completion of the evaluation and rankings of Offers, PG&E will submit the results of the evaluation and its recommendations to its ~~Procurement Review Group~~ ("PRG"). PG&E will consider any alternative recommendations proposed by the PRG. PG&E, in its sole discretion, shall determine whether any alternatives proposed by the PRG should be adopted. PG&E has no obligation to obtain the concurrence of the PRG with respect to any Offer.

PG&E assumes no responsibility for the actions of the PRG, including actions that may delay or otherwise affect the schedule for this solicitation, including the timing of the selection of ~~Participants~~Offers and the obtaining of Regulatory Approval.

VII. Regulatory Approval

The effectiveness of any executed ~~Final Agreement~~PPA is expressly conditioned on PG&E's receipt of CPUC approval of such ~~Final Agreement~~PPA.

VIII. Participant's Waiver of Claims and Limitations of Remedies

Except as expressly set forth in this ~~RFO~~Protocol, by submitting an Offer, ~~the~~ Participant knowingly and voluntarily waives ~~any rights under statute, regulation, state or federal constitution, or common law to assert any claim or complaint or other challenge in any regulatory, judicial or other forum, including the CPUC, except as expressly provided below, the FERC, the Superior Court of the State of California ("State Court") or United States District Court ("Federal Court")~~all remedies or damages at law or equity concerning or related in any way to the ~~RFO~~Solicitation, the Solicitation Protocol and/or any ~~Appendices~~attachments to the ~~RFO~~Solicitation Protocol ("Waived Claims"). The assertion of any Waived Claims by Participant ~~at the CPUC, FERC, State Court, Federal Court, or otherwise shall~~may, to the extent that Participant's Offer has not already been disqualified, ~~provide PG&E the right, and may result in PG&E electing, to reject such Offer or terminate the RFO-automatically disqualify such Offer from further~~consideration in the Solicitation or otherwise.

By submitting an Offer, ~~the~~ Participant ~~further~~ agrees that the ~~sole forum~~only forums in which Participant may assert any challenge with respect to the conduct or results of the

~~RFO is the CPUC. The Solicitation is in the proceeding related to the CPUC's Decision ("D.") 10-04-052 adopted on April 22, 2010, or through the alternative dispute resolution ("ADR") services provided by the CPUC pursuant to Resolution ALJ-185, August 25, 2005. The ADR process is voluntary in nature, and does not include processes, such as binding arbitration, that impose a solution on the disputing parties. However, PG&E will consider the use of ADR under the appropriate circumstances. Additional information about this program is available on the CPUC's website at the following link: www.cpuc.ca.gov/PUBLISHED/Agenda_resolution/47777.htm.~~

Participant further agrees that ~~the sole~~ other than through the ADR process, the only means of challenging the conduct or results of the ~~RFO Solicitation~~ is a protest to ~~PG&E's filing before the CPUC~~ an Advice Letter Filing seeking approval of one or more Agreements entered into as a result of the ~~RFO. The Participant further agrees~~ Solicitation, that the sole basis for any such protest shall be ~~a challenge to the conduct or results of the RFO on the ground~~ that PG&E allegedly failed in a material respect to conduct the ~~RFO Solicitation~~ in accordance with ~~the RFO rules and procedures outlined in this document~~ this Protocol, and the exclusive remedy available to ~~the~~ Participant in the case of such a protest shall be an order of the CPUC that PG&E again conduct any portion of the ~~RFO Solicitation~~ that the CPUC determines was not previously conducted in accordance with the ~~RFO rules and procedures outlined in this document. The Solicitation Protocol~~. Participant expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs, and/or attorneys' fees. Unless PG&E elects to do otherwise in its sole discretion; during the pendency of such a protest or ADR process, the ~~RFO Solicitation~~ and any related regulatory proceedings related to the ~~RFO Solicitation~~ will continue as if the protest had not been filed, unless the CPUC has issued an order suspending the ~~RFO Solicitation~~ or PG&E has elected to terminate the ~~RFO Solicitation~~.

~~The~~ Participant agrees to indemnify and hold PG&E harmless from any and all claims by any other Participant asserted in response to the assertion of a Waived Claim by ~~the~~ Participant or as a result of a Participant's protest to an ~~Advice Letter Filing~~ advice letter filing with the CPUC resulting from the ~~RFO. Solicitation~~.

Except as expressly provided in this ~~RFO Protocol~~, nothing herein; including Participant's waiver of the Waived Claims as set forth above, shall in any way limit or otherwise affect the rights and remedies of PG&E. Nothing in this Protocol is intended to prevent any Participant from informally communicating with the CPUC or its staff regarding this Solicitation or any other matter.

IX. Termination of the RFO-Related Matters

PG&E reserves the right at any time, in its sole discretion, to terminate the RFO for any reason whatsoever without prior notification to Participants and without liability of any kind to or responsibility of PG&E or anyone acting on PG&E's behalf. Without limitation, grounds for termination of the RFO may include the assertion of any Waived

Claims by a Participant or a determination by PG&E that, following evaluation of the Offers, there are no Offers that provide adequate ratepayer benefit.

PG&E reserves the right to change the Offer evaluation criteria for any reason, to terminate further participation in this process by any Participant, to accept any Offer or to enter into any definitive ~~Final Agreement~~[PPA](#), to evaluate the qualifications of any Participant, and to reject any or all Offers, all without notice and without assigning any reasons and without liability to PG&E or anyone acting on PG&E's behalf.

In the event of termination of the RFO for any reason, PG&E will not reimburse the Participant for any expenses incurred in connection with the RFO regardless of whether such Participant's Offer is selected, not selected, rejected or disqualified.

Unless earlier terminated, the RFO will terminate automatically upon the execution of one or more ~~Final Agreements~~[PPAs](#) by selected Participants as described herein. In the event that no ~~Final Agreements~~[PPAs](#) are executed, then the RFO will terminate automatically on 12 months after issuance of the RFO.

X. Participant's Representations and Warranties

Breach by any participant of the representations and warranties of the RFO Attachments is, in addition to any other remedies that may be available to PG&E under applicable law, grounds for immediate disqualification of such participant from participation in the RFO, and depending on the nature or severity of the breach, may also be grounds for terminating the RFO in its entirety.

Appendix A

Summary of Changes to Offer Form

Changes to Offer Form

Product Description tab

- Project Information section
 - Added fields:
 - Offer Number
 - Total Offers
 - Longitude
 - Latitude

- System Characteristics section
 - Added field:
 - System Type
 - Changed field names:
 - Inserted “Panel” in front of field “manufacturer”
 - Changed field “installation area” unit of measurement to acre from square feet

- Offer Characteristic section
 - Changed field names:
 - Changed field “Nameplate capacity of Generating Facility” to “Contact Capacity”
 - Changed field “Estimated Annual Generation (MWh)” to “Average Contract Quantity (MWh)”
 - Added text and fields:
 - Text: “In the event selection of the full amount of this Offer would result in exceedance of the authorized annual solicitation amount, indicate whether Participant is willing to reduce the offer size at the same price”
 - Fields: Contract Capacity Decrease Option, Step Down Increment (MW), Lowered Contract Capacity (MW)

- Electrical Interconnection section
 - Changed field names:
 - Changed “Point of Interconnection” to “Point of Interconnection”
 - Changed “Interconnection System Level” to “Interconnection Voltage Level”
 - Changed “Direct Assignment Costs” to “Est. Direct Assignment Costs (Interconnection Facilities and Distribution Upgrades)”
 - Removed “as defined in CAISO Tariff” from “Estimate of Network Upgrade Cost”
 - Added field:
 - Est. Completion Date of Interconnection (mm,dd,yyyy)

- Removed Project Owners section
- Removed Awards and Subsidies section

- Site Control section
Added field:
 - Date Obtained

- Acknowledgement of Non-Disclosure Terms and Conditions section
Added field:
 - Electronic Signature
 - Select “Yes” to certify that typed name acts as electronic signature

- Acknowledgement of Waiver of Claims and Limitations of Remedies section
 - Electronic Signature
 - Select “Yes” to certify that typed name acts as electronic signature

Instructions tab

- Updated instructions for the added and changed fields

Aggregated Facilities tab

- New and not in previously submitted offer form

Developer Experience tab

- New and not in previously submitted offer form

Contract Quantity tab

- New and not in previously submitted offer form

Appendix B1

Redline of Appendix B1 - Small PV PPA

**SMALL PHOTOVOLTAIC GENERATOR
POWER PURCHASE AGREEMENT
BETWEEN**

**_____ AND
PACIFIC GAS AND ELECTRIC COMPANY**

PACIFIC GAS AND ELECTRIC COMPANY, a California Corporation (“PG&E” or “Buyer”), and _____ (“Seller”) hereby enter into this Power Purchase Agreement (“Agreement”) dated as of _____ (the “Execution Date”). Seller and PG&E are sometimes referred to in this Agreement jointly as “Parties” or individually as “Party.” In consideration of the mutual promises and obligations stated in this Agreement and its appendices, the Parties agree as follows:

1. DOCUMENTS INCLUDED; DEFINED TERMS

This Agreement includes the following appendices, which are specifically incorporated herein and made a part of this Agreement.

Appendix A - Definitions

Appendix B - Initial Energy Delivery Date Confirmation Letter

Appendix C - Time of Delivery (“TOD”) Periods and Factors

Appendix D – Scheduling Requirements

Appendix E – Data and Weather Station Requirements

Appendix F - Counterparty Notification and Forecasting Requirements

Appendix G – Form of Letter of Credit (and Exhibit A – Sight Draft)

Appendix H – Facility Description

Appendix I – Dispute Resolution

2. SELLER’S GENERATING FACILITY, PURCHASE PRICES AND PAYMENT

2.1 Facility. This Agreement governs PG&E’s purchase of Product from the electrical generating facility or Aggregated Facilities (hereinafter referred to as the “Facility” or “Unit”) as described in this Section. Information describing the individual facilities comprising an Aggregated Facility is provided hereto as an attachment as necessary.

2.1.1 The Facility is located at the following site(s):

a. _____ in _____ County, California.

b. _____ in _____ County, California.

c. _____ in _____ County, California.

d. _____ in _____ County, California.

e. _____ in _____ County, California.

f. ~~2.1.1 The Facility is located at~~ _____ in _____ County, California.

2.1.2 The Facility has a nameplate rating of ___ kilowatts (“kW”), at unity power factor at 60 degrees Fahrenheit at sea level and has a primary voltage level of ___ kilovolts (“kV”)(AC). Seller shall not modify the Facility to increase the nameplate rating without the prior written consent of PG&E, and in no event shall PG&E be obligated to receive or pay for, in any hour, any energy that exceeds the nameplate rating.

2.1.3 The Facility is connected to the PG&E electric system at _____ kV.

2.1.4 The Facility’s scheduled Commercial Operation Date is _____, which date may be extended as provided in Section 5.

2.1.5 A description of the Facility, including a summary of its significant components, a drawing showing the general arrangements of the Facility, and a single line diagram illustrating the interconnection of the Facility and loads with PG&E’s electric distribution system, is attached and incorporated herein as Appendix H. If the Facility is an Aggregated Facility, the description must encompass each component facility (by site) and include the gross power rating of each facility.

2.1.6 The name and address PG&E shall use to locate the electric service account(s) and premises used to interconnect the Facility with PG&E’s distribution systems is:

2.1.7 The obligations of Seller hereunder may be satisfied by one or more units participating as a single “Aggregated Facility” subject to the following.

2.1.7.1 An Aggregated Facility shall mean two or more facilities located on one or more contiguous or non-contiguous sites, each of which individual facilities is composed of units that are under common ownership of the Seller and each of which has a nameplate capacity of no less than 500 KWs, provided that all the facilities comprising the Aggregated Facility share a single resource ID (that is, are deemed to deliver to the same p-node.)

2.1.7.2 For the purposes of this Agreement, all references to “site” shall mean “sites” and all references to “Facility” shall mean the “Aggregated Facility,” when applied to an Aggregated Facility.

2.2 Transaction. During the Delivery Term of this Agreement, and as otherwise provided in Section 2.3, Seller shall sell and deliver, or cause to be delivered, and PG&E shall purchase and receive, or cause to be received, Energy produced by and Capacity Attributes provided from the Facility at the Delivery Point. PG&E shall pay Seller the Contract Price, set forth in Section 2.5, in accordance with the terms hereof. Seller agrees to sell to PG&E the Facility’s gross output in kilowatt-hours, net of Station Use and transformation and transmission losses to the Delivery Point, together with all Green Attributes and Resource Adequacy Benefits.

2.2.1 In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to PG&E under this Agreement (except with respect to energy delivered to PG&E in connection with scheduling Energy Deviations) or substitute any element of such Product.

2.2.2 PG&E shall have no obligation to receive or purchase Product from Seller prior to the Initial Energy Delivery Date, or after the end of the Delivery Term, except test energy during the Test Period as provided in Section 2.3.

2.2.3 The Parties agree that the execution and performance of the Parties under this Agreement shall satisfy PG&E's obligations, if any, under the Public Utility Regulatory Policies Act and its implementing regulations, i.e., 18 C.F.R. §292.303.

2.2.4 Seller shall purchase all energy required to serve the Facility's on-site load, net of station use, from PG&E pursuant to PG&E's applicable tariff.

2.3 Test Period. For the period prior to the Initial Energy Delivery Date and after the CAISO informs Seller in writing that Seller may deliver energy from the Facility to the CAISO Grid, which period shall not exceed ninety (90) consecutive days, Seller may deliver test energy to PG&E, which PG&E shall purchase and receive ("Test Period").

2.4 Delivery Term. The Seller shall deliver the Product from the Facility to PG&E for a period of twenty (20) Contract Years ("Delivery Term"), which shall commence on the first date on which energy is delivered from the Facility to PG&E ("Initial Energy Delivery Date") under this Agreement and continue until the end of the last Contract Year unless terminated by the terms of this Agreement. The Initial Energy Delivery Date shall occur after the Test Period only when all of the following conditions have been satisfied:

2.4.1 the Commercial Operation Date has occurred;

2.4.2 the Facility's status as an Eligible Renewable Energy Resource is demonstrated by Seller's receipt of certification from the CEC and is registered in WREGIS;

~~2.4.3 Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Section 7; and~~

~~2.4.4~~ 2.4.3 the Conditions Precedent in Section 12.1 have been satisfied or waived.

As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix B on the Initial Energy Delivery Date

2.5 Contract Price Payment

2.5.1 Contract Price. The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year shall be _____ ("Contract Price").

2.5.2 TOD Periods and TOD Factors. The time of delivery periods ("TOD Periods") and the time of delivery factors ("TOD Factors") are specified in Appendix C.

2.5.3 Monthly TOD Payment. For each month, Buyer shall pay Seller for Delivered Energy in each TOD Period ("Monthly TOD Payment") the amount resulting from multiplying the

Contract Price times the TOD Factor for the applicable TOD Period, times the Delivered Energy in each hour:

$$\text{MonthlyTODPayment} = \sum_{\text{hour}=1}^n \text{Contract Price\$} * \text{TOD Factor} * \text{Delivered Energy MW}_{\text{hour}}$$

2.6 Test Period Payment. During the Test Period, Seller's full compensation for such Product shall be (a) the credits and other payments received by Buyer, as Seller's Scheduling Coordinator, as a result of test energy from the Facility delivered to the real-time market by Seller during the Test Period, including revenues associated with CAISO dispatches and (b) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Facility for, or attributable to, scheduling and deliveries from the Facility under this Agreement. PG&E shall promptly forward such revenues to Seller.

2.7 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Facility, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer.

2.8 Payment

2.8.1 Seller Data and Invoice. On or about the tenth (10th) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from the CAISO; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with this Section 2.

2.8.2 Buyer Payment. Buyer shall pay the undisputed amount of such invoices less the amount of any Forecasting Penalties (as applicable), on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

2.8.3 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 6.2, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the

Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 2.8.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

2.9 CAISO Charges.

2.9.1 Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer as a result of Seller's actions. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer's actions.

2.9.2 Buyer shall be responsible for all CAISO costs and charges with respect to scheduling and imbalances except as provided in Section 2.9.3 below. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits associated with the Energy generated from the Facility.

2.9.3 Forecasting Penalties.

2.9.3.1 In the event Seller does not in a given hour either: (a) provide the access and information required in Appendix E, Section 1; (b) comply with the installation, maintenance and repair requirements of Appendix E, Section 4; or (c) provide the forecast of Available Capacity required in Appendix D, Section 3, and the sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

2.9.3.2 The Performance Tolerance Band is five percent (5%) multiplied by Contract Capacity multiplied by one (1) hour ("Performance Tolerance Band").

2.9.3.3 The Forecasting Penalty shall be equal to one hundred fifty percent (150%) of the Contract Price for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 2.9.3 ("Forecasting Penalty").

2.10 Title and Risk of Loss. Title to and risk of loss related to the Energy produced from and Capacity Attributes provided by the Facility shall transfer from Seller to PG&E at the Delivery Point. Seller warrants that it will deliver to PG&E all Product from the Facility free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

2.11 Governmental Charges. Seller shall be responsible for paying all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product or the Transaction arising at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Facility. Buyer shall be responsible for paying all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point.

2.12 No Additional Incentives. Seller agrees that during the Term of this Agreement, Seller shall not seek additional compensation or other benefits with respect to the Facility pursuant to the Self-Generation Incentive Program as defined in CPUC Decision 01-03-073, the California Solar Initiative as defined in CPUC Decision 06-01-024, PG&E's net energy metering tariff, or programs that succeed or

replace these programs, unless such program(s) are for a future product related explicitly to energy storage on the utility side of the meter. Seller may participate in other California ratepayer subsidized programs relating to energy production with respect to the Facility so long as such participation does not adversely affect Seller's delivery of Product or performance of its obligations under this Agreement.

3. GREEN ATTRIBUTES; RESOURCE ADEQUACY BENEFITS

3.1 Conveyance of Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

Further, "Green Attributes" also means any and all credits that satisfy the requirement to procure electricity from ERRs, pursuant to the California Renewables Portfolio Standard, that are directly attributable to electric production from the Facility. Seller represents that the Energy, Capacity Attributes, ancillary services and Green Attributes from the Facility have not been, nor will be, sold or used to satisfy any obligation other than PG&E's California Renewables Portfolio Standard obligation.

3.2 WREGIS. Prior to the Initial Energy Delivery Date, Seller shall register the Facility in WREGIS and take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time. Subject to the Compliance Cost Cap, Seller warrants that it shall take all necessary steps to ensure the Renewable Energy Credits transferred to Buyer under this Agreement are tracked in WREGIS and transferred in a timely manner to Buyer through WREGIS for purposes of satisfying Buyer's California Renewables Portfolio Standard Requirements, as may be amended or supplemented by the CPUC or CEC from time to time. Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. For purposes of this Section, the term "contract" has the same meaning as the term "Agreement" and the phrase "renewable energy credit" has the same meaning as the defined term "Renewable Energy Credit".

3.3 Resource Adequacy Benefits. Seller conveys to PG&E all Resource Adequacy Benefits attributable to the physical generating capacity of Seller's Facility. Seller shall comply with all applicable reporting requirements and take all reasonable actions and execute documents and instructions necessary to enable Buyer to secure Resource Adequacy Benefits, subject to the Compliance Cost Cap.

3.4 Compliance Cost Cap. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term shall be capped annually at \$10,000.00 per MW of Contract Capacity and in the aggregate throughout the Delivery Term at \$20,000.00 per MW of Contract Capacity (collectively, the "Compliance Cost Cap"). In the event and to the extent that the Compliance Costs incurred by Seller exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap. Within sixty (60) days after the change, amendment, repeal, or enactment of Law after the Execution Date which Seller anticipates will cause it to incur Compliance Costs in excess of the Compliance Cost Cap, Seller shall provide to Buyer Notice with an estimate of the expected annual Compliance Costs caused by such change in Law. Within thirty (30) days of the delivery of such Notice, Buyer shall provide Seller Notice of (a) Buyer's request for Seller to incur the Compliance Costs in excess of the Compliance Cost Cap, (b) Buyer's initiation of Dispute Resolution under Appendix I, or (c) Buyer's waiver of Seller's performance of such obligations. The Parties shall agree on a reasonable allocation, as between Seller and Buyer, over the remaining Delivery Term of any such Compliance Costs that are

incurred after the fifteenth (15th) Contract Year and that are expected to benefit the Facility beyond the Delivery Term of this Agreement. Any Compliance Cost reimbursement by Buyer to Seller shall be subject to CPUC approval, and the amount of such reimbursement shall not be paid by Buyer to Seller until such time as the CPUC has approved such payment. Seller shall be relieved from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap and which give rise to the payment that is the subject of the above referenced CPUC approval until such time as the CPUC issued its approval of the reimbursement payment in final and non-appealable form.

