STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE

September 10, 2020

Advice Letter 5896-E / 5896-E-A

Erik Jacobson
Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

SUBJECT: Implementation of Resolution E-4995 Ordering Pacific Gas and Electric Company to Remove Temporary Modifications Made To Standard Contracts under the Bioenergy Market Adjusting Tariff program, Green Tariff Shared Renewables program, and Assembly Bill 1613 program During PG&E's Federal Bankruptcy Proceeding

Dear Mr. Jacobson:

Advice Letter 5896-E / 5896-E-A is effective as of August 30th, 2020.

Sincerely,

Edward Randolph

Edward Randolph
Deputy Executive Director for Energy and Climate Policy/
Director, Energy Division

Pacific Gas and Electric Company

Erik Jacobson
Director
Regulatory Relations

Pacific Gas and Electric Company
77 Beale St., Mail Code B13U
P.O. Box 770000
San Francisco, CA 94177

Fax: 415-973-3582

July 31, 2020

Advice 5896-E
(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

Subject: **Implementation of Resolution E-4995 Ordering Pacific Gas and Electric Company to Remove Temporary Modifications Made To Standard Contracts under the Bioenergy Market Adjusting Tariff program, Green Tariff Shared Renewables program, and Assembly Bill 1613 program During PG&E's Federal Bankruptcy Proceeding**

Purpose

Pacific Gas and Electric Company ("PG&E") respectfully submits this advice letter in compliance with Ordering Paragraph 5 ("OP") of the California Public Utilities Commission's ("Commission" or "CPUC") Resolution E-4995 (the "Resolution"). The Resolution requires PG&E to submit standard form contracts for its Bioenergy Market Adjusting Tariff ("BioMAT") program, Green Tariff Shared Renewables ("GTSR") program and Assembly Bill ("AB") 1613 program that do not include the temporary modifications made during PG&E's federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089-DM, and ended on July 1, 2020.

Background

In OP 5 of the Resolution,[1] the Commission directed PG&E to submit a compliance submittal by Tier 2 advice letter within 30 days of July 1, 2020, the date that PG&E exited from its federal bankruptcy proceeding.[2] Specifically, the Commission directed PG&E to submit standard contracts for BioMAT, GTSR, and AB 1613 that do not include the temporary modifications made during PG&E's federal bankruptcy proceeding, as ordered in Ops 1, 2, 3 of the Resolution, and made effective through Advice Letter 5508-E.[3]

A summary of the temporary modifications made to the standard form contracts that have been removed are provided below.

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[1] Resolution at p.18
[2] See the official notice of PG&E's emergence from bankruptcy (available at: https://restructuring.primeclerk.com/pge/Home-DownloadPDF?id1=NDU0NjY3&id2=0).
[3] Resolution at pp. 16-18

Compliance with OP 5 of the Resolution regarding the BioMAT Standard Contract

PG&E is providing as Attachments 1 and 4 to this Advice Letter a clean and redlined version of the BioMAT standard contract removing the temporary modifications made consistent with the following requirements of OP 1 of the Resolution.[4]

(a) Temporary modifications made to Sections 4.1.4, 4.1.5 and 13.2.1.1 of the BioMAT contract eliminating the application of these sections to buyer for the contracts executed while PG&E Company was in a federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089, have now been removed.

(b) Temporary modifications made to Section 4.2 of the BioMAT contract eliminating the application of these sections to Buyer for the contracts executed while PG&E Company was in a federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089, have now been removed.

(c) A new definition for "Chapter 11 Cases" that means Buyer's Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19-30089 (DM) that was added while PG&E Company was in a federal bankruptcy proceeding that commenced on January 29, 2019 has now been removed.

Compliance with OP 5 of the Resolution regarding the GTSR Standard Contract

PG&E is providing as Attachments 2 and 5 to this Advice Letter a clean and redlined version of the GTSR standard contract removing the temporary modifications made consistent with OP 2 of the Resolution.[5]

a) Temporary modifications made to Sections 10.2(a)(vi), 10.2(a)(vii), 5.1(a)(iv), and 5.1(a)(v) eliminating the application of these sections to the buyer for GTSR contracts executed while PG&E was in a federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089, have now been removed.

b) A temporary modification made to Section 10.3 such that a breach of any of the covenants does not give rise to a right of termination if that breach was caused by an order or directive of a court of competent jurisdiction with respect to the federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089-DM, has been removed.

c) A new definition for "Chapter 11 Cases" that means Buyer's Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of

[4] Resolution at p. 16
[5] Resolution at pp. 16-17

California, Case Nos. 19-30088 (DM) and 19-30089 (DM), that was added while PG&E Company was in a federal bankruptcy proceeding that commenced on January 29, 2019 has now been removed.

Compliance with OP 3 of the Resolution regarding the AB 1613 Standard Contracts

PG&E is providing as Attachments 3 and 6 to this Advice Letter a clean and redlined

version of the AB 1613 standard contract with facilities with a power rating ≤20 MW.

Attachments 3 and 6 to this Advice Letter provide a clean and redlined version of the AB 1613 standard contract with facilities with a net output not greater than 5 MW. Finally, Attachments 3 and 6 to this Advice Letter provide a clean and redlined version of the AB 1613 standard contract with a power rating of <500 KW.

Each of the respective redlines reflect removal of the temporary modifications made consistent with OP 2 of the Resolution.[6]

a) For all contracts, temporary modifications made to Sections 6.01(a)(iv) and 6.01(a)(v), eliminating application of these provisions to the buyer while PG&E was in a federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089, have now been removed.

b) For contracts with facilities with a net output not greater than 5 MW and facilities with a power rating of <500 KW, temporary modifications eliminating the application of section 7.01(e) to the buyer while was in a federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089, have now been removed.

c) For contracts with facilities with a power rating ≤20 MW, temporary modifications to Section 9.01(e) eliminating application of this provision to buyer while was in a federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089, have now been removed.

d) A new definition for “Chapter 11 Cases” that means Buyer’s Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19-30089 (DM) that was added while PG&E Company was in a federal bankruptcy proceeding that commenced on January 29, 2019 has now been removed.

<u>Tariff Revisions</u>

PG&E is requesting to make the following revisions to our tariffs:

[6] Resolution at pp. 17-18

a) **Electric Sample Form 79—1172 -** *Bioenergy Market Adjusting Tariff Power Purchase Agreement*

As articulated in the Background section of this Advice Letter, the BioMAT Standard Contract (Form 79-1172) will be amended to remove temporary modifications to the form agreement and footer made during PG&E's federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089-DM.

b) Electric Sample Form 79-1207 – *Green Tariff Shared Renewable (GTSR) Program Power Purchase Agreement*

As articulated in the Background section of this Advice Letter, the GTSR Standard Contract will be amended to remove temporary modifications to the form agreement and footer made during PG&E's federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089-DM. PG&E is also revising the GTSR Standard Contract by assigning a PG&E Sample Electric Form number of 79-1207 and applying the PG&E standard sample form header and footer onto the contract.

c) Electric Sample Forms

79-1120 - *Standard Contract for Eligible CHP Facilities*

79-1121 - *Power Purchase and Sale Agreement - Contract for Eligible CHP Facilities With Net Output of Not Greater Than 5 MW*

79-1138 - *Power Purchase and Sale Agreement - Contract for Eligible CHP Facilities With a Power Rating of Less Than 500 kW*

As articulated in the Background section of this Advice Letter, the AB 1613 Standard Contracts (Forms 79-1120, 79-1121 and 79-1138, respectively) will be amended to remove temporary modifications to the form agreements and footers made during PG&E's federal bankruptcy proceeding that commenced on January 29, 2019, Case Nos. 19-30088-DM and 19-30089-DM.

This submittal would not increase any current rate or charge, cause the withdrawal of service, or conflict with any rate schedule or rule. The affected tariff sheets are listed on the enclosed Attachment 1. For convenience of the reader, PG&E has included redline revisions in Attachment 2.

Protests

*****Due to the COVID-19 pandemic and the shelter at home orders, PG&E is currently unable to receive protests or comments to this advice letter via U.S. mail or fax. Please submit protests or comments to this advice letter to EDTariffUnit@cpuc.ca.gov and PGETariffs@pge.com*****

Anyone wishing to protest this submittal may do so by letter sent via U.S. mail, facsimile or E-mail, no later than August 20, 2020, which is 20 days after the date of this submittal. Protests must be submitted to:

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

Facsimile: (415) 703-2200
E-mail: EDTariffUnit@cpuc.ca.gov

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

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

Erik Jacobson
Director, Regulatory Relations
c/o Megan Lawson
Pacific Gas and Electric Company
77 Beale Street, Mail Code B13U
P.O. Box 770000
San Francisco, California 94177

Facsimile: (415) 973-3582
E-mail: PGETariffs@pge.com

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter (General Order 96-B, Section 7.4). The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the day on which the protest was submitted to the reviewing Industry Division (General Order 96-B, Section 3.11).

Effective Date

Pursuant to General Order (GO) 96-B, Rule 5.2, and OP 5 of Resolution E-4995, this advice letter is submitted with a Tier 2 designation. PG&E requests that this Tier 2 advice submittal become effective on regular notice, August 30, 2020 which is 30 calendar days after the date of submittal.

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 parties on the service list for R.18-07-003, A.12-04-020, R.08-06-024, and R.13-12-010**.** Address changes to the General Order 96-B service list should be directed to PG&E at email address 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 submittals can also be accessed electronically at: http://www.pge.com/tariffs/.

/S/

Erik Jacobson
Director, Regulatory Relations

Attachment 1 – Tariff
Attachment 2 – Redline Tariffs

cc: Service Lists R.18-07-003, A.12-04-020, R.08-06-024, and R.13-12-010

California Public Utilities Commission

ADVICE LETTER 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 E)

Utility type:
- [x] ELC
- [ ] GAS
- [ ] WATER
- [ ] PLC
- [ ] HEAT

Contact Person: Annie Ho
Phone #: (415) 973-8794
E-mail: PGETariffs@pge.com
E-mail Disposition Notice to: AMHP@pge.com

EXPLANATION OF UTILITY TYPE
ELC = Electric GAS = Gas WATER = Water
PLC = Pipeline HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #: 5896-E

Tier Designation: 2

Subject of AL: Implementation of Resolution E-4995 Ordering Pacific Gas and Electric Company to Remove Temporary Modifications Made To Standard Contracts under the Bioenergy Market Adjusting Tariff program, Green Tariff Shared Renewables program, and Assembly Bill

Keywords (choose from CPUC listing): Compliance,

AL Type: [ ] Monthly [ ] Quarterly [ ] Annual [x] One-Time [ ] Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #:
E-4995

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 AL:

Confidential treatment requested? [ ] Yes [x] No

If yes, specification of confidential information:
Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information:

Resolution required? [ ] Yes [x] No

Requested effective date: 8/30/20

No. of tariff sheets: 7

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: See Attachment 1

Service affected and changes proposed[1]: N/A

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

[1]Discuss in AL if more space is needed.

Clear Form

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

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Name: Erik Jacobson, c/o Megan Lawson
Title: Director, Regulatory Relations
Utility Name: Pacific Gas and Electric Company
Address: 77 Beale Street, Mail Code B13U
City: San Francisco, CA 94177
State: California Zip: 94177
Telephone (xxx) xxx-xxxx: (415)973-2093
Facsimile (xxx) xxx-xxxx: (415)973-3582
Email: PGETariffs@pge.com

Name:
Title:
Utility Name:
Address:
City:
State: District of Columbia Zip:
Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email:

Clear Form

Cal P.U.C. Sheet No.	Title of Sheet	Cancelling Cal P.U.C. Sheet No.
46866-E	ELECTRIC SAMPLE FORM 79-1120 STANDARD CONTRACT FOR ELIGIBLE CHP FACILITIES Sheet 1	44021-E
46867-E	Electric Sample Form 79-1121 Power Purchase and Sale Agreement - Contract for Eligible CHP Facilities With Net Output of Not Greater Than 5 MW Sheet 1	44022-E
46868-E	Electric Sample Form 79-1138 Power Purchase and Sale Agreement - Contract for Eligible CHP Facilities With a Power Rating of Less Than 500 kW Sheet 1	44023-E
46869-E	Electric Sample Form No. 79-1172 Bioenergy Market Adjusting Tariff Power Purchase Agreement Sheet 1	46099-E
46870-E	Electric Sample Form 79-1207 GREEN TARIFF SHARED RENEWABLES ("GTSR") PROGRAM POWER PURCHASE AGREEMENT Sheet 1	
46871-E	ELECTRIC TABLE OF CONTENTS Sheet 1	46826-E
46872-E	ELECTRIC TABLE OF CONTENTS Sheet 30	46320-E

ELECTRIC SAMPLE FORM 79-1120 Sheet 1
STANDARD CONTRACT FOR ELIGIBLE CHP FACILITIES

Please Refer to Attached
Sample Form

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

Standard Contract for Eligible CHP Facilities

TERMS THAT ARE BOXED AND SHADED IN LIGHT YELLOW AND/OR BRACKETED AND IN BLUE FONT ARE EITHER BUYER COMMENTS OR GENERATING FACILITY-TYPE SPECIFIC COMMENTS THAT SHOULD BE REMOVED, ACCEPTED OR COMPLETED, AS APPLICABLE.

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O. QF Efficiency Monitory Program – Cogeneration Data Reporting Form

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID# [Number])

PREAMBLE

This Power Purchase and Sale Agreement by and between **[Buyer's name]**, a California corporation ("Buyer"), and **[Seller's name]**, a [Seller's form of business entity and state of registration] ("Seller"), together with the exhibits, attachments, and any applicable referenced collateral agreement between the Parties (collectively, this "Agreement"), is made, effective and binding as of [Date of execution] (the "Effective Date").

Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement the provisions of Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill Buyer's obligations under the Act and CPUC Decisions issued in R. 08-06-024 ("AB 1613 Decisions"), and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

ARTICLE ONE. SPECIAL CONDITIONS

{Buyer Comment: If the Term is greater than or equal to five years, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in CPUC D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends [Number of months] months after the Term Start Date (the "Term End Date").

(a) The Term Start Date must be on the first day of a calendar month.

(b) Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least one year before such Term Start Date; provided, however, that notwithstanding any change to the Term Start Date, the Term may not exceed [Number of months in the Term] months; *provided further*, that if the Generating Facility is (i) a New Eligible CHP Facility, the Term Start Date must occur within 60 months of the Effective Date, or (ii) an Existing Eligible CHP Facility, the Term Start Date must occur within 24 months of the Effective Date, in each case subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03) and Section 4(c)(ii) of Exhibit D.

(c) The Term shall be no less than one (1) year and no more than ten (10) years. Seller designates the Term Start Date and the Term End Date.

1.02 Generating Facility.

(a) Name. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility]. To be eligible for this Agreement, the Generating Facility must be an Eligible CHP Facility during the entire Term, (1) satisfies the provisions of AB 1613, as implemented by the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA, unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

(b) Location. The Generating Facility is located at [Generating Facility address], and is further described in Exhibit B. To be eligible for this Agreement, the Generating Facility must be located in Buyer's electric service territory.

(c) Contract Capacity. The As-Available Contract Capacity is [__] kW. The Power Rating of the Generating Facility must be less than or equal to 20 MW. If the Generating Facility has more than one Generating Unit, the Power Rating of all such Generating Units must be less than or equal to 20MW.

(d) Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [____] kWh. The Expected Term Year Energy Production may

be revised based on changes in the Site Host Load or the Site Host thermal requirements; provided, however, that such change must be supported by a certification from a California-licensed professional engineer qualified to make a representation affirming that such revision is reasonable and based on changes in the Site Host Load or the Site Host thermal requirements. Such certification must include all data relied on to support the revised Expected Term Year Energy Production.

{Buyer Comment: Expected Term Year Energy Production cannot exceed As-Available Contract Capacity at 100% capacity factor applied over the Term Year.}

(e) Site Host Load. The Site Host Load is expected to equal, on average, [___] kW annually. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year.

1.03 Delivery Point. The point of delivery of the Power Product is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept the Power Product at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs, exclusive of line losses (if any) and interconnection costs, to deliver the power from the Delivery Point to the point of interconnection between the Buyer's distribution or transmission facilities and the CAISO-Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement) and any line losses from the Delivery Point to the Interconnection Point. Any line losses incurred or avoided from the Delivery Point to the Interconnection Point are determined as part of the interconnection process.

1.04 Planned Outages. All Planned Outages must be scheduled by Seller in accordance with the procedures set forth in Exhibit N. Seller shall make reasonable efforts not to schedule a Planned Outage during the Peak Months. Should it become necessary for Seller to schedule a Planned Outage during the Peak Months, Seller shall only schedule such Planned Outage during the non-peak hours of the Peak Months. In no event may Seller schedule or utilize a Planned Outage that is more than 12 non-peak hours per Peak Month.

1.05 Power Product Prices.

(a) The Monthly Contract Payment for the Power Product shall be calculated in accordance with Exhibit C.

(b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit C (1).

(c) A Generating Facility subject to paragraph 1.05(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof.

(d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.05(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit C.

1.06 Credit and Collateral Requirements.

(a) Seller shall post and thereafter maintain the Development Security in accordance with Section 4(b) of Exhibit D.

(b) Seller shall post and thereafter maintain the Performance Assurance, in accordance with Section 2(a) of Exhibit D, in an amount equal to 5% of expected revenue of the Generating Facility under this Agreement (the "Performance Assurance Amount"). The initial amount of Performance Assurance equals $[___]. The Performance Assurance Amount will be revised upon any change to the Expected Term Year Energy Production.

(c) Seller shall comply with all of the provisions of Exhibit D.

(d) Seller's Guarantor, if any, is [Name of Guarantor].

(e) Guarantor shall guarantee $[Performance Assurance Amount x 1.25].

(f) The Cross Default Amount, if any, equals $[___].

1.07 Scheduling Coordinator. Buyer is the Scheduling Coordinator under this Agreement.

1.08 GHG Emissions Allowances. Seller elects one of the following, provided, however, that this Section 1.08 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit C (1): [____][1]

(a) Seller shall manage its own GHG Emissions Allowances and request payment from Buyer in accordance with Section 3.03.

(b) PG&E shall purchase GHG Emissions Allowances on behalf of Seller upon the CPUC's adoption of the necessary procedure. Until such time, Buyer will reimburse Seller per section (a), above.

1.09 Decertification from AB 1613 Program. In the event of Seller's default pursuant to Section 6.01(c)(xvi), due to CEC decertification under Public Utilities Code 2843, so long as at the time of default, Seller demonstrates qualifying facility status under PURPA and notwithstanding Section 2.02(b), upon termination of this Agreement, Seller's continued conveyance of Power Product and acceptance of payment shall constitute Seller's acceptance of any applicable mandatory must-purchase contract available to qualifying facilities under PURPA. Seller shall be

[1] See D.10-12-055 ordering paragraph 5.

paid the short run avoided cost rate for energy and as-available capacity applicable under such contract at the time of decertification.

**** End of Article One ****

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS BEFORE THE TERM START DATE; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Seller shall satisfy each of the following obligations before the Term Start Date:

(a) The Generating Facility is or becomes an Eligible CHP Facility;

(b) Seller enters into all agreements, obtains all Governmental Authority approvals and Permits, and takes all steps necessary for it to:

(i) Operate the Generating Facility;

(ii) Deliver electric energy from the Generating Facility to the Delivery Point; and

(iii) Have Buyer Schedule the electric energy produced by the Generating Facility with the CAISO;

(c) Seller satisfies its obligation to install the CAISO-Approved Meters, as set forth in Section 3.09(a);

(d) Seller furnishes to Buyer the insurance documents required under Section 9.10;

(e) Seller enters into all agreements required by the CAISO Tariff;

(f) Seller enters into and fulfills all of its obligations under (i) the applicable interconnection agreements with the applicable Transmission Provider that are required to enable Parallel Operation of the Generating Facility with the interconnected electric system and the CAISO Controlled Grid, and (ii) any transmission, distribution or other service agreement that are required to enable Seller to transmit electric energy from the Generating Facility to the Delivery Point;

(g) Seller furnishes to Buyer the documents required under Section 3.06;

(h) Seller has posted with Buyer the Performance Assurance Amount;

(i) If the Term is equal to or greater than five years, the Generating Facility meets the GHG EPS and, at any time upon Buyer's request, Seller provides to the CPUC documentation evidencing its compliance with the GHG EPS;

(j) Seller shall have taken all steps to ensure that Buyer is authorized as Scheduling Coordinator by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO; and

(k) Seller shall provide instructions to the CAISO granting authorizations or other documents sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR as required to implement the Agreement.

2.02 Termination Rights of the Parties.

(a) Termination Right of Seller. Seller has the right to terminate this Agreement if Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation.

(b) Event of Default. Except as provided in Section 1.09, in the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.02 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or Related Products from the Generating Facility to Buyer or any other California investor-owned utility for a period of 365 days following the date of such termination. For purposes of this Section 2.02(b), "control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power.

(c) End of Term. This Agreement automatically terminates at midnight of the Term End Date.

2.03 Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement, including:

(a) The obligation of Buyer to make all outstanding Monthly Contract Payments for periods before termination of this Agreement;

(b) The obligation of Buyer to invoice Seller for all payment adjustments for periods before termination of this Agreement, as set forth in Section 4.02;

(c) The obligation of Seller to pay any Buyer payment-adjustment invoice described in Section 4.03(b) for periods before termination of this Agreement within thirty (30) days of Seller's receipt of such invoice;

(d) The obligation to make a Termination Payment, as set forth in Section 6.03;

(e) The indemnity obligations, as set forth in Section 9.03;

(f) The obligation of confidentiality, as set forth in Section 9.09;

(g) The right to pursue remedies under Section 6.02(c);

(h) The limitation of damages under Article Seven; and

(i) The obligation of Seller to post Performance Assurance in accordance with Exhibit D.

**** End of Article Two ****

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Power Product and Related Products; Retained Benefits.

(a) Power Product. During the Term, Seller shall provide and convey the Power Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Power Product and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Power Product purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of such Power Product.

(b) Green Attributes. Seller hereby agrees to provide and convey all Green Attributes associated with the Related Products as part of the Product being delivered during the Term. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Related Products, 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.

(c) Related Products. Seller hereby agrees to provide and convey to Buyer all Related Products during the Term. Seller represents and warrants that Seller holds the rights to all Related Products and Seller agrees to convey and hereby conveys all such Related Products to the Buyer. Buyer shall have the exclusive right to the Related Products and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Related Products purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of such Related Products.

(d) Further Action by Seller. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term, which actions may include:

(i) Cooperating with the Governmental Authority responsible for Resource Adequacy administration to certify the Generating Facility for Resource Adequacy purposes;

(ii) Testing the Generating Facility as may be required to certify the Generating Facility for Resource Adequacy purposes in accordance with the requirements set forth in the CAISO Tariff or as otherwise agreed to by the Parties; and

(iii) Complying with Applicable Laws regarding the registration, transfer or ownership of Green Attributes associated with the Related Products, including, if applicable to the Generating Facility, participation in the Western Renewable Energy Generation Information System or other process recognized under Applicable Laws.

(e) Retained Benefits. Seller shall retain for its own use or disposition all Financial Incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced therefrom, other than the Power Product and the Related Products.

Nothing in this Agreement restricts Seller's ability to use, provide and convey any energy, capacity, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the Term.

{Buyer Comment: Insert this sentence only if Seller has a FERC jurisdictional interconnection agreement.}

Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Power Product and the Related Products to any Person other than Buyer (unless the FERC determines that a party holding a state jurisdictional interconnection agreement may sell Related Products to a Person other than Buyer).

{Buyer Comment: Insert this sentence if Seller does not have a FERC jurisdictional interconnection agreement.}

3.02 Resource Adequacy Rulings. During the Term, Seller shall grant, pledge, assign and otherwise commit to Buyer the generating capacity of the Generating Facility associated with the Related Products in order for Buyer to use in meeting its Resource Adequacy obligations under any Resource Adequacy Ruling. Seller:

(a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer;

(b) Will not during the Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer; and

(c) Shall take all reasonable action, including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings, and execute all documents that are reasonable and necessary to effect the use of the generating capacity of the Generating Facility associated with the Related Products for Buyer's sole benefit throughout the Term.

(d) Shall comply with CPUC and CAISO requirements to count towards Resource Adequacy; *provided, however*,

(i) If such requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge.

(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.

(e) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.

3.03 GHG Compliance Costs.

(a) Direct GHG Compliance Costs. During the Term, Buyer shall reimburse Seller for any Direct GHG Compliance Costs, other than GHG Emissions Allowances, which are separately addressed in the sections below, attributable to the Generating Facility for GHG emissions associated with the Power Product, within forty-five (45) days of Buyer's receipt from Seller of reasonable documentation, in form and substance acceptable to Buyer, establishing that:

(i) Seller is actually liable for the Direct GHG Compliance Costs for GHG emissions attributed to the Power Product;

(ii) Direct GHG Compliance Costs were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose Direct GHG Compliance Costs where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility.

(iii) Buyer is not liable for reimbursement to Seller for Direct GHG Compliance Costs for GHG emissions associated with the Power Product if the GHG emissions for which Seller seeks reimbursement exceed the GHG Emissions Cap based on the actual delivered Power Product.

(iv) The Generating Facility's GHG emissions has been allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended.

(b) GHG Emissions Allowance Costs. Buyer shall bear the cost of GHG Emissions Allowances for GHG emissions attributable to the Generating Facility and associated with the Power Product through either reimbursement, or direct procurement, as indicated at Section 1.08, provided that:

(i) Seller is actually required to procure such GHG Emissions Allowances for GHG emissions attributed to the Power Product;

(ii) Such GHG Emissions Allowances compliance requirements were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose GHG emissions allowances requirements where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility;

(iii) The Generating Facility's GHG emissions, less any Free Allowance for which the Generating Facility is eligible, shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended;

(iv) Buyer's responsibility for GHG Emissions Allowances is limited to GHG emissions associated with the Power Product for which the Seller or the Generating Facility was not eligible to receive Free Allowances;

(v) Buyer's responsibility for GHG Emissions Allowances will not exceed the GHG Emissions Cap based on the actual delivered Power Product.

(c) Reimbursement of Seller for GHG Emissions Allowances. If Seller has elected to manage its own GHG Emissions Allowances in Section 1.08, then, during the Term, Buyer shall reimburse Seller to the extent of Buyer's responsibility for GHG Emissions Allowances in accordance with Section 3.03(b) ("applicable quantity") within forty-fine (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, requesting reimbursement. If the CPUC has specified an index for use in determining the price to be paid for GHG Emissions Allowances, in no event shall Buyer's total payment to Seller for the applicable quantity exceed the total payment that would be due to Seller if the applicable quantity were purchased at the index price at the relevant time period.

(d) Buyer's Purchase of GHG Emissions Allowances. If Seller has elected to have Buyer purchase GHG Emissions Allowances for the Generating Facility in Section 1.08, then, during the Term and upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to the AB 1613 Decisions, Buyer shall purchase GHG Emissions Allowances for Seller for the applicable quantity for the remainder of the Term in accordance with and subject to such guidelines, as may be revised from time to time.

(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is calculated in accordance with Exhibit C (1).

3.04 Site Control.

(a) Within sixty (60) days of the Effective Date and at all times during the Term, Seller shall have Site Control and shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.

(b) If the Generating Facility is a New Eligible CHP Facility, Seller shall provide Buyer with Notice of the status of its Site Control before commencing construction of the Generating Facility.

3.05 Permits. Seller shall obtain and maintain any and all Permits necessary for the Operation of the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.06 Transmission.

(a) Interconnection Studies. Upon Buyer's request, Seller shall provide to Buyer true and complete copies of all Interconnection Studies received by Seller for the Generating Facility after the date that is twenty-four (24) months before the Effective Date.

(b) Seller's Responsibility. Seller shall, at its sole cost, obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable Parallel Operation of the Generating Facility with the Transmission Provider's electric system and the applicable Control Area operator's electric grid and to effect Scheduling of the electric energy from the Generating Facility and transmission and delivery to the Delivery Point.

Except as otherwise provided in its interconnection agreement, the CAISO Tariff, or the Transmission Provider's tariff, rules or regulations, Seller shall pay all Transmission Provider charges or other charges directly caused by, associated with, or allocated to the following:

(i) All required Interconnection Studies, facilities upgrades, and agreements;

(ii) Interconnection of the Generating Facility to the Transmission Provider's electric system;

(iii) Any costs or fees associated with obtaining and maintaining a wholesale distribution access tariff agreement, if applicable; and

(iv) The transmission and delivery of electric energy from the Generating Facility to the Delivery Point.

(c) Acknowledgement. The Parties acknowledge and agree that any other agreement between Seller and Buyer, including any interconnection agreement, is separate and apart from this Agreement and does not modify or add to the Parties' obligations under this Agreement, and that any Party's breach under such other agreement does not excuse such Party's nonperformance under this Agreement, except to the extent that such breach constitutes a Force Majeure under this Agreement.

3.07 CAISO Relationship. Seller shall comply with the applicable requirements of the CAISO Tariff, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

(a) If the Generating Facility is PIRP-eligible, then the Generating Facility shall be certified as a PIRP resource by the CAISO.

3.08 Generating Facility Modifications.

(a) Seller is responsible for the design, procurement and construction of all modifications necessary for the Generating Facility to meet the requirements of this Agreement and to comply with any restriction set forth in any Permit.

(b) Seller shall provide thirty (30) days advance Notice to Buyer if there is any modification (other than a routine fluctuation in output or consumption) of the Generating Facility, the Site Host Load or operations related to the Site Host Load changing:

(i) Energy output by five percent (5%) of Expected Term Year Energy Production; or,

(ii) The type of Primary Fuel consumed by the Generating Facility.

(c) Seller acknowledges that nothing in this Section 3.08 excuses Seller from any requirements of the CAISO's interconnection process, or any other applicable interconnection process.

3.09 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test all CAISO-Approved Meters pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one or more Check Meters, as applicable, on the high voltage side of the substation associated with the Generating

Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. More than one Check Meter may be necessary if there is more than one CAISO-Approved Meter. The Check Meter shall be interconnected with Buyer's communication network to permit:

(i) Periodic, remote collection of revenue quality meter data; and

(ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.10.

Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal shall be broken only by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every thirty-six (36) months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes.

(i) Buyer shall routinely compare the Check Meter data to the CAISO-Approved Meter data.

(ii) If the deviation between the CAISO-Approved Meter data (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable.

(iii) Each Party shall bear its own costs for any meter check or recertification.

(iv) Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.

(v) For the avoidance of doubt, the Check Meter is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and Check Meter data shall only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is checked or recertified.

(d) Multiple Points of Metering at a Single Customer Site. Notwithstanding any other provision of this Agreement, Seller, at its sole expense and with the consent of Buyer and in compliance with the tariffs, rules and regulations of Buyer and the CAISO (including the CAISO Tariff), may establish for the Generating Facility more than a single point of metering at the number of locations, at a single customer site, that the Generating Facility interconnects with the CAISO Controlled Grid or Buyer's electrical system. The metered delivery of the Power Product pursuant to this Agreement will be determined as the meter readings for all such metering netted on an individual settlement interval basis.

3.10 Telemetry System. Seller is responsible for designing, furnishing, installing, maintaining and testing a real time Telemetry System in accordance with the CAISO Tariff.

3.11 Provision of Information.

(a) Upon Buyer's reasonable request by written Notice, Seller shall provide to Buyer (to the extent not already in Buyer's possession) within a commercially reasonable amount of time and subject to Section 9.09:

(i) All currently operative agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;

(ii) Any Permits concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;

(iii) Each of the following engineering documents for the Generating Facility:

1) Site plan drawings;

2) Electrical one-line diagrams;

3) Control and data acquisition details and configuration documents;

4) Major electrical equipment specifications;

5) Process flow diagrams;

6) Piping and instrumentation diagrams;

7) General arrangement drawings; and

8) Aerial photographs of the Site, if any;

(iv) Instrument specifications, installation instructions, operating manuals, maintenance procedures and wiring diagrams for the CAISO-Approved Meter(s) and the Telemetry System reasonably requested by Buyer; and

(v) Any currently operative filings, rulings, orders or other pleadings or papers concerning the qualification of the Generating Facility as an Eligible CHP Facility.

(b) If applicable and subject to Section 9.09, as soon as possible, Seller shall provide to Buyer (i) engineering specifications and design drawings for the Telemetry System, and (ii) annual test reports for the CAISO-Approved Meters.

(c) Subject to Section 9.09 and upon Buyer's request, Seller shall make commercially reasonable efforts to provide Buyer with all documentation necessary for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.12 Progress Reporting. If the Generating Facility is a New Eligible CHP Facility, Seller shall use commercially reasonable efforts to meet the Milestone Schedule and shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware which may materially impact its ability to meet the Milestone Schedule. No later than the 10th day of each month until the Term Start Date, Seller shall, in accordance with Exhibit F, prepare and provide to Buyer a written report detailing Seller's progress toward meeting the Milestone Schedule. Seller shall include in such report a list of all letters, notices and Permits to or from any Governmental Authority (and the CAISO) applicable to Seller's effort to meet the Milestone Schedule, and shall provide any such documents as may be reasonably requested on Notice from Buyer.