4. REPRESENTATION AND WARRANTIES; COVENANTS

4.1 Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

4.1.1 it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

4.1.2 the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it;

4.1.3 this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

4.1.4 it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;

4.1.5 there is not pending or, to its knowledge, threatened against it or any of its affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and

4.1.6 it is acting for its own account, has made its own independent decision to enter into this Agreement, and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

4.2 General Covenants. Each Party covenants that throughout the Term of this Agreement:

4.2.1 it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

4.2.2 it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

4.2.3 it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.

4.3 Seller Representation and Warranty and Covenant. In addition to the representations and warranties specified in Sections 4.1 and 4.2, Seller makes the following additional representations and warranties as of the Execution Date:

4.3.1 Seller has not received an incentive under the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, or the California Solar Initiative, as defined in CPUC Decision 06-01-024.

4.3.2 Seller warrants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Facility in order to receive Resource Adequacy Benefits.

4.3.3 Covenant. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

4.3.4 The term "commercially reasonable efforts" as used in Section 4.3.3 of this Agreement shall not require Seller to incur Compliance Costs in excess of the Compliance Cost Cap.

5. GUARANTEED COMMERCIAL OPERATION DATE

5.1 Milestones. The Parties agree time is of the essence in regards to the Agreement. As such, the Parties also agree the Commercial Operation Date must be achieved in a timely fashion or Buyer will suffer damages. Seller shall comply with Buyer's reasonable request for any requested documentation to support the Seller's progress in achieving the Commercial Operation Date within twenty (20) Business Days of receipt of such request by Seller.

5.2 Milestone Report. Within thirty (30) days after the close of each month from the first month following the Execution Date until the Commercial Operation Date, Seller shall provide to Buyer a monthly progress report in a form provided by Buyer and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The monthly progress report shall indicate whether Seller has met or is on target to achieve Commercial Operation.

5.3 Construction Start Date. The Construction Start Date shall occur no later than three hundred and sixty (360) days after the ~~Execution~~Effective Date of this Agreement, provided that the Construction Start Date may be extended on a day-for-day basis for not more than one hundred and eighty (180) days:

5.3.1 if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Facility, but is unable to obtain such permits due to delays beyond Seller's reasonable control ("Permitting Delay");

5.3.2 if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to have the Facility physically interconnected to the PG&E system or CAISO Grid and to complete all electric system upgrades needed, if any, in order to interconnect the Facility to the PG&E system or CAISO Grid, but fails to secure any necessary commitments from CAISO or PG&E for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"); or,

5.3.3 in the event of Force Majeure without regard to Transmission Delay or Permitting Delay provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

5.4 Guaranteed Commercial Operation Date Seller shall demonstrate Commercial Operation no later than five hundred and forty (540) days after the ~~Execution~~Effective Date of this Agreement (the "Guaranteed Commercial Operation Date"), provided that the Guaranteed Commercial Operation Date may be extended on a day-for-day basis for (a) any extension claimed by Seller pursuant to and in accordance with Section 5.3, and (b) Force Majeure occurring after the Construction Start Date, provided that the total number of such further extension days under this subpart (b) shall not exceed one hundred and eighty (180) days.

5.5 Permitted Extensions. If Seller claims Permitting Delay, Transmission Delay or Force Majeure in accordance with Section 5.3 or 5.4 (collectively or individually, "Permitted Extension(s)"), such extensions shall be concurrent, rather than cumulative, during any overlapping days. If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days Notice prior to the Construction Start Date or the Guaranteed Commercial Operation Date (as applicable), which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension; provided that in the case of a Force Majeure, if sixty (60) days is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure.

6. GENERAL CONDITIONS

6.1 Facility Care, Interconnection and Transmission Service. Seller shall execute a Small Generator Interconnection Agreement ("SGIA") with PG&E's Generation Interconnection Services Department and pay and be responsible for designing, installing, operating, and maintaining the Facility in accordance with all applicable laws and regulations and shall comply with all applicable PG&E, CAISO, CPUC and FERC tariff provisions, including applicable interconnection and metering requirements. Seller shall also comply with any modifications, amendments or additions to the applicable tariff and protocols. Prior to the Commercial Operation Date, Seller shall include updates on the status of the SGIA in Seller's monthly progress report provided pursuant to Section 5.2. During the Delivery Term, Seller shall arrange and pay independently for any and all necessary costs under any interconnection agreement with PG&E. To make deliveries to PG&E, Seller must maintain an interconnection agreement with PG&E in full force and effect.

6.2 Metering Requirements. All output from the Facility, or in the case of an Aggregated Facility, all output from each site composing the Facility, per the terms of this Agreement must be delivered through a single CAISO revenue meter per site and that meter must be dedicated exclusively to the Facility ~~described herein~~(or in the case of an Aggregated Facility, the portion of the Facility located on such site). All Product purchased under this Agreement must be measured by the Facility's CAISO

revenue meter(s) to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Facility. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 2.8, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

6.3 Standard of Care. Seller shall: (a) maintain and operate the Facility and Interconnection Facilities, except facilities installed by PG&E, in conformance with all applicable Law and regulations and in accordance with Good Utility Practices, as defined by PG&E's Wholesale Distribution Tariff and the CAISO Tariff, as they may be amended, supplemented or replaced (in whole or in part) from time to time; (b) obtain any governmental authorizations and permits required for the construction and operation thereof; and (c) generate and perform services hereunder in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs and Good Utility Practices, as provided in clause (a) above. Seller shall reimburse PG&E for any and all losses, damages, claims, penalties, or liability PG&E incurs as a result of Seller's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of the Facility throughout the Term of this Agreement.

6.4 Access Rights. PG&E, its authorized agents, employees and inspectors shall have the right to inspect the Facility on reasonable advance notice (which in no case shall be less than three (3) Business Days) during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to PG&E by Law, or its tariff schedules, PG&E Interconnection Handbook and rules on file with the CPUC. In connection with the foregoing, PG&E, its authorized agents, employees and inspectors must (a) at all times adhere to all safety and security procedures as may be required by Seller, (b) not interfere with the operation of the Facility, and (c) unless waived in writing by Seller, be escorted by a representative of Seller. PG&E shall make reasonable efforts to coordinate its emergency activities with the safety and security department(s), if any, of the Facility operator. Seller shall keep PG&E advised of current procedures for communicating with the Facility operator's safety and security department(s).

6.5 Protection of Property. Each Party shall be responsible for protecting its own facilities from possible damage resulting from electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities and such other Party shall not be liable for any such damages so caused.

6.6 Performance Excuses.

6.6.1 PG&E Performance Excuse. PG&E shall not be obligated to accept or pay for Energy produced by or Capacity Attributes provided from the Facility during a Curtailment Period, or Force Majeure.

6.6.2 Seller Curtailment. Seller shall interrupt or reduce Energy deliveries from the Facility as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Curtailment Period.

6.7 Notices of Outages. Whenever possible, PG&E shall give Seller reasonable notice of the possibility that interruption or reduction of deliveries may be required and shall coordinate with Seller to mitigate the impact of such outages consistent with PG&E and CAISO Tariffs and the SGIA.

6.8 Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Facility reasonably necessary to permit Buyer to comply with such requirements, if any, subject to the Compliance Cost Cap.

7. PERFORMANCE ASSURANCE

7.1 Project Development Security; ~~Delivery Term Security.~~ Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

7.1.1 Project Development Security in the amount equal to \$_____ [amount equal to \$20/kw], and in the form of _____ [specify cash or Letter of Credit] from a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Section 12.1 are either satisfied or waived ~~until Seller posts Delivery Term Security as specified below.~~

~~7.1.2 Delivery Term Security in the amount equal to \$_____ [amount equal to \$150/kw] and in the form of _____ [specify cash, Letter of Credit, or Guarantee] from the Commercial Operation Date until the end of the Term.~~

7.2 Liquidated Damages. Except for termination of this Agreement for failure of the Facility to achieve timely Commercial Operation as provided in Section 13.1.1, the amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. The Parties agree that Seller's forfeiture of the Project Development Security in connection with termination of the Agreement as provided in Section 13.1.1 shall be considered liquidated damages and not a penalty, in accordance with Section 9.

7.3 Termination of Project Development Security. If after the Commercial Operation Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security. ~~The Project Development Security due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security toward the Delivery Term Security.~~

7.4 Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security ~~or Delivery Term Security, as applicable, at the Interest Rate; provided that, such interest shall be retained by Buyer until Seller posts the Delivery Term Security. Upon Seller's posting of the Delivery Term Security, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified by Seller. After Seller posts the Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for such Delivery Term Security.~~

~~7.5 Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 7.4 above, to Seller promptly after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 13, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including but not limited to payments pursuant to Section 2.9 (CAISO Charges), indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting)~~

8. INDEMNITY

Each Party as indemnitor shall save harmless and indemnify the other Party and the directors, officers, employees, agents and representatives of such other Party against and from any and all loss and liability for injuries to persons including employees of either Party, and damages, including property of either Party, resulting from or arising out of: (a) the engineering, design, construction, maintenance, or operation of; or (b) the installation of replacements, additions, or betterments to the indemnitor's facilities. This indemnity and save harmless provision shall apply notwithstanding the active or passive negligence of the indemnitee. Neither Party shall be indemnified for liability or loss, resulting from its sole negligence or willful misconduct. The indemnitor shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity and shall pay all costs, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.

9. LIMITATION OF DAMAGES

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 8 (INDEMNITY), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

10. NOTICES

Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Whenever this Agreement requires or permits delivery of a "notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified below. A notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. All written notices shall be directed as follows:

To PG&E: Pacific Gas and Electric Company
Attention: Manager, Contract Management
245 Market Street, Mail Code N12E

San Francisco, CA 94177-0001

To Seller: _____

11. INSURANCE

11.1 General Liability Coverage.

11.1.1 Seller shall maintain during the performance hereof, "General Liability Insurance" of not less than \$1,000,000 or below of combined single limit or equivalent for bodily injury, personal injury, and property damage as the result of any one occurrence.

11.1.2 General Liability Insurance shall include coverage for Premises-Operations, Owners and Contractors Protective, Products/Completed Operations Hazard, Explosion, Collapse, Underground, Contractual Liability, and Broad Form Property Damage including Completed Operations.

11.1.3 Such insurance shall provide for thirty (30) days written notice to PG&E prior to cancellation, termination, alteration, or material change of such insurance.

11.2 Additional Insurance Provisions.

11.2.1 Evidence of coverage described above in Paragraph 11.1 shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by PG&E.

11.2.2 PG&E shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

11.2.3 Seller shall furnish the required certificates and endorsements to PG&E prior to commencing operation.

11.2.4 All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

Pacific Gas and Electric Company
Attention: Manager, Insurance Department
77 Beale Street, Room E280
San Francisco, CA 94105

12. TERM OF AGREEMENT

12.1 Conditions Precedent. The Term shall commence and all terms and conditions contained in this Agreement shall be in full force and effect, enforceable and binding in all respects, upon the occurrence of all of the following ("Conditions Precedent"):

12.1.1 This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;

12.1.2 CPUC Approval has been obtained for the terms, conditions and pricing of this Agreement;

12.1.3 The advice letter submitting this Agreement to the CPUC becomes effective in accordance with CPUC General Order 96-B or its successor order, or as otherwise provided by CPUC order.

12.2 Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 12.1.2 and 12.1.3 are not satisfied or waived in writing by both Parties on or before one hundred and eighty (180) days from the date on which Buyer files an advice letter submitting this Agreement to the CPUC, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

12.3 Term.

12.3.1 The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 12.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 13 of this Agreement (the "Term"); provided that this Agreement shall thereafter remain in effect (a) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security ~~or Delivery Term Security, as applicable~~, is released and/or returned as applicable (the "Satisfaction Date") or (b) in accordance with the survival provisions set forth in Section 12.3.2 below.

12.3.2 Survival. Notwithstanding anything to the contrary in this Agreement, (a) all rights under Section 8 (Indemnity) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (b) all rights and obligations under Section 15 (Confidentiality) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years.

12.4 Binding Nature. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under: Appendix A; Sections: 2.2, 2.4, 4.1, 4.2, 4.3; and Articles: 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21 and , 22.

13. EVENTS OF DEFAULT. An "Event of Default" shall mean:

13.1 With respect to Seller, the occurrence of any of the following:

13.1.1 The Facility has not achieved Commercial Operation by the Guaranteed Commercial Operation Date, as extended by any Permitted Extensions;

13.1.2 Following the Commercial Operation Date, Seller has not sold or delivered Energy from the Facility to PG&E for a period of twelve (12) consecutive months, provided that the time period under this Section 13.1.2 shall be extended for up to an additional sixty (60) days if Seller is making diligent efforts to cure such failure to perform; or

13.1.3 Seller breaches the covenant set forth in Section 4.3.3 of the Agreement and fails to remedy or cure such failure to perform within thirty (30) days, provided during such period in lieu of the Contract Price, Buyer shall pay Seller for Delivered Energy based on the simple average overall

Settlement Intervals in the cure period of the day-ahead Locational Marginal Price for the Existing Zone Generation Trading Hub associated with the current NP 15 zone.

13.2 With respect to either Party, the occurrence of any of the following:

13.2.1 If any representation or warranty in this Agreement made by the other Party is false or misleading in any material respect when made or when deemed made, or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within twenty (20) Business Days after Notice thereof from the non-breaching Party to the breaching Party;

13.2.2 Except for an obligation to make payment when due, upon the other Party's failure to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure) if such failure is not remedied within forty-five (45) days after Notice of such failure is provided by the non-breaching Party to the breaching Party of such failure; or

13.2.3 If the other Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice of such failure is provided by the non-breaching Party to the breaching Party.

13.3 Rights upon Event of Default. If an Event of Default described in Section 13.1 or 13.2 has occurred and is continuing, the non-defaulting Party shall have the right to: (a) send notice, designating a day, no earlier than five days after such notice is deemed to be received (as provided in Section 10) and no later than 20 days after such notice is deemed to be received (as provided in Section 10), as an early termination date of this Agreement ("Early Termination Date"); (b) accelerate all amounts owing between the Parties; (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date; (d) withhold any payments due to the Defaulting Party under this Agreement; (e) suspend performance; (f) exercise its rights to draw upon and retain Performance Assurance as provided in Section 7; and (g) exercise any other rights or remedies available at law or in equity against the other Party (including seeking monetary damages).

14. SCHEDULING

14.1 Scheduling Obligations. PG&E shall be Seller's designated Scheduling Coordinator (as defined by CAISO tariff). Specific scheduling duties and obligations of the Parties are identified in Appendix D.

14.2 EIRP Requirements. The Parties acknowledge that as of the Execution Date, the CAISO has not yet established protocols for scheduling solar power to permit solar projects to participate in EIRP. As soon as practicable, but not more than ninety (90) days after such protocols are finalized and made effective by the CAISO, Seller shall apply to have the Facility certified as a Participating Intermittent Resource and shall thereafter diligently pursue such process to completion, including negotiating and executing all necessary documents to become a Participating Intermittent Resource (defined by the CAISO Tariff). Seller shall provide Buyer with a copy of the notice from CAISO certifying the Facility as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. Subject to the Compliance Cost Cap, following certification and whenever applicable, Seller shall participate in and comply with EIRP as directed by Buyer or Third-Party SC and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during all hours of the Delivery Term.

14.3 Access to Data and Installation and Maintenance of Weather Stations. Seller shall comply with the data and weather station requirements identified in Appendix E.

14.4 Outage Notification. Seller shall comply with PG&E's Outage Notification Procedures.

15. CONFIDENTIALITY

15.1 Neither Party shall disclose the non-public terms or conditions of this Agreement to a third party, other than as follows: (a) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential; (b) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision 02-08-071, subject to a confidentiality agreement; (c) to the CPUC under seal for purposes of review; (d) for disclosure of those certain terms specified in and pursuant to subsection 15.4; (e) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (f); or (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC.

15.2 If a Party is required to disclose confidential information in order to satisfy an obligation pursuant to subsection 15.1(e) above ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (a) to notify the other Party prior to disclosing the confidential information and (b) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

15.3 The Parties agree that the confidentiality provisions are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions shall govern confidential treatment of all information exchanged between the Parties as of and after the Execution Date.

15.4 Notwithstanding anything to the contrary contained herein, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, Delivery Term, Facility characteristics and location, Contract Capacity, anticipated Commercial Operation Date, Initial Energy Delivery Date, Delivery Point, and the net power rating of the Facility.

16. ASSIGNMENT

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to (a) its financing provider(s) or (b) an affiliate with equal or greater creditworthiness than the transferring Party, provided that any such assignee shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party, and provided further that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.

17. APPLICABLE LAW

17.1 This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its

17.2 Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Buyer will require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term: (a) complete financial statements and notes to financial statements; and (b) financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter. Any information provided to Buyer pursuant to this Section 17.2 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

17.3 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

18. SEVERABILITY

If any provision in this Agreement is determined to be invalid, void or unenforceable by the CPUC or any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

20. MOBILE SIERRA

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United States Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

21. PREVAILING WAGE

21.1 Producer shall use reasonable efforts to ensure that all Electricians hired by Producer, and its contractors and subcontractors are paid wages at rates not less than those prevailing for electricians performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code. Nothing herein shall require Producer, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the Labor Code.

21.2 To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.14, subdivision (h).

22. GENERAL

The CPUC has reviewed and approved the form of this Agreement. No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both parties. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below.

[SELLER, a (*include place of formation and business type*)]

**PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A

Definitions

- 1.1. “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2. ~~1.2.~~ “Aggregated Facility” has the meaning set forth in Section 2.1.7.
- 1.3. ~~1.2.~~ “Available Capacity” means the capacity from the Facility, expressed in whole megawatts, that is available to generate Product.
- 1.4. ~~1.3.~~ “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday during the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party in each instance shall be the Party from whom the notice, payment or delivery is being sent.
- 1.5. ~~1.4.~~ “Buyer” has the meaning set forth in the Preamble.
- 1.6. ~~1.5.~~ “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.
- 1.7. ~~1.6.~~ “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO revenue meter.
- 1.8. ~~1.7.~~ “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.
- 1.9. ~~1.8.~~ “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case “CAISO Penalties” do not include the costs and charges related to Scheduling and imbalances as addressed in Section 2.9.3 of this Agreement.
- 1.10. ~~1.9.~~ “CAISO Tariff” means the CAISO FERC Electric Tariff, Fourth Replacement Volume Nos. I and II, as amended, supplemented or replaced in whole or in part from time to time.
- 1.11. ~~1.10.~~ “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bill 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions may be amended or supplemented from time to time.
- 1.12. ~~1.11.~~ “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

- 1.13. ~~1.12.~~ “CEC” means the California Energy Commission or its successor agency.
- 1.14. ~~1.13.~~ “Commercial Operation” means the Facility described in Section 2.1 is operating and is in compliance with applicable interconnection and system protection requirements and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement.
- 1.15. ~~1.14.~~ “Commercial Operation Date” means the date on which Seller provides written notification of Commercial Operation to the CAISO as required under the CAISO Tariff or California ISO Generator Interconnection Manual.
- 1.16. ~~1.15.~~ “Compliance Cost Cap” has the meaning set forth in Section 3.4.
- 1.17. ~~1.16.~~ “Compliance Costs” means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under Sections 3.2 (WREGIS), 3.3 (Resource Adequacy Benefits), 4.3.3 (Covenant), 6.8 (Greenhouse Gas Emissions Reporting), and 14.2 (EIRP Requirements), including but not limited to registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller's internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date.
- 1.18. ~~1.17.~~ “Conditions Precedent” has the meaning set forth in Section 12.1.
- 1.19. ~~1.18.~~ “Construction Start Date” means the later to occur of the date on which Seller delivers to Buyer (a) a copy of the Notice to Proceed that Seller has delivered to the engineering, procurement, and construction contractor for the Facility, and (b) for ground-mounted Projects, Notice that grading and site preparation for the Facility has commenced, and for a Facility mounted on buildings or structures, notice that similar physical material actions toward installation of the Facility have begun.
- 1.20. ~~1.19.~~ “Contract Capacity” shall mean [_____] MW (AC) net of all auxiliary loads and station electrical uses.
- 1.21. ~~1.20.~~ “Contract Price” has the meaning set forth in Section 2.5.1.
- 1.22. ~~1.21.~~ “Contract Year” means a period of twelve (12) consecutive months with the first Contract Year commencing on the first day of the month immediately following the Initial Energy Delivery Date and each subsequent Contract Year commencing on the anniversary of the Initial Energy Delivery Date.
- 1.23. ~~1.22.~~ “CPUC” means the California Public Utilities Commission, or successor entity.
- 1.24. ~~1.23.~~ “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- (a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and
 - (b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the

California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

For purposes of this section, a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings shall be deemed to satisfy the CPUC decision requirement.