3.13 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.14 Operation and Record Keeping. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) Comply with the Forecasting requirements, as set forth in Exhibit G;

(c) Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit G;

(d) Pay all CAISO Charges, as set forth in Exhibit H;

(e) Pay all SDD Adjustments for which Seller is responsible, as set forth in Exhibit I;

(f) Comply with the Planned Outage scheduling procedures, as set forth in Section 1.04;

(g) Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit N;

(h) Use reasonable efforts to comply with CAISO orders for delivery of the Power Product during an Emergency;

(i) Use reasonable efforts to reschedule any Planned Outage that occurs during an Emergency;

(j) Keep all Operating records required of a CHP Eligible Facility by any applicable CPUC order, as well as any additional information that may be required of a CHP Eligible Facility in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the CPUC;

(k) Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to Buyer within twenty (20) days of a request by Notice from Buyer, including:

(i) Real and reactive power production;

(ii) Changes in Operating status;

(iii) Protective apparatus operations; and

(iv) Any unusual conditions found during inspections.

(l) Provide, upon Buyer's request, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract to supply electric energy;

(m) Pay all Scheduling Fees, as set forth in Exhibit E;

(n) Not participate in the CAISO Station Power Protocol;

(o) If applicable, register with the NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to register pursuant to the NERC Registration Criteria;

(p) If applicable, maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with the NERC Reliability Standards applicable to protection systems for electric generators if Generator Owner or Generator Operator is required to maintain such documentation under the NERC Reliability Standards; and

(q) Maintain data to demonstrate compliance with the Qualifying Facility efficiency monitoring program adopted by Decision ("D.")10-12-035;

(r) At least thirty (30) days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator.

3.15 Power Product Curtailments at Transmission Provider's or CAISO's Request.

(a) Seller shall promptly curtail the production of the Power Product upon receipt of a curtailment notice or instruction from the Transmission Provider or the CAISO (which may be communicated by Buyer), which notice shall only be provided when it reasonably believes that curtailment of the Power Product is required to comply with (i) the Transmission Provider's maintenance requirements and operating orders, (ii) a CAISO Declared Over-Generation Condition, or (iii) an Emergency.

(b) Notwithstanding Section 3.14(a), except as may be required in order to respond to any Emergency, Buyer shall (i) use reasonable efforts to coordinate the Transmission Provider's curtailment needs with Seller to the extent Buyer can influence such needs, or (ii) request that the Transmission Provider and the CAISO limit the curtailment duration.

{Buyer Comment: This Section is applicable if Seller does not execute a FERC jurisdictional interconnection agreement. If this Section is deleted, replace with "[Intentionally omitted]".}

3.16 Report of Lost Output. To the extent the conditions set forth in Sections 3.16(a) through (d) occur, Seller shall prepare and provide to Buyer, by the fifth (5th) Business Day following the end of each month during the Term, a lost output report. The lost output report shall identify the date, time, duration, cause and amount by which the Metered Energy was reduced below the Seller's Forecast due to:

(a) Planned Outages;

(b) CAISO or Transmission Provider-ordered curtailments;

(c) Force Majeure; or

(d) Forced Outages.

3.17 Eligible CHP Facility Status.

(a) To the extent required by Applicable Law, administration of this Agreement or program eligibility guidelines established by the CEC within thirty (30) Business Days following the Term Start Date or Notice from Buyer, Seller shall provide to Buyer certification from the CEC that the Generating Facility meets the applicable operating and efficiency standards for Eligible CHP Facilities for the applicable year.

(b) Seller shall take all necessary steps, including making or supporting timely filings with the appropriate Governmental Authority in order to maintain certification of the Eligible CHP Facility status of the Generating Facility throughout the Term.

(c) Seller shall provide to Buyer copies of all documentation, including calculations and verifiable supporting data provided to the appropriate Governmental Authority, which demonstrates the compliance of the Generating Facility with the Eligible CHP Facility operating and efficiency standards for the applicable year. Notwithstanding the

foregoing, Seller shall provide Buyer with a copy of its Annual Performance Reporting Forms (CEC Form 2843 or its successor) within 5 days of submission to the CEC.

(d) Seller, unless a public agency, shall take all necessary steps, including making or supporting timely filings with FERC in order to maintain the qualifying facility status of the Generating Facility as required by 18 CFR §292.201, et seq., throughout the Term.

(e) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, each QF Seller shall provide to Buyer:

(i) Subject to Section 9.09, a completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form", substantially in the form of Exhibit O, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with qualifying cogeneration facility operating and efficiency standards set forth in 18 CFR Part 292, Section 292.205 "Criteria for Qualifying Cogeneration Facilities", for the applicable year; and,

(ii) A copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.

3.18 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one (1) Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to:

(a) Interconnect with the Transmission Provider's electric system;

(b) Transmit and deliver electric energy to the Delivery Point; or

(c) Own and operate any CAISO-Approved Meter.

3.19 Buyer's Access Rights. Upon providing at least five (5) Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Buyer has the right to examine the Site, the Generating Facility and the Operating records, provided that Buyer follows Seller's safety policies and procedures that Seller has communicated to Buyer, does not interfere with or hinder Seller's Operations, and agrees to escorted access to the Generating Facility during regular business hours for:

(a) Any purpose reasonably connected with this Agreement;

(b) The exercise of any and all rights of Buyer under Applicable Law or its tariff schedules and rules on file with the CPUC; or

(c) The inspection and testing of any Check Meter, CAISO-Approved Meter or the Telemetry System.

Seller hereby grants Buyer reasonable access to all CAISO-Approved Meters and Check meters for meter readings and any purpose necessary to effectuate this Agreement. Seller shall provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request, as necessary to effectuate this Agreement. Seller shall inform buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO.

Notwithstanding anything to the contrary set forth in this Section 3.19, in the case of an Emergency which, in Buyer's reasonable discretion, requires Buyer to examine the Site or the Generating Facility, the Notice requirements of this Section 3.19 do not apply.

3.20 Seller Financial Information.

(a) The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Financial Accounting Standard Boards Interpretation No. 46(R), "Consolidation of Variable Interest Entities" or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement. If, as a result of this review (or subsequent reviews as required), the Parties determine that such consolidation is required for a given period, or in the event the Parties cannot agree on whether consolidation is required, then the Parties agree to the following provisions for such period.

(i) Within thirty (30) days following the end of each year, Seller shall deliver to Buyer in a format mutually agreeable to the Parties: (1) unaudited financial statements together with related footnotes as necessary to comply with GAAP, and (2) a completed annual disclosure checklist with supporting financial schedules necessary for Buyer to prepare its annual filing with the SEC. Buyer will provide to Seller such checklist before the end of each year and include only items considered material to Buyer. If audited financial statements are prepared for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.

(ii) Within twenty (20) days following the end of each calendar quarter, Seller shall deliver to Buyer in a format mutually agreeable to the Parties: (1) an unaudited condensed statement of income for the calendar quarter and year-to-date, (2) an unaudited condensed statement of cash flows for the calendar quarter and year-to-date, (3) an unaudited condensed balance sheet at the end of such calendar quarter, and (4) a completed quarterly disclosure checklist with supporting financial schedules necessary for Buyer to prepare its quarterly filing with the United States Securities and Exchange Commission. Buyer will provide to Seller such checklist before the end of each quarter and include only items considered material to Buyer.

(iii) Seller shall prepare its financial statements to be delivered in accordance with this Section 3.20 in accordance with GAAP.

(iv) Promptly upon Notice from Buyer, Seller shall allow Buyer's internal auditors and independent registered public accounting firm reasonable access to Seller's records and personnel, so that Buyer's internal auditors and independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. Buyer shall take reasonable steps to ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 3.20(a)(iv), (2) such information is used solely for purposes of conducting the audits described in this Section 3.20(a)(iv), (3) disclose any information received only to personnel responsible for conducting the audits. Within 30 days of Seller's receipt of Notice from Buyer, Seller shall remediate any material deficiency in Seller's internal controls of financial reporting identified by Buyer or Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 3.20(a)(iv), provided that Seller has the right to challenge the appropriateness of any determination of deficiency. All reasonable expenses for the foregoing shall be borne by Buyer.

(v) Within two (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing. Such items may include the following:

1) Acquisition or disposition of a material amount of assets outside of the ordinary course of Seller's business;

2) Creation of a material "direct financial obligation" or "off-balance sheet financing arrangement", as such terms are defined in Item 2.03 of the Form 8-K, as amended from time to time;

3) Existence of "material legal proceedings", as defined in Item 103 of Regulation S-K, as amended from time to time; and

4) Entry into, or termination of, a material contract upon which Seller's business is substantially dependent and outside of the ordinary course of Seller's business.

(b) Buyer shall treat Seller's financial statements or other financial information provided under the terms of this Section 3.20 in strict confidence and, accordingly:

(i) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which

Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain Credit Ratings; and

(ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Sections 9.09(a)(vi) and 9.09(a)(vii).

3.21 NERC Electric System Reliability Standards.

(a) During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility, Seller (or an agent of Seller as agreed to by Buyer in its reasonable discretion) must be registered with the NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that Buyer, in its capacity as Scheduling Coordinator is required to perform under this Agreement or under the CAISO Tariff.

(b) Notwithstanding anything to the contrary set forth in this Section 3.21 and subject to the indemnity obligations set forth in Section 9.03(g), each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by the NERC, the WECC, the CAISO, or a Governmental Authority in order to comply with the NERC Reliability Standards.

(c) Buyer as Scheduling Coordinator will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller's compliance with the NERC Reliability Standards referenced above. Buyer's cooperation will include providing to Seller, or such other Person as Seller designates in writing, information in Buyer's possession that Buyer as Scheduling Coordinator has provided to the CAISO related to the Generating Facility or actions that Buyer has taken as Scheduling Coordinator related to Seller's compliance with the NERC Reliability Standards referenced above (e.g., Seller's notices and updates provided by Buyer to the CAISO via SLIC). Buyer may, in its reasonable discretion (depending upon the quantity of information requested by Seller and the timeframe established by Seller for compliance), comply with the requirement to provide information set forth in the previous sentence, by making such information available for inspection by Seller or by providing responsive summaries or excerpts of same, so long as the foregoing enables Seller to comply with the NERC Reliability Standards. In addition, Buyer may redact any information or data that is confidential to Buyer from materials or information to be supplied to Seller.

3.22 Allocation of Availability Incentive Payments and Non-Availability Charges. If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, or

Availability Incentive Payments as defined and provided for by the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

**** End of Article Three ****

ARTICLE FOUR. BUYER'S OBLIGATIONS

4.01 Obligation to Pay. For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit C or Exhibit C (1), as determined pursuant to Section 1.05.

4.02 Payment Adjustments.

(a) Buyer shall adjust each Monthly Contract Payment to Seller to account for:

(i) Scheduling Fees owed by Seller to Buyer, as set forth in Exhibit E;

(ii) Any SDD Energy Adjustment or SDD Administrative Charge, as set forth in Exhibit I;

(iii) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit H;

(iv) Any payment adjustments (including adjustments to CAISO Charges) provided for under this Agreement;

(v) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02; and

(vi) The agreement of the Parties that Buyer shall have no liability to make any payments to Seller for any electricity deliveries from the Generating Facility in a Term Year that exceed one hundred and twenty percent (120%) of Expected Term Year Energy Production.

(b) During the Term, any payment adjustments will be added to or deducted from a subsequent regular Monthly Contract Payment that is made by Buyer to Seller after the expiration of a 30-day period which begins upon Buyer's receipt of all of the information required in order to calculate the payment adjustment.

(c) After the Term End Date, Buyer shall invoice Seller for any payment adjustments within sixty (60) days of Buyer's receipt of all of the information required in order to calculate the payment adjustment.

4.03 Payment Statement and Payment.

(a) No later than thirty (30) days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is not a Business Day, Buyer shall mail to Seller:

(i) A table showing the hourly electric energy quantities for each of the following, in MWh per hour:

1) Seller's Energy Forecast;

2) Seller's Day-Ahead Forecast;

3) Metered Energy;

4) The final Buyer Energy Schedule; and

5) The final Buyer Parent Energy Schedule.

(ii) A statement showing:

1) TOD Period subtotals and overall monthly totals for each of the items set forth in Section 4.03(a)(i);

2) A calculation of the Monthly Contract Payment, as set forth in Exhibit C or Exhibit C (1), as determined pursuant to Section 1.05;

3) A calculation of any payment adjustments pursuant to Section 4.02; and

4) A calculation of the net dollar amount due for the month.

(iii) Buyer's payment to Seller, in accordance with Section 9.15, in the net dollar amount owed to Seller for the month; provided, however, in the event the statement shows a net amount owed to Buyer, Seller shall pay such amount within twenty (20) days of the statement date.

(b) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO in the CAISO's meter-data acquisition and processing system, Buyer shall promptly recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading in accordance with the CAISO Tariff.

Buyer shall then promptly recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to the next monthly statement that is calculated after Buyer's recomputation using corrected measurements.

If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's monthly statement until such amount is fully collected by Buyer.

At Buyer's sole discretion, Buyer may offset any remaining amount owed to Buyer in any subsequent monthly payments to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within twenty (20) days of receipt of such invoice.

(c) Buyer reserves the right to deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer:

(i) Under this Agreement; or

(ii) Arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if, within ninety (90) days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the CAISO after the expiration of the original 90-day period, Seller shall have an additional ninety (90) days from the date on which it receives the information from the CAISO in which to give Notice to Buyer of the error identified by such settlement, audit or other information.

If Seller identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to the next monthly statement that is calculated.

If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to the next monthly statement that is calculated.

If the recomputation results in a net amount still owing to Buyer after applying the overpayment, the next monthly statement shall show a net amount owing to Buyer.

At Buyer's sole discretion, Buyer may apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within twenty (20) days of receipt of such invoice.

The Parties shall negotiate to resolve any disputes regarding claimed errors in a statement. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

(e) Nothing in this Section 4.03 limits a Party's rights under applicable tariffs, other agreements or Applicable Law.

4.04 No Representation by Buyer. Any review by Buyer of the design, engineering, construction, testing and Operation of the Generating Facility is solely for Buyer's information. Buyer makes no representation that:

(a) It has reviewed the financial viability, technical feasibility, operational capability, or long term reliability of the Generating Facility;

(b) The Generating Facility complies with any Applicable Laws; or

(c) The Generating Facility will be able to meet the terms of this Agreement.

Seller shall in no way represent to any third party that any such review by Buyer constitutes any such representation.

4.05 Buyer's Responsibility. Buyer shall, at its sole cost, obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable transmission and delivery of electric energy at and after the Delivery Point. Buyer shall pay, in accordance with Applicable Laws and Buyer's tariffs, any costs associated with maintaining its electric system in order to allow delivery of the Power Product from the Delivery Point to the CAISO-Controlled Grid.

4.06 Buyer As Scheduling Coordinator. Buyer shall take all steps necessary to become the Scheduling Coordinator for the Generating Facility during the Term.

**** End of Article Four ****

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected.

In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must timely provide evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure.

In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform.

This Article Five will not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party.

When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The non-Claiming Party may terminate this Agreement on Notice, which Notice will be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which materially interferes with the Claiming Party's ability to perform its obligations under this Agreement and which extends for more than three hundred and sixty-five (365) consecutive days, or for more than a total of three hundred and sixty-five (365) days in any consecutive 540-day period.

**** End of Article Five ****

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement that 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:

1) Remedied within ten (10) Business Days after Notice from the Non-Defaulting Party to the Defaulting Party; or

2) Capable of a cure, but the Non-Defaulting Party's damages resulting from such misrepresentation or breach of warranty can reasonably be ascertained and the payment of such damages is not made within ten (10) Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 30-day cure period, the Defaulting Party shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as such Defaulting Party promptly commences and diligently pursues such cure;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankrupt; or

(v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement to which such Party 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's Guarantor, if any (each event listed below to be deemed an Event of Default with respect to Seller):

(i) Any representation or warranty made by a Guarantor in connection with this Agreement 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 and the misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice;

(ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty Agreement and such failure is not remedied within three (3) Business Days after Notice is provided by the Non-Defaulting Party to the Guarantor;

(iii) A Guarantor becomes Bankrupt and replacement credit support is not provided within three (3) Business Days after Notice;

(iv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming immediately due and payable and replacement credit support is not provided within three (3) Business Days after Notice;

(v) The failure of any Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) and replacement credit support is not provided within three (3) Business Day after Notice; or

(vi) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to Buyer and replacement credit support is not provided within three (3) Business Days after Notice.

(c) With respect to Seller:

(i) Seller does not own or lease the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.04, and Seller has not cured a failure with respect to Section 3.04(a) within thirty (30) days after providing Notice to Buyer in accordance with Section 3.04(a);

(ii) The total quantity of Metered Energy in any Term Year is less than 10% percent the Expected Term Year Energy Production, and Seller fails to demonstrate a legitimate reason for such failure within ten (10) Business Days after Notice from Buyer;

(iii) Except as provided for in Section 3.01(e), Seller (1) conveys, transfers, allocates, designates, awards, reports or otherwise provides any and all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than

Buyer (except as may relate to transactions in the imbalance market arising from ordinary course deviations between Metered Energy and energy Scheduled to Buyer), or (2) starts up or Operates the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);

(iv) Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;

(v) Seller removes from the Site equipment upon which the As-Available Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair, repowering or maintenance, and such equipment is not returned within five (5) Business Days after Notice from Buyer to Seller;

(vi) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system for transmission and delivery of the electric energy from the Generating Facility to the Delivery Point, or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation;

(vii) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Section 3.20, and such failure is not remedied within ten (10) days after Notice from Buyer to Seller;

(viii) Seller fails to remediate any material deficiency in internal controls over financial reporting in accordance with Section 3.20;

(ix) Seller fails to take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term as specified in Section 3.01, if such failure is not remedied within ten (10) days after Notice of such failure is provided by Buyer to Seller, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 10-day cure period, Seller shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as Seller promptly commences and diligently pursues such cure;

(x) The occurrence and continuation of a default, event of default or other similar condition or event under any loan agreement with any Lender, or under any other related agreement or instrument with or for the benefit of any Lender, which results in any indebtedness under those agreements or instruments becoming immediately due and payable; provided, however, if Seller, Buyer and a Lender have entered into a Collateral Assignment Agreement with substantially the provisions set forth in Section 9.05, and the terms of such Collateral Assignment

Agreement conflict or are inconsistent with this Section 6.01(c)(x), the provisions of the Collateral Assignment Agreement control;

(xi) If any failure by Seller to comply with the CAISO Tariff materially impacts Buyer's ability to comply with this Agreement, the CAISO Tariff or other Applicable Laws, and such failure by Seller (including any consequences suffered by Buyer) is not cured within thirty (30) days after Notice from Buyer to Seller;

(xii) If Seller materially modifies the Generating Facility without Buyer's prior written consent;

(xiii) Seller fails to satisfy the creditworthiness and collateral requirements in Sections 2 and 3 of Exhibit D and such failure is not cured within five (5) Business Days after Notice is provided by Buyer to Seller of such failure;

(xiv) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender;

(xv) Seller fails to post and maintain the Development Security pursuant to Section 4(b) of Exhibit D and such failure is not cured within five Business Days after Notice of such failure;

(xvi) Seller fails to maintain its status as an Eligible CHP Facility during the Term; or

(xvii) If Seller fails to satisfy all of the conditions set forth in Section 2.01 before the Term Start Date, and such failure is not cured within 30 Business Days after Notice from Buyer to Seller.

6.02 Early Termination. There shall be no opportunity to cure a default other than as specifically provided in Section 6.01. If this Agreement is terminated pursuant to Section 2.02(b), then Buyer or the Non-Defaulting Party, as applicable, will have the right to:

(a) Designate by Notice to the Defaulting Party a date, no later than twenty (20) days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");

(b) Immediately suspend performance under this Agreement; and

(c) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

6.03 Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party under this Agreement, including Forward Settlement Amounts, less any amounts owed by the Non-Defaulting Party to the Defaulting Party under this Agreement (the "Termination Payment"). The Notice shall include a written statement, setting forth, in reasonable detail, the calculation of such Termination Payment together with appropriate supporting documentation. If the Generating Facility is a New Eligible CHP Facility, no Forward Settlement Amount is assessed for any Termination Payment due to Buyer as the Non-Defaulting Party by Seller as the Defaulting Party if this Agreement is terminated before the Term Start Date.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within 10 Business Days after the Notice is provided.

The Parties shall negotiate to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

**** End of Article Six ****

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH IN THIS ARTICLE SEVEN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. 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 IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS 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 FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE VALUE OF ANY PRODUCTION TAX CREDITS DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

THE VALUE OF ANY INVESTMENT TAX CREDITS DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 9.03, 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.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS ARTICLE SEVEN 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 UNDER THIS AGREEMENT 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 UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTHING IN THIS ARTICLE SEVEN PREVENTS, OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTEREST IN COLLATERAL.

**** End of Article Seven ****

ARTICLE EIGHT. GOVERNMENTAL CHARGES

8.01 Cooperation to Minimize Tax Liabilities. Each Party shall use diligent 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.

8.02 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility ("Governmental Charges").

Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Power Product at and after the Delivery Point.

If Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer's responsibility under this Agreement, Buyer shall promptly reimburse Seller for such Governmental Charges.

If Buyer is required by Applicable Law or regulation to remit or pay Governmental Charges which are Seller's responsibility under this Agreement, Buyer may deduct such amounts from payments to Seller made pursuant to Article Four.

If Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon Notice from Buyer of the amount to be reimbursed.

Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

8.03 Providing Information to Taxing Governmental Authorities. To the extent required by Applicable Law and subject to Section 9.09(b), each Party shall provide information concerning the Generating Facility to any requesting taxing Governmental Authority.

**** End of Article Eight ****

ARTICLE NINE. MISCELLANEOUS

9.01 Representations and Warranties. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(e) There is not pending, or to its knowledge threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

(f) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement;

(g) It is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;

(h) It has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and

(i) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or receive the Power Product as contemplated by this Agreement.

9.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It will have Site Control as of the earlier of (i) the Term Start Date or (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term;

(b) During the Term, it or its subcontractors will own or lease and Operate the Generating Facility unless otherwise agreed to by the Parties;

(c) It will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person throughout the Term;

(d) It will hold throughout the Term the rights to all of the Product, subject to the terms of this Agreement;

(e) During the Term, it does not, and will not (1) convey, transfer, allocate, designate, award, report or otherwise provides any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (2) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);

(f) During the Term, the Generating Facility qualifies as an Eligible CHP Facility;

(g) The Generating Facility meets all applicable greenhouse gas emissions standards, as such standards may change from time to time during the Term; and

(h) As of the Effective Date, there is not pending, or to its knowledge threatened against it or any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

9.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, claim, cost, charge, demand or expense to the extent resulting from its negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 9.01 and Section 9.02.

(c) The provisions of this Section 9.03 may not be construed to relieve any insurer of its obligations to pay any insurance Claims in accordance with the provisions of any valid insurance policy.

(d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Sections 3.20(a)(v) or 9.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Sections 3.20(a)(v) and 9.10.

The inclusion of this Section 9.03(d) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 9.10.

(e) Each Party shall defend, save harmless and indemnify the other Party against any Governmental Charges for which such indemnifying Party is responsible under Article Eight.

(f) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02.

(g) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations for which Seller is responsible, in accordance with Section 3.21, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, Claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to Seller's actions or inactions that result in NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses and reasonable costs and expenses (which shall include reasonable costs of outside and in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent they are due to Buyer's negligence or willful misconduct in performing its role as Seller's Scheduling Coordinator during the Term.

(h) All indemnity rights will survive the termination of this Agreement for twelve (12) months.

9.04 Assignment. Neither Party may assign this Agreement or its rights under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Any direct or indirect change of control of either Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding anything to the contrary in this Section 9.04, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder):

(a) Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements in accordance with Section 9.05; and

(b) Transfer or assign this Agreement to an Affiliate of Seller which Affiliate's creditworthiness is equal to or higher than that of Seller.

9.05 Consent to Collateral Assignment. Subject to the provisions of this Section 9.05, Seller has the right to assign this Agreement as collateral to a Lender for any financing or refinancing of the Generating Facility, including a Sale-Leaseback Transaction or Equity Investment and, in connection therewith, Buyer shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement or to a Sale-Leaseback Transaction or Equity Investment, as applicable ("Collateral Assignment Agreement").

The Collateral Assignment Agreement shall be in form and substance reasonably agreed to by Buyer, Seller and Lender, and shall include, among others, the following provisions (together with such other commercially reasonable provisions required by any Lender that are reasonably acceptable to Buyer):

(a) Buyer shall give, to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, simultaneously with the Notice to Seller and before exercising its right to terminate this Agreement, written Notice of any event or circumstance known to Buyer which would, if not cured within the applicable cure period specified in Article Six, constitute an Event of Default (an "Incipient Event of Default");

(b) Lender shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement as apply to Seller;

(c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to (although Lender may, but shall have no obligation, subject to 9.05(g)) provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan;

(d) Seller or Lender shall provide the report to Buyer within 10 Business Days after Notice from Buyer requesting the report. Buyer shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(e) Lender shall have the right to cure an Event of Default or Incipient Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender's intention to cure. Lender may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period for Lender shall be extended for each day Buyer does not provide the Notice to Lender referred to in Section 9.05(a). In addition, such cure period may, in Buyer's reasonable discretion, be extended by no more than an additional one hundred and eighty (180) days. If possession of the Generating Facility is necessary to cure such Incipient Event of Default or Event of Default, Lender has commenced foreclosure proceedings within sixty (60) days after receipt of such Notice from Buyer, and Lender is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Lender or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed one hundred and eighty (180) days after Lender's commencement of foreclosure. Additionally, if Lender is prohibited from curing any Incipient Event of Default or Event of Default by any process, stay or injunction issued by a Governmental Authority or pursuant to any bankruptcy, insolvency or similar proceedings, then the time period for curing such Incipient Event of Default or Event of Default shall be extended for the period of the prohibition provided that Lender is exercising reasonable diligence in having such process, stay or injunction removed;

(f) Lender shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default or the end of the Term;

(g) Lender shall receive prior Notice of, and shall have the right to approve material amendments to this Agreement, which approval may not be unreasonably withheld, delayed or conditioned;

(h) In the event Lender, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the Person taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided, however*, that Lender (or such Person) shall have no liability for any monetary obligations of Seller under this Agreement which are due and owing to Buyer as of the assumption date (but this provision may not be interpreted to limit Buyer's rights to proceed against Seller as a result of an Event of Default) and Lender's (or such Person's) liability to Buyer after such assumption shall be limited to its interest in the Generating Facility; *provided further*, that before such assumption, if Buyer advises Lender (or such Person) that Buyer will require that Lender (or such Person) cure (or cause to be cured) one or more monetary or non-monetary Incipient Event(s) of Default or Event(s) of Default existing as of the date such Person takes title in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Incipient Event(s) of Default or Event(s) of Default, then Lender (or such Person) at its

option and in its sole discretion may elect to either (i) cause such Incipient Event(s) of Default or Event of Default to be cured, or (ii) not assume this Agreement;

(i) If Lender has assumed this Agreement as provided in Section 9.05(h) and elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender or an agent of or representative of Lender (excluding any foreclosure sale where a third party other than Lender, Seller, an Affiliate of Lender or an Affiliate of Seller is the buyer), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer excluding, however, a foreclosure (unless the transferee or buyer is Lender, Seller, an Affiliate of Lender or an Affiliate of Seller). Lender shall be released from all further obligations under the Agreement and all related documents following such assumption. Such sale or transfer (excluding a foreclosure) may be made only to a Person reasonably acceptable to Buyer; and

(j) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its representative or designee, directly or indirectly, takes title to the Generating Facility, then, at the request of either Buyer or Lender, Buyer and Lender (or its designee or representative) shall promptly enter into a new agreement, wherein Buyer shall have substantially the same contractual rights as found in this Agreement. for the term that would have been remaining under this Agreement, provided that Lender's (or its designee's or representative's) liability under such new agreement shall be limited to its interest in the Generating Facility and neither Lender (or its designee or representative) nor Buyer shall have any personal liability to the other for any amounts owing and neither Buyer nor Lender (or its designee or representative) shall have any obligation to cure any defaults under the original Agreement that was rejected in, or otherwise terminated in connection with Seller's Bankruptcy.

9.06 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE 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.

9.07 Notices. All notices, requests, statements or payments shall be made as specified in Exhibit J. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 9.07 are deemed given as follows:

(a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day;

(b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out;

(c) Notice by first class United States mail is deemed given two (2) Business Days after the postmarked date;

(d) Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement;

(e) A Party may change its designated representatives, addresses and other contact information by providing notice of same in accordance herewith; and

(f) All notices, requests, statements or payments for this Generating Facility must reference the identification number set forth on the cover page of this Agreement.

9.08 General.

(a) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(b) This Agreement will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

(c) Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

(f) The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.

(g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(h) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Articles", "Sections" and "Exhibits" refer to the corresponding Articles, Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Articles" or "Sections" in Exhibits A through Exhibit O refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

(i) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(j) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as shall inure to a successor or permitted assignee.

(k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between the Parties covering transmission, distribution, metering, scheduling or interconnection of electric energy. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.

(l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(m) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

(n) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.

(o) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.

9.09 Confidentiality.

(a) Neither Party shall disclose any Confidential Information to a third party, other than:

(i) To such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;

(ii) To potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; *provided, however*, that disclosure (1) of cash flow and other financial projections to any potential Lender or investor in connection with

a potential loan or tax equity investment; or (2) to potential Lenders or investors with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, will not require such consent of Buyer; *provided further*, that in each case such potential Lender or investor has a need to know such information and has agreed to keep such terms confidential;

(iii) To Buyer's Procurement Review Group, as defined in D.02-08-071, subject to a protective order applicable to Buyer's Procurement Review Group;

(iv) With respect to Confidential Information other than nonpublic financial information of Seller supplied to Buyer pursuant to Section 3.20, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information;

(v) In order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party, other than to those entities set forth in Section 9.09(a)(vi);

(vi) In order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC; and

(vii) To representatives of a Party's credit ratings agencies who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes or with respect to the potential impact of this Agreement on the Party's financial reporting obligations, in each case subject to confidentiality restrictions no less stringent than as set forth in this Agreement.

(b) In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Sections 8.03 and 9.09(a)(vi) (all to be considered a "Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to (i) notify the other Party before disclosing the confidential information, and (ii) prevent or limit such disclosure. After using such reasonable efforts, the disclosing party may not be (x) prohibited from complying with a Disclosure Order, or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of any terms or conditions of this Agreement which are the subject of such Disclosure Order.

(c) Except as provided in clause (y) of Section 9.09(b), the Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 9.09.

(d) This Section 9.09 shall remain in effect for three (3) years following the termination of this Agreement.

9.10 Insurance.

(a) Seller shall, at its own expense and at all times from the Effective Date until the Term End Date, maintain in effect the following insurance policies and minimum limits of coverage (and such additional coverage as may be required by Applicable Law), in each case with insurance companies authorized to do business in California having an A.M. Best's Insurance Rating of A minus: VII or better:

(i) Workers' compensation insurance, with statutory limits as required by California;

(ii) Employer's liability insurance, with at least the following limits: (1) bodily injury by accident - $1,000,000 each accident; (2) bodily injury by disease - $1,000,000 policy limit; and (3) bodily injury by disease - $1,000,000 each employee;

(iii) Commercial general liability insurance, written on an "occurrence" (not a claims-made) basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement. This commercial general liability insurance must (1) bear a combined single limit per occurrence and annual aggregate of not less than $1,000,000, exclusive of defense costs, for all coverages, (2) contain standard cross-liability or severability of interest provisions, and (3) contain no explosion, collapse, or underground exclusion.

(iv) Commercial automobile liability insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence. This commercial automobile liability insurance must cover liability arising out of the use of all owned, non-owned and hired automobiles.

(v) Excess liability insurance, written on an "occurrence" (not claims-made) basis and providing coverage excess of the underlying employer's liability, commercial general liability and commercial automobile liability insurance, on terms at least as broad as the underlying coverage with limits of not less than $4,000,000 per occurrence and in the annual aggregate.

(b) The insurance required in this Section 9.10 applies as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, despite of any provision in Seller's insurance to the contrary. Carriers furnishing the required insurance must waive all rights of recovery from or subrogation against Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, employees and insurers. The insurance required in Section 9.10(a) must name Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents and employees additional insureds with respect to all third party liabilities arising out of Seller's construction, use or

ownership of the Generating Facility. The insurance required in this Section 9.10 may be provided by any combination of Seller's primary and excess liability policies.

(c) Within 30 days of the Effective Date, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to the Buyer certificates of insurance in forms reasonably acceptable to Buyer, establishing that Seller's policies provide the coverage and limits of insurance required under this Section 9.10 and that these policies will be in full force and effect as of the Effective Date, continuing until the end of the Term. Seller's insurance obtained in accordance with this Section 9.10 may only be terminated, expire or materially altered upon 30 days' prior Notice to Buyer.

(d) If any of the required insurance coverages contain aggregate limits applying to other operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, claim, settlement or judgment against such insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

(e) If Seller fails to comply with any of the provisions of this Section 9.10, Seller shall, among other things and without restricting Buyer's remedies under the law or otherwise, at its own cost, defend, indemnify and hold harmless Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property to the extent that Buyer would have been protected had Seller complied with all of the provisions of this Section. Nothing in this Section 9.10(e) affects or diminishes Seller's obligation to indemnify SCE under any other section of this Agreement.

9.11 Nondedication. Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and such service shall cease upon termination of this Agreement.

9.12 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party will seek, nor will they support any third party in seeking, to prospectively or retroactively revise the rates, terms, or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206, or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

Further, absent the prior 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 Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 US 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 US 348 (1956).

9.13 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in

support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

9.14 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

9.15 Payments. Payments to be made under this Agreement shall be made, at Seller's option, by check or electronic wire funds transfer.

9.16 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 3.01, 3.02, 3.04, 9.09 and Section 4(e) of Exhibit D in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all Claims for monetary damages under this Agreement) to arbitration pursuant to Section 10.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Section 10.01, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for such breach of the provision, or if this Agreement does not specify a remedy for such breach, all other remedies available at law or equity to the Parties for such breach.

**** End of Article Nine ****

ARTICLE TEN. DISPUTE RESOLUTION

10.01 Dispute Resolution. Other than requests for provisional relief under Section 9.16, any and all disputes, Claims or controversies arising out of, relating to, concerning, or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Disputes"), which Disputes the Parties have been unable to resolve by informal methods, will first be submitted to mediation in accordance with the procedures described in Section 10.02, and if the Dispute is not resolved through mediation, then for final and binding arbitration in accordance with the procedures described in Section 10.03.

10.02 Mediation. Either Party may initiate mediation by providing Notice to the other Party of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within forty-five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred and twenty (120) days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; *provided, however*, that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.03 Arbitration. Either Party may initiate binding arbitration with respect to the matters first submitted to mediation in accordance with Section 10.02 by providing Notice of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") at any time following the unsuccessful conclusion of the mediation provided for in Section 10.02.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred and eighty (180) days from the date of Notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party's demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for in this Section 10.03, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Francisco, California, and discovery will be limited as follows:

(a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);

(b) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;

(c) Discovery may commence at any time after the Parties' initial disclosure;

(d) The Parties will not be permitted to propound any interrogatories or requests for admissions;

(e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three lay witness depositions, and three expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);

(f) Each Party is allowed a maximum of three expert witnesses, excluding rebuttal experts;

(g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;

(h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two rebuttal experts;

(i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and

(j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 3.01, 3.02, 3.04, 9.09 or Section 4(e) of Exhibit D.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

**** End of Article Ten ****

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[SELLER'S NAME],

a [Seller's business registration]

By:_____

Name:_____

Title:_____

[BUYER'S NAME],

a California corporation

By:_____

Name:_____

Title:_____

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"AB 1613 Decisions" means the decisions issued in R.08-06-024.

"Act" has the meaning set forth in Recital A.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this Agreement, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Ambient Conditions" means reductions in capacity due to that status of, or variations in, Site Host Load or ambient weather conditions.

"Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.

"Arbitrator" has the meaning set forth in Article Ten.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.02(c).

"Availability Standards" means the standard set forth in the CAISO Tariff setting forth criteria for determining if a Resource Adequacy Resource is subject to Non-Availability Charges or Availability Incentive Payments (each as defined in the CAISO Tariff), under the CAISO Tariff.

"Average Higher Heating Value MPR Heat Rate" means the heat rate equal to 6,924 Btu/kWh, or 6.924 mmbtu/MWh, per CPUC Resolution E-4298, which heat rate will be modified in this Agreement if there is any modification thereto by the CPUC or other authorized Governmental Authority.

"Bankrupt" means with respect to any Person, such Person:

(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 (which petition is not dismissed within 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.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Tariffs" means the entire body of effective rates, fees, rentals, charges, and rules collectively of PG&E, including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, rules, and sample forms.

"Buyer Energy Schedule" means the schedule of electric energy that Buyer submits to the CAISO for electric energy produced by the Generating Facility.

"Buyer Parent Energy Schedule" means the schedule of electric energy that Buyer submits to the CAISO for electric energy delivered to the CAISO for the CAISO Global Resource ID associated with the Generating Facility.

"Buyer Projected Energy Forecast" has the meaning set forth in Section 2(a) of Exhibit E.

"CAISO" means the California Independent System Operator Corporation or successor entity that dispatches certain generating units, supplies certain loads and controls the transmission facilities of entities that (a) own, operate and maintain transmission lines and associated facilities or have entitlements to use certain transmission lines and associated facilities, and (b) have transferred to the CAISO or its successor entity operational control of such facilities or entitlements.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter furnished by Seller, that (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) includes all of the associated metering transformers and related appurtenances that are required in order to measure the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy that Buyer Schedules with the CAISO and the CAISO approves in its final schedule, which is published in accordance with the CAISO Tariff.

"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling, Availability Standards or deliveries from the Generating Facility under this Agreement.

"CAISO Charges Invoice" has the meaning set forth in Section 5 of Exhibit E.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

"CAISO Forced Outage Report" means a complete copy of a forced outage report in a form reasonably acceptable to Buyer which includes detailed information regarding the event, including the affected Generating Unit, outage start date and time, estimation of outage duration, MW unavailable and summary of work to be performed.

"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.

"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

"CAISO Station Power Protocol" means the CAISO protocol that the CAISO filed with the FERC in Docket ER05-849, including all revisions, amendments and successor protocols that would allow a generating facility to self-supply its Station Power (as defined in the CAISO Tariff) by any means other than permitted netting, when permitted netting allows netting of generator output with Station Power load that is electrically connected to the generator at the same time when the generator is on-line.

"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

"CARB" means the California Air Resources Board.

"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

"CEC" means the California Energy Commission, or any successor entity.

"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may furnish at its discretion, as set forth in Section 3.09(b) and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"CHP" means combined heat and power.

"Claiming Party" has the meaning set forth in Section 5.02.

"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 before or after the termination of this Agreement.

"Collateral Assignment Agreement" has the meaning set forth in Section 9.05.

"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

"Control Area" means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.

"CPUC" means the California Public Utilities Commission, or any successor entity.

"Credit Rating" means with respect to any Person, on the relevant date of determination, the respective ratings then assigned to such Person's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody's. If no rating is assigned to such Person's unsecured, senior long-term debt or deposit obligation by either S&P or Moody's, then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned to the Person by S&P or Moody's, as the case may be.

"Cross Default Amount" is the amount set forth in Section 1.06(f).

"Daily Delay Liquidated Damages" has the meaning set forth in Section 4(c)(ii) of Exhibit D.

"Day-Ahead" has the meaning set forth in the CAISO Tariff.

"Decision" means CPUC Decision D. 07-09-040.

"Defaulting Party" has the meaning set forth in Section 6.01(a).

"Delivery Point" has the meaning set forth in Section 1.03.

"Development Security" has the meaning set forth in Section 4(b)(i) of Exhibit D.

"Direct GHG Compliance Costs" mean any taxes, charges or fees imposed by an authorized Governmental authority with jurisdiction over the Seller or the Generating Facility, and levied directly on the Generating Facility for GHG emissions attributable to its Operations.

"Disclosure Order" has the meaning set forth in Section 9.09(b).

"Dispute" has the meaning set forth in Section 10.01.

"Early Termination Date" has the meaning set forth in Section 6.02(a).

"Effective Date" has the meaning set forth in the Preamble.

"Eligible CHP Facility" means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, (1) meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code §2843 and, (2) meets the requirements of 18 Code of Federal Regulations §292.201, et seq., unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Emergency" means an actual or imminent condition or situation which:

(a) Is defined and declared by the CAISO or Transmission Provider;

(b) Jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider's electric system;

(c) Requires automatic or immediate manual action to prevent or limit loss of load or generation supply; or

(d) Poses a threat to public safety.

"Equitable Defense" means any Bankruptcy or other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

"Equity Investment" means an acquisition by a Lender of an ownership interest, in the form of stock, membership or partnership interest, in Seller or the immediate parent of Seller under which Seller retains the right to act in all matters relating to the control and Operation of the Site and the Generating Facility for the Term, subject to Lender's rights to enforce its ownership interest in Seller or the immediate parent of Seller, as applicable, in the event of a default by Seller or the immediate parent of Seller under Lender's equity acquisition agreement or the partnership agreement, operating agreement, or other agreement governing the relationship between the equity owners of the Generating Facility.

"Event of Default" has the meaning set forth in Section 6.01.

"Existing Eligible CHP Facility" means an Eligible CHP Facility that first commenced Operation on or after January 1, 2008 but before the Effective Date.

"Expected Term Year Energy Production" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.02(d).

"Federal Funds Effective Rate" means the rate for that day opposite the caption "Federal Funds (effective)" as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

"FERC" means the Federal Energy Regulatory Commission, or any successor entity.

"Financial Incentives" means any and all financial incentives, benefits or credits associated with the Generating Facility, or the ownership or Operation thereof, or the electrical or thermal output of the Generating Facility, including any production or investment tax credits, real or personal property tax credits or sales or use tax credits, but not including any Green Attributes, Capacity Attributes or Resource Adequacy Benefits.

"Firm Operation Date" means the date that is six months after the Term Start Date.

"Force Majeure" means any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome.
Force Majeure does not include:

(a) A failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event;

(b) Failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility;

(c) Breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or

(d) A lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

"Forced Outage" has the meaning set forth in the CAISO Tariff.

"Forecast" means the hourly forecast of (a) the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible net of the Site Host Load and Station Use.

"Forward Settlement Amount" means the Non-Defaulting Party's Costs and Losses on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be zero dollars. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Defaulting Party. The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

"Free Allowance" means any GHG Emissions Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

"GAAP" means generally accepted accounting principles for financial reporting in the United States, consistently applied.

"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), as of the Early Termination Date resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner.

"Generating Facility" means the Generating Unit(s) comprising Seller's power plant, as more particularly described in Section 1.02 and Exhibit B, including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

"Generation Operations Center" means the location of Buyer's real-time operations personnel.

"Generator Operator" means the Person that Operates the Generating Facility and performs the functions of supplying energy and interconnected operations services within the meaning of the NERC Registration Criteria.

"Generator Operator Obligations" means the obligations of a Generator Operator as set forth in all applicable NERC Reliability Standards.

"Generator Owner" means the Person that owns the Generating Facility and has registered with the NERC as the Person responsible for complying with all NERC Reliability Standards applicable to the owner of the Generating Facility.

"Generator Owner Obligations" means the obligations of a Generator Owner as set forth in all applicable NERC Reliability Standards.

"GHG" is an abbreviation for "greenhouse gas" which means emissions released into the atmosphere of carbon dioxide (CO2), nitrous oxide (N2O) and methane (CH4), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a metric ton of CO2-equivalent, in order to allow comparison between the different effects of gases on the environment; provided, however, that the definition of the term "Greenhouse Gas", as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority

"GHG Emissions Allowance" means a limited tradable authorization (whether in the form of a credit, allowance, or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a

Related Entity of Seller, which respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

"GHG Emissions Cap" means the product of (a) the rate for tonnes of CO2 per MMBtu of natural gas, 0.0531 tonnes/mmbtu, times (b) the Average Higher Heating Value MPR Heat Rate in mmbtu/MWh.

"GHG EPS" means the Greenhouse Gas Emissions Performance Standard set forth in CPUC D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, as well as revisions to these standards set forth in any subsequent CPUC-established precondition to the execution of this Agreement.

"Governmental Authority" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

"Governmental Charges" has the meaning as set forth in Section 8.02.

"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;

(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.

"Guarantor" means that certain guarantor of Seller set forth in Section 1.06(d).

"Guaranty Agreement" means a guaranty agreement substantially in the form of Exhibit K.

"High-Value Area" means a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC, as defined in Exhibit C, Section 6.

"Holidays" means "NERC Holidays" as defined in Exhibit C, Section 5. "Time of Delivery Periods and Allocation Factors."

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

"Incipient Event of Default" has the meaning set forth in Section 9.05(a).

"Interconnection Study or Interconnection Studies" means a study or studies prepared by or on behalf of the Transmission Provider or the CAISO to evaluate the impact of the interconnection of the Generating Facility to the Transmission Provider's electric system or the applicable Control Area operator's electric grid.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; provided, however, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"JAMS" means the Judicial Arbitration and Mediation Services, Inc. or any successor entity.

"kW" means a kilowatt (1,000 watts) of electric capacity or power output.

"kWh" means a kilowatt-hour (1,000 watt-hours) of electric energy.

"Lease" means one or more agreements whereby Seller leases the Site(s) described in Section 1.02 and Exhibit B from a third party, the term of which lease begins on or before the Term Start Date and extends at least through the Term End Date.

"Lender" means any third-party institution or entity or successor in interest or assignee that either (i) purchases the Generating Facility and then leases it to Seller under a Sale-Leaseback Transaction, or (ii) provides development, bridge, construction, or permanent debt or tax equity financing or refinancing (including an Equity Investment) for the Generating Facility to Seller or credit support in connection with this Agreement.

"Letter of Credit" means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least "A-" from S&P and "A3" from Moody's, substantially in the form of Exhibit L. All costs to establish and maintain the Letter of Credit shall be borne by Seller.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:

(a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P and "A3" by Moody's;

(b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;

(c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;

(d) Such Letter of Credit fails or ceases to be in full force and effect at any time;

(e) Seller fails to provide an extended or replacement Letter of Credit within 20 Business Days before such Letter of Credit expires or terminates; or

(f) The issuer of such Letter of Credit becomes Bankrupt;

provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

"Location Bonus" is described in Section 6 of Exhibit C.

"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), as of the Early Termination Date, resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner.

"Market Price" means the real-time price for Uninstructed Imbalance Energy (as defined in the CAISO Tariff) or any successor price for short-term imbalance energy, as such price or successor price is defined in the CAISO Tariff, that would apply to the Generating Facility, which values are, as of the Effective Date, posted by the CAISO on its website. The values used in this Agreement will be those appearing on the CAISO website on the third Business Day of the calendar month following the month for which such prices are being applied.

"Mediator" has the meaning set forth in Section 10.02.

"Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

"Metered Energy" means the total electric energy, expressed in kWh, measured by any or all of the CAISO-Approved Meters or Check Meters, as applicable, at the Generating Facility for the specified Metering Interval, after adjusting for any compensation factors introduced by the CAISO into the CAISO-approved meter.

"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters.

"Milestone Schedule" means Seller's milestone schedule, the form of which is attached to this Agreement as Exhibit M.

"Monthly Contract Payment" has the meaning set forth in Section 4.01.

"Monthly Scheduling Fee" is described in Section 4(b) of Exhibit E.

"Moody's" means Moody's Investor Services, Inc.

"MW" means a megawatt (1,000,000 watts) of electric capacity or power output.

"MWh" means a megawatt-hour (1,000,000 watt-hours) of electric energy or power output.

"NERC" means the North American Electric Reliability Corporation, or any successor entity.

"NERC Registration Criteria" means the most recent NERC Statement of Compliance Registry Criteria, which is available on NERC's website.

"NERC Reliability Standards" means those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by the NERC and approved by the applicable regulatory authorities, which are available on NERC's website.

"NERC Standards Non-Compliance Penalties" means any and all monetary fines, penalties, damages, interest or assessments by the NERC, the CAISO, the WECC, a Governmental Authority or any Person acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator or Generator Owner as set forth in the NERC Reliability Standards.

"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.

"Non-Defaulting Party" has the meaning set forth in Section 6.02.

"Non-Peak Hours" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in Exhibit C, "5. Time of Delivery Periods and Allocations Factors" or Exhibit C (1), "4. Time of Delivery Periods," as determined pursuant to Section 1.05.

"Notice" means notices, requests, statements or payments provided in accordance with Section 9.07 and Exhibit J.

"OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement-quality meter data or its successor.

"Operate", "Operating", and "Operation" mean to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

"Outage" has the meaning set forth in the CAISO Tariff.

"Outage Schedule" has the meaning set forth in Section 2(a) of Exhibit N.

"Outage Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer 24 months in advance, as set forth in Exhibit N.

"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

"Party or Parties" has the meaning set forth in the Preamble.

"Peak Months" means June, July, August and September.

"Performance Assurance" means collateral (in the amount of the Performance Assurance Amount) for Seller's performance under this Agreement in the form of cash, Letter(s) of Credit, or other security acceptable to Buyer.

"Performance Assurance Amount" has the meaning set forth in Section 1.06(b).

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

"Person or Persons" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Physical Trade" has the meaning set forth in the CAISO Tariff.

"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

"Planned Outage" means a disconnection, separation or reduction in the capacity of the Generating Facility which is not the result of a Forced Outage.

"PNode" has the meaning set forth in the CAISO Tariff.

"Power Product" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

"Power Rating" means the electrical power output value indicated on the generating equipment nameplate.

"Primary Fuel" means the fuel or combination of fuels that are provided for in the Permits applicable to the Generating Facility.

"Product" means the Power Product and the Related Products.

"Project" means the Generating Facility.

"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that:

(a) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;

(b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;

(c) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Prevailing Pacific Time, which is the Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, codified at 16 United States Code ("USC") §824a-3, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC decisions, orders, and rules implementing PURPA, as amended from time to time, including 18 Code of Federal Regulations ("CFR") Part 292.201, et seq., unless the Qualifying Facility is a public agency exempt from FERC jurisdiction under 16 USC §824(f).

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Related Products" means (i) with respect to Resource Adequacy Benefits that portion of the Resource Adequacy Benefits that are in excess of those Resource Adequacy Benefits used by Seller or by a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the Resource Adequacy Benefits are to be used, Resource Adequacy obligation under any Resource Adequacy Ruling, and (ii) any Green Attributes, Capacity Attributes and all other attributes associated with the electric energy or capacity of the Generating Facility (but not including any Financial Incentives) that are in excess of those Green Attributes, Capacity Attributes or other attributes used, or retained for future use, by Seller or a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the relevant attribute(s) are to be used or retained, obligation under Applicable Law.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(e)(2), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in Resource Adequacy Rulings, 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.

"Resource Adequacy Benefits" means the rights and privileges attached to the Generating Facility that satisfy any Person'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 Generating Facility.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 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 CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.

"Responsible Officer" means the chief financial officer, treasurer or any assistant treasurer of a Party or its Guarantor or any employee of a Party or its Guarantor designated by any of the foregoing officers.

"S&P" means the Standard & Poor's Rating Group.

"Sale-Leaseback Transaction" means a transaction in which Seller (i) sells the Generating Facility to a Lender providing tax equity financing to Seller and then (ii) leases the Generating Facility back from the Lender under an agreement authorizing Seller to act on behalf of the Lender in all matters relating to the control and Operation of the Site and the Generating Facility for the Term, subject to Lender's right to terminate the lease in the event of a default by Seller as set forth in the agreement between Seller and Lender.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy.

"Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

"Scheduling Coordinator" means the Buyer as certified by the CAISO for the purposes of undertaking the functions specified in Exhibit E.

"Scheduling Fee" means the Monthly Scheduling Fee and the SC Set-Up Fee.

"SC Set-Up Fee" is described in Section 4(a) of Exhibit E.

"SC Replacement Date" has the meaning set forth in Section 7 of Exhibit E.

"SEC" means the United States Securities and Exchange Commission, or any successor entity.

"Security Interest" has the meaning set forth in Section 3 of Exhibit D.

"Seller" has the meaning set forth in the Preamble.

"Seller's Day-Ahead Forecast" means the most recently update Forecast submitted by 5:00 p.m. PPT on the day before the Trading Day.

"Seller's Energy Forecast" means Seller's most recently updated Forecast submitted in accordance with Exhibit G.

"Seller's Final Energy Forecast" means Seller's energy Forecast as may be updated for Forced Outages that occur after the Hour Ahead Scheduling Deadline, but not for Ambient Conditions.

"Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035.

"Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective.

"Settlement Interval" has meaning set forth in the CAISO Tariff.

"Simple Interest Payment" means a dollar amount calculated by multiplying the:

(a) Dollar amount on which the Simple Interest Payment is based; by

(b) Federal Funds Effective Rate or Interest Rate as applicable; by

(c) The result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02(b) and Exhibit B.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a Lease, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

"Site Host" means the Person or Persons purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code Section 218(b).

"SLIC" means Scheduling and Logging system for the CAISO.

"SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

"Station Use" means electric energy produced by the Generating Facility that is:

(a) Used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation; and

(b) Consumed as losses within the low voltage, electrical distribution system of the Generating Facility including:

i. The Generating Facility's, or, if applicable, each Generating Unit's [____]kV electric voltage step-up transformer; and

ii. The portion of the electric bus work that:

1. Connects the high voltage side of the Generating Facility's, or, if applicable, each Generating Unit's electric voltage step-up transformer to the [Substation name]; and

2. Is located on the Generating Facility side of the measurement points for the CAISO-Approved Meters.

"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility in accordance with the CAISO's applicable requirements as set forth in Section 3.10.

"Term" has the meaning set forth in Section 1.01.

"Term End Date" has the meaning set forth in Section 1.01.

"Termination Payment" has the meaning set forth in Section 6.03.

"Term Start Date" has the meaning set forth in Section 1.01.

"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

"TOD Period" means the time of delivery period used to calculate the Monthly Contract Payment set forth in Exhibit C or Exhibit C (1), as determined by Section 1.05.

"Trading Day" means the day in which Day-Ahead trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).

"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Buyer from the Delivery Point to the CAISO-controlled grid.

"Uninstructed Deviation GMC Rate" means the administrative grid management charge applied by the CAISO to Uninstructed Deviations (as defined in the CAISO Tariff) using the absolute value for the Uninstructed Deviations by Settlement Interval.

"Uninstructed Deviation Penalty" means the penalty set forth in the CAISO Tariff.

"Web Client" has the meaning set forth in Section 2(a) of Exhibit N.

"WECC" means the Western Electricity Coordinating Council, the regional reliability council for the western United States, northwestern Mexico, and southwestern Canada, or any successor entity.

**** End of Exhibit A ****

ID# [Number], [Seller's Name]

EXHIBIT B
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

**** End of Exhibit B ****

ID# [Number], [Seller's Name]

EXHIBIT C

Monthly Contract Payment Calculation

These Price Inputs are based upon the 2011 Market Price Referent (MPR)

This Exhibit C establishes the avoided cost price adopted and implemented by the CPUC in CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033).

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period payment 1st TOD Period +
TOD Period payment 2nd TOD Period +
TOD Period payment 3rd TOD Period +
Location Bonus

All TOD Period Payments shall be calculated as set forth in Section 2 of this Exhibit C.

The "1st TOD Period," "2nd TOD Period," and "3rd TOD Period" subscripts refer to the three TOD Periods that apply for the applicable calculation month, as set forth in Section 5 of this Exhibit C.

The Location Bonus, if applicable, shall be calculated as set forth in Section 6 of this Exhibit C.

2. TOD Period Payment Calculation

Each monthly TOD Period Payment is calculated in dollars using the terms defined below as follows:

(Fixed price component + Variable price component) * TOD Factor *
metered kWh exported during the TOD Period during the month

Once 120% of the Expected Term Year Net Energy Production is achieved, no further payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

3. Fixed Price Component

The Fixed Price Component of the Monthly Contract Payment for all TOD Periods shall be the amount in the following table for the year of the Term Start Date. The fixed price component does not escalate during the term of the Agreement.

Year	$/kwh
2012	0.02000
2013	0.02033
2014	0.02068
2015	0.02104
2016	0.02140

Year	$/kwh
2017	0.02142
2018	0.02145
2019	0.02147
2020	0.02149
2021	0.02151
2022	0.02153
2023	0.02155

4. Variable Price Component Calculation

The Variable Price Component is calculated in dollars as follows:

[(Monthly bidweek gas price + Intrastate gas transportation rate)/1,000,000* Heat Rate] + Variable O&M

(a) Monthly bidweek gas price shall be calculated as the average of monthly bidweek gas price indices at PG&E Citygate as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly

(b) Intrastate gas transportation rate shall be the tariffed intrastate gas transportation rate for large electric generators as published in the PG&E Gas Tariffs G-EG and G-SUR.

(c) Heat Rate, pursuant to D. 09-12-042, shall be equal to:

6,924 Btu/kWh

(d) Variable O&M shall be the amount in the following table for the year in which the payment is being calculated. For years after 2023, Variable O&M shall be the 2023 payment multiplied by 1.02, compounded for each year beyond 2023.

Variable O&M	
Year	$/kwh
2012	0.00311
2013	0.00316
2014	0.00322
2015	0.00329
2016	0.00335
2017	0.00342
2018	0.00349
2019	0.00356
2020	0.00364
2021	0.00371
2022	0.00377
2023	0.00384

5. Time of Delivery Periods and Allocation Factors.

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

	TOD PERIOD		
Monthly 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 paragraph, 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. In accordance with all other terms of this Exhibit C, the following Time of Delivery Factors ("TOD Factors") shall be used in the TOD Period Payment Calculation for each of the specified TOD Periods in which Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	2.38	1.12	0.59
B. Oct. – Dec.; Jan. & Feb.	1.10	0.94	0.66
C. Mar. – May	1.22	0.90	0.61

6. Location Bonus.

If the Generating Facility is located in a "High-Value Area" as set forth below, each Monthly Contract Payment for the entire Term shall receive a Location Bonus calculated as follows:

Location Bonus = Sum of monthly TOD Periodn Payments * 0.10

The Generating Facility shall be deemed to be located in a High-Value Area if it is interconnected to Buyer's electric system at a location which, in the year of the Effective Date, is identified pursuant to CPUC D. 09-12-042 (as modified by other AB 1613 Decisions) as a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC.

**** End of Exhibit C****

Exhibit C (1)

Monthly Contract Payment Calculation

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period Energy Payment $_{\text{1st TOD Period}}$ +
TOD Period Energy Payment $_{\text{2nd TOD Period}}$ +
TOD Period Energy Payment $_{\text{3rd TOD Period}}$ +
TOD Period Energy Payment $_{\text{4th TOD Period}}$ +
TOD Period Capacity Payment $_{\text{1st TOD Period}}$ +
TOD Period Capacity Payment $_{\text{2nd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{3rd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{4th TOD Period}}$

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit C (1).

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit C (1).

The "1st TOD Period," "2nd TOD Period," "3rd TOD Period" and "4th TOD Period" subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit C (1).

2. TOD Period Energy Payment Calculation.

(a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{FirstHour}^{LastHour} [(EP-LA) \times APE + LA \times MA]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit C (1), in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit C (1).

LA = Hourly Location Adjustment price, as set forth in SRAC.

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no additional hourly energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

(b) Factor "EP" in Section 2(a) of this Exhibit C (1). The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in SRAC.

(c) Factor "APE" in Section 2(a) of this Exhibit C (1). The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = ACP x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit C (1), in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision:

Capacity Payment Allocation Factors		
Season	*TOD Period*	*Factor*
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

(b) Factor "ACP" in Section 3(a) of this Exhibit C (1). The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars

= AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit C (1), in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	*Price $/kW-yr*
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

(c) Factor "AAC" in Section 3(b) of this Exhibit C (1). The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit C (1), in kWh per hour.

(d) Factor "MAC" in Section 3(c) of this Exhibit C (1). The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit C (1), in kWh.

PH = The total number of hours in the TOD Period (period hours).

(e) Factor "LE" in Section 3(d) of this Exhibit C (1). The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{FirstHour}^{LastHour} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit C (1), in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor "E" in Section 3(e) of this Exhibit C (1). The Allowed Hourly Energy is calculated as follows:
ALLOWED HOURLY ENERGY in kWh = 1 hour x CC

Where:

CC = The Contract Capacity, as set forth in Section 1.02(c), in kW.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	**Period A – Summer May 1 - October 31**	**Period B - Winter November 1 - April 30**	**Applicable Days**
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

*** End of Exhibit C (1) ***

EXHIBIT D
Credit and Collateral Requirements

1. Financial Information.

(a) If requested by Buyer, Seller shall deliver to Buyer the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:

(i) Within one hundred and twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year; and

(ii) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous fiscal year;

provided, however, that if Seller is not an SEC reporting company or if the financial statements required under Sections 1(a)(i) or (ii) of this Exhibit D are not audited financial statements, a Responsible Officer of Seller will certify such financial statements as being in accordance with all Applicable Laws, prepared in accordance with GAAP and fairly stated in all material respects (subject to normal year-end audit adjustments for the quarterly financial statements); *provided further*, that such information must be provided only to those employees of Buyer that need to know such information for financial risk management purposes and may not be disclosed to third parties except as permitted under Section 9.09.

(b) For purposes of the requirement set forth in Section 1(a) of this Exhibit D:

(i) If Seller's or its Guarantor's financial statements are publicly available electronically on the website of Seller, its Guarantor or the SEC, then Seller is deemed to have met this requirement; and

(ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay is not an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

2. Performance Assurance.

(a) Posting Performance Assurance. On or before the Term Start Date, Seller shall post Performance Assurance with Buyer and shall maintain the Performance Assurance

Amount at all times on and after the Term Start Date until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed three hundred and sixty-five (365) days following the Term End Date.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to Buyer; *provided, however*, that if, as of the Term Start Date, Seller has posted the Development Security in the form of cash or a Letter of Credit and Buyer has either not returned the Development Security to Seller or given Seller Notice, in accordance with this Exhibit D, of its determination regarding the disposition of the Development Security by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by Buyer until three Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 4(c) or (e) of this Exhibit D, after which Seller shall be obligated to post the full Performance Assurance Amount.

In lieu of cash or a Letter of Credit, Buyer may accept a Guaranty Agreement, in accordance with Section 2(c) of this Exhibit D, from a Guarantor acceptable to Buyer, to satisfy Seller's Performance Assurance obligation.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit is subject to the following provisions:

(i) Each Letter of Credit must be maintained for the benefit of Buyer;

(ii) Seller shall:

(1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;

(2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to Buyer at least thirty (30) days before the expiration of the outstanding Letter of Credit or within five (5) Business Days of such indication by the bank, whichever is later; and

(3) If the bank issuing a Letter of Credit fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to Buyer within three Business Day after such refusal;

(iii) Upon, or at any time after, the occurrence of a Letter of Credit Default, Seller shall provide to Buyer either a substitute Letter of Credit or alternative Performance Assurance acceptable to Buyer, in each case on or before the third Business Day after the occurrence thereof (or the fifth Business Day after the occurrence thereof if only Section a) in the definition of "Letter of Credit Default" in Exhibit A applies); and

(iv) Upon the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit by submitting to the bank issuing such Letter of Credit one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 3 of this Exhibit D with respect to such cash proceeds.

Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any (1) failure to provide or maintain sufficient Performance Assurance, or (2) any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

(v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.

(c) Guaranty Agreement. If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit K executed by the Guarantor identified in Section 1.06(d) or other party, in each case acceptable to Buyer and meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:

(i) "BBB-" from S&P and "Baa3" from Moody's, if it is rated by both S&P and Moody's; or

(ii) "BBB-" from S&P or "Baa3" from Moody's if it is rated by either S&P or Moody's but not by both.

If at any time the Guarantor fails to maintain such Credit Ratings, Seller shall provide to Buyer Performance Assurance in the form of cash or a Letter of Credit, or a replacement Guaranty Agreement from a party acceptable to Buyer, within five Business Days of such failure by the Guarantor.

3. First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security (if applicable), Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 2 and 4 of this Exhibit D and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer's Security

Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller, Buyer may do any one or more of the following:

(a) Exercise any of its rights and remedies with respect to all Development Security and Performance Assurance, including any such rights and remedies under law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit; and

(c) Liquidate all Development Security and Performance Assurance 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 this Agreement (Seller shall remain liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

4. Development Security.

(a) Introduction. Development Security shall be held by Buyer as security for Seller's meeting the Term Start Date. Before the Term Start Date, Seller must deliver to Buyer certificates from a California-licensed professional engineer qualified to make a representation that that Seller has installed the equipment sufficient to provide the As-Available Contract Capacity designated by Seller.

(b) Development Security. Seller shall post such Development Security in accordance with the following terms and conditions:

(i) Seller shall post a development fee (the "Development Security") in the amount of $20 per kW of the As-Available Contract Capacity on or before the 30th day following the Effective Date. The Development Security shall be held by Buyer and shall be in the form of either a cash deposit or a Letter of Credit; and

(ii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be substantially in the form of Exhibit L.

(c) Forfeiture of Development Security for Failure to Commence Term by the Term Start Date; Extension of the Term Start Date.

(i) Failure to Meet the Term Start Date. Subject to Seller's right to extend the Term Start Date as provided in Section 4(c)(ii) of this Exhibit D or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), if the Term does not commence on or before the Term Start Date, Buyer may retain the entire Development Security (if applicable) and, if not already terminated, terminate this Agreement, and neither Party shall have liability for

damages for failure to deliver or purchase the Product after the effective date of such termination.

(ii) Daily Delay Liquidated Damages to Extend Term Start Date. Subject to limitations set forth in Section 1.01(b), Seller may elect to delay the Term Start Date by paying to Buyer liquidated damages in an amount equal to one percent of the Development Security per day for each day (or portion thereof) from and including the original Term Start Date to and excluding the actual Term Start Date ("Daily Delay Liquidated Damages").

To extend the Term Start Date, Seller must, at the earliest possible time, but no later than 6:00 a.m. on the first day of the proposed extension, provide Buyer with Notice of its election to extend the Term Start Date along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Term Start Date extension period.

Seller may further extend the Term Start Date beyond the original Term Start Date extension period subject to the same terms applicable to the original Term Start Date extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Term Start Date extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Term Start Date was actually extended.

In no event may Seller extend the Term Start Date for more than a total of 180 days by the payment of Daily Delay Liquidated Damages.