- 1.25. ~~1.24.~~ “Curtailment Period” means the period of time during which there is any of the following: (a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any system emergency, as defined in the CAISO Tariff (“System Emergency”), (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected; (b) a curtailment directed by the CAISO due to over generation as defined in the CAISO Tariff, or a forecast or expectation of over generation, including, but not limited to, a request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (c) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (d) scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or (e) a curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.
- 1.26. ~~1.25.~~ “Day-Ahead Availability Notice” has the meaning set forth in Appendix D, Section 3(b).
- 1.27. ~~1.26.~~ “Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.
- 1.28. ~~1.27.~~ “Delivered Energy” means all Energy produced from the Facility and delivered to the Delivery Point as measured in MWh at the CAISO revenue meter of the Facility.
- 1.29. ~~1.28.~~ “Delivery Point” means the point of interconnection to the PG&E distribution system.
- 1.30. ~~1.29.~~ “Delivery Term” has the term set forth Section 2.4.
- ~~1.30. — “Delivery Term Security” means the Performance Assurance that Seller is required to maintain, as specified in Section 7, to secure performance of its obligations during the Delivery Term.~~
- 1.31. “Dispute Resolution” means the process set forth in Appendix I.
- 1.32. “Early Termination Date” has the meaning set forth in Section 13.3.
- 1.33. “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.

- 1.34. “Eligible Intermittent Resource Program” or “EIRP” means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.
- 1.35. “Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in Public Utilities Code Sections 399.12 and California Public Resources Code Section 25741, as either code provision may be amended or supplemented from time to time.
- 1.36. “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 1.47, “Green Attributes,” the word “energy” shall have the meaning set forth in this definition.
- 1.37. “Energy Deviation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid (as defined in the CAISO Tariff) submitted for the Project for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and (b) Delivered Energy for the Settlement Interval.
- 1.38. “Execution Date” means the date set forth in the Preamble.
- 1.39. “Existing Zone Generation Trading Hub” has the meaning set forth in the CAISO Tariff.
- 1.40. “Facility” has the meaning set forth in Section 2.1.
- 1.41. “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.42. “Forecasting Penalty” has the meaning set forth in Section 2.9.3.3.
- 1.43. “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (a) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (b) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (c) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Force Majeure shall not be based on: (i) PG&E’s inability economically to use or resell the energy or capacity purchased hereunder; (ii) Seller’s ability to sell the energy, capacity or other benefits produced by or associated with the Facility at a price greater than the price set forth in this Agreement, (iii) Seller’s inability to obtain approvals of any type for the construction, operation, or maintenance of the Facility; (iv) Seller’s inability to obtain sufficient fuel to operate the Facility, except if Seller’s inability to obtain sufficient fuel is caused by an event of Force Majeure; (v) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure; (vi) a strike or labor dispute limited only to Seller, Seller’s affiliates, the engineering, procurement, and construction contractor or subcontractors thereof; or (vii) any equipment failure not caused by an event of Force Majeure.
- 1.44. “Forced Outage” means any unplanned reduction or suspension of the electrical output from the Facility resulting in the unavailability of the Facility, in whole or in part, in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of the Facility for operation, in whole or in part, for maintenance or repair that is not a scheduled maintenance outage and not the result of Force Majeure.

- 1.45. “Good Utility Practice” has the meaning set forth in the CAISO Tariff.
- 1.46. “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.
- 1.47. “Governmental Charges” has the meaning set forth in Section 2.11.
- 1.48. “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.
- 1.49. “Guaranteed Commercial Operation Date” has the meaning set forth in Section 5.4.
- 1.50. “Hour-Ahead Scheduling Process” has the meaning set forth in the CAISO Tariff.
- 1.51. “Integrated Forward Market Load Uplift Obligation” has the meaning set forth in the CAISO Tariff.
- 1.52. “Interconnection Facilities” has the meaning set forth in the CAISO Tariff.
- 1.53. “Initial Energy Delivery Date” has the meaning set forth in Section 2.4.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

- 1.54. “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.
- 1.55. “Interest Payment Date” means the last Business Day of each calendar year.
- 1.56. “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.
- 1.57. “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.I5-519, or its successor publication.
- 1.58. “Law” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing.
- 1.59. “Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by (a) a U.S. commercial bank or (b) a U.S. branch of a foreign commercial bank with sufficient assets in the United States, as determined by Buyer, with either such bank having a Credit Rating of at least A from S&P or A2 from Moody’s, substantially in the form as contained in Appendix G to this Agreement.
- 1.60. “Locational Marginal Price” has the meaning set forth in the CAISO Tariff.
- 1.61. “Market Price Referent” means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c), as may be amended or modified from time to time.
- 1.62. “Monthly Forecast” has the meaning set forth in Appendix D, Section 3(a).
- 1.63. “Monthly TOD Payment” has the meaning set forth in Section 2.5.3.
- 1.64. “Notice” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).
- 1.65. “Outage Notification Procedures” means the procedures specified in Appendix F. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.
- 1.66. “Participating Intermittent Resource” has the meaning set forth in the CAISO Tariff.
- 1.67. “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.

- 1.68. “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security.
- 1.69. “Performance Tolerance Band” has the meaning set forth in Section 2.9.3.2.
- 1.70. “Permitted Extensions” means extensions to either of the Construction Start Date or Guaranteed Commercial Operation Date due to Permitting Delay, Transmission Delay, Force Majeure Construction Extension, as applicable, pursuant to Section 5.3 or 5.4.
- 1.71. “Permitting Delay” has the meaning set forth in Section 5.3.1.
- 1.72. “PG&E Wholesale Distribution Tariff” means the Pacific Gas and Electric Company FERC Electric Tariff First Revised Volume No. 4, as it may be amended, supplemented or replaced (in whole or in part) from time to time.
- 1.73. “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Facility, (b) cannot be reasonably conducted during Facility operations, and (c) causes the generation level of the Facility to be reduced by at least ten percent (10%) of the Available Capacity.
- 1.74. “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Facility is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Available Capacity.
- 1.75. “Producer” has the meaning set forth under the definition of “Seller.”
- 1.76. “Product” means the Energy, capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Facility, including, without limitation, renewable attributes, Renewable Energy Credits, [Resource Adequacy Benefits](#), Capacity Attributes and Green Attributes.
- 1.77. “Project Development Security” is the collateral required of Seller, as specified and referred to in Section 7.1
- 1.78. “Renewable Energy Credit” has the meaning set forth in Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.
- 1.79. “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions 04-10-035 and 05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings 04-04-003 and 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.
- 1.80. “Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.
- 1.81. “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision, or any other resource adequacy

laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time during the Delivery Term.

- 1.82. “Satisfaction Date” has the meaning set forth in Section 12.3.1.
- 1.83. “Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator”, of the CAISO Tariff, as amended from time to time.
- 1.84. “Scheduling and Logging system for the CAISO” or “SLIC” has the meaning set forth in the CAISO Tariff.
- 1.85. “Seller” has the meaning set forth in the Preamble. For the purposes of Section 21.1, the term “Producer” has the same meaning as the term “Seller”.
- 1.86. “Settlement Interval” means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
- 1.87. “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.
- 1.88. “SGIA” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and, as applicable, the CAISO governing the terms and conditions of Seller’s interconnection with the Participating TO’s transmission or distribution system, including any description of the plan for interconnecting to Participating TO’s transmission or distribution system.
- 1.89. “Station Use” means energy consumed within the Facility’s electric energy distribution system as losses, as well as energy used to operate the Facility’s auxiliary equipment. The auxiliary equipment may include, but is not limited to, forced and induced draft fans, cooling towers, boiler feeds pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems, and sump pumps.
- 1.90. “Term” has the meaning provided in Section 12.3.1.
- 1.91. “Test Period” has the meaning set forth in Section 2.3.
- 1.92. “Third-Party SC” means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Facility pursuant to this Agreement.
- 1.93. “TOD Factors” has the meaning set forth in Section 2.5.2
- 1.94. “TOD Periods” has the meaning set forth in Section 2.5.2.
- 1.95. “Transaction” means the particular transaction described in its entirety in Section 2.2.
- 1.96. “Transmission Delay” has the meaning set forth in Section 5.3.2.
- 1.97. “Unit” has the meaning set forth in Section 2.1.

- 1.98. "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

APPENDIX B

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Small Photovoltaic Power Purchase Agreement dated _____ (“Agreement”) by and between Pacific Gas and Electric Company (“PG&E”) and _____ (“Seller”), this letter serves to document the parties further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and PG&E has received the Energy, as specified in the Agreement, as of this _____ day of _____, _____. This letter shall confirm the Initial Energy Delivery Date, as defined in the Agreement, as the date referenced in the preceding sentence.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below:

[SELLER]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Appendix C
Time of Delivery (“TOD”) Periods and Factors

Monthly Period	TOD PERIOD		
	1. Super-Peak	2. Shoulder	3. Night
A. June - September	A1	A2	A3
B. Oct. - Dec., Jan. & Feb.	B1	B2	B3
C. March – May	C1	C2	C3

Monthly Period Definitions. The Monthly Periods are defined as follows:

- A. June - September;
- B. October, November, December, January and February; and
- C. March - May.

TOD Period Definitions. The TOD Periods are defined as follows:

1. **Super-Peak** (5x8) = hours ending 13-20 (Pacific Prevailing Time (PPT)) Monday - Friday (*except* NERC Holidays) in the applicable Monthly Period.
2. **Shoulder** = hours ending 7 - 12, 21 and 22 PPT Monday - Friday (*except* NERC Holidays); and hours ending 7-22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.
3. **Night** (7x8) = hours ending 1-6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

“NERC Holidays” mean the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “NERC Holiday” remains on that Saturday. Notwithstanding anything to the contrary in this Section 4.2, NERC Holidays shall be calculated as “Shoulder” hours for all non-“Night” hours and any remaining hours shall be calculated as “Night” hours.

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June - September	2.20490	1.12237	0.68988
B. Oct. - Dec., Jan. & Feb.	1.05783	0.93477	0.76384
C. March – May	1.14588	0.84634	0.64235

APPENDIX D – SCHEDULING REQUIREMENTS

1. Designation of Scheduling Coordinator. At least ninety (90) days before the beginning of the Test Period Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller’s Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller’s Scheduling Coordinator. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly. Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Period and Delivery Term.

2. Buyer’s Responsibilities as Scheduling Coordinator. Buyer or Third-Party SC shall comply with all obligations as Seller’s Scheduling Coordinator under the CAISO Tariff and shall conduct all Scheduling in full compliance with the terms and conditions of this Agreement, the applicable CAISO Tariff, all requirements of EIRP (if applicable), and protocols and scheduling practices for the Day-Ahead Schedule or in the Hour-Ahead Scheduling Process.

3. Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller’s availability forecasts below shall include Facility availability and updated status of photovoltaic panels, inverters, transformers, and any other equipment that may impact availability. To avoid Forecasting Penalties set forth in Section 2.9.3 of this Agreement, Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including but not limited to automated forecast and outage submissions.

(a) Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer (“Monthly Forecast”).

(b) Daily Updates to the Forecast of Available Capacity. During each month of the Delivery Term, if the hourly Available Capacity for any hour differs by more than one (1) MW relative to the forecast for such hour provided for that day in the Monthly Forecast of Available Capacity, whether due to Forced Outage, Force Majeure or other cause, Seller or Seller’s agent shall provide a revised day ahead forecast of Available Capacity (the “Day-Ahead Availability Notice”) to Buyer or Third-Party SC (as applicable) via Buyer’s internet site, for each affected day no later than fourteen (14) hours before the beginning of the “Preschedule Day” (as defined by the WECC) for such affected day. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (1) Monday – Preschedule Day for Tuesday
- (2) Tuesday – Preschedule Day for Wednesday
- (3) Wednesday – Preschedule Day for Thursday

- (4) Thursday – Preschedule Day for Friday and Saturday
- (5) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, “Prescheduling Calendar.” Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller’s forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is more than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day-Ahead Schedules, then Seller must notify Buyer of such change by telephone (at Buyers’ discretion) and shall send a revised notice to Buyer’s internet site indicated in Appendix F, section 8. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

Day-Ahead Trading Desk
Primary Telephone: (415) 973-6222
Backup Telephone: (415) 973-4500

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, (i) until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Buyer and Seller and (ii) to the extent Seller’s failure contributes to an imbalance charge, Seller shall be subject to the Forecasting Penalties.

(c) Hourly Forecast of Available Capacity. During the Delivery Term, if the hourly Available Capacity for any hour differs by more than one (1) MW relative to the forecast for such hour in either the Monthly Forecast of Available Capacity or the Day-Ahead Availability Notice, whether due to Forced Outage, Force Majeure or other cause, Seller shall notify Buyer of such changes in Available Capacity as soon as reasonably possible, but no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit a schedule in the Hour-Ahead Schedules Process. Available Capacity changes after one (1) hour before the CAISO deadline for Hour-Ahead Scheduling Process, but before the CAISO Hour-Ahead Scheduling Process deadline, shall also be reported by Seller to Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage immediately following Seller Available Capacity notification to the CAISO via SLIC, if applicable and Seller shall follow PG&E’s Outage Notification Procedures. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These notices and changes to Available Capacity shall be communicated by telephone (at Buyer’s discretion) to Buyer’s Hour-Ahead Trading Desk and shall be sent to Buyer’s internet site indicated in Appendix F, section 8:

Hour-Ahead Trading Desk
Primary Telephone: (415) 973-4500

4. Replacement of Scheduling Coordinator.

(a) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller’s SC. These actions include (i) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (ii) causing the newly-designated SC to submit a letter to the CAISO accepting the

designation; and (iii) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(b) Buyer shall submit, or if applicable cause the Third-Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (i) thirty (30) days prior to the end of the Delivery Term or (ii) the date of any early termination of this Agreement.

5. Authorized Representative. Each Party shall provide Notice to the other Party of the person(s) authorized to schedule or dispatch order for the delivery of the Product or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such person(s) from time to time in its sole discretion by providing Notice.

6. Recording. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer's employees or representatives performing a Scheduling Coordinator function as provided in Appendix C and any representative of Seller. The Parties agree that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

APPENDIX E – DATA AND WEATHER STATION REQUIREMENTS

1. Data Access Requirements. Commencing on the first date on which the Facility generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the following data on a real-time basis and, if applicable, historical basis:

- (a) read-only access to meteorological measurements, inverter and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (f) of this list, and energy output information collected by the supervisory control and data acquisition (or SCADA) system for the Facility;
- (b) read-only access to the Facility's CAISO revenue meter and all Facility meter data at the Facility;
- (c) full, real time access to the Facility's Scheduling and Logging for the CAISO SLIC client application;
- (d) net plant electrical output at the CAISO revenue meter;
- (e) time-average data including 10-minute and hourly values of solar irradiance, air temperature, wind speed, wind direction, standard deviation of wind direction, barometric pressure and, if applicable, visibility in winter fog areas; and
- (f) an equation, updated on an ongoing basis to reflect the potential generation of the Facility as a function of solar irradiance, temperature, wind speed, and, if applicable, wind direction. Such equation shall take into account the expected availability of the facility.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Facility's monthly Settlement Interval Actual Available Capacity in a form provided by Buyer. Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report, in a form provided by Buyer. Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Appendix E, Section 1; provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

2. Validation. Buyer reserves the right to validate the data provided pursuant to Appendix E, Section 1 with information publicly available from NOAA and nearby weather stations and substitute such data for its settlement purposes if Seller's data is inconsistent with the publicly available data or is missing; provided that Buyer shall notify Seller promptly of Buyer's substitution of such data.

3. Data Availability. Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Appendix E, Section 1, which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

4. Installation, Maintenance and Repair.

(a) Seller, at its own expense, shall install and maintain one (1) stand-alone meteorological station at the Facility to monitor and report the meteorological data required in Appendix E, Section 1. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Appendix E, Section 1.

(b) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third Party SC (as applicable). Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(c) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(d) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of communication (i.e, cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail) until the telecommunications link is re-established.

5. Additional Information. Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller. Seller hereby voluntarily consents to allow PG&E, as a Participating Transmission Owner, to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide PG&E with written confirmation of such voluntary consent at least thirty (30) days prior to the Initial Energy Delivery Date.

6. Recorded Data At Initial Energy Delivery Date. No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide one (1) year, if available, but no less than two (2) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Facility. Such weather station shall provide, via remote access to Buyer, all data relating to (a) solar irradiance, air temperature, wind speed and direction, barometric pressure, and visibility in winter fog areas as applicable (forward scatter sensor) at the Facility, as well as time-average data including 10-minute and hourly values of irradiance, air temperature, wind speed, wind direction, standard deviation of wind direction, barometric pressure and visibility in winter fog areas as applicable; (b) elevation, latitude and longitude of the weather station; and (c) any other data that would be required for participation in the EIRP.

APPENDIX F -- COUNTERPARTY NOTIFICATION AND FORECASTING REQUIREMENTS

1. CAISO Approval of Outage(s). In accordance with the CAISO Tariff, Seller is responsible for securing CAISO approvals for Facility outages, including securing changes in its outage schedules when CAISO disapproves Seller's schedules or cancels previously approved outages. Seller shall communicate any CAISO-required changes to Buyer in a timely manner, in accordance with this Appendix F, Sections 7 and 8.

2. Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Facility for the following calendar year no later than August 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of January, June through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Facility must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the Facility during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

3. Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the provisions in this Appendix F, Sections 7 and 8. Seller shall notify Buyer in writing when the Facility is again capable of meeting its Contract Quantity on a pro rata basis using the same notification procedure as used with initial notice. Seller shall not substitute Energy from any other source for the output of the Facility during a Prolonged Outage.

4. Force Majeure. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. Seller shall not substitute Products from any other source for the output of the Facility during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Product that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

5. Communications with CAISO. In accordance with the CAISO Tariff, Seller shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide Buyer with copies of all outage plans and clearance requests submitted to CAISO, and shall promptly inform

Buyer of all clearance approvals and disapprovals and other communications with CAISO pertaining to the status of planned or in-progress Facility outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to Buyer upon request. If either Party receives information through CAISO regarding maintenance that will directly affect the Facility, it will provide this information promptly to the other Party.

6. Changes to Operating Procedures. Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increase cost of performance to Seller hereunder other than *de minimis* amounts.

7. Notification Requirements for Start-Up and Shutdown. Prior to paralleling to or after disconnecting from the electric system, Seller should always follow the balancing authority rules and notify your designated balancing authority control center as follows:

- (a) Call the balancing authority control center to parallel before any start-up
- (b) Call the balancing authority control center again with parallel time after start-up.
- (c) Call the balancing authority control center after any separation and report the separation time as well as the date and time estimate for return to service.

8. Submission of Available Capacity And Facility Outages. Seller shall:

(a) Submit information by posting to PG&E's Power Procurement Information Center, which is located at www.pge.com under "For My Business." After selecting "Wholesale Power" on the right side of the page, select "Electric Procurement" along the left banner. After selecting the Power Procurement Information Center icon in the middle of the page, you will be required to enter a username and password, which will be assigned to you by PG&E's Bilateral Settlements Group.

(b) If the website is unavailable, implement the procedures set forth below:

- 1) For all email correspondence, enter the following in the email subject field: Delivery Date Range, Contract Name, Email Purpose (For example: "dd/mm/yyyy - dd/mm/yyyy XYZ Company Facility #2 Daily Forecast of Available Capacity")
- 2) For Monthly and WECC Preschedule Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
- 3) For Daily Update to Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Day-Ahead Schedules, call primary phone 415.973.6222 or backup phone 415.973.4500 (if such an Update is required per Appendix D, section c). Also send email to DAenergy@pge.com.
- 4) For Hourly Update to Forecasts of Available Capacity, call PG&E's Hour-ahead Trading Desk at 415.973.4500 and email to RealTime@pge.com (if such an Update is required per Appendix D, section d).

- 5) For Facility outages, complete the specifics below and submit by email to DAenergy@pge.com and Bilat_Settlements@pge.com
- i. Email subject Field: dd/mm/yyyy – dd/mm/yyyy XYZ Company Facility #2 Outage Notification
 - ii. Email body:
 1. Type of Outage: Planned Outage, Forced Outage, Prolonged Outage
 2. Start Date and Start Time
 3. Estimated or Actual End Date and End Time
 4. Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted
 5. Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage required by the CAISO.

APPENDIX G

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary: Pacific Gas and Electric Company
77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

Applicant: [Insert name and address of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. “Pursuant to the terms of that certain Power Purchase Agreement (“PPA”), dated _____, between Beneficiary and **[insert name of Seller under the PPA]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the PPA]** under the PPA; or
 - B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the PPA]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended (without an amendment hereto) for a period of one (1) year from the Expiry Date or any future Expiry Date, unless **[insert name of Seller under the PPA]** has provided replacement security acceptable to Beneficiary, or Beneficiary has returned this Letter of Credit to **[insert name of Seller under the PPA]** prior to the Expiry Date.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ **[print or type name]**

Title: _____

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

APPENDIX H -- FACILITY DESCRIPTION

[Seller to complete pursuant to Section 2.1.5 of the Agreement.]

APPENDIX I – DISPUTE RESOLUTION

1. Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article Twelve. The lone exception to the foregoing is that either Party may seek an injunction in Superior Court in San Francisco, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting to, be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from the Referral Date. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be resolved by negotiation as set forth in Section 12.2 above, then either Party may initiate mediation, the first-step of a two-step dispute resolution process, which JAMS shall administer. As the first step, the Parties agree to mediate any controversy before a commercial mediator from the JAMS panel, pursuant to JAMS's then-applicable commercial mediation rules, in San Francisco, California. Either Party may initiate such a mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, or as extended by mutual agreement of the Parties, the mediation does not result in resolution of the dispute, then the Parties shall resolve such controversy through Arbitration by one retired judge or justice from the JAMS panel, which Arbitration shall take place in San Francisco, California, and which the Arbitrator shall administer by and in

accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the Arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an Arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

12.4 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994) and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law.

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(e) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

(f) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

Appendix B2

Redline of Appendix B2 - Large PV PPA

PV PROGRAM: Form of Power Purchase Agreement

Standard contract terms and conditions that “may not be modified” per CPUC Decision 07-11-025 are shown in shaded text.

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY

(as “Buyer”)

and

(as “Seller”)

Note 1: This Form of Power Purchase Agreement requires deliveries to PG&E in PG&E’s service territory.

Note 2: This Form of Power Purchase Agreement is available only for projects of 3 to 20 MW (AC).

POWER PURCHASE AGREEMENT

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APPENDICES

The following Appendices constitute a part of this Agreement and are incorporated into this Agreement by reference:

- Appendix I Form of Letter of Credit
- Appendix II Initial Energy Delivery Date Confirmation Letter
- Appendix III Milestones Schedule

Attachment A Form of Monthly Progress Report

- Appendix IV Project Description Including Description of Site
- Appendix V Delivery Term Contract Quantity Schedule
- Appendix VI Commercial Operation Certification Procedure

Attachment A Form of Certification

- Appendix VII GEP Damages Calculation
- Appendix VIII Notification Requirements for Available Capacity and Project Outages
- Appendix IX Certification of Third Party Agreement
- Appendix X Resource Adequacy
- Appendix XI Notices List
- Appendix XII Form of Consent to Assignment
- Appendix XIII Seller Documentation Condition Precedent
- Appendix XIV Form of Actual Availability Report

Attachment A Form of Actual Availability Report

POWER PURCHASE AGREEMENT

PREAMBLE

This Power Purchase Agreement, together with the appendices and any other attachments referenced herein, is made and entered into between Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”), and [Seller], a [include place of formation and business type] (“Seller”), as of the Execution Date set forth on the signature page hereof. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

- 1.1 “Actual Availability Report” has the meaning set forth in Section 3.1(l)(i).
- 1.2 “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.3 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, the word “agreement” shall have the meaning set forth in this definition. For purposes of Section 3.1(k)(viii), the word “contract” shall have the meaning set forth in this definition.
- 1.4 “Arbitration” has the meaning set forth in Section 12.3.
- 1.5 “Available Capacity” means the capacity from the Project, expressed in whole megawatts, that is available to generate Product.
- 1.6 “Availability Workbook” has the meaning set forth in Appendix XIV.
- 1.7 “As-Available Product” means a Product for which, subject to the terms of this Agreement, (a) Seller is obligated to sell and deliver and (b) Buyer is obligated to purchase and receive, the Energy component of the Product from the Project whenever such Energy is capable of being generated from the Project.
- 1.8 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any

substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

1.9 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

1.10 “Buyer” has the meaning set forth in the Preamble.

1.11 “Buyer’s Notice” has the meaning set forth in Section 3.9(e)(ii) or Section 11.1(b)(ii), as applicable.

1.12 “Buyer’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

1.13 “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

1.14 “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO revenue meter.

1.15 “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

1.16 “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case “CAISO Penalties” do not include the costs and charges related to Scheduling and imbalances as addressed in Section 4.5(b) of this Agreement.

1.17 “CAISO Revenues” means (a) the credits and other payments received by Buyer, as Seller’s Scheduling Coordinator, as a result of test energy from the Project delivered to the real-time market by Seller during the Test Period, including revenues associated with CAISO dispatches and (b) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Project for, or attributable to, scheduling and deliveries from the Project under this Agreement.

1.18 “CAISO Tariff means the CAISO FERC Electric Tariff, First Replacement Volume No. 1, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.19 “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.20 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

1.21 “CEC” means the California Energy Commission or its successor agency.

1.22 “CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has been constructed, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

1.23 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination or expiration of this Agreement.

1.24 “Commercial Operation” means the Project is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement.

1.25 “Commercial Operation Date” means the date on which Seller (a) notifies Buyer that Commercial Operation has commenced and (b) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix VI, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix VI hereto.

1.26 “Compliance Costs” means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under Sections 3.1(j) (Greenhouse Gas Emissions Reporting), 3.1(k) (WREGIS), 3.1(n) (Obtaining and Maintaining CEC Certification and Verification), 3.3 (Resource Adequacy), 3.4(b) (EIRP Requirements), and 10.2(b) (ERR), and under Appendix X (Resource Adequacy), including but not limited to registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller's internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date.

1.27 “Compliance Cost Cap” has the meaning set forth in Section 3.1(o).

1.28 “Condition Precedent” means each of, or one of, the conditions set forth in Section 2.4(a)(i) through (iv) and “Conditions Precedent” shall refer to all of the conditions set forth in Section 2.4(a)(i) through (iv).

- 1.29 “Construction Cure Period” has the meaning set forth in Section 3.9(c)(iv).
- 1.30 “Construction Start Date” means the later to occur of the date on which Seller delivers to Buyer (a) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (b) a written Certification substantially in the form attached hereto as Attachment A to Appendix VI.
- 1.31 “Contract Capacity” has the meaning set forth in Section 3.1(f).
- 1.32 “Contract Capacity Commitment” means the amount of the Contract Capacity that may be constructed pursuant to the material Governmental Approvals received or obtained by Seller as of the Guaranteed Construction Start Date (as may be extended pursuant to Section 3.9(c)(iii)).
- 1.33 “Contract Price” means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in Section 4.1.
- 1.34 “Contract Quantity” means the quantity of Delivered Energy expected to be delivered by Seller during each Contract Year as set forth in Section 3.1(e).
- 1.35 “Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Initial Energy Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Energy Delivery Date.
- 1.36 “Costs” means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace the Terminated Transaction; and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Transaction.
- 1.37 “CPUC” or “Commission or successor entity” means the California Public Utilities Commission, or successor entity.
- 1.38 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- (a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and
 - (b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

For purposes of this section, a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings shall be deemed to satisfy the CPUC decision requirement.

1.39 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

1.40 “Cure” has the meaning set forth in Section 8.5(a).

1.41 “Curtailed Period” means the period of time during which there is any of the following: (a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any system emergency, as defined in the CAISO Tariff (“System Emergency”), (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected; (b) a curtailment directed by the CAISO due to over generation as defined in the CAISO Tariff, or a forecast or expectation of over generation, including, but not limited to, a request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (c) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (d) scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or (e) a curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

1.42 “Daily Delay Damages” means with respect to a Guaranteed Project Milestone, an amount equal to (a) the Project Development Security Amount posted as of the first date that Daily Delay Damages are payable under this Agreement with respect to such Guaranteed Project Milestone, divided by (b) one hundred and eighty (180).

1.43 “Damage Payment” means the dollar amount equal to (a) the amount initially posted as Project Development Security pursuant to Section 8.4(a)(ii), less (b) amounts collected by Buyer as Daily Delay Damages pursuant to Section 3.9(c)(iv).

1.44 “Day-Ahead Availability Notice” has the meaning set forth in Section 3.4(c)(iii)(C).

- 1.45 “Day Ahead Schedule” has the meaning set forth in the CAISO Tariff.
- 1.46 “Defaulting Party” means the Party that is subject to an Event of Default.
- 1.47 “Deficient Month” has the meaning set forth in Section 3.1(k)(v).
- 1.48 “Delivered Energy” means all Energy produced from the Project and delivered to the Delivery Point as measured in MWh at the CAISO revenue meter of the Project.
- 1.49 “Delivery Point” means the point at which Buyer receives Seller’s Product, as identified in Section 3.1(d).
- 1.50 “Delivery Term” has the meaning set forth in Section 3.1(c).
- 1.51 “Delivery Term Security” means the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.
- 1.52 “Disclosing Party” has the meaning set forth in Section 10.7.
- 1.53 “Disclosure Order” has the meaning set forth in Section 10.7
- 1.54 “Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to PG&E’s distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of Interconnection, as defined in the PG&E Wholesale Distribution Tariff, at the point where PG&E’s meter is physically located, and the first point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.
- 1.55 “Distribution Upgrades” has the meaning set forth in the CAISO Tariff.
- 1.56 “DUNS” means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.
- 1.57 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.58 “Effective Date” means the date on which all of the Conditions Precedent set forth in Section 2.4(a) have been satisfied or waived in writing by both Parties.
- 1.59 “Electrical Losses” means all applicable losses, including, but not limited to, the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.
- 1.60 “Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner’s electric system for receipt of Energy at the Point of

Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if the Participating TO's electric system is not part of the CAISO Grid.

1.61 "Electrician" means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.

1.62 "Eligible Intermittent Resource Program" or "EIRP" means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

1.63 "Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

1.64 "Energy" means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 1.90, "Green Attributes," the word "energy" shall have the meaning set forth in this definition.

1.65 "Energy Deviation(s)" means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the Final Hour Ahead Schedule (as defined in the CAISO Tariff) for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and (b) Delivered Energy for the Settlement Interval.

1.66 "Energy Investment Tax Credit" or "ITC" means the tax credit for "energy property" described in Section 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.67 "EPC Contract" means the Seller's engineering, procurement and construction contract with the EPC Contractor.

1.68 "EPC Contractor" means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller's; provided, however, that the Seller or the Seller's affiliate(s) may serve as the EPC Contractor.

1.69 "Equitable Defenses" means any bankruptcy, insolvency, reorganization or other Laws affecting creditors' rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

1.70 "Event of Default" has the meaning set forth in Section 5.1.

1.71 "Exclusivity Period" has the meaning set forth in Section 3.9(e) or Section 11.1(b)(i), as applicable.

1.72 "Execution Date" means the latest signature date found on the signature page of this Agreement.

1.73 “Executive(s)” has the meaning set forth in Section 12.2(a).

1.74 “Exempt Wholesale Generator” has the meaning provided in 18 CFR Section 366.1.

1.75 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.76 “Final Output Report” means the unabridged and unredacted final report provided to Buyer as set forth in Section 3.9(a)(vii) concerning the Energy producing potential of the Site, inclusive of anticipated Planned Outages and Forced Outages on an annual basis, prepared by a Licensed Professional Engineer who shall be retained by Seller. The Energy producing potential of the Site as reflected in the Final Output Report may be expressed on a calendar year by calendar year basis, if necessary to reflect adjustments in such potential over time due to any anticipated degradation of the photovoltaic panels.

1.77 “First Offer” has the meaning set forth in Section 3.9(e)(i) or Section 11.1(b)(i), as applicable.

1.78 “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:

(i) flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcanic eruption, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) except as set forth in subsection (b)(vii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); or

(iv) emergencies declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the

Transmission Provider to transmit Energy, including Energy to be delivered pursuant to this Agreement; provided that, if a curtailment of the Project pursuant to this subsection (a)(iv) would also meet the definition of a Curtailment Period, then it shall be treated as a Curtailment Period for purposes of Section 3.1(i).

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project;

(iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure;

(v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(vi) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;

(vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project;

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; or

(ix) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

1.79 "Force Majeure Construction Extension" has the meaning set forth in Section 3.9(c)(iii)(A).

1.80 "Force Majeure Failure" means either Force Majeure Project Failure or Force Majeure Development Failure, as applicable.

1.81 "Force Majeure Development Failure" has the meaning set forth in Section 11.1(a)(ii).

1.82 "Force Majeure Project Failure" has the meaning set forth in Section 11.1(a)(i).

1.83 “Forced Outage” means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part from a Unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a Unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

1.84 “Forecasting Penalty” has the meaning set forth in Section 4.5(c)(iii), and “Forecasting Penalties” means more than one Forecasting Penalty.

1.85 “Gains” means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.86 “GEP Cure” has the meaning set forth in Section 3.1(e)(ii).

1.87 “GEP Damages” has the meaning set forth in Section 3.1(e)(ii).

1.88 “GEP Failure” means Seller’s failure to produce Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

1.89 “GEP Shortfall” means the amount in MWh by which Seller failed to achieve the Guaranteed Energy Production in the applicable Performance Measurement Period.

1.90 “Good Utility Practice” has the meaning provided in the CAISO Tariff.

1.91 “Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use and operation of the Project.

1.92 “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

1.93 “Governmental Charges” has the meaning set forth in Section 9.2.

1.94 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

1.95 “Guaranteed Commercial Operation Date” has the meaning set forth in Section 3.9(c)(iii)(B).

1.96 “Guaranteed Construction Start Date” has the meaning set forth in Section 3.9(c)(iii)(A).

1.97 “Guaranteed Energy Production” or “GEP” has the meaning set forth in Section 3.1(e).

1.98 “Guaranteed Project Milestones” are the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date set forth in 3.9(c)(iii).

1.99 “Hour Ahead” has the meaning set forth in the CAISO Tariff.

1.100 “Initial Energy Delivery Date” has the meaning set forth in Section 3.1(c).

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

- 1.101 “Initial Negotiation End Date” has the meaning set forth in Section 12.2(a).
- 1.102 “Interconnection Customer’s Interconnection Facilities” has the meaning set forth in the CAISO Tariff.
- 1.103 “Interconnection Facilities” has the meaning set forth in the CAISO Tariff.
- 1.104 “Interconnection Point” means *[Seller to identify the physical interconnection point of the Project]*,
- 1.105 “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.
- 1.106 “Interest Payment Date” means the last Business Day of each calendar year.
- 1.107 “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.
- 1.108 “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.
- 1.109 “JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.
- 1.110 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Sections 1.38 “CPUC Approval,” 1.94 “Green Attributes,” 10.2(b), “Seller Representations and Warranties” and 10.12 “Governing Law”, the term “law” shall have the meaning set forth in this definition.
- 1.111 “Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by (a) a U.S. commercial bank or (b) a U.S. branch of a foreign commercial bank with sufficient assets in the United States, as determined by Buyer, with either such bank having a Credit Rating of at least A from S&P or A2 from Moody’s, substantially in the form as contained in Appendix I to this Agreement.
- 1.112 “Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of

Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

1.113 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

1.114 “Manager” has the meaning set forth in Section 12.2(a).

1.115 “Milestones” means the key development activities required for the construction and operation of the Project, as set forth in Appendix III.

1.116 “Monthly Progress Report” means the report similar in form and content attached hereto as Attachment A to Appendix III.

1.117 “Monthly Period” has the meaning set forth in Section 4.2.

1.118 “Monthly TOD Payment” has the meaning set forth in Section 4.3.

1.119 “Moody’s” means Moody’s Investor Services, Inc., or its successor.

1.120 “MW” means megawatt (AC).

1.121 “MWh” means megawatt-hour.

1.122 “NERC” means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.

1.123 “NERC Holiday” has the meaning set forth in Section 4.2.

1.124 “Network Upgrades” has the meaning set forth in the CAISO Tariff.

1.125 “New Generation Facility” means a project that (a) has not previously been operational and able to produce and deliver Energy to another entity or (b) must be re-powered or expanded in order to deliver the Product pursuant to the terms set forth in this Agreement.

1.126 “NOAA” means National Oceanic and Atmospheric Administration or successor thereto.

- 1.127 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.128 “Notice,” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Appendix XI contains the names and addresses to be used for Notices.
- 1.129 “Notice to Proceed” means the notice provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin construction of the Project without any delay or waiting periods.
- 1.130 “Obligor” means the Party breaching the terms of this Agreement.
- 1.131 “Outage Notification Procedures” means the procedures specified in Appendix VIII, attached hereto. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.
- 1.132 “Participating Intermittent Resource” or “PIRP” has the meaning set forth in the CAISO Tariff.
- 1.133 “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.
- 1.134 “Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 10.12, Governing Law, the word “party” or “parties” shall have the meaning set forth in this definition.
- 1.135 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security.
- 1.136 “Performance Measurement Period” has the meaning set forth in Section 3.1(e).
- 1.137 “Performance Tolerance Band” shall be calculated as set forth in Section 4.5(c)(ii).
- 1.138 “Permitting Delay” has the meaning set forth in Section 3.9(c)(iii)(A).
- 1.139 “Permitted Extensions” means extensions to either of the Guaranteed Project Milestones due to Permitting Delay, Transmission Delay, Force Majeure Construction Extension, as applicable, to each Guaranteed Project Milestone pursuant to Section 3.9(c)(iii)(A) or (B), as applicable.
- 1.140 “Permit Failure” has the meaning set forth in Section 3.9(d).

1.141 “PG&E Wholesale Distribution Tariff” means the Pacific Gas and Electric Company FERC Electric Tariff First Revised Volume No. 4, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.142 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.

1.143 “Preamble” means the paragraph that precedes Article One: General Definitions to this Agreement.

1.144 “Preschedule Day” has the meaning set forth in Section 3.4(c)(iii).

1.145 “Product” means the Energy, capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project, including, without limitation, renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

1.146 “Production Tax Credit” or “PTC” means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.147 “Program Agreements” has the meaning set forth in Section 3.4(b).

1.148 “Project” means all of the Unit(s), the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including but not limited to the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described on Appendix IV. For purposes of Section 1.90, “Green Attributes,” the word “project” shall have the meaning set forth in this definition.

1.149 “Project Cure Period” has the meaning set forth in Section 3.9(c)(iv).

1.150 “Project Development Security” is the collateral required of Seller, as specified and referred to in Section 8.4(a).

1.151 “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Project is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Contract Capacity.

1.152 “Qualifying Facility” has the meaning provided in the Public Utility Regulatory Policies Act (“PURPA”) and in regulations of the FERC at 18 C.F.R. §§ 292.201 through 292.207.

1.153 “Qualifying Protocols” has the meaning set forth in Section 3.4(b).

- 1.154 “RA Capacity” means the maximum megawatt amount that the CAISO recognizes from a Project that qualifies for Buyer’s Resource Adequacy Requirements and is associated with the Project’s Capacity Attributes.
- 1.155 “Reductions” has the meaning set forth in Section 4.7(b).
- 1.156 “Referral Date” has the meaning set forth in Section 12.2(a).
- 1.157 “Remedial Action Plan” has the meaning provided in Section 3.9(c)(ii).
- 1.158 “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.
- 1.159 “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.
- 1.160 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.
- 1.161 “Revised Offer” has the meaning set forth in Section 3.9(e)(iii) or Section 11.1(b)(iii), as applicable.
- 1.162 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.163 “Satisfaction Date” has the meaning set forth in Section 2.5.
- 1.164 “Schedule” has the meaning set forth in the CAISO Tariff.
- 1.165 “Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator”, of the CAISO Tariff, as amended from time to time.
- 1.166 “SEC” means the U.S. Securities and Exchange Commission.
- 1.167 “Seller” has the meaning set forth in the Preamble. For the purposes of Section 3.1(m)(i), the term “Producer” has the same meaning as the term “Seller”.
- 1.168 “Seller Excuse Hours” means those hours during which Seller is unable to schedule or deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, or (c) Curtailment Period.
- 1.169 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

- 1.170 “Settlement Amount” means the amount in US\$ equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.
- 1.171 “Settlement Interval” means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
- 1.172 “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.
- 1.173 “SGIA” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and, as applicable, the CAISO governing the terms and conditions of Seller’s interconnection with the Participating TO’s transmission or distribution system, including any description of the plan for interconnecting to Participating TO’s transmission or distribution system.
- 1.174 “SGIP” means the Small Generator Interconnection Procedures set forth in the PG&E Wholesale Distribution Tariff or CAISO Tariff, as applicable, and associated documents; provided that if the SGIP is replaced by such other successor procedures approved by FERC governing interconnection (a) to the Participating TO’s transmission or distribution system or (b) of generating facilities with an expected net capacity equal to or greater than the Project’s Contract Capacity, the term “SGIP” shall then apply to such successor procedure.
- 1.175 “Site” means the location of the Project as described in Appendix IV.
- 1.176 “System Emergency” has the meaning provided in Section 1.41, “Curtailed Period.”
- 1.177 “Term” has the meaning provided in Section 2.5.
- 1.178 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2 of this Agreement.
- 1.179 “Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.
- 1.180 “Test Period” means the period of not more than ninety (90) consecutive days commencing on the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Project to the CAISO Grid and ending when Seller advises Buyer of the occurrence of the Initial Energy Delivery Date.
- 1.181 “Third-Party SC” means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement.
- 1.182 “TOD” means time of delivery of Delivered Energy from Seller to Buyer.