(d) Full Return of Development Security. The Development Security shall be returned to Seller in accordance with the following procedure:

(i) Subject to Seller commencing the Term by the Term Start Date, as the Term Start Date may have been extended in accordance with Section 4(c)(ii) of this Exhibit D or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), Seller demonstrates the As-Available Contract Capacity on or before the Firm Operation Date by delivering to Buyer certificates from a California-licensed professional engineer qualified to make a representation that Seller has installed the equipment sufficient to provide the entire As-Available Contract Capacity designated by Seller.

(e) Deficient Installation of As-Available Contract Capacity; Partial Forfeiture and Partial Return of the Development Security. If, on or before the Firm Operation Date, Seller does not demonstrate any portion of the As-Available Contract Capacity or only demonstrates a portion of the As-Available Contract Capacity by delivering to Buyer certificates from a California-licensed professional engineer qualified to make a

representation setting forth the As-Available Contract Capacity, then Seller will only be entitled to a return of the portion of the Development Security posted by Seller equal to the product of $20 per kW times the kilowatts of As-Available Contract Capacity which Seller has demonstrated, if any.

Seller shall forfeit and Buyer shall be entitled to retain the balance of the Development Security.

In addition, as of the Firm Operation Date, the Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 2 of this Exhibit D shall be calculated using the adjusted As-Available Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted As-Available Contract Capacity shall be returned to Seller.

(f) Seller shall provide Notice to Buyer of its request for a refund of the Development Security.

5. Interest Payments on Cash Deposits.

(a) Buyer shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the Development Security and Performance Assurance.

(b) Upon receipt of a monthly invoice that sets forth the calculation of the Simple Interest Payment amount due, Buyer shall make payment thereof on or before the third Business Day of the first month after the last month to which the invoice relates, so long as such date is after the day on which such invoice is received; ***provided, however***, that:

(i) No Event of Default has occurred and is continuing with respect to Seller; and

(ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.

(c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, Buyer shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:

(i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or

(ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

**** End of Exhibit D ****

EXHIBIT E
Scheduling Coordinator Services

1. Designation of Buyer as Scheduling Coordinator.

   (a) At least thirty (30) days before the Term Start Date, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Scheduling Coordinator with the CAISO effective as of the Term Start Date.

   (b) During the Term, Seller may 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.

   (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff and the Eligible CHP Facility's Participating Generator Agreement.

   (d) Buyer shall submit all required notices and updates regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO in accordance with the CAISO procedures.

   (e) Seller is not entitled to any Monthly Capacity Payment until Buyer is fully authorized as Scheduling Coordinator for the Generating Facility; *provided, however*, that Buyer may not take, or not refrain from taking, any action if the result would be to delay such authorization.

2. Buyer's Scheduling Responsibilities. Pursuant to the CAISO Tariff, Buyer shall be responsible for the following:

   (a) Using the Forecast submitted by Seller to Buyer pursuant to Exhibit G, including updated Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using Buyer's forecasting model ("Buyer Projected Energy Forecast") in any given hour;

   (b) Adjusting Buyer Projected Energy Forecast for forecasted electric energy line losses in accordance with the amount of electric energy Seller is expected to deliver to the Delivery Point;

   (c) Submitting the adjusted Forecasts to the CAISO as Scheduling Coordinator Schedules (as defined in the CAISO Tariff); and

   (d) Receiving notification of the final Schedules from the CAISO.

3. Notices. As Scheduling Coordinator, Buyer shall submit all notices and updates required under the CAISO Tariff and Applicable Laws regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO, including all SLIC Outage requests, SLIC Forced Outages, or CAISO Forced Outage Reports.

4. Scheduling Fees. In accordance with Section 4.02, Buyer shall invoice to Seller and Seller shall pay to Buyer the following Scheduling Fees:

   (a) SC Set-Up Fee. The SC Set-Up Fee is equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable, in accordance with the CAISO Tariff. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee, including separate line items for registration charges, equipment costs, software costs, and labor costs (including hourly rate if applicable) itemized for registration, equipment installation, configuration, testing and software related charges. Buyer estimates that the SC Set-up Fee for this Agreement will equal $[___].

   (b) Monthly Scheduling Fee. The Monthly Scheduling Fee will be as forth in the following table.

As-Available Contract Capacity (kW)	Monthly Scheduling Fee
Less than 10,000	$2,500
10,000 – 20,000	$5,000

5. CAISO Settlements. As Scheduling Coordinator, Buyer shall be responsible for all settlement functions with the CAISO related to the Generating Units or the Generating Facility, as applicable. Seller shall cooperate with Buyer in Buyer's performance of any settlement functions, and Seller shall promptly deliver to Buyer, or provide Buyer access to, all Generating Unit or the Generating Facility, as applicable, data necessary for CAISO settlements and any correspondence or communications with CAISO related to the Generating Units or the Generating Facility, as applicable, including any invoices or settlement data, in the mutually agreed upon format reasonably requested by Buyer.

   Buyer shall render a separate invoice to Seller for all CAISO Charges ("CAISO Charges Invoice") for which Seller is responsible under this Agreement as described in Exhibit H, in accordance with the applicable billing and payment methodologies utilized for the specific CAISO Charge as set forth in the CAISO Tariff. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges. At Seller's request, Buyer shall provide Seller with an invoice detailing all Generating Facility CAISO Charges by individual CAISO Charge codes or types used by CAISO to identify individual CAISO Charges including a copy of all supplemental and/or supporting documentation provided by the CAISO to Buyer in the settlement process.

   Seller shall pay the amount of CAISO Charges Invoices on or before the later of the 20th day of each month, or tenth day after receipt of the CAISO Charges Invoice or, if such day is not a Business Day, then on the next Business Day. If Seller fails to pay a CAISO Charges Invoice within such timeframe, Buyer may offset any amounts owing to it for these CAISO Charges Invoices as set forth in Section 4.02.

6. Disputes and Adjustments of CAISO Invoices. The Parties agree that all CAISO Charges Invoices are subject to the CAISO Tariff and may be adjusted by the CAISO, or disputed by Buyer, as Scheduling Coordinator, in accordance with the CAISO Tariff. The Parties agree that all CAISO Charges Invoices are subject to dispute between the Parties in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the obligations under this Exhibit E with respect to the payment of CAISO Charges Invoices, or the adjustment of such CAISO Charges Invoices, shall survive the expiration or termination of this Agreement for a period of three hundred and sixty-five (365) days beyond the time period which CAISO may adjust, modify or change any previously issued invoice, or any charges or revenues set forth on such invoice pursuant to the CAISO Tariff.

7. Termination of Buyer as Scheduling Coordinator. At least 30 days before the expiration of the Term or as soon as an Early Termination Date is declared (regardless of which Party declared it), the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator as of 11:59 p.m. on the final date of the Term ("SC Replacement Date"). Such actions include the following: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator effective as of the SC Replacement Date.

**** End of Exhibit E ****

EXHIBIT F
Milestone Progress Reporting Form

1. Introduction. This Exhibit F is only applicable if the Generating Facility is a New Eligible CHP Facility. Seller shall prepare a written milestone progress report as set forth in Section 3.12 on its progress relative to the:

   (a) Installation of the CAISO-Approved Meters and Telemetry System;

   (b) Installation of the Telemetry System as required by the CAISO Tariff; and

   (c) Work on other agreements with the CAISO and the Transmission Provider.

2. Format. The report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer's Contract Administrator, as noted in Exhibit J, on the fifth Business Day of each month. Each such milestone progress report must include the following items:

   (a) Cover page;

   (b) Brief Generating Facility description;

   (c) Site plan of the Generation Facility;

   (d) Description of any planned changes to the Generating Facility and Site Description in Exhibit B;

   (e) Bar chart schedule showing progress on achieving the Milestone Schedule;

   (f) PERT or GANT chart showing critical path schedule of major items and activities;

   (g) Summary of activities during the previous month;

   (h) Forecast of activities scheduled for the current month;

   (i) Written description about the progress relative to the Milestone Schedule;

   (j) List of issues that could potentially impact the Milestone Schedule;

   (k) Enumeration and schedule of any support or actions requested of Buyer;

   (l) Progress and schedule of all material agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages; and

   (m) List of items required under Section 3.11.

**** End of Exhibit F ****

EXHIBIT G

Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements for all Generating Facilities.

   (a) 30-Day Forecast.

   In the case of a New Eligible CHP Facility, no later than 30 days before the Term Start Date (or, in the case of a New Eligible CHP Facility no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the start of the Term (or, if applicable, Parallel Operation) using the Web Client.

   In the case of a New Eligible CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), if Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

   If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit J.

   The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

   (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and

   (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

   (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section

2(a) of this Exhibit G, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit J.

(c) Further Update to 30-Day Forecast. As soon as reasonably practicable, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage, and a Real-Time Forced Outage, which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit G must be submitted to Buyer via the Web Client by no later than:

(i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;

(ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or

(iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change, with notification also by phone to Seller's Real Time Scheduling Desk.

Seller's updated Forecast must contain the following information:

(w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected energy production change;

(x) The expected ending date and time of the event:

(y) The expected energy production, in MWh; and

(z) Any other information required by the CAISO as communicated to Seller by Buyer.

**** End of Exhibit G ****

ID# [Number], [Seller's Name]

EXHIBIT H
CAISO Charges

Buyer, as Scheduling Coordinator for the Generating Facility, shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if at any time after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or,

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to: (a) curtail output, or (b) reschedule a Planned Outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

4. If the Generating Facility is PIRP eligible and is not certified as a PIRP resource for any reason, then Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the energy generated and delivered from the Generating Facility.

5. Buyer as Seller's Scheduling Coordinator is subject to either Non-Availability Charges or Availability Incentive Payments, or both, during a month within the Resource Adequacy compliance year, as defined by CAISO Tariff, then any such charges or payments shall be offset and the net value shall be entered into Seller's Account for the applicable month pursuant to Section 3.22.

If any of Sections 1 through 4 of this Exhibit H apply and the Generating Facility is subject to an Uninstructed Deviation Penalty, Seller will not be required to pay the SDD Energy Adjustment and, instead, shall be responsible for all applicable Uninstructed Deviation Penalty charges for the Generating Facility.

**** End of Exhibit H ****

EXHIBIT I

Scheduling and Delivery Deviation Adjustments

Seller or Buyer, as the case may be, shall be responsible for the following Scheduling and Delivery Deviation ("SDD") Adjustments with respect to the Generating Facility:

1. SDD Energy Adjustment. An Adjustment will be calculated for each Settlement Interval in a month if the Metered Energy is either (a) less than the Performance Tolerance Band Lower Limit in any Settlement Interval or (b) greater than the Performance Tolerance Band Upper Limit in any Settlement Interval. When the SDD Energy Adjustment is negative, Seller shall make a payment to Buyer and when the SDD Energy Adjustment is positive, Seller shall receive a credit from Buyer. The SDD Energy Adjustment is calculated as follows:

   If A < D, then SDD Energy Adjustment= (D – A) x (EP – P)

   or

   If A > E, then SDD Energy Adjustment = (A – E) x (P – EP)

   Otherwise, the SDD Energy Adjustment = 0

   where:

   A = Metered Energy for the Settlement Interval;

   B = Seller's Final Energy Forecast based on the hourly forecasts made pursuant to Exhibit G corresponding to the Settlement Interval;

   C = Performance Tolerance Band =

   Three percent of the Seller's Final Energy Forecast divided by the number of Settlement Intervals in such hour;

   D = Performance Tolerance Band Lower Limit = (B – C);

   E = Performance Tolerance Band Upper Limit = (B + C);

   EP = TOD Period Payment divided by Metered Energy applicable to the Settlement Interval specified in Exhibit C or TOD Period Energy Price applicable to the Settlement Interval specified in Section 2 (b) of Exhibit C (1); and

   P = Market Price for the Generator's PNode as published by the CAISO on OASIS for the Settlement Interval.

2. SDD Administrative Charge. Seller shall make a payment to Buyer (the "SDD Administrative Charge") for each Settlement Interval in a month if Metered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, in any Settlement Interval. The SDD Administrative Charge is calculated as follows:

   If A > (B + C) or A < (B – C), then:

   SDD Administrative Charge = (Absolute Value (B – A) – C) x Uninstructed Deviation GMC Rate.

   Otherwise, the SDD Administrative Charge = 0.

**** End of Exhibit I ****

ID# [Number], [Seller's Name]

EXHIBIT J
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	

CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Guarantor: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit J ****

EXHIBIT K
Form of Guaranty Agreement

1. Guaranty. For valuable consideration, *[Guarantor's legal name]*, *[legal status]* ("Guarantor") guarantees payment to *[Buyer's legal name]*, a California corporation ("Beneficiary"), its successors and assigns, of all amounts owed to Beneficiary by *[Seller's legal name]*, *[legal status]* ("Principal") under that certain Power Purchase and Sale Agreement between Beneficiary and Principal dated *[date]*, as amended from time to time ("Agreement") (said amounts are hereinafter referred to as the "Obligations").

   Initially capitalized words that are used but not otherwise defined in this agreement ("Guaranty") shall have the meanings given them in the Agreement.

   Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

   Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, that all cure periods have expired, and with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

   Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

   The obligations of Guarantor hereunder are not subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

   A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. Guaranty Limit. Subject to Paragraph 13, the liability of Guarantor hereunder may not exceed $_____ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

3. Guaranty Absolute. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and is not affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

   (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectability, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;

   (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;

(c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;

(d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and

(e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:

(i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;

(ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;

(iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;

(iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;

(v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;

(vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;

(vii) Beneficiary's exercise of any other rights available to it under the Agreement;

(viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;

(ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;

(x) [Intentionally omitted;] and

(xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

(f) Guarantor agrees that upon a demand for payment under this Guaranty in accordance with Section 1 hereof, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, statute of frauds, statute of limitations and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.

4. Termination; Reinstatement.

(a) The term of this Guaranty is continuous until the date on which the Obligations have been performed or paid in full.

(b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy; Post-Petition Interest.

(a) So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal.

The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations.

Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

6. Subrogation. Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, provided that Guarantor postpones the exercise of such rights until all Obligations have been irrevocably paid in full to the Beneficiary.

If any amount is paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder have not been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary (provided that no fiduciary duty shall be deemed to arise in connection herewith) and shall promptly pay such amount to Beneficiary.

7. [Intentionally omitted.]

8. Waivers of Guarantor.

(a) [Intentionally omitted.]

(b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.

(c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:

(i) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property.

This means, among other things:

a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.

b. If the creditor forecloses on any real property collateral pledged by the debtor:

(1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(ii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.

(e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability of the Principal, failure of consideration or any defense based on or arising out of the lack of validity or enforceability of the Obligations;

(f) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;

(g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerate guarantors, provide any legal or equitable discharge of Guarantor's obligations hereunder, or which may conflict with the terms of this Guaranty;

(i) Other than demand for payment, the Guarantor expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and

(j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.

9. No Waiver of Rights by Beneficiary. No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

10. Assignment, Successors and Assigns. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors, assigns and creditors. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided*, *however*, that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.

    The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

11. Representations of Guarantor. Guarantor represents and warrants that:

    (a) It is a corporation duly organized, validly existing and in good standing in all necessary jurisdictions and has full power and authority to execute, deliver and perform this Guaranty;

    (b) It has taken all necessary actions to execute, deliver and perform this Guaranty;

    (c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;

    (d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and

    (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

12. Financial Statements. If requested by Beneficiary, Guarantor shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:

    (a) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and

(b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and: (i) certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission ("SEC") rules and regulations, if Guarantor is an SEC reporting company; or (ii) certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.

(c) For the purposes of the requirement in this Paragraph 12, if Guarantor's financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.

13. Attorneys' Fees. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 is not subject to, and does not count toward, the guaranty limit set forth in Paragraph 2 above.

14. Governing Law. This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

15. Construction. All parties to this Guaranty are represented by legal counsel. The terms of this Guaranty and the language used in this Guaranty shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Guaranty. No rule of strict construction will be applied against any party.

16. Amendment; Severability. Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

If any provision in or obligation under this Guaranty is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, is not in any way be affected or impaired thereby.

17. Third Party Rights. This Guaranty may not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.

18. Notices. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary:	*[Buyer]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:
with a copy to:	*[Name]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:
Guarantor:	*[Guarantor]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:
Principal:	*[Principal]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

ID# [Number], [Seller's Name]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of _____, ____.

_____*[legal name]*___

By: _____

Name: _____

Title: _____

*** *End of Exhibit K* ***

EXHIBIT L
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

_____
_____
_____
_____

Ladies and Gentlemen:

_____ (the "Bank") establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of _____, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# ___ (the "Applicant"), for the amount of XXX AND XX/100 Dollars ($_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on _____ (the "Expiration Date").

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

ID# [Number], [Seller's Name]

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations may not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference may not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

Name:_____

Title:_____

ID# [Number], [Seller's Name]

ATTACHMENT A
Drawing Certificate

TO *[ISSUING BANK NAME]*

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number:

The undersigned _____, an authorized representative of _____ (the "Beneficiary"), certifies to *[Issuing Bank Name]* (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {_____}, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to $_____, for the following reason(s) [check applicable provision]:

   [ ]A. An Event of Default, as defined in that certain Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of *[Date of Execution]* (the "Agreement"), with respect to the Applicant has occurred and is continuing.

   [ ]B. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

   [ ]C. The Letter of Credit will expire in fewer than 30 days from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

   [ ]D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within 30 days following the date of the Notice of Non-renewal.

[ ]E. The Beneficiary is entitled to retain the entire Development Security (i) as a result of Applicant's failure to commence the Term by the Term Start Date, or (ii) the Agreement has terminated due to an Event of Default by Applicant before the Term Start Date.

[ ]F. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of $20 per kW of As-Available Contract Capacity that Seller failed to demonstrate times the kilowatts of As-Available Contract Capacity which Seller failed to demonstrate.

2. Based upon the foregoing, the Beneficiary makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: [BENEFICIARY NAME]

By: _____

Name:_____

Title:_____

**** End of Exhibit L ****

ID# [Number], [Seller's Name]

EXHIBIT M
Seller's Milestone Schedule

No.	*Target Date*	*Milestones*

**** End of Exhibit M ****

EXHIBIT N
Outage Schedule Submittal Requirements

1. General Requirements.

The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to:

(a) Comply with the CAISO Tariff;

(b) Accommodate changes to their respective generation technology and organizational structure; and

(c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements for all Generating Facilities.

Seller shall submit maintenance and Planned Outage schedules in accordance with the following schedule:

(a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed Planned Outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client") only if web-based system is not available.

(b) Seller shall provide the following information for each proposed Planned Outage:

(i) Start date and time;

(ii) End date and time; and

(iii) Capacity online, in MW, during the Planned Outage in addition to the information required by the CAISO, as indicated by the Buyer-provided web-based system.

(c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any Planned Outage.

(d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

(e) In the event a condition occurs at the Generating Facility which causes Seller to revise its Planned Outages, Seller shall provide Notice to Buyer, using the Web Client, of such change

(including, an estimate of the length of such Planned Outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

(f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

**** End of Exhibit N ***

EXHIBIT O

QF Efficiency Monitoring Program – Cogeneration Data Reporting Form

[Buyer's address]
Buyer's telephone number and email address]

[PrevYear]

I. Name and Address of Project

Name:
Street:
City: _____ State: _____ Zip Code: _____

ID No.: _____ Generation Nameplate (KW): _____

II. In Operation: Yes ☐ No ☐

III. Can your facility dump your thermal output directly to the environment? ☐Yes ☐No

IV. Ownership

	Name	Address	Ownership (%)	Utility	
1				Y	N
2				Y	N
3				Y	N
4				Y	N
5				Y	N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your useful thermal output if other than mBTUs:
  BTUs _____ Therms _____ mmBTUs _____
- If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (kWh)	Energy Input (Therms)	Useful Thermal Output (mBtu)
JAN			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

**** End of Exhibit O ***

Electric Sample Form 79-1121 Sheet 1

Power Purchase and Sale Agreement - Contract for Eligible CHP Facilities With Net Output of Not Greater Than 5 MW

Please Refer to Attached Sample Form

Pacific Gas and Electric Company

DISTRIBUTION:
☐ XXXX
☐ XXXX
☐ XXXX
☐ XXXX
☐ _____

REFERENCE:
_____
_____
_____
_____
_____

POWER PURCHASE AND SALE AGREEMENT

CONTRACT FOR ELIGIBLE CHP FACILITIES WITH NET OUTPUT OF NOT GREATER THAN 5 MW

PREAMBLE

This Power Purchase and Sale Agreement (this "Agreement") by and between [Buyer's name], a California corporation ("Buyer"), and [Seller's name], a [Seller's form of business entity and state of registration] ("Seller"), is dated as of [Date of execution] (the "Effective Date"). Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A. Exhibits A through G inclusive are hereby incorporated into and made a part of this Agreement.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill its obligations under the Act and the Decisions issued in Rulemaking ("R.") 08-06-024 ("AB 1613 Decisions"), and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

{Buyer Comment: If the Term is greater than or equal to five years and if the Generating Facility provides baseload generation, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

ARTICLE ONE. SPECIAL CONDITIONS

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends on [Date] (the "Term End Date"). The Term Start Date must be on the first day of a calendar month. If the Generating Facility is (a) a New Eligible CHP Facility, the Term Start Date must occur within 18 months of the Effective Date, or (b) an Existing Eligible CHP Facility, the Term Start Date must occur within 6 months of the Effective Date. Subject to the limitation set forth in the immediately preceding sentence, Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least three months before such Term Start Date. The Term must be no less than one year and no more than 10 years.

1.02 Generating Facility. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility], and which is further described in Exhibit G.

The Generating Facility is located at [Generating Facility address], which must be located within Buyer's electric service territory. To be eligible for this Agreement, the Generating Facility must be an Eligible CHP Facility that, during the entire Term, (1) satisfies the provisions of AB 1613, as implemented by the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA. However, public agency sellers exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f) are not subject to the requirements of 18 CFR §292.201.

1.03 As-Available Contract Capacity; Power Rating. The As-Available Contract Capacity equals [___] kW. (The As-Available Contract Capacity must be no greater than 5 MW.) The Power Rating of the Generating Facility must be no more than 20 MW. Seller has no obligation under this Agreement to produce or deliver firm energy or capacity.

1.04 Site Host Load. The Site Host Load is expected to equal, on average, [___] kW. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year, which amount may change from time to time; *provided, however*, that Seller shall provide Notice to Buyer at least 30 days, or as soon as otherwise is practicable, before any such change that Seller reasonably anticipates will be greater than 4,380,000 kWh, on an annual basis; and *provided further*, that the As-Available Contract Capacity shall never exceed 5 MW.

1.05 Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [___] kWh. The actual energy production of the Generating Facility may change from time to time; *provided, however*, that (a) Seller shall provide Buyer with 30 days advance Notice of any change to the actual energy production that Seller reasonably anticipates will be greater than 4,380,000 kWh, on an annual basis, and (b) the Expected Term Year Energy Production may not exceed the As-Available Contract Capacity at 100% capacity factor applied over the Term Year.

1.06 Delivery Point. The point of delivery of the Power Product is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept the Power Product at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs, exclusive of line losses (if any) and interconnection costs, to deliver the power from the Delivery Point to the point of interconnection between the Buyer's distribution or transmission facilities and the CAISO- Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement) and any line losses from the Delivery Point to the Interconnection Point. Any line losses incurred or avoided from the Delivery Point to the Interconnection Point are determined as part of the interconnection process.

1.07 Power Product Prices.

(a) Monthly Contract Payment for the Power Product shall be calculated in accordance with Exhibit B.

(b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit B(1).

(c) A Generating Facility subject to paragraph 1.07(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof.

(d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.07(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit B.

1.08 Scheduling Coordinator. Buyer is the Scheduling Coordinator under this Agreement. Buyer shall take all steps necessary to be authorized as the Scheduling Coordinator during the Term. Seller shall cooperate with Buyer in good faith to assure that Buyer is authorized as the Scheduling Coordinator during the Term. In accordance with Section 4.01, Buyer shall invoice to Seller and set off against future payments to Seller:

(a) $1,500.00 per month in consideration for Buyer rendering its services to Seller as the Scheduling Coordinator; *provided, however*, that if the As-Available Contract Capacity is less than 1 MW, Seller shall not be required to pay this fee; and

(b) A fee (the "SC Set-Up Fee") equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee. The actual cost will be a simple pass-through to Seller of Buyer's actual costs. Buyer estimates that the SC Set-up Fee for this Agreement will equal $2,000.00 or less.

1.09 GHG Emissions Allowances. Seller elects one of the following: ___(a) __(b), provided however, that this Section 1.09 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

(a) Seller shall manage its own GHG Emissions Allowances and request payment from Buyer in accordance with Section 3.03.

(b) PG&E shall purchase GHG Emissions Allowances on behalf of Seller upon the CPUC's adoption of the necessary procedure. Until such time, Buyer will reimburse Seller per section 1.09(a), above.

1.10 Decertification from AB 1613 Program. In the event of Seller's default pursuant to Section 6.01(b)(vi) due to CEC decertification under the Public Utilities Code 2843, so long as at the time of default, Seller demonstrates qualifying facility status under PURPA and notwithstanding Section 2.02(b), upon termination of this Agreement, Seller's continued conveyance of Power Product and acceptance of payment shall constitute Seller's acceptance of any applicable mandatory must-purchase contract available to qualifying facilities under PURPA. Seller shall be paid the short run avoided cost rate for energy and as-available capacity applicable under such contract at the time of decertification.

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Before the Term Start Date, Seller must demonstrate to Buyer that Seller has satisfied all of the requirements necessary for Seller to Operate the Generating Facility in accordance with the terms of this Agreement (including Section 7.10), Applicable Law, the CAISO Tariff (to the extent applicable), and any other applicable tariff, legal, and regulatory requirements.

2.02 Termination Rights of the Parties.

(a) Termination Rights of Seller. Seller has the right to terminate this Agreement on Notice:

(i) If Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation; or

(ii) If Seller's Site Host relocates its business outside the State of California or terminates its business operations in California; provided, however, that if Seller terminates this agreement in accordance with this Section 2.02(a)(ii), Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year from the effective date of such termination. The termination of this Agreement becomes effective five Business Days after Seller delivers such Notice.

(b) Event of Default. Except as provided in Section 1.10, in the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.03 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year following the date of such termination.

(c) End of Term. This Agreement terminates at midnight of (i) the Term End Date, or (ii) a termination date agreed to in writing by the Parties.

(d) Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement.

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for Buyer's benefit throughout the Term.

3.02 Resource Adequacy. In accordance with Public Utilities Code section 2841(f), Seller grants, pledges, assigns and otherwise commits to Buyer the generating capacity of the Generating Facility to the extent necessary in order for Buyer to count such generating capacity to meet its Resource Adequacy obligations. Seller shall comply with CPUC and CAISO requirements to count towards Resource Adequacy; provided however,

(i) If such requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge.

(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.

(iii) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.

3.03 GHG Compliance Costs.

(a) Direct GHG Compliance Costs. During the Term, Buyer shall reimburse Seller for any Direct GHG Compliance Costs, other than GHG Emissions Allowances, which are separately addressed in the sections below, attributable to the Generating Facility for GHG emissions associated with the Power Product, within forty-five (45) days of Buyer's receipt from Seller of reasonable documentation, in form and substance acceptable to Buyer, establishing that:

(i) Seller is actually liable for the Direct GHG Compliance Costs for GHG emissions attributed to the Power Product;

(ii) Direct GHG Compliance Costs were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose Direct GHG Compliance Costs where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility.

(iii) Buyer is not liable for reimbursement to Seller for Direct GHG Compliance Costs for GHG emissions associated with the Power Product if the GHG emissions for which Seller seeks reimbursement exceed the GHG Emissions Cap and based on the actual delivered Power Product.

(iv) The Generating Facility's GHG emissions has been allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended.

(b) GHG Allowance Costs. Buyer shall bear the cost of GHG Emissions Allowances for GHG emissions attributable to the Generating Facility and associated with the Power Product through either reimbursement, or direct procurement, as indicated at Section 1.08, provided that:

(i) Seller is actually required to procure such GHG Emissions Allowances for GHG emissions attributed to the Power Product;

(ii) Such GHG Emissions Allowances compliance requirements were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose GHG emissions

allowances requirements where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility;

(iii) The Generating Facility's GHG emissions, less any Free Allowance for which the Generating Facility is eligible, shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended;

(iv) Buyer's responsibility for GHG Emissions Allowances is limited to GHG emissions associated with the Power Product for which the Seller or the Generating Facility was not eligible to receive Free Allowances;

(v) Buyer's responsibility for GHG Emissions Allowances will not exceed the GHG Emissions Cap based on the actual delivered Power Product.

(c) Reimbursement of Seller for GHG Emissions Allowances. If Seller has elected to manage its own GHG Emissions Allowances in Section 1.09, then, during the Term, Buyer shall reimburse Seller to the extent of Buyer's responsibility for GHG Emissions Allowances in accordance with Section 3.03(b) ("applicable quantity") within forty-fine (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, requesting reimbursement. If the CPUC has specified an index for use in determining the price to be paid for GHG Emissions Allowances, in no event shall Buyer's total payment to Seller for the applicable quantity exceed the total payment that would be due to Seller if the applicable quantity were purchased at the index price at the relevant time period.

(d) Buyer's Purchase of GHG Emissions Allowances. If Seller has elected to have Buyer purchase GHG Emissions Allowances for the Generating Facility in Section 1.09, then, during the Term and upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to the AB 1613 Decisions, Buyer shall purchase GHG Emissions Allowances for Seller for the applicable quantity for the remainder of the Term in accordance with and subject to such guidelines, as may be revised from time to time.

(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

3.04 Exclusive Rights. Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Product to any Person other than Buyer.

3.05 Site Control. Within 60 days of the Effective Date and until the Term End Date, Seller shall have Site Control.

3.06 Permits. Seller shall obtain and maintain all Permits necessary for the Seller to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.07 Interconnection. Seller shall, at its own cost, obtain and maintain all interconnection rights and an interconnection agreement and any related Governmental Authority approval(s) required to enable interconnection with Buyer's electric system and Parallel Operation of the Generating Facility.

3.08 CAISO Relationship. Seller shall comply with all applicable provisions of the CAISO Tariff, including securing and maintaining in full force all CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

3.09 Generating Facility Modifications. Seller shall provide at least 30 days advance Notice to Buyer before making any material modification to the Generating Facility, which Notice will include a description of any change in actual energy production of the Generating Facility and in the Site Host Load anticipated as a result of the modification. Notwithstanding the foregoing, Seller shall make no modification to the Generating Facility that would prevent Seller from complying with the terms of this Agreement.

3.10 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test the CAISO-Approved Meter pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one Check Meter on the high voltage side of the substation associated with the Generating Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. The Check Meter shall be interconnected with Buyer's communication network to permit (i) periodic, remote collection of revenue quality meter data, and (ii) back-up real time transmission of operating-quality meter data through the Telemetry System. Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal may only be broken by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every 36 months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes. Buyer may compare the Check Meter data to the CAISO-Approved Meter data. If the deviation between the CAISO-Approved Meter data and the Check Meter data (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter) for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests. For the avoidance of doubt, the Check Meter is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and Check Meter data shall only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is checked or recertified.

3.11 Provision of Information. Seller shall promptly provide to Buyer all documents reasonably requested by Buyer relating to the Generating Facility (including site plan drawings and single-line diagrams), the administration of this Agreement, or in order for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.12 Operation. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) Comply with the requirements set forth in Exhibit C and Exhibit D;

(c) Use its commercially reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit C;

(d) Pay the CAISO Charges for which it is responsible under Exhibit E;

(e) Use reasonable efforts to respond to any instruction issued by the CAISO or the Transmission Provider or delivered to Seller by Buyer in response to an Emergency;

(f) Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to Buyer within 20 days of a request by Notice from Buyer, including records showing (i) real and reactive power production, (ii) changes in Operating status, (iii) protective apparatus operations, and (iv) any unusual conditions found during inspections;

(g) Keep all Operating records to the extent required of an Eligible CHP Facility by any applicable CPUC or CEC order;

(h) At least 75 days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and

(i) Comply with all NERC reliability standards and requirements applicable to the generator owner and generator operator of the Generating Facility, if any.

3.13 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.14 Power Product Curtailments at Request of Scheduling Coordinator, Transmission Provider, or CAISO. Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from Seller's Scheduling Coordinator, the Transmission Provider, or the CAISO; *provided, however*, that Buyer, in its role as Scheduling Coordinator, shall issue such an instruction only when Buyer is expressly directed to curtail production of the Power Product by the CAISO or where Buyer reasonably believes that curtailment of the Power Product is required to comply with (a) its maintenance requirements and operating orders, (b) a CAISO Declared Over-Generation Condition, or (c) an Emergency. Whenever practicable, Buyer will use commercially reasonable efforts to provide Seller reasonable advance notice of the possibility that a reduction or interruption of deliveries may be required.

3.15 Eligible CHP Facility Status.

(a) To the extent required by Applicable Law, administration of this Agreement or program eligibility guidelines established by the CEC within thirty (30) Business Days following the Term Start Date or Notice from Buyer, Seller shall provide to Buyer certification from the CEC that the Generating Facility meets the applicable operating and efficiency standards for Eligible CHP Facilities for the applicable year.

(b) Seller shall take all necessary steps, including making or supporting timely filings with the appropriate Governmental Authority in order to maintain certification of the Eligible CHP Facility status of the Generating Facility throughout the Term.