- 1.183 “TOD Factors” has the meaning set forth in Section 4.3(a).
- 1.184 “TOD Period” has the meaning set forth in Section 4.2.
- 1.185 “Transaction” means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.
- 1.186 “Transmission Delay” has the meaning set forth in Section 3.9(c)(iii)(A).
- 1.187 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point. For purposes of this Agreement the Transmission Provider is CAISO.
- 1.188 “Unit” means the *[insert technology, including any applicable model]* used to produce the Products, which are identified in Appendix IV for the Transaction entered into under this Agreement.
- 1.189 “WECC” means the Western Electricity Coordinating Council or successor agency.
- 1.190 “WREGIS” means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.
- 1.191 “WREGIS Certificate Deficit” has the meaning set forth in Section 3.1(k)(v).
- 1.192 “WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.
- 1.193 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of June 4, 2007, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.
- 1.194 “Work” means (a) work or operations performed by a Party or on a Party’s behalf, and (b) materials, parts or equipment furnished in connection with such work or operations, including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”, and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. ~~—~~This Agreement, together with the Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties.

2.2 Interpretation.~~—~~

The following rules of interpretation shall apply in addition to those set forth in Section 10.13:

(a) The term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends.

(b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then existing at the applicable time to which such construction applies.

(c) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article One, unless otherwise specified.

(d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(e) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(f) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.

(g) All references to dollars are to U.S. dollars.

2.3 Authorized Representatives.

Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

2.4 Conditions Precedent.

(a) Conditions Precedent. Subject to Section 2.6 hereof, the Term shall not commence until the occurrence of all of the following:

(i) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;

(ii) CPUC Approval has been obtained for the terms, conditions and pricing of this Agreement;

(iii) The advice letter submitting this Agreement to the CPUC becomes effective in accordance with CPUC General Order 96-B or its successor order, or as otherwise provided by CPUC order; and

(iv) Buyer receives from Seller the documentation listed in Appendix XIII (Seller Documentation Condition Precedent).

(b) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 2.4(a)(ii) and (iii) are not satisfied or waived in writing by both Parties on or before one hundred and eighty (180) days from the date on which Buyer files an advice letter submitting this Agreement to the CPUC, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

2.5 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.4(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 2.4(b), Section 5.2 or Section 11 of this Agreement (the “Term”); provided that this Agreement shall thereafter remain in effect (i) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (the “Satisfaction Date”) or (ii) in accordance with the survival provisions set forth in subpart (b) below.

(b) Notwithstanding anything to the contrary in this Agreement, (i) all rights under Section 10.5 (Indemnities) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (ii) all rights and obligations under Section 10.7 (Confidentiality) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years; and (iii) the right of first offer in Section 11.1 (b) shall survive the Satisfaction Date for two (2) years.

2.6 Binding Nature.

(a) Upon Execution Date. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

(i) Sections 5.1(a)(iv)-(v), and 5.1(b)(v);

(ii) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.6;

- (iii) Sections 5.2 through 5.7;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;
- (v) Sections 10.2, 10.6 through 10.8, and Sections 10.12 through 10.15; and
- (vi) Articles One, Two, Seven, Twelve and Thirteen.

(b) Upon Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is an As-Available Product.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right (i) to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Energy delivered to Buyer in connection with Energy Deviations or (ii) sell Product from the Project to a third Party other than in connection with Energy Deviations. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except during the Test Period. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt at and from the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(c) Delivery Term. "Delivery Term" shall mean the period of twenty (20) Contract Years beginning on the first date that Seller delivers Product to Buyer from the Project ("Initial Energy Delivery Date") in connection with this Agreement and continuing until the end of the twentieth Contract Year unless terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (A) the Commercial Operation Date has occurred; (B) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; (C) Seller shall have obtained the requisite CEC Certification and Verification for the Project; (D) all of the applicable Conditions Precedent in Section 2.4(a) of the Agreement have been satisfied or waived in writing, and (E) Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource to the extent such status is available at such time as the conditions in subsections (A) through (D) of this Section 3.1(c) are satisfied. If subsection (E) is applicable, Seller shall obtain such certification no later than one hundred twenty (120) days following the

Commercial Operation Date. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the “Initial Energy Delivery Date Confirmation Letter” attached hereto as Appendix II on the Initial Energy Delivery Date. Eighteen (18) months prior to the anticipated conclusion of the Delivery Term, the Parties shall provide notice of their intentions with respect to the Project, including if desired, any proposed extension of this Agreement.

(d) Delivery Point. The Delivery Point shall be the Interconnection Point.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity. The Contract Quantity during each Contract Year is the amount set forth in the applicable Contract Year in the “Delivery Term Contract Quantity Schedule,” attached hereto as Appendix V, which amount is inclusive of outages. ***[Seller shall provide the Contract Quantity amount listed in its Offer on the worksheet in the Bid Offer Forms applicable to the Product. Such amounts should account for annual degradation of PV.]***

(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” means an amount of Delivered Energy, as measured in MWh, equal to the product of (x),(y), where (x) is one hundred sixty percent (160%) of the then-applicable Contract Quantities for the Performance Measurement Period, (y) is the difference between (I) and (II), with the resulting difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. Guaranteed Energy Production is described by the following formula:

Guaranteed Energy Production = ~~(140)~~160% * Contract Quantity in MWh * [(Hrs in Performance Measurement Period - Seller Excuse Hrs) / Hrs in Performance Measurement Period]

(B) If Seller has a GEP Failure, then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall promptly notify Seller of such failure. Seller may cure the GEP Failure by delivering to Buyer no less than ninety percent (90%) of the Contract Quantity over the next following Contract Year (“GEP Cure”). If Seller fails to generate sufficient Delivered Energy to make the GEP Cure for a given Performance Measurement Period, Seller shall pay GEP Damages, calculated pursuant to Appendix VII (GEP Damages Calculation), provided however that in lieu of paying GEP Damages, Seller shall have the one-time option to reduce the Contract Capacity to no less than seventy percent (70%) of the original Contract Capacity.

(I) In the event that the Contract Capacity is reduced pursuant to Sections 3.1(e)(ii)(B) above, (i) the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Schedule set forth in Appendix V shall be adjusted proportionately with such reduction, and (ii) the Guaranteed Energy Production shall be adjusted

to one hundred sixty percent (160%) of the then-applicable Contract Quantities for the Performance Measurement Period, as described by the following formula:

Guaranteed Energy Production = (160% * adjusted Contract Quantity in MWh) * [(Hrs in Performance Measurement Period - Seller Excuse Hrs) / Hrs in Performance Measurement Period]

(II) Seller shall not incur or be subject to any liability, including but not limited to GEP Damages hereunder as a result of such one-time reduction in the Contract Capacity or adjusted Contract Quantities pursuant to Section 3.1(e)(ii)(B).

(III) The Parties agree that the damages sustained by Buyer associated with Seller's failure to achieve the Guaranteed Energy Production requirement would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay GEP Damages.

(IV) After the GEP Cure period has run, if Seller has not achieved the GEP Cure, Buyer shall have forty-five (45) days to notify Seller of such failure. Within forty-five (45) days of the end of the GEP Cure period, Buyer shall provide Notice to Seller in writing of the amount of the GEP Damages, if any, which Seller shall pay within sixty (60) days of receipt of the Notice. If Seller does not pay the GEP Damages within the sixty (60) day time period, Buyer may, at its option, declare an Event of Default pursuant to Section 5.1(b)(vi)(A). If Buyer does not (1) notify Seller of the GEP Failure or (2) declare an Event of Default pursuant to Section 5.1(b)(vi), if Seller has failed to pay the GEP Damages, then Buyer shall be deemed to have waived its right to declare an Event of Default based on Seller's failure with respect to the Performance Measurement Period which served as the basis for the notice of GEP Failure, GEP Damages, or default, subject to the limitations set forth in Section 5.1(b)(vi)(B).

(f) Contract Capacity. The generation capability designated for the Project shall be [_____] MW (AC) net of all auxiliary loads, station electrical uses, and Electrical Losses (the "Contract Capacity"). Throughout the Delivery Term, Seller shall sell and Schedule all Product produced by the Project (net of station use) solely to Buyer and Buyer shall purchase all Product produced by the Project; provided, however, that in no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds one hundred and ten percent (110%) of Contract Capacity.

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity or the anticipated output of the Project without Buyer's prior written consent. The Project is further described in Appendix IV.

(ii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Section 10.6(b). Seller shall be deemed to have relinquished

possession of the Project if after the Commercial Operation Date Seller has ceased work on the Project or ceased production and delivery of Product for a consecutive thirty (30) day period and such cessation is not a result of a Force Majeure event or direct action of Buyer.

(h) Interconnection Facilities.

(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any interconnection agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer's Interconnection Facilities, including metering facilities to be maintained; and (C) comply with the procedures set forth in the SGIP and applicable agreements or procedures provided under the SGIP.

(ii) Coordination with Buyer. Seller shall (A) provide to Buyer copies of all material correspondence related thereto; and (B) provide Buyer with written reports of the status of the SGIA on a monthly basis. The foregoing shall not preclude Seller from executing an SGIA that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law.

(i) Performance Excuses.

(i) Seller Excuses. Seller shall be excused from achieving the Guaranteed Energy Production and the Capacity Factor for the applicable time period during Seller Excuse Hours.

(ii) Buyer Excuses. The performance of Buyer to receive or pay for the Product shall be excused only (A) during periods of Force Majeure, (B) by Seller's failure to perform, or (C) during Curtailment Periods.

(iii) Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Curtailment Period.

(iv) No Excuse. Except for a failure or curtailment resulting from a Force Majeure or during a Curtailment Period, the failure of electric transmission service shall not excuse performance with respect to either Party for the delivery or receipt of Energy to be provided under this Agreement.

(j) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any, subject to the Compliance Cost Cap.

(k) WREGIS. Seller shall, at its sole expense, but subject to the Compliance Cost Cap, take all actions and execute all documents or instruments necessary to ensure that all

WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall comply with all Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in section 3.1(k)(viii); provided that Seller fulfills its obligations under Sections 3.1(k)(i) through (vii) below. In addition:

(i) Prior to the Initial Energy Delivery Date, Seller shall register the Project with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Project's metered data.

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 6, Buyer shall make an invoice payment for a given month in accordance Article 6 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.1(k). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 6.

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 6 and the Guaranteed Energy Production for the applicable Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller's obligations under this Section 3.1(k), if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(vii) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(k) after the Execution Date, the Parties promptly shall modify this Section 3.1(k) as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

(viii) Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(l) Access to Data and Installation and Maintenance of Weather Station.

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the following data on a real-time basis and, if applicable, historical basis:

(A) read-only access to meteorological measurements, inverter and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (F) of this list, and energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project;

(B) read-only access to the Project's CAISO revenue meter and all Project meter data at the Site;

(C) full, real time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application;

(D) net plant electrical output at the CAISO revenue meter;

(E) time-average data including 10-minute and hourly values of total global horizontal irradiance or direct normal insolation, total global radiation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and, if applicable, visibility in winter fog areas; and

(F) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of solar insolation, temperature, wind speed, and, if applicable, wind direction. Such equation shall take into account the expected availability of the facility.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Project's monthly Settlement Interval Actual Available Capacity in the

form set forth in Appendix XIV (Form of Actual Availability Report). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(l)(i); provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

(ii) Buyer reserves the right to validate the data provided pursuant to Section 3.1(l)(i) with information publicly available from NOAA and nearby weather stations and substitute such data for its settlement purposes if Seller's data is inconsistent with the publicly available data or is missing; provided that Buyer shall notify Seller promptly of Buyer's substitution of such data.

(iii) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 3.1(l)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(iv) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 3.1(l)(i) of this Agreement. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third Party SC (as applicable). Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(C) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(D) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of communication (i.e, cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail) until the telecommunications link is re-established.

(v) Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least thirty (30) days prior to the Initial Energy Delivery Date.

(vi) No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (A) total global horizontal irradiance or direct normal insolation, air temperature, wind speed and direction, precipitation, barometric pressure, visibility in winter fog areas as applicable (forward scatter sensor) and humidity at the Site, as well as time-average data including 10-minute and hourly values of irradiance or insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and visibility in winter fog areas as applicable; (B) elevation, latitude and longitude of the weather station; and (C) any other data that would be required for participation in the EIRP.

(m) Prevailing Wage.

(i) Producer shall use reasonable efforts to ensure that all Electricians hired by Producer, and its contractors and subcontractors are paid wages at rates not less than those prevailing for electricians performing similar work in the locality as provided by Division 2, Party 7, Chapter 1 of the California Labor Code. Nothing herein shall require Producer, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the Labor Code.

(ii) To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.14, subdivision (h).

(n) Obtaining and Maintaining CEC Certification and Verification. Subject to the Compliance Cost Cap, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

(o) Compliance Cost Cap. Costs applicable to the Compliance Cost Cap are only those costs applicable under the term's definition (section 1.26) and are new costs associated with a change in law from the contract's execution date. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term shall be capped annually at \$10,000.00 per MW (AC) of Contract Capacity and in the aggregate throughout the Delivery Term at \$20,000.00 per MW (AC) of Contract Capacity (collectively, the "Compliance Cost Cap"). In the event and to the extent that the Compliance Costs incurred by Seller exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that

exceed the Compliance Cost Cap, or excuse Seller from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap. Within sixty (60) days after the change, amendment, repeal, or enactment of Law after the Execution Date which Seller anticipates will cause it to incur Compliance Costs in excess of the Compliance Cost Cap, Seller shall provide to Buyer Notice with an estimate of the expected annual Compliance Costs caused by such change in Law. Within thirty (30) days of the delivery of such Notice with the estimate, Buyer shall provide Seller Notice of (i) Buyer's request for Seller to incur the Compliance Costs in excess of the Compliance Cost Cap, (ii) Buyer's initiation of dispute resolution under Article 12, or (iii) Buyer's waiver of Seller's performance of such obligations. The Parties shall agree on a reasonable allocation, as between Seller and Buyer, over the remaining Term of any such Compliance Costs that are incurred after the fifteenth (15th) Contract Year and that are expected to benefit the Project beyond the Term of this Agreement. Any reimbursement by Buyer to Seller referenced above in this Section 3.1(o) shall be subject to CPUC approval, and the amount of such reimbursement shall not be paid by Buyer to Seller until such time as the CPUC has approved such payment. Seller shall be relieved from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap and which give rise to the payment that is the subject of the above reference CPUC approval until such time as the CPUC issued its approval of the reimbursement payment in final and non-appealable form.

3.2 Green Attributes.

Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

3.3 Resource Adequacy.

During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, from the Project to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe ("Resource Adequacy Requirements"). Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Subject to the Compliance Cost Cap, Seller agrees that during the Delivery Term Seller shall, at a minimum, comply with the terms set forth in Appendix X to enable Buyer to use all of the capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements.

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller's Transmission Service Obligations. As of the Test Period and during the Delivery Term:

(A) Seller shall arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement.

(B) Seller shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment to the Delivery Point.

(C) Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver Energy to the CAISO Grid.

(ii) Buyer's Transmission Service Obligations. As of the Test Period and during the Delivery Term,

(A) Buyer shall arrange and be responsible for transmission service at and from the Delivery Point.

(B) Buyer shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment from the Delivery Point.

(C) Buyer shall Schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Point.

(D) Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point.

(b) EIRP Requirements. The Parties acknowledge that as of the Execution Date, the CAISO has not yet established protocols for scheduling solar power to permit solar projects to participate in EIRP ("Qualifying Protocols"). As soon as practicable, but not more than ninety (90) days after Qualifying Protocols are finalized and made effective by the CAISO, Seller shall apply to have the Project certified as a Participating Intermittent Resource and shall thereafter diligently pursue such process to completion, subject to the Compliance Cost Cap, including negotiating and executing all necessary documents to become a Participating Intermittent Resource (each as defined by the CAISO Tariff and collectively, the "Program Agreements"). Seller shall provide Buyer with a copy of the notice from CAISO certifying the Project as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. Following certification and whenever applicable, Seller shall participate in and comply with EIRP as directed by Buyer or Third-Party SC and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during all hours of the Delivery Term, and Buyer, as Scheduling Coordinator, shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to assist Seller's participation in and compliance with EIRP and such additional protocols, to the extent such actions are at *de minimis* cost to Buyer.

(c) Scheduling Coordinator. Buyer shall act as the Scheduling Coordinator for the Project. In that regard, Buyer and Seller shall agree to the following:

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the beginning of the Test Period Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller's Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller's Scheduling Coordinator. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Period and Delivery Term.

(ii) Buyer's Responsibilities as Scheduling Coordinator. Buyer or Third-Party SC shall comply with all obligations as Seller's Scheduling Coordinator under the CAISO Tariff and shall conduct all Scheduling in full compliance with the terms and conditions of this Agreement, the applicable CAISO Tariff, all requirements of EIRP (if applicable), and protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff.

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include Project availability and updated status of photovoltaic panels, inverters, transformers, and any other equipment that may impact availability. To avoid Forecasting Penalties set forth in Section 4.5(c)(ii), Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including but not limited to automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of September 1 of the first Contract Year or forty-five (45) days before the first day of the first Contract Year of the Delivery Term, if applicable, and (II) September 1 of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for an

average day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(C) Daily Forecast of Available Capacity. During each month of the Delivery Term, Seller or Seller's agent shall provide a binding day ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or Third-Party SC (as applicable) via Buyer's internet site, as provided in Appendix VIII, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (1) Monday - Preschedule Day for Tuesday
- (2) Tuesday - Preschedule Day for Wednesday
- (3) Wednesday - Preschedule Day for Thursday
- (4) Thursday - Preschedule Day for Friday and Saturday
- (5) Friday - Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, "Prescheduling Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW (AC) as of a time that is more than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day-Ahead Schedules, then Seller must notify Buyer of such change by telephone and shall send a revised notice to Buyer's Internet site set forth in Appendix VIII. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW (AC), and any other necessary information.

Day-Ahead Trading Desk
Primary Telephone: (415) 973-6222
Backup Telephone: (415) 973-4500

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, (I) until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Buyer and Seller and (II) to the extent Seller's failure contributes to an imbalance charge, Seller shall be subject to the Forecasting Penalties set forth in Section 4.5(c)(ii).

(D) Hourly Forecast of Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW (AC) or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit Hour-Ahead schedules to the CAISO. Available Capacity changes after one (1) hour before the CAISO deadline for Hour-Ahead Schedules, but before the CAISO Hour-Ahead deadline, shall also be reported by Seller to Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW (AC), and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall (I) use commercially reasonable efforts to notify Buyer of such outage immediately following Seller Available Capacity notification to the CAISO via SLIC and Seller shall follow the Outage Notification Procedures in Appendix VIII of this Agreement. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Project during or after the end of such outage. These notices and changes to Available Capacity shall be communicated by telephone to Buyer's Hour-Ahead Trading Desk and shall be sent to Buyer's internet site as set forth in Appendix VIII:

Hour-Ahead Trading Desk
Primary Telephone: (415) 973-4500

(iv) Replacement of Scheduling Coordinator.

(A) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller's SC. These actions include (I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(B) Buyer shall submit, or if applicable cause the Third- Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (I) thirty (30) days prior to the end of the Delivery Term or (II) the date of any early termination of this Agreement.

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to construction, ownership and/or operation of the Project).

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies,

criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Utility Practices.

(c) Reliability Standard. Seller agrees to abide by (i) CPUC General Order No. 167, “Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities”, and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner.

3.6 Metering.

All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project’s CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification.

(a) CAISO Approval of Outage(s). Seller is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Seller’s schedules or cancels previously approved outages. Seller shall communicate any CAISO-required changes to Buyer in a timely manner, in accordance with the provisions set forth in Appendix VIII.

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with the Annual Forecast of Available Capacity procedure set forth in Appendix VIII no later than August 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer’s approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of January, June through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer’s

approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

(c) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the provisions in Appendix VIII. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis using the same notification procedure as used with initial notice. Seller shall not substitute Energy from any other source for the output of the Project during a Prolonged Outage.

(d) Force Majeure. Within two (2) Business Days of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. Seller shall not substitute Products from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

(e) Communications with CAISO. Seller shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide Buyer with copies of all outage plans and clearance requests submitted to CAISO, and shall promptly inform Buyer of all clearance approvals and disapprovals and other communications with CAISO pertaining to the status of planned or in-progress Project outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to Buyer and the Participating Transmission Owner upon request. If either Party receives information through CAISO or directly from the Participating Transmission Owner regarding maintenance that will directly affect the Project, it will provide this information promptly to the other Party.