(c) Seller shall provide to Buyer copies of all documentation, including calculations and verifiable supporting data provided to the appropriate Governmental Authority, which demonstrates the compliance of the Generating Facility with the Eligible CHP Facility operating and efficiency standards for the applicable year. Notwithstanding the foregoing, Seller shall provide Buyer with a copy of its Annual Performance Reporting Forms (CEC Form 2843 or its successor) within 5 days of submission to the CEC.

(d) Seller, unless a public agency, shall take all necessary steps, including making or supporting timely filings with FERC in order to maintain the qualifying facility status of the Generating Facility as required by 18 CFR §292.201, et seq., throughout the Term.

(e) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, each QF Seller shall provide to Buyer a copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.

3.16 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to (a) interconnect with the Transmission Provider's electric system, (b) transmit and deliver electric energy to the Delivery Point, or (c) own and operate any CAISO-Approved Meter.

3.17 Buyer's Access Rights. Buyer has the right to examine the Site, the Generating Facility and the Operating records for any purpose connected with this Agreement upon providing Seller with reasonable advance Notice under the circumstances. Seller hereby grants Buyer reasonable access to all CAISO-Approved Meters and Check meters for meter readings and any purpose necessary to effectuate this Agreement. Seller shall provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request, as necessary to effectuate this Agreement. Seller shall inform Buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO. Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR.

3.18 Planned Outages. Seller shall schedule and utilize all planned outages in accordance with the procedures and subject to the limitations set forth in Exhibit D.

3.19 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

3.20 Regulation of Net Output of the Generating Facility. In its sole discretion, Buyer may require that Seller install, at Seller's sole cost, a device or equipment that will disable the Generating Facility from delivering electric energy at a rate greater than 5,000 kWh per hour of Metered Energy. At Buyer's request, Seller

shall install such device before the Term Start Date or within 60 days if Buyer's request is made any time after the Term Start Date. Unless otherwise agreed to by the Parties, Buyer shall own, operate, and maintain such device at Seller's sole cost. Any such device shall be agreed upon by Seller and Buyer and must, in accordance with Prudent Electrical Practices, be suitable to the purpose for which it is installed and meet the Transmission Provider's interconnection requirements.

3.21 Allocation of Availability Incentive Payments and Non-Availability Charges. If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, or Availability Incentive Payments as defined and provided for by the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

ARTICLE FOUR. BUYER'S OBLIGATION TO PAY

4.01 Obligation to Pay.

(a) For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit B or Exhibit B (1), as determined pursuant to Section 1.07 *provided, however*, Buyer is not obligated to issue a payment to Seller until the amount due to Seller pursuant to this Agreement exceeds $5,000.00 after set-offs and adjustments in accordance with this Agreement. Buyer shall adjust each Monthly Contract Payment in accordance with the terms of this Agreement, including making adjustment for the fees set forth in Section 1.08 and any CAISO Charges.

(b) Subject to Section 4.01(a), Buyer shall provide a payment statement within 30 days after the last Business Day of each calendar month, which statement shall include Buyer's payment to Seller and a calculation thereof.

(c) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO, Buyer shall recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading. Buyer shall then recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to a subsequent monthly statement that is calculated after Buyer's recomputation using corrected measurements. If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on a subsequent monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's statement until such amount is fully collected by Buyer.

(d) Buyer may deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(e) Except as otherwise provided for in this Agreement, if, within 90 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete. If Seller timely identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to a subsequent monthly statement that is calculated. If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and

Buyer shall apply the overpayment to a subsequent statement that is calculated. If the recomputation results in a net amount still owing to Buyer after applying the overpayment, a subsequent statement shall show a net amount owing to Buyer.

(f) Notwithstanding anything to the contrary in this Agreement, if any payment statement shows amounts owed by Seller to Buyer, Buyer may, at its option, apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

(g) Notwithstanding anything to the contrary in this Agreement, for the entire period during which Seller fails to materially comply with any provision set forth in Exhibit C, Seller shall be responsible for all CAISO Charges; *provided, however*, that if Seller complies fully with Exhibit C, Buyer shall pay all CAISO Charges (except those CAISO Charges for which Seller is responsible under Exhibit E) for up to 1 MW of deviation of Seller's Forecast from the Metered Energy, and Seller shall be responsible only for CAISO Charges attributable to such deviations in excess of 1 MW.

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement 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 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankrupt; or

(v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(b) With respect to Seller:

(i) The total quantity of Metered Energy in any Term Year is less than 10% of the Expected Term Year Energy Production;

(ii) Seller delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement, electric energy that was not generated by the Generating Facility;

(iii) The Term Start Date does not occur within 18 months of the Effective Date, if Seller is a New Eligible CHP Facility, or within 6 months of the Effective Date, if Seller is an Existing Eligible CHP Facility; *provided, however*, that this 18-month or 6-month period shall be extended on a day-for-day basis for any delay caused solely by Buyer's failure to perform its obligation(s) under this Agreement or excused solely as a result of Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), as to which, in either case, Seller has notified Buyer of the new expected Term Start Date;

(iv) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation;

(v) Seller materially fails to comply with any provision of Exhibit C and such failure is not cured within 30 days after Notice is provided by Buyer to Seller; or

(vi) Seller fails to maintain its status as an Eligible CHP Facility during the Term.

6.02 Site Host Changes. Notwithstanding Section 6.01 above, with respect to Seller, an Event of Default shall not include (a) cessation of operation by the Site Host, or (b) the inability of Site Host to use the waste heat from the Generating Facility in a manner that is consistent with the requirements of the Act. If the Site Host ceases operation or is unable to use the waste heat from the Generating Facility in a manner that is consistent with the Act for a period of 365 days or more, either Party may terminate this Agreement. If Seller terminates this Agreement pursuant to this Section 6.02, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one following the effective date of such termination.

6.03 Early Termination. There shall be no opportunity to cure a default other than as expressly provided in Section 6.01. If this Agreement is terminated pursuant to Section 2.02(b), then Buyer or the Non-Defaulting Party will have the right to (a) designate by no more than twenty (20) days' Notice to the Defaulting Party a date for the early termination of this Agreement (an "Early Termination Date"), (b) immediately suspend performance under this Agreement, and (c) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), subject to the terms of this Agreement.

ARTICLE SEVEN. MISCELLANEOUS

7.01 Representations, Warranties and Covenants. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;

(e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

(f) It is acting for its own account, and its decision to enter into this Agreement is based on its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and

(g) It has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement.

7.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It does not, and will not (i) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (ii) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party, except in order to satisfy the Site Host Load, or as required by other Applicable Laws.

(b) Throughout the Term: (i) it or its subcontractors will own or lease and Operate the Generating Facility; (ii) it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person; (iii) it will hold the rights to all of the Product; (iv) the Generating Facility will maintain its qualification as an Eligible CHP Facility; and (v) the Generating Facility will meet all applicable greenhouse gas emissions standards, as such standards may change from time to time.

(c) As of the Effective Date, there is not pending, or to its knowledge, threatened against it or any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement

7.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, Claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, Claim, cost, charge, demand or expense to the extent resulting from its own negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, Claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 7.01 and Section 7.02. Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 7.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, Claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any Person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 7.10. The inclusion of this Section 7.03(b) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 7.10.

(c) Each Party shall defend, save harmless and indemnify the other Party against any taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility for which such indemnifying Party is responsible.

(d) All indemnity rights survive the termination of this Agreement for 12 months.

7.04 Assignment. Seller may not assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld; *provided, however*, that Seller may, without the consent of Buyer (and without relieving Seller from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender(s) in connection with any financing if (a) such Lender(s) assumes the payment and performance obligations provided under this Agreement with respect to Seller, (b) such Lender(s) agree in writing to be bound by the terms and conditions of this Agreement, and (c) Seller delivers such tax and enforceability assurance as Buyer may reasonably request.

7.05 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE 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.

7.06 Arbitration. Except for matters relating to specific performance, injunctive relief or other equitable remedies, the Parties agree to submit to arbitration any and all matters in dispute or controversy among them concerning the terms of this Agreement. Unless the Parties agree to alternative arrangements, the selection of arbitrators and the procedure shall be in accordance with the commercial arbitration rules then in effect of the Judicial Arbitration and Mediation Services, Inc. Any award rendered shall be final and conclusive upon the Parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the Parties; *provided, however*, that each Party shall pay for and bear the costs of its own experts, evidence and counsel's fees. Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Francisco, California.

7.07 Notices. All Notices shall be made in accordance with this Section 7.07 and Exhibit F. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 7.07 are deemed given as follows: (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day; (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out; and (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date. Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

7.08 General.

(a) Except as may otherwise be 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. Unless expressly provided for in this Agreement, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages. This Agreement will not be construed against any Party as a result of the

preparation, substitution, or other event of negotiation, drafting or execution thereof. Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(b) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.

(c) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

(f) The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.

(g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(h) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(i) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties.

(j) Whenever this Agreement refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(k) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

(l) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Sections" and "Exhibits" refer to the corresponding Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Sections" in Exhibits A through G refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

(m) This agreement at all times shall be subject to such modifications as the California Public Utilities Commission may direct from time to time in the exercise of its jurisdiction.

7.09 Confidentiality. Neither Party may disclose any Confidential Information to a third party, other than: (a) to such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential; (b) to potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; (c) to Buyer's Procurement Review Group, as defined in D.02-08-071, subject to any applicable limitations and subject to a protective order applicable to Buyer's Procurement Review Group; (d) with respect to Confidential Information, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information; (e) in order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party; and (f) in order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC. In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Section 7.09(f), each Party shall use reasonable efforts to (i) notify the other Party before disclosing the Confidential Information, and (ii) prevent or limit such disclosure.

7.10 Insurance.

(a) General Liability Coverage. Seller shall, at its own expense and at all times from the Effective Date until the Term End Date, maintain in effect the following insurance policies and minimum limits of coverage (and such additional coverage as may be required by Applicable Law), in each case with insurance companies authorized to do business in California having an A.M. Best's Insurance Rating of A minus: VII or better, and in each case specifying Buyer as an insured on the policy. The insurance required in this Section 7.10 may be provided by any combination of Seller's primary and excess liability policies.

(i) Workers' compensation insurance, with statutory limits as required by California;

(ii) Employer's liability insurance, with at least the following limits: (1) bodily injury by accident - $1,000,000 each accident; (2) bodily injury by disease - $1,000,000 policy limit; and (3) bodily injury by disease - $1,000,000 each employee;

(iii) Commercial general liability insurance, written on an "occurrence" (not a claims-made) basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement. This commercial general liability insurance must (1) bear a combined single limit per occurrence and annual aggregate of not less than $1,000,000, exclusive of defense costs, for all coverages, (2) contain standard cross-liability or severability of interest provisions, and (3) contain no explosion, collapse, or underground exclusion;

(iv) Commercial automobile liability insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence. This commercial automobile liability insurance must cover liability arising out of the use of all owned, non-owned and hired automobiles; and

(v) Excess liability insurance written on an "occurrence" (not "claims made") basis and providing coverage excess of the underlying employer's liability, commercial general

liability, and commercial automobile liability insurance, on terms at least as broad as the underlying coverage with limits of not less than $4,000,000 per occurrence and in the annual aggregate.

(b) The insurance required in this Section 7.10 applies as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, despite of any provision in Seller's insurance to the contrary. Carriers furnishing the required insurance must waive all rights of recovery from or subrogation against Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, employees and insurers. The insurance required in Section 7.10(a) must name Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents and employees additional insureds with respect to all third party liabilities arising out of Seller's construction, use or ownership of the Generating Facility.

(c) Within 30 days of the Effective Date, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to the Buyer certificates of insurance in forms reasonably acceptable to Buyer, establishing that Seller's policies provide the coverage and limits of insurance required under this Section 7.10 and that these policies will be in full force and effect as of the Effective Date, continuing until the end of the Term. Seller's insurance obtained in accordance with this Section 7.10 may only be terminated, expire or materially altered upon 30 days' prior Notice to Buyer.

(d) If any of the required insurance coverages contain aggregate limits applying to other operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, Claim, settlement or judgment against such insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. Governmental entities that have an established record of self-insurance may provide the required coverage through self insurance.

(e) If Seller fails to comply with any of the provisions of this Section 7.10, Seller shall, among other things and without restricting Buyer's remedies under the law or otherwise, at its own cost, defend, indemnify and hold harmless Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, from and against any and all liability, damages, losses, Claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property to the extent that Buyer would have been protected had Seller complied with all of the provisions of this Section.

7.11 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

This agreement is effective when accepted and executed by PG&E.

Seller's Name	Buyer's Name **A California Corporation**
Seller's business registration	Buyer's business registration
Authorized by (Print)	Authorized by (Print)
Signature	Signature
Title	Title
Date	Date

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"AB 1613 Decisions" means the decisions issued in R.08-06-024.

"Act" has the meaning set forth in the Recitals.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this definition, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Applicable Law" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to any Party, the Generating Facility or the terms of this Agreement.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.03, as may be adjusted from time to time.

"Availability Standards" means the standard set forth in the CAISO Tariff setting forth criteria for determining if a Resource Adequacy Resource is subject to Non-Availability Charges or Availability Incentive Payments (each as defined in the CAISO Tariff), under the CAISO Tariff.

"Average Higher Heating Value MPR Heat Rate" means the heat rate equal to 6,924 Btu/kWh, or 6.924 mmbtu/MWh, per CPUC Resolution E-4298, which heat rate will be modified in this Agreement if there is any modification thereto by the CPUC or other authorized Governmental Authority.

"Bankrupt" means with respect to any Person, such Person:

(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 (which petition is not dismissed within 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.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Tariffs" means the entire body of effective rates, fees, rentals, charges, and rules collectively of PG&E, including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, rules, and sample forms.

"CAISO" means the California Independent System Operator Corporation.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter system(s), including all associated metering transformers and related appurtenances, as required by the CAISO (or, to the extent that the CAISO's metering requirement does not apply, Prudent Electrical Practices) and furnished by Seller, and which (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) is a time-of-use meter capable of measuring the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy the Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO-declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling, Availability Standards or deliveries from the Generating Facility under this Agreement.

"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.

"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

"CARB" means the California Air Resources Board

"CEC" means the California Energy Commission.

"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may furnish at its discretion, as set forth in Section 3.10(b), and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"Claiming Party" has the meaning set forth in Section 5.02.

"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 before or after the termination of this Agreement.

"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

"Control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power

"CPUC" means the California Public Utilities Commission.

"Decision" means CPUC Decision ("D") 07-09-040.

"Defaulting Party" has the meaning set forth in Section 6.01(a).

"Delivery Point" has the meaning set forth in Section 1.06.

"Direct GHG Compliance Costs" mean any taxes, charges or fees imposed by an authorized Governmental Authority with jurisdiction over the Seller or the Generating Facility, and levied directly on the Generating Facility for GHG emissions attributable to its Operations.

"Early Termination Date" has the meaning set forth in Section 6.03(a).

"Effective Date" has the meaning set forth in the Preamble.

"Eligible CHP Facility" means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, (1) meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code §2843 and, (2) meets the requirements of 18 Code of Federal Regulations §292.201, et seq., unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Emergency" means an actual or imminent condition or situation which (a) is defined and declared by the CAISO or Transmission Provider, (b) jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider's electric system, (c) requires automatic or immediate manual action to prevent or limit loss of load or generation supply, or (d) poses a threat to public safety.

"Event of Default" has the meaning set forth in Section 6.01.

"Existing Eligible CHP Facility" means an Eligible CHP Facility that, during the entire Term, (1) satisfies the provisions of the Act as implemented by the CEC pursuant to Public Utilities Code Section 2843 in the CEC's

"Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA, unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Expected Term Year Energy Production" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.05.

"FERC" means the Federal Energy Regulatory Commission.

"Forced Outage" has the meaning set forth in the CAISO Tariff.

"Force Majeure" means any event or circumstance (that is not anticipated as of the Effective Date) to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Force Majeure does not include: (a) a failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure; (b) failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility (provided, however, that failure or delay in the granting of permits, to the extent such failure or delay is not caused by action or inaction of Seller, qualifies as a Force Majeure for purposes of this Agreement); (c) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or (d) a lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

"Forecast" means the hourly forecast of the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, net of the Site Host Load and Station Use.

"Free Allowance" means any GHG Emissions Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

"Generating Facility" means the Generating Unit(s) comprising Seller's power plant (as more particularly described in Section 1.02 and Exhibit G), including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

"Generation Operations Center" means the location of Buyer's real-time operations personnel.

"GHG" is an abbreviation for "greenhouse gas" which means emissions released into the atmosphere of carbon dioxide (CO2), nitrous oxide (N2O) and methane (CH4), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a metric ton of CO2-equivalent, in order to allow comparison between the different effects of gases on the environment; provided, however, that the definition of the term "Greenhouse Gas", as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority

"GHG Emissions Allowance" means a limited tradable authorization (whether in the form of a credit, allowance, or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a Related Entity of Seller, which respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

"GHG Emissions Cap" means the product of (a) the rate for tonnes of CO2 per MMBtu of natural gas, 0.0531 tonnes/mmbtu, times (b) the Average Higher Heating Value MPR Heat Rate in mmbtu/MWh.

"Governmental Authority" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

"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;

(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.

"High-Value Area" means a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC, as defined in Exhibit B, Section 6.

"Holidays" means "NERC Holidays" as defined in Exhibit B, Section 5. "Time of Delivery Periods and Allocation Factors."

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; *provided, however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"Lender" means any financial institutions or successors in interest or assignees that provides development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.

"Location Bonus" is described in Section 6 of Exhibit B.

"Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

"Metered Energy" means the total electric energy expressed in kWh, in excess of Station Use and Site Host Load and measured by the CAISO-Approved Meter(s) or Check Meter(s), (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter), as applicable, at the Generating Facility for the specified Metering Interval.

"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters, as applicable.

"Monthly Contract Payment" has the meaning set forth in Section 4.01(a).

"NERC" means the North American Electric Reliability Corporation.

"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.

"Non-Defaulting Party" has the meaning set forth in Section 6.03.

"Non-Peak Hours" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in Exhibit B, "5. Time of Delivery Periods and Allocations Factors" or Exhibit B(1), "4. Time of Delivery Periods" as determined pursuant to Section 1.07.

"Notice" means notices, requests, statements or payments provided in accordance with Section 7.07 and Exhibit F.

"OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement-quality meter data or its successor.

"Operate", "Operating" and "Operation" mean to provide all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

"Outage Schedule" has the meaning set forth in Section 2(a) of Exhibit D.

"Outage Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer in accordance with Exhibit D.

"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Peak Months" means June, July, August and September.

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

"Person" or "Persons" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Physical Trade" has the meaning set forth in the CAISO Tariff.

"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

"Power Product" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

"Power Rating" means the electrical power output value indicated on the generating equipment nameplate.

"Product" means the Power Product, Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

"Project" means the Generating Facility.

"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could

reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that: (a) equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs; (b) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site; (c) preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools; (d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (e) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (f) equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, codified at 16 United States Code ("USC") §824a-3, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC decisions, orders, and rules implementing PURPA, as amended from time to time, including 18 Code of Federal Regulations ("CFR") Part 292.201, et seq., unless the Qualifying Facility is a public agency exempt from FERC jurisdiction under 16 USC §824(f).

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(e)(2), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in Resource Adequacy Rulings, 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.

"Resource Adequacy Benefits" means the rights and privileges attached to the generating capacity of the Generating Facility that, in accordance with Public Utilities Code Section 2841(f), count toward satisfying Buyer's Resource Adequacy obligations.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 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 CPUC decisions, rulings, laws, rules or regulations may be Amended or modified from time to time during the Term.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of preparing a schedule based on Seller's forecast and notifying, requesting, and confirming the CAISO-Approved Quantity with the CAISO, the electric energy delivered from the Generating Facility.

"Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

"Scheduling Coordinator" means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.

"SC Set-Up Fee" has the meaning set forth in Section 1.08.

"Seller" has the meaning set forth in the Preamble.

"Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035.

"Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective.

"Simple Interest Payment" means a dollar amount calculated by multiplying the: (a) dollar amount on which the Simple Interest Payment is based; by (b) the Interest Rate; by (c) the result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02 and Exhibit G.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a lease, the term of which begins on or before the Term Start Date and extends at least through the Term End Date, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

"Site Host" means any Person purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties pursuant to California Public Utilities Code Section 218(b).

"SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

"Station Use" means the electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, including transformation losses to power such equipment and other necessary loads.

"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility, all in accordance with the CAISO Tariff.

"Term" has the meaning set forth in Section 1.01.

"Term End Date" has the meaning set forth in Section 1.01.

"Term Start Date" has the meaning set forth in Section 1.01.

"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

"TOD Period" means the time of delivery period used to calculate the Monthly Contract Payment set forth in Exhibit B or Exhibit B(1), as determined by Section 1.07.

"Trading Day" means the day in which Day-Ahead (as defined in the CAISO Tariff) trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).

"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Buyer from the Delivery Point to the CAISO-Controlled Grid.

"Web Client" has the meaning set forth in Section 2(a) of Exhibit D.

"WECC" means the Western Electricity Coordinating Council.

**** End of Exhibit A ****

EXHIBIT B

This Exhibit B establishes the avoided cost price adopted and implemented by the CPUC in CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033).

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period payment 1st TOD Period +
TOD Period payment 2nd TOD Period +
TOD Period payment 3rd TOD Period +
Location Bonus

All TOD Period Payments shall be calculated as set forth in Section 2 of this Exhibit B.

The "1st TOD Period," "2nd TOD Period," and "3rd TOD Period" subscripts refer to the three TOD Periods that apply for the applicable calculation month, as set forth in Section 5 of this Exhibit B.

The Location Bonus, if applicable, shall be calculated as set forth in Section 6 of this Exhibit B.

2. TOD Period Payment Calculation

Each monthly TOD Period Payment is calculated in dollars, using the terms defined below, as follows:

(Fixed price component + Variable price component) * (TOD Factor) *
metered kWh exported during the TOD Period during the month

The Metered Energy per hour used for payments shall be limited to 5,000 kW times 1 hour. Additionally, once the Metered Energy delivered during any Term Year equals the As-Available Contract Capacity at 100% capacity factor applied over 8,760 hours, no further payments will be calculated or paid for the remaining TOD Periods within any remaining months of the current Term Year.

3. Fixed Price Component

The Fixed Price Component for all TOD Periods shall be the amount in the following table for the year of the Term Start Date. The fixed price component does not escalate during the term of the Agreement.

Year	$/kwh
2012	0.02000
2013	0.02033
2014	0.02068
2015	0.02104
2016	0.02140
2017	0.02142
2018	0.02145

Year	$/kwh
2019	0.02147
2020	0.02149
2021	0.02151
2022	0.02153
2023	0.02155

4. Variable Price Component Calculation

(a) Monthly bidweek gas price shall be calculated as the average of monthly bidweek gas price indices at PG&E Citygate as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly

(b) Intrastate gas transportation rate shall be the tariffed intrastate gas transportation rate for large electric generators as published in the PG&E Gas Tariffs G-EG and G-SUR.

(c) Heat Rate, pursuant to D. 09-12-042, shall be equal to:

6,924 Btu/kWh

(d) Variable O&M shall be the amount in the following table for the year in which the payment is being calculated. For years after 2023, Variable O&M shall be the 2023 payment multiplied by 1.02, compounded for each year beyond 2023.

Variable O&M	
Year	**$/kwh**
2012	0.00311
2013	0.00316
2014	0.00322
2015	0.00329
2016	0.00335
2017	0.00342
2018	0.00349
2019	0.00356
2020	0.00364
2021	0.00371
2022	0.00377
2023	0.00384

5. Time of Delivery Periods and Allocation Factors.

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

	TOD PERIOD		
Monthly 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 paragraph, 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. In accordance with all other terms of this Exhibit B, the following Time of Delivery Factors ("TOD Factors") shall be used in the TOD Period Payment Calculation for each of the specified TOD Periods in which Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	2.38	1.12	0.59
B. Oct. – Dec.; Jan. & Feb.	1.10	0.94	0.66
C. Mar. – May	1.22	0.90	0.61

6. <u>Location Bonus</u>.

If the Generating Facility is located in a "High-Value Area" as set forth below, each Monthly Contract Payment for the entire Term shall receive a Location Bonus calculated as follows:

Location Bonus = Sum of monthly TOD Periodn Payments * 0.10

The Generating Facility shall be deemed to be located in a High-Value Area if it is interconnected to Buyer's electric system at a location which, in the year of the Effective Date, is identified pursuant to CPUC D. 09-12-042 (as modified by other AB 1613 Decisions) as a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC.

**** End of Exhibit B****

Exhibit B (1)
Monthly Contract Payment Calculation

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period Energy Payment $_{\text{1st TOD Period}}$ +
TOD Period Energy Payment $_{\text{2nd TOD Period}}$ +
TOD Period Energy Payment $_{\text{3rd TOD Period}}$ +
TOD Period Energy Payment $_{\text{4th TOD Period}}$ +
TOD Period Capacity Payment $_{\text{1st TOD Period}}$ +
TOD Period Capacity Payment $_{\text{2nd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{3rd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{4th TOD Period}}$

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit B (1).

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit B (1).

The "1st TOD Period," "2nd TOD Period," "3rd TOD Period" and "4th TOD Period" subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit B (1).

2. TOD Period Energy Payment Calculation.

(a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{FirstHour}^{LastHour} [(EP-LA) \times APE + LA \times MA]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit B (1), in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit B (1).

LA = Hourly Location Adjustment price, as set forth in SRAC.

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no additional hourly energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

(b) Factor "EP" in Section 2(a) of this Exhibit B (1). The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in SRAC.

(c) Factor "APE" in Section 2(a) of this Exhibit B (1). The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = ACP x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit B (1), in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision:

Capacity Payment Allocation Factors		
Season	*TOD Period*	*Factor*
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

(b) Factor "ACP" in Section 3(a) of this Exhibit B (1). The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars

= AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit B (1), in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	*Price $/kW-yr*
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

(c) Factor "AAC" in Section 3(b) of this Exhibit B (1). The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit B (1), in kWh per hour.

(d) Factor "MAC" in Section 3(c) of this Exhibit B (1). The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit B (1), in kWh.

PH = The total number of hours in the TOD Period (period hours).

(e) Factor "LE" in Section 3(d) of this Exhibit B (1). The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{FirstHour}^{LastHour} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit B (1), in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor "E" in Section 3(e) of this Exhibit B (1). The Allowed Hourly Energy is calculated as follows:
ALLOWED HOURLY ENERGY in kWh = 1 hour x CC

Where:

CC = The As-Available Contract Capacity, as set forth in Section 1.03, in kW.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	**Period A – Summer May 1 - October 31**	**Period B - Winter November 1 - April 30**	**Applicable Days**
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

*** End of Exhibit B (1) ***

EXHIBIT C
Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff, as applicable;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements.

   (a) 30-Day Forecast.

   No later than 30 days before the Term Start Date (or, in the case of a New Eligible CHP Facility, no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the Term Start Date (or, if applicable, Parallel Operation) using the Web Client.

   In the case of a New Eligible CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

   If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center at the e-mail address or telephone number(s) listed in Exhibit F.

   The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

   (i) Not include any anticipated or expected electric energy losses between the Delivery Point and the CAISO-Controlled Grid; and

   (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

   (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit C, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall

use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit F.

(c) Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage and a Real-Time Forced Outage, which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit C must be submitted to Buyer via the Web Client by no later than:

(i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;

(ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or

(iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change, with notification also by phone to Seller's Real Time Scheduling Desk.

Seller's updated Forecast must contain the following information:

(w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected energy production change;

(x) The expected ending date and time of the event:

(y) The expected energy production, in MWh; and

(z) Any other information required by the CAISO as communicated to Seller by Buyer.

**** End of Exhibit C ****

EXHIBIT D
Outage Schedule Submittal Requirements

1. General Requirements. The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to (a) comply with the CAISO Tariff, (b) accommodate changes to their respective generation technology and organizational structure, and (c) address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements. Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

   (a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client") only if web-based system is not available.

   (b) Seller shall provide the following information for each proposed planned outage: (i) Start date and time; (ii) End date and time; and (iii) Capacity online, in MW, during the planned outage in addition to the information required by the CAISO, as indicated by the Buyer-provided web-based system.

   (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.

   (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

   (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

   (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

3. Restriction on Planned Outages. During the Peak Months, Seller may schedule and utilize no more than 12 hours of outages per Peak Month, and only during the non-peak hours of the Peak Months.

**** End of Exhibit D ***

EXHIBIT E
CAISO Charges

Subject to Section 4.01(g), Buyer shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if, on or after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller in violation of this Agreement, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site Host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or,

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to curtail output, or reschedule a planned outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

5. Buyer as Seller's Scheduling Coordinator is subject to either Non-Availability Charges or Availability Incentive Payments, or both, during a month within the Resource Adequacy compliance year, as defined by CAISO Tariff, then any such charges or payments shall be offset and the net value shall be entered into Seller's Account for the applicable month pursuant to Section 3.21.

**** End of Exhibit E ****

EXHIBIT F
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	

Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit F ****

EXHIBIT G
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

**** End of Exhibit G ****

(End of Simplified Contract for Eligible CHP)

Electric Sample Form 79-1138 Sheet 1

Power Purchase and Sale Agreement - Contract for Eligible CHP Facilities With a Power Rating of Less Than 500 kW

Please Refer to Attached Sample Form

Pacific Gas and Electric Company

DISTRIBUTION:
- ☐ XXXX
- ☐ XXXX
- ☐ XXXX
- ☐ XXXX
- ☐ _____

REFERENCE:
_____
_____
_____
_____
_____

POWER PURCHASE AND SALE AGREEMENT

CONTRACT FOR ELIGIBLE CHP FACILITIES WITH A POWER RATING OF LESS THAN 500 KW

PREAMBLE

This Power Purchase and Sale Agreement (this "Agreement") by and between [Buyer's name], a California corporation ("Buyer"), and [Seller's name], a [Seller's form of business entity and state of registration] ("Seller"), is dated as of [Date of execution] (the "Effective Date"). Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A. Exhibits A through G inclusive are hereby incorporated into and made a part of this Agreement.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill its obligations under the Act and the Decisions issued in Rulemaking ("R.") 08-06-024 ("AB 1613 Decisions"), and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

{Buyer Comment: If the Term is greater than or equal to five years and if the Generating Facility provides baseload generation, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

ARTICLE ONE. SPECIAL CONDITIONS

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends on [Date] (the "Term End Date"). The Term Start Date must be on the first day of a calendar month. If the Generating Facility is (a) a New Eligible CHP Facility, the Term Start Date must occur within 18 months of the Effective Date, or (b) an Existing Eligible CHP Facility, the Term Start Date must occur within 6 months of the Effective Date. Subject to the limitation set forth in the immediately preceding sentence, Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least three months before such Term Start Date. The Term must be no less than one year and no more than 10 years.

1.02 Generating Facility. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility], and which is further described in Exhibit G. The Generating Facility is located at [Generating Facility address], which must be located within Buyer's service territory.

1.03 As-Available Contract Capacity; Power Rating. The As-Available Contract Capacity equals [___] kW. (The As-Available Contract Capacity must be less than 500 kW.) The Power Rating of the Generating Facility must be less than 500 kW. Seller has no obligation under this Agreement to produce or deliver firm energy or capacity.

1.04 Site Host Load. The Site Host Load is expected to equal, on average, [___] kW. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year, which amount may change from time to time; *provided, however*, that the As-Available Contract Capacity shall always be less than 500 kW.

1.05 Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [___] kWh. The actual energy production of the Generating Facility may change from time to time; *provided, however*, that the Expected Term Year Energy Production may not exceed the As-Available Contract Capacity at 100% capacity factor applied over the Term Year.

1.06 Delivery Point. The delivery point is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept the Power Product at the Delivery Point. Title to and risk of loss related to the Power Product shall transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs, exclusive of line losses (if any) and interconnection costs, to deliver the power from the Delivery Point to the point of interconnection between the Buyer's distribution or transmission facilities and the CAISO- Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement) and any line losses from the Delivery Point to the Interconnection Point. Any line losses incurred or avoided from the Delivery Point to the Interconnection Point shall be determined as part of the interconnection process.

1.07 Power Product Prices.

(a) Monthly Contract Payment for the Power Product shall be calculated in accordance with Exhibit B.

(b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit B(1).

(c) A Generating Facility subject to paragraph 1.07(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof.

(d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.07(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit B.

1.08 Scheduling Coordinator. Buyer may elect to become the Scheduling Coordinator under this Agreement by providing 30 days prior notice to Seller. If Buyer elects to become the Scheduling Coordinator under this Agreement, Buyer shall take all steps necessary to be authorized as the Scheduling Coordinator during the Term (or remaining portion thereof, as applicable) and Seller shall cooperate with Buyer in good faith to assure that Buyer is authorized as the Scheduling Coordinator during the Term (or remaining portion thereof, as applicable). If Buyer elects to become the Scheduling Coordinator under this Agreement, in accordance with Section 4.01, Buyer shall invoice to Seller and set off against future payments to Seller a fee (the "SC Set-Up Fee") equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility

registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable. Such Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee. The actual cost will be a simple pass-through to Seller of Buyer's actual costs. If Buyer elects to become the Scheduling Coordinator under this Agreement, Buyer estimates that the SC Set-up Fee for this Agreement will equal $2,000.00 or less.