(f) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7 or 3.8 or Appendix VIII. Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increase cost of performance to Seller hereunder other than *de minimis* amounts.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice (which no case shall be less than three (3) Business Days) visit the Project during normal business hours for purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. In connection with the foregoing, Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller; (ii) not interfere with the operation of the Project; and (iii) unless waived in writing by Seller, be escorted by a representative of Seller. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

3.9 New Generation Facility.

(a) Seller, at no cost to Buyer, shall be responsible to:

(i) Design and construct the Project.

(ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the Participating Transmission Owner for the Interconnection Facilities to Schedule and deliver the Product.

(iii) Acquire all permits and other approvals necessary for the construction, operation, and maintenance of the Project.

(iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project.

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any changes in the Project and provide to Buyer specifications and design drawings of any such changes.

(vi) Within fifteen (15) days after the close of each month from the first month following the Execution Date until the Commercial Operation Date, provide to Buyer a Monthly Progress Report and agree to regularly scheduled meetings between representatives of

Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The Monthly Progress Report shall indicate whether Seller has met or is on target to meet the Milestones.

(vii) Provide to Buyer a copy of the Final Output Report, and any updates thereafter for the time period beginning on the Effective Date and ending on the last day of the first Contract Year.

(b) Buyer shall have the right, but not the obligation, to:

(i) Notify Seller in writing of the results of the review within thirty (30) days of Buyer's receipt of all specifications for the Project, including a description of any flaws perceived by Buyer in the design.

(ii) Inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable notice.

(c) Construction Milestones.

(i) Milestones. The Parties agree time is of the essence in regards to the Agreement. As such, the Parties also agree certain Milestones must be achieved in a timely fashion or Buyer will suffer damages. Seller shall provide Buyer with any requested documentation to support the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

(ii) Remedial Action Plan. If Seller misses three (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan"), which is outlined in the Monthly Progress Report and requires Seller to provide a detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, then subsection (iv) below shall apply.

(iii) Guaranteed Project Milestones. "Guaranteed Project Milestones" are as follows:

(A) The Construction Start Date shall occur no later than _____ (the "Guaranteed Construction Start Date"); provided that the Guaranteed Construction Start Date may be extended on a day for day basis for not more than three hundred sixty (360) days:

(I) if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Project, but

is unable to obtain such permits due to delays beyond Seller's reasonable control ("Permitting Delay");

(II) if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to have the Project physically interconnected to the CAISO Grid and to complete all Electric System Upgrades needed, if any, in order to interconnect the Project to the CAISO Grid, but fails to secure any necessary commitments from CAISO or the Participating Transmission Owner for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay");

(III) in the event of Force Majeure ("Force Majeure Construction Extension") without regard to Transmission Delay or Permitting Delay; provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

Notwithstanding the foregoing, if Seller claims Permitting Delay and Transmission Delay, such extensions cannot cumulatively exceed three hundred sixty (360) days and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(B) Seller shall have demonstrated Commercial Operation per the terms of Appendix VI no later than eighteen (18) months after the Effective Date of this Agreement, (the "Guaranteed Commercial Operation Date"), provided that (I) the Guaranteed Commercial Operation Date may be extended on a day for day basis equal to any extension claimed by Seller pursuant to and in accordance with Section 3.9(c)(iii)(A), and (II) the Guaranteed Commercial Operation Date may be extended further on a day for day basis for Force Majeure occurring after the Construction Start Date provided that the total number of such further extension days shall not exceed three hundred sixty (360) days.

(C) If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days Notice prior to original date of the applicable Guaranteed Project Milestone, which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension; provided that in the case of a Force Majeure Construction Extension, if sixty (60) days is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(iv) Cure Period and Delay Damages.

(A) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date. If (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions or Force Majeure after Construction Start Date or (II) the Construction Start Date occurs after the Guaranteed Construction Start Date after giving effect to Permitted Extensions, then Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily

Delay Damages for each day or portion of a day that (1) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions for up to a total of sixty (60) days (“Project Cure Period”); or (2) the Construction Start Date occurs after the Guaranteed Construction Start Date after giving effect to Permitted Extensions for up to a total of sixty (60) days (“Construction Cure Period”). The Parties agree that Buyer’s receipt of Daily Delay Damages shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 5.1 and (y) not limit Buyer’s right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer’s default right pursuant to Section 5.2.

(B) Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to Seller’s delay in achieving either of the Guaranteed Project Milestones would be difficult or impossible to predict with certainty, and (II) the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller’s failure to meet the Guaranteed Construction Start Date only if Seller meets the Guaranteed Commercial Operation Date (as may be extended by Permitted Extensions) as provided further in Section 8.4(c) of this Agreement. For sake of certainty, Buyer shall retain all Daily Delay Damages drawn (or which Buyer is entitled to draw) as a result of Seller’s failure to meet the Guaranteed Commercial Operation Date and the Guaranteed Construction Start Date (both as may be extended by Permitted Extensions), if Seller fails to meet the Guaranteed Commercial Operation Date (as may be extended by Permitted Extensions).

(d) Resize of Project Due to Permit Failure.

(i) If Seller has not received or obtained by the Guaranteed Construction Start Date (as may be extended pursuant to this Agreement) final and non-appealable material Governmental Approvals required for the construction of the Project with the Contract Capacity set forth in Section 3.1(f), after using commercially reasonable efforts to do so (including, but not limited to, timely filings with all applicable Governmental Authorities and timely payment of any required fees) (“Permit Failure”), Seller shall make a Contract Capacity Commitment on the Guaranteed Construction Start Date (as may be extended), equal to, at a minimum, seventy percent (70%) of the initial Contract Capacity set forth in Section 3.1(f), provided that such amount shall also be the maximum amount of the generation capacity permitted under the final and non-appealable material Governmental Approvals that Seller has received as of the Guaranteed Construction Start Date (as may be extended) and may not be under one (1) MW (AC), and provided further that for a period of two (2) years from any such resizing pursuant to this Section 3.9(d), Seller must offer Buyer a Right of First Offer for any Products from the Project up to the initial Contract Capacity set forth in Section 3.1(f) as further provided in Section 3.9(e), below. Seller shall provide Notice of such Contract Capacity Commitment to Buyer no later than ten (10) Business Days following the Guaranteed Construction Start Date.

(ii) In the event that the Contract Capacity is reduced pursuant to Sections 3.9(d)(i) above, the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Schedule attached hereto shall be adjusted proportionately with such reduction.

(iii) In the event that the Contract Capacity and Contract Quantity are reduced pursuant to Sections 3.9(d)(i) and (ii), the revised Contract Capacity and Contract Quantity shall be used to determine Seller's performance under the Agreement, including but not limited to the amount of Guaranteed Energy Production under Section 3.1(e) and the amount of Delivery Term Security required under Section 8.4.

(iv) If the final Contract Capacity is less than the initial Contract Capacity due to a resize of the project pursuant to Section 3.9(d)(i), then Seller shall forfeit a proportional share of the Project Development Security on a percent-for-percent basis.

(e) Right of First Offer.

(i) If Seller resizes the Project due to Permit Failure, then for a period of two (2) years from the date on which Seller Notifies Buyer of the Contract Capacity Commitment ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project in excess of the Contract Capacity Commitment, up to the initial Contract Capacity set forth in Section 3.1(f), to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the "First Offer") and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer's management approval and CPUC Approval ("Buyer's Notice"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller's documented incremental costs in overcoming the Permit Failure.

(iii) If Buyer rejects or fails to accept Seller's First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. Seller's certificate shall be in substantially the form of Appendix IX. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the "Revised Offer") in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller's Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or

otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price.

The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year shall be as follows:

Contract Year	Contract Price (\$/MWh)
1-20	\$246 /MWh

4.2 TOD Periods.

The time of delivery periods (“TOD Periods”) specified below shall be referenced by the following designations:

Monthly Period	TOD PERIOD		
	1. Super-Peak	2. Shoulder	3. Night
A. June - September	A1	A2	A3
B. Oct. -Dec., Jan. & Feb.	B1	B2	B3
C. Mar. – May	C1	C2	C3

Monthly Period Definitions. The Monthly Periods are defined as follows:

- A. June - September;
- B. October, November, December, January and February; and
- C. March - May.

TOD Period Definitions. The TOD Periods are defined as follows:

1. **Super-Peak** (5x8) = hours ending 13-20 (Pacific Prevailing Time (PPT)) Monday - Friday (*except* NERC Holidays) in the applicable Monthly Period.
2. **Shoulder** = hours ending 7 - 12, 21 and 22 PPT Monday - Friday (*except* NERC Holidays); and hours ending 7-22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.
3. **Night** (7x8) = hours ending 1-6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

“NERC Holidays” mean the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “NERC Holiday” remains on that Saturday. Notwithstanding anything to the contrary in this Section 4.2, NERC Holidays shall be calculated as “Shoulder” hours for all non-”Night” hours and any remaining hours shall be calculated as “Night” hours.

4.3 TOD Factors and Monthly TOD Payment.

(a) TOD Factors. In accordance with all other terms of this Article Four, the Contract Price for Delivered Energy shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified TOD Periods in which Delivered Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June - September	2.20490	1.12237	0.68988
B. Oct. -Dec., Jan. & Feb.	1.05783	0.93477	0.76384
C. Mar. – May	1.14588	0.84634	0.64235

(b) Monthly TOD Payment. For each month, Buyer shall pay Seller for Delivered Energy in each TOD Period (“Monthly TOD Payment”) the amount resulting from multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the Delivered Energy in each hour:

$$MonthlyTODPayment = \sum_{hour=1}^n Contract\ Price\$ * TOD\ Factor * Delivered\ Energy\ MW_{hour}$$

4.4 Excess Delivered Energy.

In any Contract Year, if Seller delivers Delivered Energy in excess of one hundred twenty percent (120%) of the annual Contract Quantity amount, the Contract Price for such Energy in excess of such one hundred twenty percent (120%) shall be adjusted to be seventy-five percent (75%) of the applicable Contract Price.

4.5 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller’s failure to perform any covenant or

obligation set forth in this Agreement. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties, incurred by Seller because of Buyer's actions.

(b) Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling and imbalances except as provided in Section 4.5(c) below. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller's and Buyer's respective responsibilities for payment for imbalance and congestion charges and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(c) Forecasting Penalties.

(i) Subject to Force Majeure, in the event Seller does not in a given hour either (A) provide the access and information required in Section 3.1(l)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(l)(iv); or (C) provide the forecast of Available Capacity required in Section 3.4(c)(iii), and the sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

(ii) The Performance Tolerance Band is five percent (5%) multiplied by Contract Capacity multiplied by one (1) hour.

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to one hundred fifty percent (150%) of the Contract Price for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.5(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.

4.6 Test Period Payments.

During the Test Period Seller's full compensation for Product sold to Buyer shall be the CAISO Revenues for the Delivered Energy, which revenues Buyer shall forward promptly to Seller.

4.7 Additional Compensation.

(a) To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to Electric System Upgrades contemplated in Section 3.1(h)(i).

(b) To the extent that during the Delivery Term Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from

CAISO for congestion charges or Congestion Revenue Rights (as defined in the CAISO Tariff), whether due to any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the Product (collectively, any such refunds, credits or benefits are referred to as “Reductions”), then, at Buyer’s option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer less any costs incurred by Seller in connection with such Reductions; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions less any costs incurred by Seller in connection with such Reduction and Seller shall retain the Reductions.

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

5.1 Events of Default.

An “Event of Default” shall mean,

(a) with respect to a Party that is subject to the Event of Default, the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written Notice is received by the Party failing to make such payment;

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.2(b), becomes false or misleading in any material respect during the Delivery Term; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.2(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b) shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading.

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within forty-five (45) days after Notice from the Non-Defaulting Party, which time period shall be extended if the Defaulting Party is making diligent efforts to cure such failure to perform, provided that such extended period shall not exceed forty-five (45) additional days;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project;

(ii) failure by Seller to meet the Guaranteed Construction Start Date as extended by any Permitted Extensions, and after the applicable cure period has expired due solely to Seller's inability to obtain, after the use of commercially reasonable efforts, any of the following in time to achieve the Guaranteed Construction Start Date: (A) permits necessary to construct or operate the Project, or (B) an SGIA that provides for the Project being physically interconnected to the CAISO Grid or the Participating Transmission Owner's distribution system, and for the completion of any necessary Electric System Upgrades;

(iii) failure by Seller to meet the Guaranteed Commercial Operation Date as extended by any Permitted Extensions, and after the applicable cure period has expired due solely to Seller's inability to achieve, after the use of commercially reasonable efforts, by the Guaranteed Commercial Operation Date either the physical interconnection of the Project to the CAISO or any necessary Electric System Upgrades;

(iv) failure by Seller for any reason other than those explicitly provided in Sections 5.1(b)(ii) and (iii) above and Section 1.1(a)(ii) to meet either of the Guaranteed Project Milestones as may be extended by Permitted Extensions and in each case after the applicable cure period has expired;

(v) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement and such failure is not cured within any applicable cure period;

(vi) failure by Seller to achieve the Guaranteed Energy Production requirement as set forth in Section 3.1(e)(ii) of this Agreement as follows:

(A) after the one (1)-year GEP Cure period Seller has failed to cure the GEP Failure and has failed to pay GEP Damages in the time period set forth in Section 3.1(e)(ii); or

(B) if, after any Performance Measurement Period the cumulative GEP Shortfall for all Performance Measurement Periods occurring during the Delivery Term equals or exceeds two times the Contract Quantity (as may be adjusted pursuant to Sections 3.9(d) and 3.1(e)(ii)); provided, however, that if all or a portion of the GEP Shortfall during an applicable Performance Measurement Period is principally caused by a non-Force Majeure major equipment malfunction, breakdown, or failure resulting in a reduction of Energy production of the Project by at least fifty percent (50%) of the Contract Quantity in one or both years of the Performance Measurement Period, as applicable, and such malfunction, breakdown, or failure was not caused by Seller and could not have been avoided through the exercise of Good Utility Practice, such failure shall be excluded from the cumulative GEP Shortfall for purposes of this subsection.

5.2 Remedies.

If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party (“Non-Defaulting Party”) shall have the following rights:

- (a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”);
- (b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;
- (c) (i) collect the Damage Payment in accordance with Section 5.8 below, if the Event of Default arose under Sections 5.1(b)(ii) or Section 5.1(b)(iii), or (ii) collect the Termination Payment for any other Event of Default;
- (d) withhold any payments due to the Defaulting Party under this Agreement;
- (e) suspend performance;
- (f) exercise its rights pursuant to Section 8.3 to draw upon and retain Performance Assurance;
- (g) demand payment for damages due to Buyer’s unexcused failure to take delivery or pay for Product; and
- (h) exercise any other rights or remedies available at Law or in equity to the extent otherwise permitted under this Agreement.

Notwithstanding anything to the contrary contained herein, Seller may exercise the rights or remedies set forth in Sections 5.2(e), (g), and (h) without terminating this Agreement.

5.3 Calculation of Termination Payment.

(a) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Product, (c) at the same Delivery Point, (d) for the remaining Delivery Term, and (e) any other commercially reasonable manner. Regardless of the method chosen by the Non-Defaulting Party to calculate the Settlement Amount, the Settlement Amount must still be reasonable under the circumstances.

(b) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.

(c) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

5.5 Disputes With Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.6 Rights And Remedies Are Cumulative.

The rights and remedies of a Party pursuant to this Article Five shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Duty to Mitigate.

Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

5.8 Damage Payment for Failure to Achieve Guaranteed Dates.

The Parties agree that the Damage Payment to be paid by Seller for an Event of Default arising under Section 5.1(b)(ii) or Section 5.1(b)(iii) associated with Seller's failure to achieve the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date shall be considered liquidated damages and not a penalty, in accordance with Section 7.1.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies.

On or about the tenth (10th) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Sections 4.3 and 4.4, as adjusted pursuant to Section 4.5 (CAISO Charges) (which may include charges incurred in preceding months), and, if applicable, Section 4.6. Buyer shall pay the undisputed amount of such invoices less the amount of any Forecasting Penalties (as applicable), on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices.

In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN.

UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information.

If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles. Buyer shall be deemed to have satisfied such delivery

requirement if the applicable report is publicly available on www.pge-corp.com or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

8.2 Seller Financial Information-

If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

8.3 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty days of the delivery of the Project Development Security or Delivery Term Security, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non- Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Performance Assurance

(a) Project Development Security; Delivery Term Security. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of \$ *[insert dollar amount equal to \$15/kw multiplied by the capacity of the Project as reflected in Seller's Offer]* and in the form of *[specify cash or Letter of Credit]* within five (5) Business Days following the Execution Date of this Agreement until Seller posts Project Development Security pursuant to Section 8.4(a)(ii) below with Buyer.

(ii) Project Development Security pursuant to this Section 8.4(a)(ii) in the amount set forth in Sections 8.4(a)(ii)(A)-(B), below, as applicable, in the form of *[specify cash or Letter of Credit]* from a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Section 2.4 are either satisfied or waived until Seller posts Delivery Term Security pursuant to Section 8.4(a)(iii) below with Buyer; provided that if Buyer collects or is entitled to collect Daily Delay Damages from Seller during the Construction Cure Period for failure to achieve the Guaranteed Construction Start Date (after giving effect to Permitted Extensions), Seller agrees that within ten (10) Business Days following the end of the Construction Cure Period it shall replenish the Project Development Security by an amount equal to the encumbered Project Development Security; provided further that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Project Development Security posted pursuant to this Section 8.4(a)(ii);

(A) For Projects with a Contract Capacity of less than 10 MW (AC), \$ *[insert dollar amount equal to \$20/kw, multiplied by the capacity of the Project as reflected in Seller's Offer]*; or

(B) For Projects with a Contract Capacity of 10 MW (AC) or greater, *[insert dollar amount equal to \$35/kw, multiplied by the capacity of the Project as reflected in Seller's Offer]*.

(iii) Delivery Term Security pursuant to this Section 8.4(a)(iii) in the amount of \$ *[insert dollar amount equal to six months of the Contract Price multiplied by the Contract Quantity in the first applicable Contract Year]* and in the form of *[specify cash, Letter of Credit or Guarantee]* from the Commercial Operation Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) toward the Delivery Term Security posted pursuant to this Section 8.4(a)(iii).

Except as provided in Section 5.2(c)(i), the amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. Except as specifically provided for in this Section 8.4(a), Buyer acknowledges that Seller shall not be required to post any additional security.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security posted by Seller for Daily Delay Damages until such

time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). If Seller has met the Guaranteed Commercial Operation Date, then the Project Development Security returned shall include amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date. The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) toward the Delivery Term Security posted pursuant to Section 8.4(a)(iii).

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security or Delivery Term Security, as applicable, at the Interest Rate; provided that, such interest shall be retained by Buyer until Seller posts the Delivery Term Security pursuant to Section 8.4(a)(iii). Upon Seller's posting of the Delivery Term Security, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix XI (Notices List). After Seller posts the Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for such Delivery Term Security.

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller promptly after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including but not limited to payments pursuant to Section 4.5 (CAISO Charges), Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting)

(f) Adjustment of Security Amounts for Project Resizing. The required amount of Delivery Term Security shall be proportionally and automatically adjusted in connection with any resizing of the Project under Sections 3.1(e)(ii), and Buyer shall promptly return to Seller the unused portion of Delivery Term Security in connection with any such adjustment.

8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit (i) fails to maintain a Credit

Rating of at least an A2 by Moody's and at least an A by S&P, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall cure such default by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within ten (10) Business Days after Buyer receives Notice of such refusal (all of which is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight.

(b) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product or the Transaction arising at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party's exemption

is lost or reduced, each Party's responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

ARTICLE TEN: MISCELLANEOUS

10.1 Recording.

Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer's employees or representatives performing a Scheduling Coordinator function as provided in Section 3.4(c) and any representative of Seller. The Parties agree that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

10.2 Representations and Warranties.

(a) General Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to perform its obligations under this Agreement, except for (A) CPUC Approval in the case of Buyer, and (B) all permits necessary to install, operate and maintain the Project in the case of Seller;

(iii) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(ix) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

(b) Seller Representations and Warranties. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(c) The term “commercially reasonable efforts” as used in Section 10.2(b) of this Agreement shall not require Seller to incur Compliance Costs in excess of the Compliance Cost Cap.

10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and the Transaction; and

(iii) it shall perform its obligations under this Agreement and the Transaction in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it.

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Project in order to satisfy its Resource Adequacy Requirements; and

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements applicable to an Interconnection Customer (as defined in the CAISO Tariff) and shall take any other necessary action, including but not limited to payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the Commercial Operation date or as soon as practicable thereafter.

10.4 Title and Risk of Loss.

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person or entity arising prior to or at the Delivery Point.

10.5 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, or (ii) Seller's operation and/or maintenance of the Project, including, without limitation, any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point, including, without limitation, any loss, Claim, action or suit, for or on account of injury to,

bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors, or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.5(a) and 10.5(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.6 Assignment.

(a) General Assignment. Except as provided in Sections 10.6(b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing and except as provided in Section 10.6(b), consent shall not be required for an assignment of this Agreement where the assigning Party remains subject to liability or obligation under this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, and (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior written notice of the assignment.

(b) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project (including any tax equity or lease financing) without the prior written consent of the Buyer; provided that the financing provider(s), enter(s) into a Consent to Assignment substantially in the form attached hereto as Appendix XII under which such financing provider(s) shall agree that upon exercising its rights to assume the Agreement, it shall be bound by the terms and conditions hereof; and provided further that Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including without limitation attorneys' fees. In connection with the foregoing, Buyer endeavors to negotiate such Consent to Assignment with Seller's financing provider(s) in good faith.

(c) Notice of Change in Control. Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates', Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.6 is void.

10.7 Confidentiality:

Confidentiality Notification: If checked, Seller has waived its right to notification in accordance with Section 10.7(b).

(a) Neither Party shall disclose the non-public terms or conditions of this Agreement to a third party, other than as follows:

(i) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential,

(ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement,

(iii) to the CPUC under seal for purposes of review,

(iv) for disclosure of those certain terms specified in and pursuant to Section 10.8 of this Agreement;

(v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or

(vi) in order to comply with *any* applicable regulation, rule, or order of the CPUC, CEC, or the FERC.

(b) If a Party is required to disclose confidential information in order to satisfy an obligation pursuant to subsection (a)(v) above ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (y) prohibited from complying with a Disclosure Order or (z) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(c) The Parties agree that the confidentiality provisions under this Section 10.7 are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Section 10.7 shall govern confidential treatment of all information exchanged between the Parties as of and after the Effective Date.

10.8 RPS Confidentiality

Notwithstanding Section 10.7(a) of this Agreement, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, Delivery Term, Project location, Contract Capacity, anticipated Commercial Operation Date, Contract Quantity, and Delivery Point.

10.9 Audit

Each Party has the right, at its sole expense and during normal working hours, after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Insurance

Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage.

(a) Workers' Compensation and Employers' Liability

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers' Liability insurance shall not be less than \$1,000,000 for injury or death occurring as a result of each accident.

(b) Commercial General Liability

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, with no alterations to the coverage form.

(ii) The limit shall not be less than \$3,000,000 each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(iv) Coverage shall:

(A) by “Additional Insured” endorsement add as insured PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller (Insurance Services Office Form CG2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a “blanket endorsement by contract,” the following language added to the certificate of insurance will satisfy Buyer’s requirement: “PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;”

(B) be endorsed to specify that the Seller’s insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it; and

(C) include a severability of interest clause.

(c) Business Auto.

(i) Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 “any auto”.

(ii) The limit shall not be less than \$1,000,000 each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) Professional Liability Insurance.

(i) Errors and Omissions Liability insurance appropriate to the Seller’s profession. Coverage shall be for a professional error, act or omission arising out of the scope of services shown in the Agreement, including coverage for bodily injury, property damage, and consequential financial loss.

(ii) The limit shall not be less than \$2,000,000 per claim,

(iii) Coverage shall:

(A) be endorsed to specify that the Seller’s insurance is primary and that any Insurance or self-insurance maintained by PG&E shall not contribute with it; and

(B) be endorsed to specify that the selection of counsel, paid for by the insurer, to defend PG&E and its officers, directors, agents, and employees against covered or potentially covered claims shall be by mutual consent of PG&E and insurer.

(e) Additional Insurance Provisions.

(i) Before commencing performance of the Work, Seller shall furnish PG&E with certificates of insurance and endorsements of all required insurance for Seller.

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to PG&E.

(iii) PG&E uses a third party vendor, Exigis, to confirm and collect insurance documents. The process starts with the PG&E Contract Administrator submitting negotiated insurance terms in the Exigis website. An e-mail will be generated from "Exigis.com" that will include a login, password, and link to the web-portal requesting specific information from the vendor. Vendor provides insurance broker information, which will trigger an e-mail to the insurance broker. The insurance broker provides insurance information and sends pdf or fax of insurance documents to Exigis. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to bind coverage on its behalf, and submitted through the Exigis website at: <https://prod1.exigis.com/pge> Helpline: 1 (888) 280-0178

Certificate Holder:
Pacific Gas and Electric Company
c/o Exigis

(iv) Reviews of such insurance may be conducted by PG&E on an annual basis and, in addition, PG&E may inspect the original policies or require complete certified copies at any time.

(v) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(f) Form And Content.

(i) All policies or binders with respect to insurance maintained by Seller shall:

(A) waive any right of subrogation of the insurers hereunder against PG&E, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy; and

(B) with respect to any additional insured, provide that such insurance will not be invalidated by any action or inaction of each such insured and will insure

each such insured regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured.

10.11 Access to Financial Information.

The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Buyer will require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

- (a) Complete financial statements and notes to financial statements; and
- (b) Financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter.

Any information provided to Buyer pursuant to this Section 10.11 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

10.12 Governing Law.

This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

10.13 General.

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.15. This Agreement shall be binding on each Party's successors and permitted assigns.

10.14 Severability.

If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

10.15 Counterparts.

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10.16 Mobile Sierra.

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in United States Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

ARTICLE ELEVEN: TERMINATION EVENT

11.1 Force Majeure Termination Event:-

(a) Force Majeure Failure. Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following:

(i) if after the Commercial Operation Date, the Project fails to deliver at least forty percent (40%) of the Contract Quantity (as may be adjusted pursuant to Sections 3.1(e)(ii) or 3.9(d)) to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project (“Force Majeure Project Failure”); provided that:

(A) if the Project may be capable of resuming normal production, then Seller shall be entitled to an additional period of time (not to exceed six (6) months) to remedy the Force Majeure if within forty-five (45) days of receipt of Notice from Buyer that a Force Majeure Project Failure has occurred, Seller presents Buyer with a plan for

mitigation of the effect of the Force Majeure which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer's written acknowledgement of such plan, and Seller diligently pursues such mitigation plan throughout said additional period; or

(B) if the Project is destroyed or rendered inoperable by a Force Majeure caused by a catastrophic natural disaster, upon Buyer's written request to Seller, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and provide Buyer a copy of the engineer's report, at no cost to Buyer.

(ii) if prior to the Construction Start Date or Commercial Operation Date, as applicable, Seller is unable, due solely to a Force Majeure event, to achieve the Construction Start Date or place the Project into Commercial Operation by either of the Guaranteed Milestones, after applicable extensions or cure periods have run, as set forth in Sections 3.9(c)(iii) and (iv) (in either case a "Force Majeure Development Failure"); provided that in the event of a Force Majeure caused by a catastrophic natural disaster, upon Buyer's written request to Seller, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and provide Buyer a copy of the engineer's report, at no cost to Buyer.

(b) Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then for a period of two (2) years from the date on which Buyer Notifies Seller of such termination ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the "First Offer") and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer's management approval and CPUC Approval ("Buyer's Notice"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller's documented incremental costs in overcoming the Force Majeure event.

(iii) If Buyer rejects or fails to accept Seller's First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions

of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. Seller's certificate shall be in substantially the form of Appendix IX. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the "Revised Offer") in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller's Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE TWELVE: DISPUTE RESOLUTION

12.1 Intent of the Parties.

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article Twelve. The lone exception to the foregoing is that either Party may seek an injunction in Superior Court in San Francisco, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

12.2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting to, be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from the Referral Date. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality

provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Arbitration Initiation.

If the dispute cannot be resolved by negotiation as set forth in Section 12.2 above, then the Parties shall resolve such controversy through Arbitration. The Arbitration shall be adjudicated by one retired judge or justice from the JAMS panel. The Arbitration shall take place in San Francisco, California, and shall be administered by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within one hundred and twenty (120) days of service of the Referral Date.

12.4 Arbitration Process.

At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994) and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law.

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(e) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

(f) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

ARTICLE THIRTEEN: NOTICES

Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, as provided in Appendix VIII, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Notices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

[SELLER, a (include place of formation and business type)]

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX I

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary: Pacific Gas and Electric Company

77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

Applicant: [Insert name and address
of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “Pursuant to the terms of that certain Power Purchase Agreement (“PPA”), dated _____, between Beneficiary and **[insert name of Seller under the PPA]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the PPA]** under the PPA; or

B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the PPA]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended (without an amendment hereto) for a period of one (1) year from the Expiry Date or any future Expiry Date, unless **[insert name of Seller under the PPA]** has provided replacement security acceptable to Beneficiary, or Beneficiary has returned this Letter of Credit to **[insert name of Seller under the PPA]** prior to the Expiry Date.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ [print or type name]

Title: _____

APPENDIX II

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between _____ (“Buyer”) and _____ (“Seller”), this letter (“Initial Energy Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and Buyer has received the Product, as specified in the Agreement, as of this ____ day of _____, _____ (the “Initial Energy Delivery Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Seller represents to Buyer that it has been granted status as an [Exempt Wholesale Generator] [Qualifying Facility]. Additionally Seller provides the following FERC Tariff information for reference purposes only:

Tariff: Dated: Docket Number:

IN WITNESS WHEREOF, each Party has caused this Initial Energy Delivery Date Confirmation Letter to be duly executed by its authorized representative as of the date of last signature provided below:

[SELLER]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX III

MILESTONES SCHEDULE

Identify Milestone	Date for Completion

[To be completed by Buyer and Seller]

APPENDIX III- Attachment A

**FORM OF MONTHLY
PROGRESS REPORT**

**Monthly Progress Report
of**

(“Seller”)

**provided to
Pacific Gas and Electric Company
(“Buyer”)**

[Submittal Date]

1 Instructions

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement by and between _____, (“Seller”) and Pacific Gas and Electric Company dated _____, (the “Agreement”).

In addition to the Remedial Action Plan requirement set forth in Section 3.9(c) of the Agreement, Seller shall review the status of each Milestone of the construction schedule (the “Schedule”) for the Units and related Project and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

- (i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Units or related Project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.
- (ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Units or related Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Monthly Construction Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

For the purpose of this report, “EPC Contractor” means the contractor responsible for engineering, procurement and construction of the Project, including Seller if acting as contractor, and including all subcontractors.

2 Executive Summary

2.1 Major activities completed

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Project (provide details in subsequent sections of this report):

- 2.1.1 [Insert Milestones from Appendix III, if needed]
- 2.1.2 Financing
- 2.1.3 Governmental Approvals
- 2.1.4 Site Control
- 2.1.5 Design and Engineering
- 2.1.6 Major Equipment Procurement
- 2.1.7 Construction
- 2.1.8 Interconnection
- 2.1.9 Startup Testing and Commissioning

2.2 Major activities recently performed

Please provide a summary of the major activities performed for each of the following aspects of the Project since the previous report (provide details in subsequent sections of this report):

- 2.2.1 [Insert Milestones from Appendix III, if needed]
- 2.2.2 Financing
- 2.2.3 Governmental Approvals
- 2.2.4 Site Control
- 2.2.5 Design and Engineering
- 2.2.6 Major Equipment Procurement
- 2.2.7 Construction
- 2.2.8 Interconnection
- 2.2.9 Startup Testing and Commissioning

2.3 Major activities planned but not completed

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Project:

- 2.3.1 [Insert Milestones from Appendix III, if needed]
- 2.3.2 Financing
- 2.3.3 Governmental Approvals
- 2.3.4 Site Control
- 2.3.5 Design and Engineering
- 2.3.6 Major Equipment procurement
- 2.3.7 Construction
- 2.3.8 Interconnection
- 2.3.9 Startup Testing and Commissioning

2.4 Major activities expected during the current month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Project (provide details in subsequent sections of this report):

- 2.4.1 Milestones
- 2.4.2 Financing
- 2.4.3 Governmental Approvals
- 2.4.4 Site Control
- 2.4.5 Design and Engineering
- 2.4.6 Major Equipment procurement
- 2.4.7 Construction
- 2.4.8 Interconnection
- 2.4.9 Startup Testing and Commissioning

3 Milestones

3.1 Milestone schedule

Please list all Milestones specified in Appendix III and state the current status of each.

Milestone	Milestone Date Specified in the Agreement	Status (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
-----------	---	--

3.2 Remedial Action Plan (if applicable)

Provide a detailed description of Seller’s course of action and plan to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date using the outline provided below.

- 3.2.1 Identify Missed Milestone
- 3.2.2 Explain plans to achieve missed Milestone
- 3.2.3 Explain plans to achieve subsequent Milestones
- 3.2.4 Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Milestones

4 Financing

Please provide the schedule Seller intends to follow to obtain financing for the Project. Include information about each stage of financing.

Activity (e.g., obtain \$xx for yy stage from zz)	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

5 Project Schedule

Please provide a copy of the current version of the overall Project schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for Governmental Approvals, design and engineering, procurement, construction, interconnection and testing.

6 Governmental Approvals

6.1 Environmental Impact Review

Please provide information about the primary environmental impact review for the Project. Indicate whether dates are expected or actual.

Agency [e.g., the lead agency as required under the California Environmental Quality Act (CEQA)]

Date of application/submission ___/___/___ (expected / actual)

Date application/submission deemed complete by agency ___/___/___ (expected / actual)

Date of initial study (if applicable) ___/___/___ (expected / actual)

Process (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report)

Date of Notice of Preparation ___/___/___ (expected / actual)

Date of Draft ND/MND/EIR ___/___/___ (expected / actual)

Date Notice of Determination filed at OPR or County Clerk ___/___/___ (expected / actual)

6.2 Federal, State, Regional, County or Local Governmental Approvals

Please describe each of the major Governmental Approvals to be obtained by Seller and the status of each:

Agency / Approval

e.g.,
California Energy Commission (CEC) /
Application for Certification (AFC)

[name] County / Conditional Use Permit (CUP) for possible delay, etc.

Status Summary

e.g., dates of application / hearing / notice / etc.
(note whether dates are anticipated or actual);
major activities (indicate whether planned, in
progress and/or completed); primary reasons

6.3 Governmental Approval activities recently performed

Please list all Governmental Approval activities that occurred since the previous report.

6.4 Governmental Approval activities expected during the current month

Please list all Governmental Approval activities that are expected to occur during the current month.

6.5 Governmental Approval Notices received from EPC Contractor

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from Governmental Agencies.

7 Site Control

7.1 Table of Site Control schedule

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Project Site (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

7.2 Site Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

7.3 Site Control activities expected during the current month.

Please explain in detail the site control activities that are expected to be performed during the current month.

8 Design and Engineering

8.1 Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

8.2 Design and engineering activities recently performed

Please explain in detail the design and engineering activities that were performed since the previous report.

8.3 Design and engineering activities expected during the current month

Please explain in detail the design and engineering activities that are expected to be performed during the current month.

9 Major Equipment Procurement.

9.1 Major equipment to be procured

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		___/___/___ (expected / actual)	___/___/___ (expected / actual)
		___/___/___ (expected / actual)	___/___/___ (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

9.2 Major Equipment procurement activities recently performed

Please explain in detail the major equipment procurement activities that were performed since the previous report.

9.3 Major Equipment procurement activities expected during the current month.

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

10 Construction

10.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		___/___/___ (expected / actual)
		___/___/___ (expected / actual)

10.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

10.3 Construction activities expected during the current month

Please explain in detail the construction activities are expected to be performed during the current month.

10.4 EPC Contractor Monthly Construction Progress Report.

Please attach a copy of the Monthly Construction Progress Reports received since the previous report from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

11 Interconnection

11.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

11.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

11.3 Interconnection activities expected during the current month

Please explain in detail the interconnection activities that are expected to be performed during the current month.

12 Startup Testing and Commissioning

12.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

12.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

12.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

13 Safety and Health Reports

13.1 Accidents

Please describe all Project-related accidents reported since the previous report.

13.2 Work stoppages

Please describe all Project-related work stoppages from that occurred since the previous report.

Please describe the effect of work stoppages on the Project schedule.

14 Certification

I, _____, on behalf of and as an authorized representative of [_____], do hereby certify that any and all information contained in this Seller’s Monthly Construction Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Units as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

FACILITY DESCRIPTION

Facility name: _____

Facility Site name: _____

Facility physical address: _____

Total number of Units at the facility (committed and not committed to Buyer)

Technology Type: _____

Substation:

The term "Site" as defined in the Agreement means the following parcel description upon which the facility is located:

The nameplate capacity of the Project is _____.

The Units utilized as generation assets as part of the Project is described below:

[INSERT MAP]

APPENDIX V

DELIVERY TERM CONTRACT QUANTITY SCHEDULE

[To be completed by Seller]

Contract Year	Contract Quantity

APPENDIX VI

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

**[To be developed by Buyer and Seller and to include Form Certification set forth in
Appendix VI Attachment A]**

APPENDIX VI - Attachment A

FORM OF CERTIFICATION

This certification (“Certification”) is delivered by _____ (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

[To be developed by Buyer and Seller]

APPENDIX VII

GEP DAMAGES CALCULATION

In accordance with the provisions in Section 3.1(e)(ii), GEP Damages means the liquidated damages payment due by Seller to Buyer, calculated as follows:

$$[(A-B)X(C-D)]$$

Where:

A = the Guaranteed Energy Production for the Performance Measurement Period, in MWh

B = Sum of Delivered Energy over the Performance Measurement Period, in MWh

C= Replacement Price for the Performance Measurement Period, in \$/MWh, reflecting the sum of (a) the simple average of the simple average of the Day Ahead Integrated Forward Market hourly price, as published by the CAISO, for the Existing Zone Generation Trading Hub, in which the Project resides, plus (b) \$50/MWh

D = the unweighted Contract Price specified in Section 4.1 for the Performance Measurement Period, in \$/MWh

The Parties agree that in the above calculation of GEP Damages, the result of “(C-D)” shall not be less than \$20/MWh. and shall be no greater than seventy five percent (75%) of the Contract Price (in \$/MWh) set forth in Section 4.1.

APPENDIX VIII

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR START-UP AND SHUTDOWN

Prior to paralleling to or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify your designated balancing authority control center as follows:

- Call the balancing authority control center to parallel before any start-up
- Call the balancing authority control center again with parallel time after start-up.
- Call the balancing authority control center after any separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PROJECT OUTAGES

1. Submit information by posting to PG&E's Power Procurement Information Center, which is located at www.pge.com under "For My Business." After selecting "Wholesale Power" on the right side of the page, select "Electric Procurement" along the left banner. After selecting the Power Procurement Information Center icon in the middle of the page, you will be required to enter a username and password, which will be assigned to you by PG&E's Bilateral Settlements Group.
2. If the website is unavailable, implement the procedures set forth below:
 - a. **For all email correspondence, enter the following in the email subject field: Delivery Date Range, Contract Name, Email Purpose (For example: "dd/mm/yyyy - dd/mm/yyyy XYZ Company Project #2 Daily Forecast of Available Capacity")**
 - b. For Annual Forecasts of Available Capacity, email to DAenergy@pge.com and [Bilat Settlements@pge.com](mailto:BilatSettlements@pge.com).
 - c. For Monthly and WECC Preschedule Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
 - d. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Day-Ahead Schedules, call primary phone 415.973.6222 or backup phone 415.973.4500. Also send email to DAenergy@pge.com.

- e. For Hourly Forecasts of Available Capacity, call PG&E's Hour-ahead Trading Desk at 415.973.4500 and email to RealTime@pge.com.
- f. For project outages, complete the specifics below and submit by email to DAenergy@pge.com and Bilat Settlements@pge.com
 - i. Email subject Field: dd/mm/yyyy - dd/mm/yyyy XYZ Company Project #2 Outage Notification*
 - ii. Email body:*
 - 1. Type of Outage: Planned Outage, Forced Outage, Prolonged Outage*
 - 2. Start Date and Start Time*
 - 3. Estimated or Actual End Date and End Time*
 - 4. Date and time when reported to PG&E and name(s) of PG&E contacted*
 - 5. Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage required by the CAISO.*

APPENDIX IX

CERTIFICATION OF THIRD PARTY AGREEMENT

[To be developed by Buyer and Seller]

APPENDIX X

RESOURCE ADEQUACY

1. Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to, the following:
 - A. Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CAISO and/or CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the Interconnection Point; and
 - B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.
2. Seller shall comply with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff as may be changed from time to time, including but not limited to the following:
 - A. Taking all actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity;
 - B. Coordinating with Buyer on the submission to the CAISO of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff;
 - C. Complying with the dispatch requirements applicable to the Project's resource type, as set forth in Section 40 of the CAISO Tariff; and
 - D. Complying with the applicable reporting requirements, such as submitting Supply Plans to the CAISO.
3. RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Interconnection Point for the Project.