1.09 GHG Emissions Allowances. Seller elects one of the following: ___(a) ___(b), provided however, that this Section 1.09 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

(a) Seller shall manage its own GHG Emissions Allowances and request reimbursement from Buyer for such GHG Emissions Allowances in accordance with Section 3.03; or

(b) To have Buyer purchase GHG Emissions Allowances on behalf of Seller upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033). Until such time, Seller shall manage its own GHG Emissions Allowances and request reimbursement from Buyer for such GHG Emissions Allowances in accordance with and subject to the requirements of Sections 3.03(b) and (c).

1.10 Decertification from AB 1613 Program. In the event of Seller's default pursuant to Section 6.01(b)(vi) due to CEC decertification under the Public Utilities Code 2843, so long as at the time of default, Seller demonstrates qualifying facility status under PURPA and notwithstanding Section 2.02(b), upon termination of this Agreement, Seller's continued conveyance of Power Product and acceptance of payment shall constitute Seller's acceptance of any applicable mandatory must-purchase contract available to qualifying facilities under PURPA. Seller shall be paid the short run avoided cost rate for energy and as-available capacity applicable under such contract at the time of decertification.

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Before the Term Start Date, Seller must demonstrate to Buyer that Seller has satisfied all of the requirements necessary for Seller to Operate the Generating Facility in accordance with the terms of this Agreement (including Section 7.10), Applicable Law, the CAISO Tariff (to the extent applicable), and any other applicable tariff, legal, and regulatory requirements.

2.02 Termination Rights of the Parties.

(a) Termination Rights of Seller. Seller has the right to terminate this Agreement on Notice if Seller's Site Host relocates its business outside the State of California or terminates its business operations in California; *provided, however*, that if Seller terminates this Agreement in accordance with this Section 2.02(a), Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year from the effective date of such termination. The termination of this Agreement becomes effective five Business Days after Seller delivers such Notice.

(b) Event of Default. Except as provided in Section 1.10, in the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-

Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.03 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year following the date of such termination.

(c) End of Term. This Agreement terminates at midnight of (i) the Term End Date, or (ii) a termination date agreed to in writing by the Parties.

(d) Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement.

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for Buyer's benefit throughout the Term.

3.02 Resource Adequacy. In accordance with Public Utilities Code section 2841(f), Seller grants, pledges, assigns and otherwise commits to Buyer the generating capacity of the Generating Facility to the extent necessary in order for Buyer to count such generating capacity to meet its Resource Adequacy obligations under any Resource Adequacy Ruling. Seller shall comply with CPUC and CAISO requirements to provide Resource Adequacy Benefits; provided however,

(i) If such requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge.

(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.

(iii) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.

3.03 GHG Emissions Compliance Costs.

(a) Direct GHG Compliance Costs.

(i) During the Term, Buyer shall reimburse Seller for any Direct GHG Compliance Costs, other than GHG Emissions Allowances, which are separately addressed in the sections below, attributable to the Generating Facility for GHG emissions associated with the Power Product, within forty-five (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, establishing that:

(1) Seller is actually liable for the Direct GHG Compliance Costs for GHG emissions attributed to the Power Product; and

(2) Direct GHG Compliance Costs were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose Direct GHG Compliance Costs where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility.

(ii) Buyer is not liable for reimbursement to Seller for Direct GHG Compliance Costs for GHG emissions associated with the Power Product if the GHG emissions for which Seller seeks reimbursement exceed the GHG Emissions Cap and based on the actual delivered Power Product.

(iii) The Generating Facility's GHG emissions shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended.

(b) GHG Allowance Costs. Buyer shall bear the cost of GHG Emissions Allowances for GHG emissions attributable to the Generating Facility and associated with the Power Product through either reimbursement, or direct procurement, as indicated at Section 1.08, provided that:

(i) Seller is actually required to procure such GHG Emissions Allowances for GHG emissions attributed to the Power Product;

(ii) Such GHG Emissions Allowances compliance requirements were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose GHG Emissions Allowances requirements where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility;

(iii) The Generating Facility's GHG emissions, less any Free Allowance for which the Generating Facility is eligible, shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended;

(iv) Buyer's responsibility for GHG Emissions Allowances is limited to GHG emissions associated with the Power Product for which the Seller or the Generating Facility was not eligible to receive Free Allowances; and

(v) Buyer's responsibility for GHG Emissions Allowances will not exceed the GHG Emissions Cap based on the actual delivered Power Product.

(c) Reimbursement of Seller for GHG Emissions Allowances. If Seller has elected to manage its own GHG Emissions Allowances in Section 1.09, then, during the Term, Buyer shall reimburse Seller to the extent of Buyer's responsibility for GHG Emissions Allowances in accordance with Section 3.03(b) ("applicable quantity") within forty-fine (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, requesting reimbursement. If the CPUC has specified an index for use in determining the price to be paid for GHG Emissions Allowances, in no event shall Buyer's total payment to Seller for the applicable quantity exceed the total payment that would be due to Seller if the applicable quantity were purchased at the index price at the relevant time period.

(d) Buyer's Purchase of GHG Emissions Allowances. If Seller has elected to have Buyer purchase GHG Emissions Allowances for the Generating Facility in Section 1.09, then, during the Term and upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to the AB 1613 Decisions, Buyer shall purchase GHG Emissions Allowances for Seller for the applicable quantity for the remainder of the Term in accordance with and subject to such guidelines, as may be revised from time to time.

(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

3.04 Exclusive Rights. Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Product to any Person other than Buyer.

3.05 Site Control. Within 60 days of the Effective Date and until the Term End Date, Seller shall have Site Control.

3.06 Permits. Seller shall obtain and maintain all Permits necessary for the Seller to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.07 Interconnection. Seller shall, at its own cost, obtain and maintain all interconnection rights and an interconnection agreement and any related Governmental Authority approval(s) required to enable interconnection with Buyer's electric system and Parallel Operation of the Generating Facility.

3.08 CAISO Relationship. If Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff, then Seller shall comply with all applicable provisions of the CAISO Tariff, including securing and maintaining in full force all CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

3.09 Generating Facility Modifications. Seller shall provide at least 30 days advance Notice to Buyer before making any material modification to the Generating Facility, which Notice will include a description of any change in actual energy production of the Generating Facility and in the Site Host Load anticipated as a result of the modification. Notwithstanding the foregoing, Seller shall make no modification to the Generating Facility that would prevent Seller from complying with the terms of this Agreement.

3.10 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test the CAISO-Approved Meter pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one or more Check Meters, as applicable, on the high voltage side of the substation associated with the Generating Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. The Check Meter shall be interconnected with Buyer's communication network to permit (i) periodic, remote collection of revenue quality meter data, and (ii) back-up real time transmission of operating-quality meter data through the Telemetry System. Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal may only be broken by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every 36 months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes. Buyer may compare the Check Meter data to the CAISO-Approved Meter data. If the deviation between the CAISO-Approved Meter data (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests. For the avoidance of doubt, the Check Meter is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and Check Meter data shall only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is checked or recertified.

3.11 Provision of Information. Seller shall promptly provide to Buyer all documents reasonably requested by Buyer relating to the Generating Facility (including site plan drawings and single-line diagrams), the administration of this Agreement, or in order for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.12 Operation. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) If Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff, comply with the requirements set forth in Exhibit C and Exhibit D that relate to participating generator obligations under the CAISO tariff;

(c) Use its commercially reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit C;

(d) Pay the CAISO Charges for which it is responsible under Exhibit E;

(e) Use reasonable efforts to respond to any instruction issued by the CAISO or the Transmission Provider or delivered to Seller by Buyer in response to an Emergency;

(f) On an annual basis from the Effective Date, provide electronically or in hard copy to Buyer, within 20 days of a request by Notice from Buyer, the following annualized operating records: total annual electricity generation (MWh/year), total annual useful thermal output (MMBtu/year), total annual

fuel use (MMBtu-HHV), and fuel conversion factor (pounds of CO2 per million BTU). Seller shall also maintain and provide electronically or in hard copy to Buyer, within 20 days of a request by Notice from Buyer but not more than once per month, a copy of daily operating records limited to real power production, changes in operating status, and unusual conditions found during inspections.;

(g) Keep all Operating records to the extent required of an Eligible CHP Facility by any applicable CPUC or CEC order;

(h) If Buyer has elected to become Scheduling Coordinator pursuant to Section 1.08, at least 75 days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and

(i) Comply with all NERC reliability standards and requirements applicable to the generator owner and generator operator of the Generating Facility, if any.

3.13 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.14 Power Product Curtailments at Request of Scheduling Coordinator, Transmission Provider, or CAISO. Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from Seller's Scheduling Coordinator, the Transmission Provider, or the CAISO; *provided, however*, that if Buyer has elected to become Scheduling Coordinator pursuant to Section 1.08, Buyer, in its role as Scheduling Coordinator, shall issue such an instruction only when Buyer is expressly directed to curtail production of the Power Product by the CAISO or where Buyer reasonably believes that curtailment of the Power Product is required to comply with (a) its maintenance requirements and operating orders, (b) a CAISO Declared Over-Generation Condition, or (c) an Emergency. Whenever practicable, Buyer will use commercially reasonable efforts to provide Seller reasonable advance notice of the possibility that a reduction or interruption of deliveries may be required.

3.15 Eligible CHP Facility Status.

(a) To the extent required by Applicable Law, administration of this Agreement or program eligibility guidelines established by the CEC within thirty (30) Business Days following the Term Start Date or Notice from Buyer, Seller shall provide to Buyer certification from the CEC that the Generating Facility meets the applicable operating and efficiency standards for Eligible CHP Facilities for the applicable year.

(b) Seller shall take all necessary steps, including making or supporting timely filings with the appropriate Governmental Authority in order to maintain certification of the Eligible CHP Facility status of the Generating Facility throughout the Term.

(c) Seller shall provide to Buyer copies of all documentation, including calculations and verifiable supporting data provided to the appropriate Governmental Authority, which demonstrates the compliance of the Generating Facility with the Eligible CHP Facility operating and efficiency standards for the applicable year. Notwithstanding the foregoing, Seller shall provide Buyer with a copy of its Annual Performance Reporting Forms (CEC Form 2843 or its successor) within 5 days of submission to the CEC.

(d) Seller, unless a public agency, shall take all necessary steps, including making or supporting timely filings with FERC in order to maintain the qualifying facility status of the Generating Facility as required by 18 CFR §292.201, et seq., throughout the Term.

(e) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, each QF Seller shall provide to Buyer a copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.

3.16 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to (a) interconnect with the Transmission Provider's electric system, (b) transmit and deliver electric energy to the Delivery Point, or (c) own and operate any CAISO-Approved Meter.

3.17 Buyer's Access Rights. Buyer has the right to examine the Site, the Generating Facility and the Operating records for any purpose connected with this Agreement upon providing Seller with reasonable advance Notice under the circumstances.

3.18 Planned Outages. Seller shall schedule and utilize all planned outages in accordance with the procedures and subject to the limitations set forth in Exhibit D.

3.19 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

3.20 Allocation of Availability Incentive Payments and Non-Availability Charges. If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as defined and provided for by the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

ARTICLE FOUR. BUYER'S OBLIGATION TO PAY

4.01 Obligation to Pay.

(a) For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit B or Exhibit B (1), as determined pursuant to Section 1.07 *provided, however*, Buyer is not obligated to issue a payment to Seller until the amount due to Seller pursuant to this Agreement exceeds fifty dollars ($50.00) after set-offs and adjustments in accordance with this Agreement. Buyer shall adjust each Monthly Contract Payment in accordance with the terms of this Agreement, including making adjustment for the fees set forth in Section 1.08 and any CAISO Charges.

(b) Subject to Section 4.01(a), Buyer shall provide a payment statement within 30 days after the last Business Day of each calendar month, which statement shall include Buyer's payment to Seller and a calculation thereof.

(c) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO, Buyer shall recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading. Buyer shall then recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to a subsequent monthly statement that is calculated after Buyer's recomputation using corrected measurements. If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on a subsequent monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's statement until such amount is fully collected by Buyer.

(d) Buyer may deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(e) Except as otherwise provided for in this Agreement, if, within 90 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete. If Seller timely identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to a subsequent monthly statement that is calculated. If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to a subsequent statement that is calculated. If the recomputation results in a net amount still owing to Buyer after applying the overpayment, a subsequent statement shall show a net amount owing to Buyer.

(f) Notwithstanding anything to the contrary in this Agreement, if any payment statement shows amounts owed by Seller to Buyer, Buyer may, at its option, apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

(g) Notwithstanding anything to the contrary in this Agreement, for the entire period during which Seller fails to materially comply with any provision set forth in Exhibit C, Seller shall be responsible for all applicable CAISO Charges; *provided, however*, that if Seller complies fully with Exhibit C, Buyer shall pay all CAISO Charges (except those CAISO Charges for which Seller is responsible under Exhibit E) for up to, but not including, 500 kW of deviation of Seller's Forecast from the Metered Energy, and Seller shall be responsible only for applicable CAISO Charges attributable to such deviations of 500 kW or more.

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement 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 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankruptor

(v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party

(b) With respect to Seller:

(i) The total quantity of Metered Energy in any Term Year is less than 10% of the Expected Term Year Energy Production;

(ii) Seller delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement, electric energy that was not generated by the Generating Facility;

(iii) The Term Start Date does not occur within 18 months of the Effective Date, if Seller is a New Eligible CHP Facility, or within 6 months of the Effective Date, if Seller is an Existing Eligible CHP Facility; *provided, however*, that this 18-month or 6-month period shall be extended on a day-for-day basis for any delay caused solely by Buyer's failure to perform its obligation(s) under this Agreement or excused solely as a result of Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), as to which, in either case, Seller has notified Buyer of the new expected Term Start Date;

(iv) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation;

(v) Seller materially fails to comply with any provision of Exhibit C and such failure is not cured within 30 days after Notice is provided by Buyer to Seller; or

(vi) Subject to Section 3.15, Seller fails to maintain its status as an Eligible CHP Facility during the Term.

6.02 Site Host Changes. Notwithstanding Section 6.01 above, with respect to Seller, an Event of Default shall not include (a) cessation of operation by the Site Host, or (b) the inability of Site Host to use the waste heat from the Generating Facility in a manner that is consistent with the requirements of the Act. If the Site Host ceases operation or is unable to use the waste heat from the Generating Facility in a manner that is consistent with the Act for a period of 365 days or more, either Party may terminate this Agreement. If Seller terminates this Agreement pursuant to this Section 6.02, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one following the effective date of such termination.

6.03 Early Termination. If an Event of Default has occurred, there will be no opportunity for cure except as specified in Section 6.01. The Party not in default (the "Non-Defaulting Party") will have the right to (a) designate by no more than twenty (20) days' Notice to the Defaulting Party a date for the early termination of this Agreement (an "Early Termination Date"), (b) immediately suspend performance under this Agreement, and (c) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), subject to the terms of this Agreement.

ARTICLE SEVEN. MISCELLANEOUS

7.01 Representations, Warranties and Covenants. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;

(e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

(f) It is acting for its own account, and its decision to enter into this Agreement is based on its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and

(g) It has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement.

7.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It does not, and will not (i) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (ii) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party, except in order to satisfy the Site Host Load, or as required by other Applicable Laws.

(b) Throughout the Term: (i) it or its subcontractors will own or lease and Operate the Generating Facility; (ii) it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person; (iii) it will hold the rights to all of the Product; (iv) the Generating Facility will maintain its qualification as an Eligible CHP Facility; and (v) the Generating Facility will meet all applicable greenhouse gas emissions standards, as such standards may change from time to time.

(c) As of the Effective Date, there is not pending, or to its knowledge, threatened against it or any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement.

7.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, Claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, Claim, cost, charge, demand or expense to the extent resulting from its own gross negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, Claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 7.01 and Section 7.02. Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 7.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, Claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any Person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 7.10. The inclusion of this Section 7.03(b) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 7.10.

(c) Each Party shall defend, save harmless and indemnify the other Party against any taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility for which such indemnifying Party is responsible.

(d) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02.

(e) All indemnity rights survive the termination of this Agreement for 12 months.

7.04 Assignment. Seller may not assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld; *provided, however*, that Seller may, without the consent of Buyer (and without relieving Seller from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender(s) in connection with any financing if (a) such Lender(s) assumes the payment and performance obligations provided under this Agreement with respect to Seller, (b) such Lender(s) agree in writing to be bound by the terms and conditions of this Agreement, and (c) Seller delivers such tax and enforceability assurance as Buyer may reasonably request.

7.05 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE 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.

7.06 Arbitration. Except for matters relating to specific performance, injunctive relief or other equitable remedies, the Parties agree to submit to arbitration any and all matters in dispute or controversy among them concerning the terms of this Agreement. Unless the Parties agree to alternative arrangements, the selection of arbitrators and the procedure shall be in accordance with the commercial arbitration rules then in effect of

the Judicial Arbitration and Mediation Services, Inc. Any award rendered shall be final and conclusive upon the Parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the Parties; *provided, however*, that each Party shall pay for and bear the costs of its own experts, evidence and counsel's fees. Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Francisco, California.

7.07 Notices. All Notices shall be made in accordance with this Section 7.07 and Exhibit F. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 7.07 are deemed given as follows: (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day; (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out; and (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date. Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

7.08 General.

(a) Except as may otherwise be 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. Unless expressly provided for in this Agreement, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages. This Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof. Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(b) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.

(c) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

(f) The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.

(g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(h) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(i) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties.

(j) Whenever this Agreement refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(k) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

(l) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Sections" and "Exhibits" refer to the corresponding Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Sections" in Exhibits A through G refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

(m) This agreement at all times shall be subject to such modifications as the California Public Utilities Commission may direct from time to time in the exercise of its jurisdiction.

7.09 Confidentiality. Neither Party may disclose any Confidential Information to a third party, other than: (a) to such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential; (b) to potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; (c) to Buyer's Procurement Review Group, as defined in D.02-08-071, subject to any applicable limitations and subject to a protective order applicable to Buyer's Procurement Review Group; (d) with respect to Confidential Information, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information; (e) in order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party; and (f) in order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC. In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Section 7.09(f), each Party shall use reasonable efforts to (i) notify the other Party before disclosing the Confidential Information, and (ii) prevent or limit such disclosure.

7.10 Insurance.

(a) General Liability Coverage.

(i) Seller shall maintain during the performance hereof, General Liability Insurance of not less than $1,000,000.00 if the Generating Facility's Nameplate is over 100 kW, $500,000.00 if the Generating Facility's Nameplate is over 20 kW to 100kW or $100,000.00 if the Generating Facility's Nameplate is 20 kW or below of combined single limit or equivalent for bodily injury, personal injury, and property damage as the result of any one occurrence.

(ii) 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.

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

(b) Additional Insurance Provisions.

(i) Evidence of coverage described above in Section 7.10(a) shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by Buyer.

(ii) Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

(iii) Seller shall furnish the required certificates and endorsements to Buyer prior to commencing operation.

(iv) 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

7.11 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

This agreement is effective when accepted and executed by PG&E.

Seller's Name	Buyer's Name
	A California Corporation

Seller's business registration	Buyer's business registration
Authorized by (Print)	Authorized by (Print)
Signature	Signature
Title	Title
Date	Date

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"AB 1613 Decisions" means the decisions issued in R.08-06-024.

"Act" has the meaning set forth in the Recitals.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this definition, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Applicable Law" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to any Party, the Generating Facility or the terms of this Agreement.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.03, as may be adjusted from time to time.

"Availability Incentive Payments" has the meaning set forth in the CAISO Tariff.

"Availability Standards" means the standard set forth in the CAISO Tariff setting forth criteria for determining if a Resource Adequacy Resource is subject to Non-Availability Charges or Availability Incentive Payments (each as defined in the CAISO Tariff), under the CAISO Tariff.

"Average Higher Heating Value MPR Heat Rate" means the heat rate equal to 6,924 Btu/kWh, or 6.924 MMBtu/MWh, per CPUC Resolution E-4298, which heat rate will be modified in this Agreement if there is any modification thereto by the CPUC or other authorized Governmental Authority.

"Bankrupt" means with respect to any Person, such Person:

(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 (which petition is not dismissed within 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.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Tariffs" means the entire body of effective rates, fees, rentals, charges, and rules collectively of PG&E, including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, rules, and sample forms.

"CAISO" means the California Independent System Operator Corporation.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter system(s), including all associated metering transformers and related appurtenances, as required by the CAISO (or, to the extent that the CAISO's metering requirement does not apply, Prudent Electrical Practices) and furnished by Seller, and which (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) is a time-of-use meter capable of measuring the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy the Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO-declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling, Availability Standards or deliveries from the Generating Facility under this Agreement.

"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.

"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

"CARB" means the California Air Resources Board

"CEC" means the California Energy Commission.

"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may furnish at its discretion, as set forth in Section 3.10(b), and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"Claiming Party" has the meaning set forth in Section 5.02.

"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 before or after the termination of this Agreement.

"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

"Control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power

"CPUC" means the California Public Utilities Commission.

"Decision" means CPUC Decision ("D") 07-09-040.

"Defaulting Party" has the meaning set forth in Section 6.01(a).

"Delivery Point" has the meaning set forth in Section 1.06.

"Direct GHG Compliance Costs" mean any taxes, charges or fees imposed by an authorized Governmental Authority with jurisdiction over the Seller or the Generating Facility, and levied directly on the Generating Facility for GHG emissions attributable to its Operations.

"Early Termination Date" has the meaning set forth in Section 6.03(a).

"Effective Date" has the meaning set forth in the Preamble.

"Eligible CHP Facility" means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, (1) meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code §2843, and (2) meets the requirements of 18 Code of Federal Regulations §292.201, et seq., unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Emergency" means an actual or imminent condition or situation which (a) is defined and declared by the CAISO or Transmission Provider, (b) jeopardizes the integrity or reliability of the CAISO Controlled Grid or

Transmission Provider's electric system, (c) requires automatic or immediate manual action to prevent or limit loss of load or generation supply, or (d) poses a threat to public safety.

"Event of Default" has the meaning set forth in Section 6.01.

"Existing Eligible CHP Facility" means an Eligible CHP Facility that first commenced Operation on or after January 1, 2008 but before the Effective Date.

"Expected Term Year Energy Production" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.05.

"FERC" means the Federal Energy Regulatory Commission.

"Forced Outage" has the meaning set forth in the CAISO Tariff.

"Force Majeure" means any event or circumstance (that is not anticipated as of the Effective Date) to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Force Majeure does not include: (a) a failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure; (b) failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility (*provided, however*, that failure or delay in the granting of permits, to the extent such failure or delay is not caused by action or inaction of Seller, qualifies as a Force Majeure for purposes of this Agreement); (c) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or (d) a lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

"Forecast" means the monthly forecast of the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, net of the Site Host Load and Station Use.

"Free Allowance" means any GHG Emissions Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

"Generating Facility" means the Generating Unit(s) comprising Seller's power plant (as more particularly described in Section 1.02 and Exhibit G), including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

"Generation Operations Center" means the location of Buyer's real-time operations personnel.

"GHG" is an abbreviation for "greenhouse gas" which means emissions released into the atmosphere of carbon dioxide (CO2), nitrous oxide (N2O) and methane (CH4), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6), which are generated in a variety of industrial processes. Greenhouse

gases may be defined or expressed in terms of a metric ton of CO2-equivalent, in order to allow comparison between the different effects of gases on the environment; *provided, however*, that the definition of the term "Greenhouse Gas", as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority

"GHG Emissions Allowance" means a limited tradable authorization (whether in the form of a credit, allowance, or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or an Affiliate of Seller, which respect to the Generating Facility, to emit one metric ton of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

"GHG Emissions Cap" means the product of (a) the rate for tonnes of CO2 per MMBtu of natural gas, 0.0531 tonnes/MMBtu, times (b) the Average Higher Heating Value MPR Heat Rate in MMBtu/MWh.

"Governmental Authority" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

"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;

(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.

"High-Value Area" means a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC, as defined in Exhibit B, Section 6.

"Holidays" means "NERC Holidays" as defined in Exhibit B, Section 5. "Time of Delivery Periods and Allocation Factors."

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; *provided, however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"Lender" means any financial institutions or successors in interest or assignees that provides development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.

"Location Bonus" is described in Section 6 of Exhibit B.

"Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

"Metered Energy" means the total electric energy expressed in kWh, in excess of Station Use and Site Host Load and measured by the CAISO-Approved Meter or Check Meter, after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter or Check Meters, as applicable, at the Generating Facility for the specified Metering Interval.

"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters, as applicable.

"Monthly Contract Payment" has the meaning set forth in Section 4.01(a).

"NERC" means the North American Electric Reliability Corporation.

"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.

"Non-Availability Charges" has the meaning set forth in the CAISO Tariff.

"Non-Defaulting Party" has the meaning set forth in Section 6.03.

"Non-Peak Hours" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in Exhibit B, "5. Time of Delivery Periods and Allocations Factors" or Exhibit B(1), "4. Time of Delivery Periods" as determined pursuant to Section 1.07.

"Notice" means notices, requests, statements or payments provided in accordance with Section 7.07 and Exhibit F.

"OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement-quality meter data or its successor.

"Operate", "Operating" and "Operation" mean to provide all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

"Outage and Maintenance Schedule" has the meaning set forth in Section 2 of Exhibit D.

"Outage and Maintenance Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer in accordance with Exhibit D.

"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Peak Months" means June, July, August and September.

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

"Person" or "Persons" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Physical Trade" has the meaning set forth in the CAISO Tariff.

"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

"Power Product" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

"Power Rating" means the electrical power output value indicated on the generating equipment nameplate.

"Product" means the Power Product, Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

"Project" means the Generating Facility.

"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that: (a) equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs; (b) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site; (c) preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools; (d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (e) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (f) equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, codified at 16 United States Code ("USC") §824a-3, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC decisions, orders, and rules implementing PURPA, as amended from time to time, including 18 Code of Federal Regulations ("CFR") Part 292.201, et seq., unless the Qualifying Facility is a public agency exempt from FERC jurisdiction under 16 USC §824(f).

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(e)(2), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in Resource Adequacy Rulings, 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.

"Resource Adequacy Benefits" means the rights and privileges attached to the generating capacity of the Generating Facility that, in accordance with Public Utilities Code Section 2841(f), count toward satisfying Buyer's Resource Adequacy obligations.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 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 CPUC decisions, rulings, laws, rules or regulations may be Amended or modified from time to time during the Term.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of preparing a schedule based on Seller's forecast and notifying, requesting, and confirming the CAISO-Approved Quantity with the CAISO, the electric energy delivered from the Generating Facility.

"Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

"Scheduling Coordinator" means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.

"SC Set-Up Fee" has the meaning set forth in Section 1.08.

"Seller" has the meaning set forth in the Preamble.

"Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035.

"Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective.

"Simple Interest Payment" means a dollar amount calculated by multiplying the: (a) dollar amount on which the Simple Interest Payment is based; by (b) the Interest Rate; by (c) the result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02 and Exhibit G.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a lease, the term of which begins on or before the Term Start Date and extends at least through the Term End Date, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

"Site Host" means any Person purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties pursuant to California Public Utilities Code Section 218(b).

"SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

"Station Use" means the electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, including transformation losses to power such equipment and other necessary loads.

"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility, all in accordance with the CAISO Tariff.

"Term" has the meaning set forth in Section 1.01.

"Term End Date" has the meaning set forth in Section 1.01.

"Term Start Date" has the meaning set forth in Section 1.01.

"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

"TOD Period" means the time of delivery period used to calculate the Monthly Contract Payment set forth in Exhibit B or Exhibit B(1), as determined by Section 1.07.

"Trading Day" means the day in which Day-Ahead (as defined in the CAISO Tariff) trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).

"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Buyer from the Delivery Point to the CAISO-Controlled Grid.

"WECC" means the Western Electricity Coordinating Council.

**** End of Exhibit A ****

EXHIBIT B

This Exhibit B establishes the avoided cost price adopted and implemented by the CPUC in CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033).

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period payment 1st TOD Period +
TOD Period payment 2nd TOD Period +
TOD Period payment 3rd TOD Period +
Location Bonus

All TOD Period Payments shall be calculated as set forth in Section 2 of this Exhibit B.

The "1st TOD Period," "2nd TOD Period," and "3rd TOD Period" subscripts refer to the three TOD Periods that apply for the applicable calculation month, as set forth in Section 5 of this Exhibit B.

The Location Bonus, if applicable, shall be calculated as set forth in Section 6 of this Exhibit B.

2. TOD Period Payment Calculation

Each monthly TOD Period Payment is calculated in dollars, using the terms defined below, as follows:

(Fixed price component + Variable price component) * (TOD Factor) *
metered kWh exported during the TOD Period during the month

The Metered Energy per hour used for payments shall be limited to 500 kW times 1 hour. Additionally, once the Metered Energy delivered during any Term Year equals the As-Available Contract Capacity at 100% capacity factor applied over 8,760 hours, no further payments will be calculated or paid for the remaining TOD Periods within any remaining months of the current Term Year.

3. Fixed Price Component

The Fixed Price Component for all TOD Periods shall be the amount in the following table for the year of the Term Start Date. The fixed price component does not escalate during the term of the Agreement.

Year	$/kwh
2012	0.02000
2013	0.02033
2014	0.02068
2015	0.02104
2016	0.02140
2017	0.02142
2018	0.02145

Year	$/kwh
2019	0.02147
2020	0.02149
2021	0.02151
2022	0.02153
2023	0.02155

4. Variable Price Component Calculation

The Variable Price Component is calculated in dollars as follows:

[(Monthly bidweek gas price + Intrastate gas transportation rate)/1,000,000* Heat Rate] + Variable O&M

(a) Monthly bidweek gas price shall be calculated as the average of monthly bidweek gas price indices at PG&E Citygate as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly

(b) Intrastate gas transportation rate shall be the tariffed intrastate gas transportation rate for large electric generators as published in the PG&E Gas Tariffs G-EG and G-SUR.

(c) Heat Rate, pursuant to the AB 1613 Decisions, shall be equal to:

6,924 Btu/kWh

(d) Variable O&M shall be the amount in the following table for the year in which the payment is being calculated. For years after 2023, Variable O&M shall be the 2023 payment multiplied by 1.02, compounded for each year beyond 2023.

Variable O&M	
Year	**$/kwh**
2012	0.00311
2013	0.00316
2014	0.00322
2015	0.00329
2016	0.00335
2017	0.00342
2018	0.00349
2019	0.00356
2020	0.00364
2021	0.00371
2022	0.00377
2023	0.00384

5. Time of Delivery Periods and Allocation Factors.

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

	TOD PERIOD		
Monthly 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 paragraph, 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. In accordance with all other terms of this Exhibit B, the following Time of Delivery Factors ("TOD Factors") shall be used in the TOD Period Payment Calculation for each of the specified TOD Periods in which Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	2.38	1.12	0.59
B. Oct. – Dec.; Jan. & Feb.	1.10	0.94	0.66
C. Mar. – May	1.22	0.90	0.61

6. <u>Location Bonus</u>.

If the Generating Facility is located in a "High-Value Area" as set forth below, each Monthly Contract Payment for the entire Term shall receive a Location Bonus calculated as follows:

Location Bonus = Sum of monthly TOD Periodn Payments * 0.10

The Generating Facility shall be deemed to be located in a High-Value Area if it is interconnected to Buyer's electric system at a location which, in the year of the Effective Date, is identified pursuant to CPUC D. 09-12-042 (as modified by other AB 1613 Decisions) as a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC.

**** End of Exhibit B****

EXHIBIT B (1)
Monthly Contract Payment Calculation

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period Energy Payment $_{\text{1st TOD Period}}$ +
TOD Period Energy Payment $_{\text{2nd TOD Period}}$ +
TOD Period Energy Payment $_{\text{3rd TOD Period}}$ +
TOD Period Energy Payment $_{\text{4th TOD Period}}$ +
TOD Period Capacity Payment $_{\text{1st TOD Period}}$ +
TOD Period Capacity Payment $_{\text{2nd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{3rd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{4th TOD Period}}$

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit B (1).

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit B (1).

The "1st TOD Period," "2nd TOD Period," "3rd TOD Period" and "4th TOD Period" subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit B (1).

2. TOD Period Energy Payment Calculation.

(a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{FirstHour}^{LastHour} [(EP-LA) \times APE + LA \times MA]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit B (1), in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit B (1).

LA = Hourly Location Adjustment price, as set forth in SRAC.

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no additional hourly energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

(b) Factor "EP" in Section 2(a) of this Exhibit B (1). The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in SRAC.

(c) Factor "APE" in Section 2(a) of this Exhibit B (1). The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = ACP x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit B (1), in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision:

Capacity Payment Allocation Factors		
Season	*TOD Period*	*Factor*
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

(b) Factor "ACP" in Section 3(a) of this Exhibit B (1). The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars

= AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit B (1), in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	*Price $/kW-yr*
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

(c) Factor "AAC" in Section 3(b) of this Exhibit B (1). The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit B (1), in kWh per hour.

(d) Factor "MAC" in Section 3(c) of this Exhibit B (1). The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:
MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit B (1), in kWh.

PH = The total number of hours in the TOD Period (period hours).