APPENDIX XI

NOTICES LIST

Name: *[Seller's Name]*, a *[include place of formation and business type]* ("Seller")

Name: Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E")

All Notices: *[Seller to complete]*

All Notices:

Delivery Address:

Delivery Address:

Street:

77 Beale Street, Mail Code N12E

City: State: Zip:

San Francisco, CA 94105-1702

Mail Address: (if different from above)

Mail Address:

P.O. Box 770000, Mail Code N12E

San Francisco, CA 94177

Attn:

Attn: CandiceChan (CWW9@pge.com)

Director, Contract Mgmt & Settlements

Phone:

Phone: (415) 973-7780

Facsimile:

Facsimile: (415) 973-5507

DUNS:

DUNS:

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

Attn: Amol Patel (AxPx@pge.com)

Manager, Bilateral Settlements

Phone:

Phone: (415) 973-6510

Facsimile:

Facsimile: (415) 973-2151

Scheduling:

Scheduling:

Attn:

Attn: Kevin F. Coffee (kfcl@pge.com)

Phone:

Phone: (415) 973-7631

Facsimile:

Facsimile: (415) 973-0400

Payments:

Payments:

Attn:

Attn: Amol Patel (AxPx@pge.com)

Manager, Bilateral Settlements

Phone:

Phone: (415) 973-6510

Facsimile:

Facsimile: (415) 973-2151

Wire Transfer:

BNK:
ABA:
ACCT:

Credit and Collections:

Attn:

Phone:
Facsimile:

With additional Notices of an Event of Default to Contract Manager:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

BNK:
ABA:
ACCT:

Credit and Collections

Attn: David Medrano
(D6MD@pge.com)
Manager, Credit Risk Management

Phone: (415) 973-9099
Facsimile: (415) 973-4071

Contract Manager:

Attn: Chad Curran (CRCq@pge.com)
Manager, Contract Management
Phone: (415) 973-6105
Facsimile: (415) 972-5507

With additional Notices of an Event of Default to:

PG&E Law Department
Attn: Renewables Portfolio Standard attorney
Phone: (415) 973-4377
Facsimile: (415) 972-5952

APPENDIX XII

FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

**THIS FORM IS SUBJECT TO GOOD FAITH NEGOTIATION WITH SELLER'S
FINANCING PROVIDERS.**

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2 ____], between PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”), and [_____] , as collateral agent (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”). PG&E, Seller, and the Financing Provider shall each individually be referred to a “Party” and collectively as the “Parties”.

Recitals

A. Pursuant to that certain Power Purchase Agreement dated as of _____, 2 _____ (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between PG&E and Seller, PG&E has agreed to purchase energy from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, PG&E has agreed to enter into this Consent and Agreement for the benefit of Seller.

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

2. Consent. Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the [Security Agreement] of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).

3. Limitations on Assignment. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the

Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) executes and delivers to PG&E a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as PG&E may reasonably request, and (e) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a "Financing Default"), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

"Permitted Transferee" means any person or entity who is reasonably acceptable to PG&E. Financing Provider may from time to time, following the occurrence of a Financing Default, notify PG&E in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider's rights under the Financing Documents, and PG&E shall, within thirty (30) business days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if PG&E shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a "Permitted Transferee".

4. Cure Rights.

(a) Notice to Financing Provider by PG&E. PG&E shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an "Event of Default") to Seller (a "Default Notice"), provide a copy of such Default Notice to Financing Provider pursuant to Section 9(a) of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a) above, PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement "Additional Cure Period" means (i) with respect to a monetary default, ten (10) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) Failure by PG&E to Deliver Default Notice. If neither PG&E nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider's applicable cure period shall begin on the date on which notice of an Event of Default is delivered to Financing Provider by either PG&E or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in PG&E's ability to terminate the Assigned Agreement (in each case only if both PG&E and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of PG&E to deliver any Default Notice shall not waive PG&E's right to take any action under the Assigned Agreement and will not subject PG&E to any damages or liability for failure to provide such notice.

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving notice of an Event of Default from PG&E or Seller, whichever is received first, Financing Provider shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) days; provided, however, that Financing Provider shall provide a written notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that PG&E shall have the right to set off or deduct from payments due to Seller each and every amount due PG&E from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action PG&E may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that PG&E makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Financing Provider releases PG&E from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that PG&E may agree with Seller to modify or amend the Assigned Agreement, and that PG&E is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases PG&E from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. PG&E shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [_____], as depositary agent,

to ABA No. [____], Account No. [____], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, PG&E and Financing Provider agrees that each such payment by PG&E to such depository agent of amounts due to Seller from PG&E under the Assigned Agreement shall satisfy PG&E's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

(a) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile or other electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties, at the address set forth below:

If to Financing Provider:

Name: _____
Address: _____

Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

If to PG&E:

Name: _____
Address: _____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

(b) No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of PG&E, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under the [loan agreement] and [security agreement].

(c) No Modification. This Consent and Agreement is neither a modification of nor an amendment to the Assigned Agreement.

(d) Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

(e) No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

(f) Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

(h) Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

(i) Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all parties hereto.

IN WITNESS WHEREOF, each of PG&E and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

PACIFIC GAS AND ELECTRIC COMPANY (PG&E)

By: _____
Name: _____
Title: _____

[_____] (Financing Provider), as collateral agent

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from PG&E to Financing Provider the next business day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned.

[_____] **[name of Seller]**

By: _____
Name: _____
Title: _____

APPENDIX XIII
SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer, pursuant to the terms of Section 2.4(a)(iv) of the Agreement, all of the following documentation at least two (2) Business Days prior to the Execution Date:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, "Charter Documents") as in effect on the Execution Date.
2. A certificate signed by an authorized officer of Seller, dated the Execution Date, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of the Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms) satisfactory to Buyer.
5. Evidence of CEC Certification and Verification (pre-certification) satisfactory to Buyer.
6. A copy of the most recent financial statements (which may be unaudited) from Seller together with a certificate from the Chief Financial or equivalent officer of Seller, dated the Execution Date, to the effect that, to the best of such officer's knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.

APPENDIX XIV

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(1)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix XIV.

- (a) Availability Workbook. Seller shall (i) collect the measurement data, listed in (b) below, in one (1) or more Microsoft Excel Workbooks (the “Availability Workbook”) provided in a form and naming convention approved by Buyer and (ii) electronically send the Availability Workbook to an address provided by Buyer. The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all generators as measured by such generator’s internal turbine controller.
- (b) Log of Availability. The Availability Workbook shall be created on a single, dedicated Excel worksheet and shall be in the form of Attachment A to this Appendix XIV.

APPENDIX XIV

Attachment A

Form of Actual Availability Report

[Seller]’s Actual Availability Report

All amounts are in MWs

<u>Settlement Interval No.</u>	<u>Date</u>	<u>HE1</u>	<u>HE2</u>	<u>HE3</u>	<u>HE4</u>	<u>HE5</u>	<u>HE6</u>	<u>HE7</u>	<u>HE8</u>	<u>HE9</u>	<u>HE10</u>	<u>HE11</u>	<u>HE12</u>	<u>HE13</u>	<u>HE14</u>	<u>HE15</u>	<u>HE16</u>	<u>HE17</u>	<u>HE18</u>	<u>HE19</u>	<u>HE20</u>	<u>HE21</u>	<u>HE22</u>	<u>HE23</u>	<u>HE24</u>
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
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5	mm/dd/yyyy																								
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3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								

Date/Time of Submittal _____

Appendix C

Redline of Appendix C – Site Control Questionnaire and Attestation

PV Program PPA Request for Offers

Full Legal Project Name:

Project Location:

Street Address:

City, State, Zip:

Description of land control and whether the project is consistent with local land use zoning ordinances.

- a. If you have site control, how is it exercised, e.g. ownership, leasehold interest, site option, etc. ~~Include copies of documents proving~~ [Documents demonstrating](#) site control and ability to operate project as proposed [will be required prior to contract execution](#).
- b. Is the project consistent with local land use zoning ordinances, including General Plans? If the project requires zoning changes or variances, describe the plan to obtain approval of the zoning changes.
- c. Describe plans to obtain project support from local land use authorities including whether the project needs any specific planning commission, city council or board or supervisor approvals.
- d. Is the project consistent with local General Plan Energy Plan Elements?
- e. Is the project consistent with the Williamson Act Contract? If not, describe how the Williamson Act Contract will be cancelled or terminated.

Provide the following information regarding the site:

- a. Include map showing site location and key project facilities.
- b. Provide at least one of the following sets of information for GIS mapping:
 - i. County Assessor's parcel number for the proposed site; or
 - ii. Coordinates and parcel size

[Site Control Attestation](#)

[Participant hereby represents, warrants and covenants that:](#)

1. [Participant has site control of the site where the project is located or will be located, which is: \[insert project address\];](#)

PV Program PPA Request for Offers

2. Participant is the entity that will execute the PPA with PG&E if PG&E enters into a PPA with the Participant as a result of the Solar PV PPA RFO;
3. Participant will promptly notify PG&E in writing of any changes in the status of the Participant's site control; and
4. Execution and delivery of this attestation are within Participant's powers and have been duly authorized by all necessary action.

"Site control" has the meaning set forth in section II.B of the PV PPA RFO Protocol Document dated February 2, 2011.

Very Truly Yours,

By: _____
Authorized Signature

Name: [print or type name]

Title: _____

Appendix D

Redline of Appendix D – Demonstration of Interconnection Application Submission

PV Program PPA Request for Offers

Full Legal Project Name:
Project Location:
Street Address:
City, State, Zip:

Please provide copies of documents proving that applicable electric distribution or transmission interconnection applications have been filed.

If available at time of initial Offer submission, provide the following:

1. List the transmission/distribution ~~system~~point of interconnection ~~point~~. (i.e. switchyard or substation, with primary equipment listed; interconnecting voltages and interconnecting transmission or distribution lines; bus configuration: collector bus, ring bus, breaker and a half).
 - i. What is the approximate distance from your site to the ~~electric~~point of interconnection ~~point~~?
 - ii. If applicable, ~~has the Project passed the “Screens” specified in section 2.2 of Attachment E of the Wholesale Distribution Tariff (“WDT”) or received its system impact study~~is the applicable study complete?
 - ~~iii. If applicable, has a transmission System Impact Study (SIS) been applied for or completed for the proposal?~~
 - ~~iv.~~ iii. If applicable, provide a proposed ~~transmission~~ interconnection plan including any existing or future approvals ~~or~~and agreements. Describe anticipated ~~transmission system~~ upgrades, including new distribution or transmission lines ~~required~~ for interconnection ~~and milestone activities and timeline for interconnection approval~~. Please include major milestones necessary to achieve Commercial Operation.

Appendix E

Redline of Appendix E – Acknowledgement and Commitment of Site Owner

PV Program PPA Request for Offers

Full Legal Project Name (“Participant”):

Project Location:

Street Address:

City, State, Zip:

Full Legal Name of Site Owner (“Site Owner”):

Business Address of Site Owner:

Street Address:

City, State, Zip:

Subject: Acknowledgement of Site Owner Regarding Alternate Program
Availability – California Solar Initiative and Net Energy Metering
Programs

Pacific Gas and Electric Company:

[Insert Site Owner’s full legal name] owns the real property located at [Insert complete Property address][, and leases or intends to lease all or a portion of the Property to [Insert Participant’s s legal name].]

[Site Owner] avows that it is informed of and has investigated the benefits offered by, alternative government-sponsored solar generation subsidy programs such as the California Solar Initiative (“CSI”) and the Net Energy Metering (“NEM”) programs.

[Site Owner] further acknowledges that if Pacific Gas and Electric Company (“PG&E”) executes a power purchase agreement with [Participant] as part of PG&E’s 2010 PV Program PPA RFO and receives California Public Utilities Commission approval of that power purchase agreement, then [Participant] will install a solar photovoltaic electric generating facility, including solar panels and other ancillary equipment (“solar photovoltaic electric generating facility”), on a defined portion of the Property, and will exclusively sell to PG&E, pursuant to the power purchase agreement, the entire output of the solar photovoltaic electric generating facility, including all attributes related thereto.

Finally, [Site Owner] asserts that it has not participated in, nor submitted any claim for receipt of funds under, the CSI or the NEM programs for the solar photovoltaic electric generating facility, and that if PG&E selects [Participant] as part of PG&E’s 2010 PV Program PPA RFO and receives California Public Utilities Commission approval of the power purchase agreement, [Site Owner] will be precluded from participating in either the CSI or the NEM programs for the solar photovoltaic electric generating facility for the entire term of the power purchase agreement.

PV Program PPA Request for Offers

Execution of this letter agreement by [Site Owner] does not prevent [Site Owner] from participating in the CSI or NEM programs for other projects, other than the solar photovoltaic electric generating facility, including other projects on the same Property.

Very Truly Yours,

[Insert Site Owner's full legal name]

By: _____

Name: _____

Title: _____

Date: _____

Appendix F

Redline of Appendix F – Supplier Diversity Questionnaire

PV Program PPA Request for Offers

Please answer the questions below about the Participating Company (or Leading Participant in the case of a Team of Participants).

- Is Participant a certified California woman, minority or disabled veteran business enterprise (WMDVBE)?
- If so, please identify the certifying agency:
- If your company is woman, minority or service disabled veteran-owned but not certified by the CPUC or Department of General Services, does your company hold a Women’s Business Enterprise National Council (WBENC), National Minority Supplier Development Council (NMSDC) or United States Small Business Administration 8(a) certification. Please provide certification number and expiration date.
- Does Participant commit to PG&E's Supplier Diversity Program which can be found at <http://www.pge.com/b2b/purchasing/supplierdiversity/>?
- Does Participant intend to use WMDVBE suppliers in Participant's materials and services supply chain?
- Does your company have a supplier diversity program? If so, describe efforts your company has made to increase business with WMDVBE firms (i.e. does your company have a policy statement, participate in outreach activities, promote diverse firm subcontracting, publicize contract opportunities, provide certification assistance, etc.?). Please provide examples.
- If your company has a supplier diversity program, does your company mentor WMDVBE suppliers? Please provide examples.

If Participant is not a WMDVBE ~~Supplier~~supplier, and if Participant intends to use WMDVBE suppliers to support its PV PPA project if its Offer is executed, then Participant shall list in the table below a plan for how the total cost of each PV PPA project proposed would be split among those WMDVBE subcontracts. Please provide a separate table for each Offer submitted, if more than one. Where applicable, Participant shall also indicate names of subcontractors that may perform those categories of work. Include all potential spend from subcontractor relationships and partnerships.

Component	Planned Spend % by Category	Supplier Names
Installation	%	
Engineering	%	
Major Equipment (modules, inverters, transformers, switchgear)	%	
Other Materials	%	
Freight, Delivery and Logistics	%	
Other (please specify below)	%	
Total Planned WMDVBE Spend as a % of Total Program Spend (%)	%	

PV Program PPA Request for Offers

- If you used the "Other" category, please define what materials and services these firms will provide.
- How much was your company's overall spend with WMDVBE firms over your total purchasing spend in the U.S. in ~~2009~~2010 (%)?
- Please describe in detail how you will assist PG&E in reaching its enterprise-wide diversity spend goal (WMDVBE participation) of 30% in ~~2010~~2011.

Attachment C

Clean and Redlined Version of the Construction Start Date
and Guaranteed Commercial Operation Date Terms of the
Standard Power Purchase Agreement for Facilities less than
Three Megawatts

Standard Power Purchase Agreement for facilities less than three megawatts

Updated Construction Start Date and Guaranteed Commercial Operation Date terms

5.3 Construction Start Date. The Construction Start Date shall occur no later than three hundred and sixty (360) days after the Effective Date of this Agreement, provided that the Construction Start Date may be extended on a day-for-day basis for not more than one hundred and eighty (180) days:

5.3.1 if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Facility, but is unable to obtain such permits due to delays beyond Seller's reasonable control ("Permitting Delay");

5.3.2 if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to have the Facility physically interconnected to the PG&E system or CAISO Grid and to complete all electric system upgrades needed, if any, in order to interconnect the Facility to the PG&E system or CAISO Grid, but fails to secure any necessary commitments from CAISO or PG&E for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"); or,

5.3.3 in the event of Force Majeure without regard to Transmission Delay or Permitting Delay provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

5.4 Guaranteed Commercial Operation Date Seller shall demonstrate Commercial Operation no later than five hundred and forty (540) days after the Effective Date of this Agreement (the "Guaranteed Commercial Operation Date"), provided that the Guaranteed Commercial Operation Date may be extended on a day-for-day basis for (a) any extension claimed by Seller pursuant to and in accordance with Section 5.3, and (b) Force Majeure occurring after the Construction Start Date, provided that the total number of such further extension days under this subpart (b) shall not exceed one hundred and eighty (180) days.

Standard Power Purchase Agreement for facilities less than three megawatts

Redlined Construction Start Date and Guaranteed Commercial Operation Date terms

5.3 Construction Start Date. The Construction Start Date shall occur no later than three hundred and sixty (360) days after the ~~Execution~~ Effective Date of this Agreement, provided that the Construction Start Date may be extended on a day-for-day basis for not more than one hundred and eighty (180) days:

5.3.1 if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Facility, but is unable to obtain such permits due to delays beyond Seller's reasonable control ("Permitting Delay");

5.3.2 if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to have the Facility physically interconnected to the PG&E system or CAISO Grid and to complete all electric system upgrades needed, if any, in order to interconnect the Facility to the PG&E system or CAISO Grid, but fails to secure any necessary commitments from CAISO or PG&E for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"); or,

5.3.3 in the event of Force Majeure without regard to Transmission Delay or Permitting Delay provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

5.4 Guaranteed Commercial Operation Date Seller shall demonstrate Commercial Operation no later than five hundred and forty (540) days after the ~~Execution~~ Effective Date of this Agreement (the "Guaranteed Commercial Operation Date"), provided that the Guaranteed Commercial Operation Date may be extended on a day-for-day basis for (a) any extension claimed by Seller pursuant to and in accordance with Section 5.3, and (b) Force Majeure occurring after the Construction Start Date, provided that the total number of such further extension days under this subpart (b) shall not exceed one hundred and eighty (180) days.

**PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV**

Alcantar & Kahl LLP	Dept of General Services	North Coast SolarResources
Ameresco	Division of Business Advisory Services	Northern California Power Association
Anderson & Poole	Douglass & Liddell	Occidental Energy Marketing, Inc.
Arizona Public Service Company	Downey & Brand	OnGrid Solar
BART	Duke Energy	Praxair
Barkovich & Yap, Inc.	Dutcher, John	R. W. Beck & Associates
Bartle Wells Associates	Economic Sciences Corporation	RCS, Inc.
Bloomberg	Ellison Schneider & Harris LLP	Recurrent Energy
Bloomberg New Energy Finance	Foster Farms	SCD Energy Solutions
Boston Properties	G. A. Krause & Assoc.	SCE
Braun Blaising McLaughlin, P.C.	GLJ Publications	SMUD
	Goodin, MacBride, Squeri, Schlotz & Ritchie	SPURR
Brookfield Renewable Power	Green Power Institute	San Francisco Public Utilities Commission
CA Bldg Industry Association	Hanna & Morton	Santa Fe Jets
CLECA Law Office	Hitachi	Seattle City Light
CSC Energy Services	In House Energy	Sempra Utilities
California Cotton Ginners & Growers Assn	International Power Technology	Sierra Pacific Power Company
California Energy Commission	Intestate Gas Services, Inc.	Silicon Valley Power
California League of Food Processors	Lawrence Berkeley National Lab	Silo Energy LLC
California Public Utilities Commission	Los Angeles Dept of Water & Power	Southern California Edison Company
Calpine	Luce, Forward, Hamilton & Scripps LLP	Spark Energy, L.P.
Cardinal Cogen	MAC Lighting Consulting	Sunshine Design
Casner, Steve	MBMC, Inc.	Sutherland, Asbill & Brennan
Chris, King	MRW & Associates	Tabors Caramanis & Associates
City of Palo Alto	Manatt Phelps Phillips	Tecogen, Inc.
City of Palo Alto Utilities	McKenzie & Associates	Tiger Natural Gas, Inc.
Clean Energy Fuels	Merced Irrigation District	TransCanada
Coast Economic Consulting	Modesto Irrigation District	Turlock Irrigation District
Commercial Energy	Morgan Stanley	United Cogen
Consumer Federation of California	Morrison & Foerster	Utility Cost Management
Crossborder Energy	NLine Energy, Inc.	Utility Specialists
Davis Wright Tremaine LLP	NRG West	Verizon
Day Carter Murphy	Navigant Consulting	Wellhead Electric Company
Defense Energy Support Center	Norris & Wong Associates	Western Manufactured Housing Communities Association (WMA)
		eMeter Corporation
Department of Water Resources	North America Power Partners	