(e) Factor "LE" in Section 3(d) of this Exhibit B (1). The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{FirstHour}^{LastHour} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit B (1), in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor "E" in Section 3(e) of this Exhibit B (1). The Allowed Hourly Energy is calculated as follows:
ALLOWED HOURLY ENERGY in kWh = 1 hour x CC

Where:

CC = The As-Available Contract Capacity, as set forth in Section 1.03, in kW.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	**Period A – Summer May 1 - October 31**	**Period B - Winter November 1 - April 30**	**Applicable Days**
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

**** End of Exhibit B(1) ****

EXHIBIT C
Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff, as applicable, if Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the operating and scheduling procedures of Seller, Buyer, and if Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff, CAISO, including automated Forecast and outage submissions.

2. Forecast of Monthly Energy Deliveries.

   (a) Using the following table, Seller shall provide Buyer a forecast of monthly Metered Energy and explain the basis of Seller's Forecast, no later than Seller's execution of this Agreement.

Monthly Metered Energy Delivery Forecast	
Month	**Average Metered Energy (kWh)**
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

   (b) If Buyer finds that Seller's actual annual metered output a differs by at least twenty percent (20%) from Seller's annual generation forecast, then Buyer may request, on an annual basis, that Seller provide an updated generation forecast schedule.

**** End of Exhibit C ****

EXHIBIT D
Outage and Maintenance Schedule Submittal Requirements

1. General Requirements. The Parties shall abide by the Outage and Maintenance Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to (a) comply with the CAISO Tariff if Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff, (b) accommodate changes to their respective generation technology and organizational structure, and (c) address changes in the operating and scheduling procedures, including automated forecast and outage submissions, of Seller, Buyer and the CAISO, if Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff.

2. Outage and Maintenance Scheduling.

   (a) Seller shall provide Buyer with its Outage and Maintenance Schedule, using the following table, and explain the basis for Seller's schedule, no later than Seller's execution of this Agreement.

Monthly Outage and Maintenance Schedule	
Month	**kWh Unavailable due to Outage or Maintenance**
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

   (b) In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Power Rating (other than curtailments due to lack of motive force), Seller shall immediately notify Buyer of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur, and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Non-Peak hours.

3. Restriction on Planned Outages. During the Peak Months, Seller may schedule and utilize no more than 12 hours of outages per Peak Month, and only during the non-peak hours of the Peak Months.

**** End of Exhibit D ***

EXHIBIT E
CAISO Charges

Subject to Section 4.01(g), Buyer shall pay all applicable CAISO Charges and receive all applicable CAISO Revenues; *provided, however*, if, on or after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller in violation of this Agreement, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site Host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or,

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to curtail output, or reschedule a planned outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

5. Buyer as Seller's Scheduling Coordinator is subject to either Non-Availability Charges or Availability Incentive Payments, or both, during a month within the Resource Adequacy Compliance Year, as defined by CAISO Tariff, then any such Non-Availability Charges or Availability Incentive Payments shall be offset and the net value shall be entered into Seller's account for the applicable month pursuant to Section 3.20.

**** End of Exhibit E ****

EXHIBIT F
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	

Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit F ****

EXHIBIT G
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

**** End of Exhibit G ****

(End of Simplified Contract for Less than 500 kW Eligible CHP Facility)

Electric Sample Form No. 79-1172 Sheet 1
Bioenergy Market Adjusting Tariff Power Purchase Agreement

Please Refer to Attached
Sample Form

[This contract has been approved by the California Public Utilities Commission in Decision 15-09-004. Modification of the terms and conditions of this contract will result in the need to obtain additional Commission approval of the contract.]

[The contract approved by Decision 15-09-004 includes terms and conditions that "may not be modified" pursuant to prior Commission decisions, including Decision 07-11-025, Decision 08-08-028 and Decision 10-03-021, as modified by Decision 11-01-025, and these terms and conditions are shown in shaded text.]

[Modifications to this contract pursuant to D.16-10-025 were filed on November 28, 2016, December 22, 2017 and May 2, 2018, (Advice Letters 4965-E, 5144-E-A, 5285-E).]

AMENDED BIOENERGY MARKET ADJUSTING TARIFF
POWER PURCHASE AGREEMENT
BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY

AND

[Name of Seller]

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COVER SHEET

Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E"), and _____ ("Seller"), a _____ ***[Seller's form of business entity and state of organization]***, hereby enter into this Power Purchase Agreement ("Agreement") made and effective as of the Execution Date. Seller and Buyer 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:

A. Fuel Resource Category and Transaction Type

(i) Project's Fuel Resource Category:

(ii) Seller elects the following transaction type pursuant to Section 2.3 of the Agreement: ***[Choose one]***

☐ Full Buy/Sell

☐ Excess Sale

(i) Seller elects the following Delivery Term pursuant to Section 2.5 of the Agreement: ***[Choose one]***

☐ ten (10) Contract Years

☐ fifteen (15) Contract Years

☐ twenty (20) Contract Years

B. Facility and Site Description

(i) Facility name:

(ii) Facility physical address (or nearest intersection and direction):

(iii) Latitude and longitude of the centroid of the Site:

(iv) Parcel numbers that are part of the Site:

(v) Existing land use:

(vi) Interconnection Point (and Service Voltage):

(vii) Delivery Point (the point of interconnection with the CAISO grid):

(viii) Contract Capacity (in MW):

(ix) Nameplate Capacity (in MW):

(x) The Project is committed to, and shall satisfy, the High Hazard Fuel Requirement throughout the Delivery Term:

☐ Yes

☐ No

(xi) Fuel Use Description (brief explanation of any Fuel Use from Fuel Resource Categories per the Fuel Resource Requirements):

(xii) Facility type:

☐ "small power production facility," as described in 18 CFR §292.203(a), 292.203(c) and 292.204

☐ "topping-cycle cogeneration facility," as defined in 18 CFR §292.202(d)

☐ "bottoming-cycle cogeneration facility," as defined in 18 CFR §292.202(e)

(xiii) The date on which the Commercial Operation Date of the Project is expected under this Agreement (must be no later than the Guaranteed Commercial Operation Date):

(xiv) The Project is an:

☐ existing Project

☐ new Project

(xv) The Interconnection Queue Position number is: ***[#]*** ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date:*** the number provided to the Project upon submission of a new Interconnection Study application pursuant to Section 4.3.15***]***

(xvi) Table of major components with technical descriptions:

Biogas	
Equipment	Description
Digester Lagoon	Size (gallons or acres)
Engine	Number, type, manufacturer, model
Generators	Type, manufacturer, capacity
Transformer	Capacity, voltage levels
(other)	

Biomass	
Equipment	Description
Boiler	Type, manufacturer, model, capacity
Turbine	Type, manufacturer, model, capacity
Generator	Type, manufacturer, capacity
Transformer	Capacity, voltage levels
(other)	

(xvii) ***[Insert Facility or Equipment Layout Drawing]*** (may overlay Site Map) illustrating the general layout of the facility:

☐ A clearly labeled perimeter of the Project Site (i.e. site control boundary).

☐ The relative positions of the project's major components.

☐ The voltage related to interconnection and the point of the interconnection.

(xviii) Legal description of the site (including APNs) and ***[Insert Site Map]*** (may overlay with Facility Drawing), illustrating the following:

- ☐ A clearly labeled perimeter of the Project Site (i.e. site control boundary).
- ☐ A parcel map including an outline of the Project Site.
- ☐ Clearly labeled nearby roads, including the nearest intersection.
- ☐ If the primary site map is too close to display the nearest intersection, a supplementary map at a larger scale so that nearby roads and landmarks can be seen.

(xix) ***[Insert Single Line Diagram]*** illustrating internal equipment and connections as well as the components for interconnection of the Facility to PG&E's electric system via Distribution Line or Existing PG&E Transmission Line. At minimum, please include information for the following components:

- ☐ Name and address of the facility.
- ☐ Electrical system components, cabling and connections with associated labeling (voltage levels, overhead or underground, etc.).
- ☐ Generators and/or inverters (including capacity and voltage designations).
- ☐ Transformers – for generation system and/or interconnection and station power (A station service transformer is for the generating facility's station use and must be on the project's side of the meter).
- ☐ Metering (e.g., CAISO revenue meters and/or Utility meters).
- ☐ Fuses and Breaker.
- ☐ Disconnects and/or switches.
- ☐ All other switchgear.

(xx) ***[For cogeneration Facilities]***:

- ☐ Forecast of useful thermal energy output (MMBtu/month).
- ☐ Dedicated Use(s) of the Facility's Useful Thermal Energy Output.

C. Contract Price

The price for Delivered Energy (the "Contract Price") is ***[Dollar amount in words]*** dollars ($ _____***[Number]***) per MWh. ***[Contract Price determined by BioMAT Tariff pricing methodology.]***

D. Delivery Term Contract Quantity Schedule

Contract Year	Contract Quantity (MWh/year)
1	
2	
3	
4	
5	

Contract Year	Contract Quantity (MWh/year)
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

E. Collateral Requirement

[The Collateral Requirement is equal to twenty thousand dollars ($20,000.00) for each megawatt of the Contract Capacity for a total of ***[Dollar amount in words]*** ($ _____.00)***.] [For all Projects except Projects with a High Hazard Fuel Requirement]***

OR

[The Collateral Requirement is equal to the greater of (i) an amount equal to (a) the Contract Price minus $199.72/MWh, multiplied by (b) 1.5, multiplied by (c) the highest annual Contract Quantity(MWh/yr) committed in the Delivery Term Contract Quantity Schedule set forth in the Cover Sheet Section D, for a total of ***[Dollar amount in words]*** ($ _____.00)***]***; or (ii) twenty thousand dollars ($20,000) for each megawatt of the Contract Capacity for a total of ***[Dollar amount in words]*** ($ _____.00)***.] [For all Projects with a High Hazard Fuel Requirement]***

F. Curtailment Orders

Operational characteristics of the Project for Curtailment Orders pursuant to Section 5.8(c) are listed below. Buyer, as Scheduling Coordinator, may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project. In addition, Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are based on the true physical characteristics of the resource.

(i) Minimum operating capacity: ____MW

(ii) Ramp Rate: ____MW/Minute

(iii) Maximum number of Curtailment Orders per calendar day (if any such operational limitations exist): ____

(iv) Maximum number of Start-ups per calendar day (if any such operational limitations exist): ____

(v) Advance notification required for a Curtailment Order: ____ Minutes

Other Requirements:

- Start-Up Time (if applicable): _____Minutes
- Minimum Run Time after Start-Up (if applicable): _____Minutes
- Minimum Down Time after Shut-Down (if applicable): _____Minutes
- Other-Specify: _____

Note: Sellers should enter the maximum flexibility the Project can offer given the operational constraints of the technology.

G. Seller Milestone Schedule

No.	*Date*	*Milestones*
1		Submits interconnection application. ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date: The anticipated date for submitting a new Interconnection Study application]***.
2		Files any land applications.
3		Files construction permit application(s).
4		Files a CEC Pre-Certification application.
5		Files material permit applications.
6		Receives a completed PG&E Initial or Supplemental Review, System Impact Study or Phase I Interconnection Study, or a CAISO Cluster Study, Independent Study or Fast Track Study.
7		Obtains control of all lands and rights-of-way comprising the Site.
8		Receives a completed interconnection PG&E Facility Study or Phase II Interconnection Study (if applicable).
9		Executes an interconnection agreement and transmission/distribution service agreement, as applicable.
10		Receives FERC acceptance of interconnection and transmission agreements.
11		Receives construction permit.
12		Receives material permits.
13		Receives CEC Pre-Certification.
14		Receives FERC docket number assigned to Seller's filing of FERC Form 556.
15		Executes an Engineering, Procurement and Construction ("EPC") contract.
16		Procures the _____ ***[applicable electrical generating equipment]*** for the Facility.
17		Completes financing, including construction financing.
18		Begins construction of the Facility.
19		Begins startup activities.
20		Initial Synchronization Date.
21		Demonstrates the Contract Capacity ***[***and the Nameplate Capacity***]***. ***[Bracketed language only for Facilities with a Nameplate Capacity greater than three megawatts]***
22		Commercial Operation Date.
23		Receives Final CEC Certification.

H. Notices List

Name: ***[Seller's Name]***, a ***[include place of formation and business type]*** ("Seller")

All Notices: ***[Seller to complete]***
Delivery Address:

Street:
City: State: Zip:

Mail Address: (if different from above)

Attn:

Phone:
Email:

DUNS:
Federal Tax ID Number:

Invoices:
Attn:

Phone:
Email:

Scheduling:
Attn:
Phone:
Email:

Payments:
Attn:

Phone:
Email:

Wire Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn:
Phone:
Email:

Name: **Pacific Gas and Electric Company**, a California corporation ("Buyer" or "PG&E")

All Notices:
Delivery Address:

77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Mail Address:
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177
Attn: Candice Chan
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780
Email: CWW9@pge.com

DUNS:
Federal Tax ID Number:

Invoices:
Attn: Amol Patel
Senior Manager, Electric Settlements
Phone: (415) 973-6510
Email: AXPX@pge.com

Scheduling:
Attn: Day-Ahead Operations
Phone: (415) 973-1971
Email: DAEnergy@pge.com

Payments:
Attn: Amol Patel
Senior Manager, Electric Settlements
Phone: (415) 973-6510
Email: AXPX@pge.com

Wire Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn: Credit Risk Management
Phone: (415) 972-5188
Email: MCRM-Credit@pge.com

With additional Notices of an Event of Default to Contract Manager:

Attn:

Phone:
Email:

Contract Manager:

Attn: Ted Yura
Sr. Manager, Contract Management
Phone: (415) 973-8660
Email: THY1q@pge.com

With additional Notices of an Event of Default to:
PG&E Law Department
Attn: Renewables Portfolio Standard attorney
Phone: (415) 973-4377

PREAMBLE

This Agreement, together with the Cover Sheet and the Appendices attached hereto, is made and entered into between PG&E and Seller as of the Execution Date. This Agreement governs Buyer's purchase of the Product from the electrical generating facility (hereinafter referred to as the "Facility" or "Project") as described in the Cover Sheet. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

1. COMMERCIAL OPERATION DATE

1.1. Expected Commercial Operation Date; Guaranteed Commercial Operation Date.

1.1.1. If not already capable of delivering Product on the Execution Date, the Facility's expected Commercial Operation Date is the date specified in the Cover Sheet, which may, subject to the terms of the Agreement, be modified by Seller from time to time after the Execution Date. Seller shall provide Notice to Buyer of the latest expected Commercial Operation Date of the Facility no later than sixty (60) days before such date.

1.1.2. Seller shall have demonstrated Commercial Operation by the "Guaranteed Commercial Operation Date," which date shall be no later than the date that is twenty-four (24) months after the ***[***Execution Date***]*** ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date: Interconnection Study Completion Date]***; provided that the Guaranteed Commercial Operation Date may be extended to no later than the date that is thirty (30) months after the ***[***Execution Date***]*** ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date: Interconnection Study Completion Date]*** for the following reasons ("Permitted Extensions"):

1.1.2.1. Subject to Section 1.1.4, if Seller has taken all commercially reasonable actions (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"), then the Guaranteed Commercial Operation Date shall be extended six (6) months;

1.1.2.2. Subject to Section 1.1.4, if Seller has taken all commercially reasonable actions (including but not limited to Seller's timely filing of required documents and payment of all applicable fees, and completion of all Electric System Upgrades needed, if any) to have the Project physically interconnected to the Transmission/Distribution Owner's electric system via Distribution Line or Existing PG&E Transmission Line, but fails to secure any necessary commitments from CAISO or the Transmission/Distribution Owner for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"), then the Guaranteed Commercial Operation Date shall be extended six (6) months;

1.1.2.3. In the event of Force Majeure without regard to Transmission Delay or Permitting Delay ("Force Majeure Delay"), the Guaranteed Commercial Operation Date shall be extended on a day-to-day basis for a cumulative period of not more than six (6) months; provided that Seller complies with Section 10; or

1.1.2.4. If Seller pays to Buyer damages in an amount equal to two percent (2%) of the Collateral Requirement per day for each day (or portion thereof) the Guaranteed

Commercial Operation Date is extended ("Daily Delay Liquidated Damages"), then the Guaranteed Commercial Operation Date shall be extended on a day-to-day basis corresponding to the number of days for which Seller has paid Daily Delay Liquidated Damages for a cumulative period of not more than six (6) months. Daily Delay Liquidated Damages payments applicable to days included in any Guaranteed Commercial Operation Date extension are nonrefundable and are in addition to, and not a part of, the Collateral Requirement; provided that Seller will be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller to Buyer which exceed the amount required to cover the number of days by which the Guaranteed Commercial Operation Date was actually extended.

1.1.3. All Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

1.1.4. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the Permitted Extensions described in Section 1.1.2.1 or 1.1.2.2 (as applicable), did not result from Seller's action or failure to take action as described in Section 1.1.2.1 or 1.1.2.2 (as applicable).

1.2. Notice of Permitted Extension.

1.2.1. In order to request a Permitting Delay or Transmission Delay (individually and collectively, "Delay"), Seller shall provide Buyer with Notice of the requested Delay by the earlier of (a) the date that is twenty-two (22) months after the Execution Date and (b) within three (3) Business Days of the date that Seller becomes aware of, or reasonably should have become aware of, the circumstances giving rise for the applicable Delay, which Notice must clearly identify the Delay being requested and include information necessary for Buyer to verify the qualification of the Delay, including any information requested pursuant to Section 1.1.4 Buyer shall use reasonable discretion to grant or deny the requested extension, and shall provide Seller Notice of its decision within ten (10) Business Days of Notice from Seller.

1.2.2. In the case of a Force Majeure Delay, Seller shall provide Notice as specified in Section 10.2.

1.2.3. In the case of an extension of the Guaranteed Commercial Operation Date by the payment of Daily Delay Liquidated Damages, Seller must, at the earliest possible time, but no later than five (5) Business Days before the commencement of the proposed Guaranteed Commercial Operation Date extension, provide Buyer with Notice of its election to extend the Guaranteed Commercial Operation Date along with Seller's estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Guaranteed Commercial Operation Date extension period.

1.2.4. Notwithstanding anything to the contrary herein, Seller shall provide Notice to Buyer of the latest expected Commercial Operation Date of the Facility no later than sixty (60) days before the Commercial Operation Date.

2. CONTRACT CAPACITY AND QUANTITY; TERM; CONTRACT PRICE; BILLING

2.1. Contract Capacity and Nameplate Capacity. The Contract Capacity is specified in the Cover Sheet. The Contract Capacity shall not exceed 3,000 kW. The Contract Capacity is subject to adjustment based on the Demonstrated Contract Capacity. The Nameplate Capacity is specified in the Cover Sheet. The Nameplate Capacity shall not exceed 5,000 kW.

2.2. 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", set forth in the Cover Sheet, which amount is net of Station Use, and, for Excess Sale arrangements, Site Host Load. Seller shall have the option to decrease the Contract Quantity for any or all Contract Years of the Delivery Term Contract Quantity Schedule one (1) time if the Contract Capacity is adjusted based on the Demonstrated Contract Capacity within ten (10) Business Days of Buyer's Notice of such adjustment to the Contract Capacity or the date of the Engineer Report, as applicable. Additionally, Seller may provide Notice to Buyer during Contract Year 1 or Contract Year 2 of the Delivery Term to request a one (1) time decrease to the Contract Quantity for any or all Contract Years in the Delivery Term Contract Quantity Schedule. Upon Buyer's approval, the adjusted amounts shall thereafter be the applicable Delivery Term Contract Quantity Schedule.

2.3. Transaction. During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase, the Product from the Facility at the Delivery Point, pursuant to Seller's election in the Cover Sheet of a Full Buy/Sell or Excess Sale arrangement as described in paragraphs 2.3.1 and 2.3.2 below.:

2.3.1. Full Buy/Sell. If "Full Buy/Sell" is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product, net of station use and transformer and transmission losses, at the Delivery Point. Seller shall purchase all Energy required to serve the Project's Site Host Load, net of Station Use, from Buyer or applicable retail service provider pursuant to its applicable retail rate schedule. Seller agrees to convey to Buyer all attributes and benefits associated with or attributable to the Product sold to Buyer.

2.3.2. Excess Sale. If "Excess Sale" is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product, net of Station Use, Site Host Load and transformer and transmission losses, at the Delivery Point. Seller agrees to convey to Buyer all attributes and benefits associated with or attributable to the Product sold to Buyer.

In no event shall Seller have the right to procure the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement or substitute such Product. Buyer shall have no obligation to receive or purchase the Product from Seller prior to the Commercial Operation Date or after the end of the Delivery Term.

2.4. Term of Agreement; Survival of Rights and Obligations.

2.4.1. The term shall commence upon the Execution Date of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Sections 10.4 or 13 of this Agreement (the "Term").

2.4.2. Notwithstanding anything to the contrary in this Agreement, the rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides survive any such termination and those that arise from Seller's or Buyer's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time before or as a result of the termination of this Agreement, including: (a) all obligations to pay in full amounts due, including under Sections 2.6, 11, 12.3, 13 and 14, (b) all obligations to post, maintain, return and release the Collateral Requirement under Section 12, (c) Seller's obligations under Sections 3.1, 3.2, 3.3 and 5.11, (d) all rights and obligations under Sections 5.4, 6, 9.2.7, and 13.8.4, and any other indemnity rights, (e) the limitations on liability set forth in Section 7, (f) all rights and obligations under Section 15, (g) all rights and obligations under Section 13.8, (h) the governing law set forth in Section 17, and (i) the dispute resolution provisions set forth in Section 18.

2.5. Delivery Term. The Seller shall deliver the Product from the Facility to Buyer for the period of Contract Years specified in the Cover Sheet ("Delivery Term"), which shall commence on the Commercial Operation Date under this Agreement and continue until the end of the last Contract Year unless terminated by the terms of this Agreement. The Commercial Operation Date shall occur only when all of the following conditions precedent have been satisfied:

2.5.1. the Facility's status as an Eligible Renewable Energy Resource is demonstrated by Seller's receipt of pre-certification from the CEC;

2.5.2. if required pursuant to Section 3.7, the Facility's status as a Qualifying Facility is demonstrated by Seller's receipt of a docket number assigned to Seller's filing of FERC Form 556;

2.5.3. as evidence of the Commercial Operation Date, the Parties shall execute and exchange the "Commercial Operation Date Confirmation Letter" attached as Appendix B;

2.5.4. Seller has provided to Buyer the Collateral Requirement specified in Section 12;

2.5.5. Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the CAISO agreement, interconnection agreement, and metering requirements in Sections 5.1 and 5.2 and has enabled Buyer to schedule the Facility with the CAISO for the Facility's full unrestricted output;

2.5.6. Seller has furnished to Buyer all insurance documents required under Section 9;

2.5.7. Seller has delivered to Buyer the first report required under Section 5.12.4;

2.5.8. Seller has satisfied all of the telemetry requirements required to be satisfied by the Commercial Operation Date under Section 5.10 and Appendix E;

2.5.9. the Demonstrated Contract Capacity has been determined in accordance with Appendix J;

2.5.10. ***[***the Demonstrated Nameplate Capacity has been determined in accordance with Appendix J; ***] [Only for Facilities with a Nameplate Capacity greater than three megawatts]***

2.5.11. Seller has provided sixty (60) days Notice prior to the Commercial Operation Date as required under Section 1.1.1;

2.5.12. Seller has delivered to Buyer any currently operative filings at FERC, including any rulings, orders or other pleadings or papers filed by FERC, concerning the qualification of the Facility as a Qualifying Facility.

2.6. Contract Price.

2.6.1. The price for Delivered Energy (the "Contract Price") is specified in the Cover Sheet.

2.6.2. ***[***In no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds one hundred ten percent (110%) of the Contract Capacity and the Contract Price for such Delivered Energy in excess of such one hundred ten percent (110%) of the Contract Capacity ("Surplus Delivered Energy") shall be adjusted to be zero dollars ($0) per kWh.***] [For all Facilities except those with a Nameplate Capacity greater than three megawatts]***

[In no event shall Buyer have any liability for, or be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds the lesser of (a) one hundred ten percent (110%) of the Contract Capacity or (b) 3 MW (the "Payment Limit"). If during any Settlement Interval, Delivered Energy exceeds the Payment Limit for that Settlement Interval ("Surplus Delivered Energy"), then the Contract Price for any Surplus Delivered Energy in excess of the Payment Limit shall be adjusted to be zero dollars ($0) per kWh for that Settlement Interval, and if there ia Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Surplus Delivered Energy ("Negative LMP Costs"). ***] [Only for Facilities with a Nameplate Capacity greater than three megawatts]***

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

2.7. Billing.

2.7.1. The amount of Product purchased by Buyer from Seller under this Agreement at the Delivery Point is determined by the meter specified in Section 5.2.1 or Check Meter, as applicable. Throughout the Delivery Term and subject to and in accordance with the terms of this Agreement, Buyer shall pay the Contract Price to Seller for the Product; provided that Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including: (a) an outage of the Facility; (b) a Force Majeure under Section 10; or (c) a reduction or curtailment of deliveries in accordance with Sections 5.8.1(a) or (b). Buyer will not be obligated to pay Seller for any Product that Seller delivers in violation of Section 5.8, including any Product Seller delivers in excess of the amount specified in any Curtailment Order.

2.7.2. For the purpose of calculating monthly payments under this Agreement, the amount recorded by the meter specified in Section 5.2.1 or Check Meter, as applicable, will be time-differentiated according to the time period and season of the receipt of the Product by Buyer from Seller, as set forth in Appendix C, and the pricing will be weighted by the Payment Allocation Factors.

2.7.3. The monthly payment will equal the sum of the sum of the monthly TOD Period payments for all TOD Periods in the month, ***[***minus (b) the Negative LMP Costs***] [Only for Facilities with a Nameplate Capacity greater than three megawatts]*** ("Monthly TOD Payment"). Each Monthly TOD Payment will be calculated pursuant to the following formula, where "n" is the TOD Period being calculated:

$$\text{TOD PERIOD}_n \text{ PAYMENT} = A \times B \times (C + D - E)$$

Where:

A = The then applicable Contract Price, in $/MWh.
B = The Payment Allocation Factor for the TOD Period being calculated.
C = The sum of Energy recorded by the meter specified in Section 5.2.1 or Check Meter, as applicable, in all hours for the TOD Period being calculated, in MWh.
D = Paid Curtailed Product
E = Any Energy produced by the Facility for which Buyer is not obligated to pay Seller as set forth in Section 2.7.1.

2.7.4. On or before the last Business Day of the calendar month immediately following each calendar month of the Delivery Term, Seller shall determine the amount of Product received by Buyer pursuant to this Agreement for each monthly period and issue an invoice showing the calculation of the payment due. Seller shall also 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. ***[***The invoices for the calendar months of March, June, September, and December of each Calendar Year shall include the Quarterly Fuel Attestation. Failure to include the applicable Quarterly Fuel Attestation with the respective monthly invoice shall render the invoice incomplete and not payable by Buyer.***] [For all Projects with a High Hazard Fuel Requirement]***

2.7.5. Buyer shall make payment of each invoice, adjusted by any amounts owed by or to Seller under this Agreement, on or before the later of the last Business Day of the month in which Buyer receives an invoice from Seller, or the tenth (10th) Business Day after receipt of the invoice; provided that Buyer shall have the right, but is not obligated, to apply any amounts due to Buyer from Seller for any charges incurred under this Agreement, for past due bills for electric service or for Buyer services, towards any amount owed to Seller under this Agreement. In the event Buyer applies any amounts due to Buyer from Seller towards an invoice issued by Seller, Buyer shall provide an explanation of the amounts Buyer has applied towards Seller's invoice.

2.7.6. 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. In the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall determine the correct amount of Product received under this Agreement during any period of inaccuracy and recompute the amount due from Buyer to Seller for the Product delivered 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 thirty (30) days of such resolution along with simple 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 simple 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 2.7.6 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made ***[***,except for invoice disputes under Section 3.3 which are waived unless the other Party is notified in accordance with this Section 2.7.6 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made***] [bracketed provision for Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]*** If an invoice is not rendered by Seller within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

2.7.7. Notwithstanding anything to the contrary in Section 2.7.5, Buyer may issue an invoice to Seller for any amount due under this Agreement. Unless explicitly stated otherwise, payment of such invoice shall be made within thirty (30) days of receipt of such invoice.

2.7.8. Unless otherwise agreed to in writing by the Parties, any payment due under this Agreement will be satisfied by issuance of a check, via Automated Clearing House transfer or via wire transfer. Notwithstanding anything to the contrary set forth in this Agreement, neither Party is obligated to make payment on any invoice until the cumulative amount due exceeds fifty dollars ($50.00), except that both Parties shall pay all amounts due pursuant to this Agreement at least once per calendar year no later than thirty (30) days after the end of the calendar year.

2.7.9. All interest paid or payable under this Agreement shall be computed as simple interest using the Interest Rate and, unless specified otherwise in this Agreement, shall be paid concurrently with the payment or refund of the underlying amount on which such interest is payable.

2.8. Title and Risk of Loss. Title to and risk of loss related to the Product from the Facility shall transfer from Seller to Buyer from the Delivery Point. Seller warrants that it will deliver to Buyer the 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.

3. BIOMETHANE TRANSACTIONS; RESOURCE ADEQUACY BENEFITS; ERR REQUIREMENTS; QUALIFYING FACILITY STATUS

3.1. Biomethane Transactions

3.1.1. For all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient renewable and environmental attributes of biomethane production and capture to ensure that there are zero (0) net emissions associated with the production of electricity from the generating facility using the biomethane.

3.1.2. For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by Law. If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.

3.2. Conveyance of Product. Throughout the Delivery Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Renewable Energy Credits, Resource Adequacy Benefits, if any, and Capacity Attributes, if any, for Buyer's benefit throughout the Delivery Term.

3.3. WREGIS. ***[WREGIS Requirements for Facilities (1) 0.5 MW or greater; and (2) eligible for a CAISO revenue meter]*** Seller shall, at its sole expense 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 Energy produced by the Facility 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 3.3.9; provided that Seller fulfills its obligations under Sections 3.3.1 through 3.3.7 below.

3.3.1. Within thirty (30) days of the Commercial Operation 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.

3.3.2. 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.

3.3.3. 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.

3.3.4. Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 2.7, Buyer shall pay an invoice payment for a given month in accordance with Section 2.7 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.3. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 2.7.

3.3.5. 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 Section 2.7 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 invoice to Buyer in accordance with Section 2.7, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller.

3.3.6. Without limiting Seller's obligations under this Section 3.3, 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.

3.3.7. If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.3 after the Execution

Date, the Parties promptly shall modify this Section 3.3 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.

3.3.8. Buyer, at its sole discretion, shall have the right to direct Seller to cause and allow Buyer to be the "Qualified Reporting Entity" and "Account Holder" (as such terms are defined by WREGIS) for the Facility.

3.3.9. 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. *[Standard term and condition that "may not be modified" pursuant to prior Commission decisions, including Decision 07-11-025, Decision 08-08-028 and Decision 10-03-021, as modified by Decision 11-01-025]*

3.3 WREGIS. ***[WREGIS Requirements for Facilities that are (1) less than 1 MW and (2) ineligible for a CAISO revenue meter.]*** With respect to WREGIS, Seller shall cause and allow Buyer to be the "Qualified Reporting Entity" and "Account Holder" (as such terms are defined by WREGIS) for the Facility within thirty (30) days after the Commercial Operation Date. ***[PG&E to use either this version of Section 3.3 or the longer version of 3.3, depending on the facility]***

3.4. Resource Adequacy Benefits.

3.4.1. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Contract Capacity, including Capacity Attributes, if any, 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").

3.4.2. If providing any Resource Adequacy, Seller shall comply with the Resource Adequacy requirements set forth in the CAISO Tariff, including Section 40 thereof, as may be changed from time to time.

3.4.3. Notwithstanding Section 3.4.4, Seller shall have the option but not the obligation to obtain Full Capacity Deliverability Status for the Project. If the Project achieves Full Capacity Deliverability Status, Seller, at its option, may make a one-time, irrevocable election to utilize the full capacity deliverability payment allocation factors set forth in Appendix C by providing Notice to Buyer of such election within sixty (60) days of achieving Full Capacity Deliverability Status (the "Full Capacity Option Notice"), which election shall be effective as specified in the definition of "Payment Allocation Factors." For avoidance of doubt, Interim Deliverability Status and Partial Capacity Deliverability Status do not qualify for Full Capacity Deliverability Status.

3.4.4. Seller shall cooperate in good faith with, and comply with unburdensome requests of, Buyer and the CAISO to enable Buyer and/or the CAISO to obtain Resource Adequacy and assign Capacity Attributes and Resource Adequacy Benefits to the Facility.

3.5. Eligible Renewable Resource. Seller shall take all actions necessary to achieve and maintain status as an Eligible Renewable Energy Resource or ERR. Within thirty (30) days after the Commercial Operation Date, Seller shall file an application or other appropriate request with the CEC for CEC Certification for the Facility. Seller shall expeditiously seek CEC Certification, including promptly responding to any requests for information from the requesting authority.

3.6. Compliance Expenditure Cap. If Seller establishes to Buyer's reasonable satisfaction that a change in Laws occurring after the Execution Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Execution Date to take all actions to comply with Seller's obligations under the Agreement with respect to obtaining and maintaining CEC Pre-Certification, CEC Certification or CEC Verification, then Seller's required out-of-pocket expenses are limited to Twenty-Five Thousand dollars ($25,000.00) in the aggregate each year of the Term ("Compliance Expenditure Cap") between the Execution Date and the last day of the Term.

3.6.1. Any actions required for Seller to comply with its obligations set forth in Section 3.6, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "Compliance Actions."

3.6.2. If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall promptly provide Notice to Buyer and documentation to demonstrate the expenses incurred up to the Compliance Expenditure Cap and such anticipated out-of-pocket expenses.

3.6.3. Buyer will have ninety (90) days to evaluate such Notice and documentation (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (a) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance Costs"), or (b) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. Notwithstanding the foregoing, if Buyer, in its sole discretion, elects to seek CPUC approval before Buyer agrees to reimburse anticipated out-of-pocket expenses that exceed the Compliance Expenditure Cap or waive Seller's obligation to take such Compliance Actions, Buyer may seek CPUC approval, during which time period Seller is not obligated to take any Compliance Actions described in the Notice.

3.6.4. If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs.

3.7. FERC Qualifying Facility Status. Seller shall take all actions, including making or supporting timely filings with the FERC necessary to obtain or maintain the Qualifying Facility status of the Facility throughout the Term; provided, however, that this obligation does not apply to the extent Seller is unable to maintain Qualifying Facility status using commercially reasonable efforts because of (a) a change in PURPA or in regulations of the FERC implementing PURPA occurring after the Execution Date, or (b) a change in Laws directly impacting the Qualifying Facility status of the Facility occurring after the Execution Date; and provided further that Seller shall not be obligated under this Section 3.7 to take any actions or make any filings to the extent that no action or filing is required by FERC to obtain, or maintain the Qualifying Facility status of the Facility.

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 are 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, or any contracts to which it is a party;

4.1.3. 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;

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 a "forward contract merchant" within the meaning of Title 11 of the United States Code (as in effect as of the Execution Date 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, or any contracts to which it is a party.

4.3. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants specified in Sections 4.1 and 4.2, Seller makes the following additional representations, warranties and covenants to Buyer, as of the Execution Date:

4.3.1. Seller has not participated in the Self-Generation Incentive Program (as defined in CPUC Decision 01-03-073) and/or other similar California ratepayer subsidized program relating to energy production (other than grants from the Electric Program Investment Charge) or rebated capacity costs with respect to the Facility and Seller does not maintain a Program Participation Request for the Project in the Renewable Market Adjusting Tariff program (as established by CPUC Decision 13-05-034).;

4.3.2. 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; *[Standard term and condition that "may not be modified" pursuant to prior Commission decisions, including Decision 07-11-025, Decision 08-08-028 and Decision 10-03-021, as modified by Decision 11-01-025]*

4.3.3. 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; *[Standard term and condition that "may not be modified" pursuant to prior Commission decisions, including Decision 07-11-025, Decision 08-08-028 and Decision 10-03-021, as modified by Decision 11-01-025]*

4.3.4. The term "commercially reasonable efforts" as used in Section 4.3.2 and 4.3.3 means efforts consistent with and subject to Section 3.6;

4.3.5. Subject to Section 3.7, throughout the Term of this Agreement, the Facility shall qualify as a Qualifying Facility.

4.3.6. Throughout the Term, Seller shall: (a) own and operate the Facility; (b) deliver the Product to Buyer to the Delivery Point free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any individual or entity; and (c) hold the rights to all of the Product;

4.3.7. Seller 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 Buyer in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement;

4.3.8. Throughout the Delivery Term: (a) Seller will not convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer; and (b) Seller will not start-up or operate the Facility per instruction of or for the benefit of any third party, except as required by other Laws or, in the case of Excess Sale arrangements, to serve any Site Host Load;

4.3.9. Seller has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement;

4.3.10. The construction of the Facility shall comply with all Laws, including applicable state and local laws, building standards, and interconnection requirements;

4.3.11. No other person or entity, including any other generating facility has any rights in connection with Seller's interconnection agreement or Seller's Interconnection Facilities and no other persons or entities shall have any such rights during the Term;

4.3.12. During the Term, Seller shall not allow any other person or entity, including any other generating facility, to use Seller's Interconnection Facilities; and

4.3.13. ***[For Pipeline Biomethane Facilities] [***The Biogas purchased for use at Seller's Facility complies with all applicable pipeline tariff rules, including, if any, quality specifications.***]***

4.3.14. ***[For Category 3 Projects that have a completed but not effective Active Interconnection Study by the Execution Date] [***An Interconnection Study has been completed for the Project prior to the Execution Date, but such Interconnection Study is not effective as of the Execution Date, and such Interconnection Study resulted in a determination that, with the identified interconnection upgrades: (a) the transmission or distribution grid that would serve as the Interconnection Point is adequate; (b) the Project meets all applicable state and local laws, building standards, and Transmission/Distribution Owner's interconnection requirements; and (c) the aggregate of all electric generating facilities on the distribution circuit would not adversely impact Transmission/Distribution Owner's operation and load restoration efforts of the electric system.***]***

[For Category 3 Projects that do not have an Active Interconnection Study by the Execution Date] [Seller shall submit a new Interconnection Study application for the Project no later than thirty (30) days from the Execution Date and Seller shall Notify PG&E of: (a) the interconnection queue position number within five (5) Business Days from receipt of such number, and (b) the Interconnection Study Completion Date no later than five (5) Business Days from the Interconnection Study Completion Date.***]***

4.4. Seller's Fuel Resource Category Representations, Warranties and Covenants.

4.4.1. Seller hereby represents, warrants and covenants to Buyer that the fuel used to generate electricity and if applicable, Useful Thermal Energy Output from the Facility to serve Site Host Load, Station Use and generate Energy for sale to Buyer ("Fuel Use") conforms and, throughout the Delivery Term, will conform to the definition of the Fuel Resource Category selected in Section A(i) of the Cover Sheet, subject to the Fuel Resource Requirements ***[Add the following bracketed language for Projects with a High Hazard Fuel Requirement: [***and the High Hazard Fuel Requirement***]]*** outlined in Section 4.4.2.

4.4.2. ***[For all Projects except Projects with a High Hazard Fuel Requirement] [***Seller hereby represents, warrants, and covenants to Buyer that, throughout the Delivery Term, at least eighty percent (80%) of Fuel Use, measured in mmBTU, during each Contract Year shall be from the Fuel Resource Category identified in Section A(i) of the Cover Sheet, and no more than twenty percent (20%) of such Fuel Use shall be from one of the other Fuel Resource Categories; provided, that if Seller has elected to use Category 2 (Dairy) as the Facility's fuel resource, Seller shall not use any other Fuel Resource Category at the Facility; provided further that all fuel used by the Facility shall meet the definition of a Fuel Resource Category as defined in this Agreement (the "Fuel Resource Requirements"). Seller shall operate the Facility in compliance with the Fuel Source Requirements during each Contract Year.***]***

[For all Projects with a High Hazard Fuel Requirement] [Seller hereby represents, warrants, and covenants to Buyer that, throughout the Delivery Term, at least eighty percent (80%) of Fuel Use, measured in Bone Dry Tons, that is delivered to the Facility and used by the Facility during each Calendar Year shall be from Fuel Resource Category 3 as identified in Section A(i) of the Cover Sheet, and no more than twenty percent (20%) of the remaining Fuel Use shall be from one of the other Fuel Resource Categories ("Fuel Resource Requirements"), as measured pursuant to Appendix L.

Sixty percent (60%) of of Fuel Use, measured in Bone Dry Tons, that is delivered to the Facility and used by the Facility during each Calendar Year, shall be from High Hazard Fuel, as measured pursuant to Appendix L ("High Hazard Fuel Requirement"). Seller shall operate the Facility in compliance with both the Fuel Resource Requirements and the High Hazard Fuel Requirement during each Calendar Year.***]***

4.4.3. ***[For all Projects except Projects with a High Hazard Fuel Requirement] [***Seller hereby represents, warrants, and covenants that no later than thirty (30) days after the last day of each Contract Year ("Annual Fuel Attestation Due Date"), Seller shall provide an attestation of the Project's compliance with the Fuel Resource Requirements for such Contract Year in the form of Appendix L ("Fuel Attestation"). For each two week period (or portion thereof) after the Annual Fuel Attestation Due Date that Seller fails to deliver to Buyer the Annual Fuel Attestation, Seller shall pay to Buyer, as liquidated damages and not as a penalty, one thousand dollars ($1,000); provided that Seller shall pay such liquidated damages for a period not to exceed one-hundred twenty (120) days after the Annual Fuel Attestation Due Date ("Annual Fuel Attestation Deadline"). The Parties acknowledge that the damages sustained by Buyer associated with Seller's failure to deliver the Annual Fuel Attestation by the Annual Fuel Attestation Due Date 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 Buyer as liquidated damages the bi-weekly amount specified in the preceding sentence which is intended to compensate Buyer for Seller's failure to perform.***]***

[For all Projects with a High Hazard Fuel Requirement] [Seller shall prove to Buyer that the Project has satisfied the Fuel Resource Requirements and High Hazard Fuel Requirement for each Calendar Year. Seller shall submit to Buyer an Annual Fuel Attestation for each Calendar Year no later than January 31st of the next Calendar Year ("Annual High Hazard Fuel Attestation Deadline") in the form of Appendix L, including the Annual Fuel Usage Log in the format provided by the Buyer (collectively, "Annual Fuel Attestation"), setting forth, among other things, the specific designated High Hazard Zones(s) from which its High Hazard Fuel was harvested and the percentage of total High Hazard Fuel delivered to the Project that came from each referenced High Hazard Zone(s). Seller shall submit to Buyer's designated recipient its Annual Fuel Attestation no later than the Annual High Hazard Fuel Attestation Deadline. Each Annual Fuel Attestation must be complete, not materially modified, and signed by an officer of the Seller. No later than the Annual High Hazard Fuel Attestation Deadline, Seller shall also obtain and provide, at Seller's sole expense, a verification from a Registered Professional Forester who shall, by his or her signature, attest to the accuracy of the source and volume of High Hazard Fuel delivered as set forth in Seller's Annual Fuel Attestation in the form of Appendix L-1 ("Verification of Fuel Source and Delivery").

4.4.3.1. <u>Failure to Submit</u>

4.4.3.1.1. If Seller has not submitted the Annual Fuel Attestation and Verification of Fuel Source and Delivery by the Annual High Hazard Fuel Attestation Deadline, Seller shall be deemed to have failed the Fuel Resource Requirement and the High Hazard Fuel Requirement during such Calendar Year and Seller shall be subject to an Event of Default pursuant to Section 13.2.2.15.

4.4.3.2. <u>Buyer's Audit Rights</u>. Buyer may reasonably rely on Seller's properly completed and timely submitted Annual Fuel Attestations as evidence of Seller's compliance with the applicable High Hazard Fuel Requirement and Fuel Resource Requirements. However, Buyer shall have the right to audit Seller's records and conduct any on-site visit to confirm Seller's compliance. Seller shall pay all reasonable expenses of Buyer in conducting such audit. Buyer shall have the right to deduct and offset the costs of conducting such audit from Seller's monthly invoices. Buyer's audit shall include, but not be limited to, Buyer's receipt and review of electronic copies of Seller's invoices for purchased fuel, including the location from which the fuel was harvested, and the records of the Registered Professional Forester who signed the Verification of Fuel Source and Delivery.***]***

4.4.4. ***[For Category 3 Projects that utilize High Hazard Fuel to meet the Fuel Resource Requirements except Projects with a High Hazard Fuel Requirement] [***Seller hereby represents, warrants, and covenants that no later than thirty (30) days after the last day of each Contract Quarter ("Quarterly Fuel Attestation Deadline"), Seller shall provide a Fuel Attestation for such Contract Quarter***]***.

[For all Projects with a High Hazard Fuel Requirement] [Seller hereby represents, warrants, and covenants that, no later than three (3) Business Days before the twenty-fifth (25th) day of the month following the last month of each Calendar Quarter ("Quarterly High Hazard Fuel Attestation Deadline"), Seller shall provide a Quarterly Fuel Attestation in the Form of Appendix L, including the Quarterly Fuel Usage Log in the format provided by the Buyer (collectively, "Quarterly Fuel Attestation") for each such Calendar Quarter.

4.4.4.1. Failure to Submit

4.4.4.1.1. If Buyer does not receive Seller's Quarterly Fuel Attestation with the applicable monthly invoice for March, June, September and/or December of each the Calendar Year, such month's invoice shall be deemed incomplete and Buyer shall not be required to pay that invoice until the Quarterly Fuel Attestation is received. Upon receipt, Seller's invoice shall be paid in the following monthly invoice cycle subject to Section 2.7.***]***

4.4.5. Seller hereby covenants that the information contained in its Annual Fuel Attestation shall be true, complete and correct. Buyer shall have the right to request and review documentation upon which Seller's Annual Fuel Attestation is based.

5. GENERAL CONDITIONS

5.1. CAISO Agreements; Interconnection Agreements; Scheduling. During the Delivery Term, Seller shall operate the Facility in compliance with the Transmission/Distribution Owner tariffs, the CAISO Tariff, and all Laws. Seller shall secure and maintain in full force all of the CAISO agreements, certifications and approvals required in order for the Facility to comply with the CAISO Tariff, including executing and maintaining, as applicable, a Participating Generator Agreement, Meter Service Agreement, interconnection agreement, and/or any other agreement necessary to deliver the Product to Buyer. Seller shall also comply with any modifications, amendments or additions to the applicable tariffs, protocols and Laws; provided that Seller shall be required to enter into a Participating Generator Agreement with the CAISO only if the Facility's net capacity is 0.5 MW or greater or if the CAISO Tariff requires or provides Seller the option to enter into such an agreement. Seller shall arrange and pay independently for any and all necessary costs under a Participating Generator Agreement, Meter Service Agreement, interconnection agreement, and/or any other agreement necessary to deliver the Product to Buyer. Ninety (90) days prior to the Commercial Operation Date, Seller must provide Buyer with all operating information, consistent with manufacturers specifications, needed for the Buyer to register the Facility with the CAISO and for Buyer to serve as Scheduling Coordinator.

5.2. Metering Requirements.

5.2.1. All output from the Project must be delivered through a single CAISO revenue meter located on the high-voltage side of the Project's final step-up transformer nearest to the Interconnection Point, and that meter must be dedicated exclusively to the Project; provided that if the CAISO does not permit a revenue meter for the Facility, the Buyer shall specify a revenue quality meter for the Facility. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter(s), or the revenue quality meter specified

by Buyer, to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project.

5.2.2. Buyer may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Facility at a location provided by Seller that is compliant with Buyer's electric service requirements. The Check Meter must be interconnected with Buyer's communication network to permit (a) periodic, remote collection of revenue quality meter data, and (b) back-up real time transmission of operating-quality meter data through the Telemetering System. In the event that Buyer elects to install a Check Meter, Buyer may compare the Check Meter data to the CAISO meter data. If the deviation between the CAISO meter data and the Check Meter data for any comparison is greater than 0.3%, Buyer may provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests. The Check Meter, if Buyer elects to install a Check Meter, is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO meter, and Check Meter data shall only be used to validate the CAISO meter data and, in the event of a failure or other malfunction of the CAISO meter, in place of the CAISO meter until such time that the CAISO meter is recertified.

5.2.3. In the case of Excess Sale arrangements, Buyer may, at its sole cost, furnish and install a net generation output meter at a location provided by Seller that is compliant with Buyer's electric service requirements. Such meter must be interconnected with Buyer's communication network to permit (a) periodic, remote collection of revenue quality meter data, and (b) back-up real time transmission of operating-quality meter data through the Telemetering System.

5.3. Meter Data. 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 readings from the CAISO Operational Meter Analysis and Reporting website and directly from the meter(s) at the Site.

5.4. Standard of Care. Seller shall: (a) maintain and operate the Facility and Interconnection Facilities, except facilities installed by Buyer, in conformance with all Laws and in accordance with Prudent Electrical Practices; (b) obtain any governmental authorizations and permits required for the construction and operation thereof; and (c) generate, schedule and perform transmission services in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs and Prudent Electrical Practices. Seller shall reimburse Buyer for any and all losses, damages, claims, penalties, or liability Buyer 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.

5.5. Access Rights.

5.5.1. 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, fuel consumption, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment, protective devices, information and documentation related to Fuel Use and the Fuel Resource Requirements, and any other pertinent information that

affects plant operations. Seller shall provide this information electronically to Buyer within twenty (20) days of Buyer's request. With respect to Fuel Use and the Fuel Resource Requirements, Buyer shall have the right to request all supporting documentation reasonably necessary to determine the accuracy and completeness of any Fuel Attestation submitted by Seller to Buyer.

5.5.2. Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice under the circumstances, 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, its tariff schedules, and rules on file with the CPUC. Buyer, its authorized agents, employees and inspectors must (a) at all times adhere to all safety and security procedures as may be required by Seller; and (b) not interfere with the operation of the Project. 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.

5.6. 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; provided that nothing in this Section 5.6 shall modify any other agreement between the Parties or applicable Law.

5.7. Performance Excuses.

5.7.1. Seller Excuses. Seller shall be excused from achieving the Guaranteed Energy Production during Seller Excuse Hours, as provided in Section 11.1.

5.7.2. Buyer Excuses. The obligation of Buyer to receive and/or pay for the Product shall be excused only (a) during periods of Force Majeure, (b) by Seller's failure to perform, or (c) as provided with respect to curtailment in Section 5.8.

5.8. Seller Curtailment.

5.8.1. Seller shall curtail the production of the Facility after receipt of: (a) direction from the CAISO directly, or from Buyer that Buyer has been instructed by the CAISO or the Transmission/Distribution Owner, to curtail Energy deliveries; (b) direction that Seller has been given a curtailment order or similar instruction in order to respond to an Emergency; (c) a Curtailment Order issued by Buyer.

5.8.2. Buyer shall have no obligation to pay Seller for any Product delivered in violation of Section 5.8 or for any Product that Seller would have been able to deliver but for the fact of a curtailment pursuant to Section 5.8.1(a) or (b). Seller shall assume all liability and reimburse Buyer for any and all costs and charges incurred by Buyer, including but not limited to CAISO Penalties, as a result of Seller delivering Energy in violation of Section 5.8.

5.8.3. Buyer shall have the right, but not the obligation, to issue to Seller a Curtailment Order. Buyer shall pay Seller the Contract Price for the Product Seller would have been able to deliver but for the fact that Buyer issued a Curtailment Order ("Paid Curtailed Product"); provided, Buyer shall have no obligation to pay Seller the Contract Price for any Product that, if delivered would have been Surplus Delivered Energy, and any such Product shall not be Paid Curtailed Product.

5.8.4. Buyer shall estimate the amount of Product the Facility would have been able to deliver under Section 5.8.3 by reference to the most recent Notice of forecasted Expected Generation Output Buyer has received from Seller at the time of the Curtailment Order. In the event this forecast is not representative of past performance of the Facility, Buyer shall apply accepted industry standards in making such an estimate and take into consideration past performance of the Facility and any other relevant information. Seller shall cooperate with Buyer's requests for information associated with any estimate made hereunder.

5.9. Forecasting and Outage Notifications. Seller shall comply with the forecasting and outage notifications in Appendix D.

5.10. Telemetry Requirements. Seller shall comply with the telemetry requirements in Appendix E.

5.11. Greenhouse Gas Emissions. 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.

5.12. Reporting and Record Retention.

5.12.1. Seller shall use commercially reasonable efforts to meet the Seller Milestone Schedule set forth in the Cover Sheet and avoid or minimize any delays in meeting such schedule. Seller shall provide Project development status reports in a format and a frequency, which shall not exceed one (1) report per month, specified by the Buyer. The report shall describe Seller's progress relative to the development, construction, and startup of the Facility, as well as a Notice of any anticipated change to the Commercial Operation Date and whether Seller is on schedule to meet the Guaranteed Commercial Operation Date.

5.12.2. Seller shall within ten (10) Business Days of receipt thereof provide to Buyer copies of any Interconnection Study or the interconnection agreement tendered to Seller by the CAISO or the Transmission/Distribution Owner and all other material reports, studies and analyses furnished by the CAISO or any Transmission/Distribution Owner, and any correspondence with the CAISO or Transmission/Distribution Owner related thereto, concerning the interconnection of the Facility to the Transmission/Distribution Owner's electric system or the transmission of Energy on the Transmission/Distribution Owners' electric system. Concurrently with the provision of any Interconnection Study or the interconnection agreement tendered to Seller by the CAISO or the Transmission/Distribution Owner that may give rise to a termination right of Buyer under Section 13.9.1, Seller shall provide Buyer a Notice of its irrevocable election to exercise or not exercise its rights under Section 13.9.2, with a failure to provide such an election deemed to be an election not to exercise such rights.

5.12.3. No later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, Seller shall provide a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other documentation of such WMDVBEs' status as such and the aggregate amount paid to WMDVBEs during such period.

5.12.4. Seller shall provide to Buyer on the Commercial Operation Date, and within thirty (30) days after the completion of each Contract Year thereafter during the Delivery Term, an

inspection and maintenance report regarding the Facility. Buyer shall provide to the Seller a form inspection and maintenance report before the Commercial Operation Date and Seller shall complete the form inspection and maintenance report. Buyer, at its sole discretion, may modify the form inspection and maintenance report to be used in subsequent Contract Years during the Delivery Term.

5.12.5. Seller shall keep all operating records required of a Qualifying Facility by any applicable CPUC order as well as any additional information that may be required of a Qualifying Facility in order to demonstrate compliance with all applicable standards which have been adopted by the CPUC.

5.12.6. If the Facility is a "qualifying cogeneration facility" as contemplated in 18 CFR Section 292.205, then within thirty (30) days following the end of each calendar year, and within thirty (30) days following the end of the Delivery Term, Seller shall provide to Buyer:

5.12.6.1. A copy of a FERC order waiving for the Facility, the applicable operating and efficiency standards for qualifying cogeneration facilities for the applicable year; or

5.12.6.2. A completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form," substantially in the form of Appendix K-1, with calculations and verifiable supporting data, which demonstrates the compliance of the Facility with cogeneration Qualifying Facility operating and efficiency standards set forth in 18 CFR Section 292.205 "Criteria for Qualifying Cogeneration Facilities," for the applicable year.

5.12.7. If the Facility is a "qualifying small power production facility" as contemplated in 18 CFR Sections 292.203(a), 292.203(c) and 292.204, then within thirty (30) days following the end of each year, and within thirty (30) days following the end of the Delivery Term, Seller shall provide to Buyer:

5.12.7.1. A copy of a FERC order waiving for the Facility, the applicable operating and fuel use standards for qualifying small power production facilities for the applicable year; or

5.12.7.2. A completed copy of Buyer's "Fuel Use Standards – Small Power Producer Data Reporting Form," substantially in the form of Appendix K-2, with calculations and verifiable supporting data, which demonstrates the compliance of the Facility with small power producer Qualifying Facility fuel use standards set forth in 18 CFR Section 292.204 "Criteria for Qualifying Small Power Production Facilities," for the applicable year.

5.13. Tax Withholding Documentation. Upon Buyer's request, Seller shall promptly provide to Buyer Internal Revenue Service tax Form W-9 and California tax Form 590 (or their equivalent), completed with Seller's information, and any other documentation necessary for Buyer to comply with its tax reporting or withholding obligations with respect to Seller.

5.14. Modifications to Facility. From the Execution Date and throughout the Delivery Term, Seller shall not repower or materially modify or alter the Facility without the written consent of Buyer, which written consent is at Buyer's sole discretion. Material modifications or alterations include, but are not limited to, (a) movement of the Site, (b) changes that may increase or decrease the expected output of the Facility (other than a one (1) time decrease based upon any adjustment to the Contract Capacity based on the Demonstrated Contract Capacity), (c) changes that may affect the generation profile of the Facility, (d) changes that may affect the

ability to accurately measure the output of Product from the Facility and (e) changes that conflict with elections, information or requirements specified elsewhere in this Agreement (other than, to the extent not covered by clauses (a) through (d), as specified in the Cover Sheet). Material modifications or alterations do not include maintenance and repairs performed in accordance with Prudent Electrical Practices. Seller shall provide to Buyer Notice not less than ninety (90) days before any proposed repowering, modification or alteration occurs describing the repowering, modification or alteration to Buyer's reasonable satisfaction and, if subject to Buyer's consent pursuant to this Section 5.14, seeking Buyer's written consent.

5.15. No Additional Incentives. Seller agrees that during the Term of this Agreement it shall not seek additional compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, Buyer's net energy metering tariff, or other similar California ratepayer subsidized program relating to energy production with respect to the Facility (other than grants from the Electric Program Investment Charge).

5.16. Site Control. Seller shall have Site Control as of the earlier of: (a) the Commercial Operation Date; or (b) any date before the Commercial Operation Date to the extent necessary for the Seller to perform its obligations under this Agreement and, in each case, Seller shall maintain Site Control throughout the Term. Seller shall promptly provide Buyer with Notice if there is any change in the status of Seller's Site Control.

5.17. Safety Plan. Seller shall provide to Buyer, prior to commencement of any construction activities on the Site, a report from an independent engineer (acceptable to both Buyer and Seller) certifying that Seller has a written plan for the safe construction and operation of the Facility in accordance with Prudent Electrical Practices.

6. INDEMNITY

6.1. Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, and employees of such other Party against and from any and all loss and liability (including reasonable attorneys' fees) for injuries to persons, including employees of either Party, and physical damage to property, including property of either Party, resulting from or arising out of: (a) the engineering, design, construction, maintenance, or operation of the indemnitor's facilities; (b) the installation of replacements, additions, or betterments to the indemnitor's facilities; or (c) the negligence or willful misconduct of the indemnitor relating to its obligation under this Agreement. 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 attorneys' fees that may be incurred by the other Party in enforcing this indemnity.

6.2. Each Party shall defend, save harmless and indemnify the other Party, its directors, officers, employees, and agents, assigns, and successors in interest, for and against any penalty imposed upon the Party to the extent caused by the other Party's failure to fulfill its obligations under this Agreement.

6.3. Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss and liability (including reasonable attorneys' fees) in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in this Agreement.

7. 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 6 (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.

8. NOTICES

Notices (other than forecasts, scheduling requests and curtailment (or equivalent) instructions) 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). Notices of curtailment (or equivalent orders) may be oral, written or electronic and must be made in accordance with accepted industry practices for such notices. 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 on the next Business Day after such Notice is 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 Notices, requests, invoices, statements or payments for this Facility must reference this Agreements identification number. Notices shall be provided as indicated in the Cover Sheet.

9. INSURANCE

9.1. Insurance Coverage. Seller shall, at its own expense, starting on the Execution Date and until the end of the Term, and for such additional periods as may be specified below, provide and maintain in effect the following insurance policies and minimum limits of coverage as specified below, and such additional coverage as may be required by Law, with insurance companies authorized to do business in the state in which the services are to be performed, with an A.M. Best's Insurance Rating of not less than A-:VII.

9.1.1. Commercial general liability insurance, written on an occurrence, not claims-made basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, contractual liability, premises-operations, owners and contractors protective, hazard, explosion, collapse and underground. Such insurance must bear a combined single limit per occurrence and annual aggregate of not less than one million dollars ($1,000,000.00), exclusive of defense costs, for all coverages. Such insurance must contain standard cross-liability and severability of interest provisions. If Seller elects, with Buyer's written concurrence, to use a "claims made" form of

commercial general liability insurance, then the following additional requirements apply: (a) the retroactive date of the policy must be prior to the Execution Date; and (b) either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates. Governmental agencies which have an established record of self-insurance may provide the required coverage through self-insurance.

9.1.2. Workers' compensation insurance with statutory limits, as required by the state having jurisdiction over Seller's employees, and employer's liability insurance with limits of not less than: (a) bodily injury by accident - one million dollars ($1,000,000.00) each accident; (b) bodily injury by disease - one million dollars ($1,000,000.00) policy limit; and (c) bodily injury by disease - one million dollars ($1,000,000.00) each employee.

9.1.3. Commercial automobile liability insurance covering bodily injury and property damage with a combined single limit of not less than one million dollars ($1,000,000.00) per occurrence. Such insurance must cover liability arising out of Seller's use of all owned, non-owned and hired automobiles in the performance of the Agreement.

9.1.4. Umbrella/excess liability insurance, written on an occurrence, not claims-made basis, providing coverage excess of the underlying employer's liability, commercial general liability, and commercial automobile liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than four million dollars ($4,000,000.00) per occurrence and in the annual aggregate.

9.2. Additional Insurance Provisions.

9.2.1. On or before the later of (a) sixty (60) days after the Execution Date and (b) the date immediately preceding commencement of construction of the Facility, and again within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to Buyer. Notwithstanding the foregoing sentence, Seller shall in no event furnish Buyer certificates of insurance evidencing required coverage later than the Commercial Operation Date. All deductibles, co-insurance and self-insured retentions applicable to the insurance above must be paid by Seller. All certificates of insurance must note that the insurers issuing coverage must endeavor to provide Buyer with at least thirty (30) days' prior written notice in the event of cancellation of coverage. Buyer's receipt of certificates that do not comply with the requirements stated in this Section 9.2.1, or Seller's failure to provide such certificates, do not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 9 and do not constitute a waiver of any of the requirements of Section 9.

9.2.2. Insurance coverage described above in Section 9.1 shall provide for thirty (30) days written Notice to Buyer prior to cancellation, termination, alteration, or material change of such insurance.

9.2.3. Evidence of coverage described above in Section 9.1 shall state that coverage provided in primary and is not excess to or contributing with any insurance or self-insurance maintained by Buyer.

9.2.4. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

9.2.5. All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance must be issued, clearly labeled with this Agreement's identification number and submitted in accordance with Section 8 and the Cover Sheet.

9.2.6. The insurance requirements set forth in Section 9.1 will apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The commercial general liability insurance required in Section 9.1.1 and the umbrella/excess liability insurance required in Section 9.1.4 must name Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, use or ownership of the Facility.

9.2.7. Seller shall remain liable for all acts, omissions or default of any subcontractor or subsupplier and shall indemnify, defend and hold harmless Buyer for any and all loss or damages, as well as all costs, charges and expenses which Buyer may suffer, incur, or bear as a result of any acts, omissions or default by or on behalf of any subcontractor or subsupplier.

9.2.8. If Seller fails to comply with any of the provisions of this Section 9, Seller, among other things and without restricting Buyer's remedies under Law or otherwise, shall, at its own cost, act as an insurer and provide insurance in accordance with the terms and conditions of this Section 9. With respect to the required commercial general liability insurance set forth in Section 9.1.1, umbrella/excess liability insurance set forth in Section 9.1.4, and commercial automobile liability insurance set forth in Section 9.1.3, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer with an A.M. Best's Insurance Rating of A-:VII would have, had the insurance been maintained in accordance with the terms and conditions set forth in this Section 9 and given the required additional insured wording in the commercial general liability insurance and umbrella/excess liability insurance, and standard "Who is an Insured" provision in commercial automobile liability form.

10. FORCE MAJEURE

10.1. No Default for Force Majeure. Neither Party shall be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure. Nothing in this Section 10 shall relieve the Seller of the obligation to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as may be extended pursuant to Section 1.1.

10.2. Requirements Applicable to Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

10.2.1. The Claiming Party, on or before the fourteenth (14th) day after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

10.2.2. The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

10.3. Limitations. The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

10.4. Termination. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with the Claiming Party's ability to perform its obligations under this Agreement and which (a) extends for more than 365 consecutive days, (b) extends for more than a total of 365 days in any consecutive 540-day period, or (c) causes the Commercial Operation Date to fail to be demonstrated by the Guaranteed Commercial Operation Date.

11. GUARANTEED ENERGY PRODUCTION

11.1. General. 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 (including, for purposes of this Section 11, Paid Curtailed Product), as measured in MWh, equal to the product of (x) and (y), where (x) is one hundred eighty percent (180%) of the average of the Contract Quantity over the Performance Measurement Period and (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 = 180% × average of the Contract Quantity over the Performance Measurement Period in MWh) × [(Hrs in Performance Measurement Period - Seller Excuse Hrs) / Hrs in Performance Measurement Period]

11.2. GEP Failures. If Seller has a GEP Failure, then within ninety (90) days after the last day of the last month of such Performance Measurement Period, Buyer shall notify Seller of such failure. Seller shall cure the GEP Failure by delivering to Buyer GEP Damages, calculated pursuant to Appendix F, within thirty (30) days of receipt of the Notice.

11.3. GEP Damages. 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.

12. CREDIT AND COLLATERAL REQUIREMENTS

12.1. Collateral Requirement. On or before the thirtieth (30th) day following the Execution Date, Seller shall post and thereafter maintain a collateral requirement (the "Collateral

Requirement") as designated in the Cover Sheet. The Collateral Requirement will be held by Buyer and must be in the form of either a cash deposit or Letter of Credit.

12.2. Maintenance of Collateral Requirement. The Collateral Requirement shall be posted to Buyer and maintained at all times from the thirtieth (30th) day following the Execution Date through the end of the Term and thereafter until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed one year following the end of the Term. In the event that Buyer draws on the Collateral Requirement pursuant to this Agreement, Seller shall promptly replenish such Collateral Requirement to the amount specified in Section 12.1, as may be adjusted pursuant to Section 12.3.

12.3. Forfeiture Based on Capacity. If, on the earlier of the Commercial Operation Date or the Guaranteed Commercial Operation Date, Seller:

12.3.1. is not capable of delivering any of the Contract Capacity to the Delivery Point, as determined by Buyer in its reasonable discretion, Seller shall forfeit, and Buyer shall be entitled to, the entire Collateral Requirement and Buyer may terminate this Agreement; or

12.3.2. is only capable of delivering a portion of the Contract Capacity to the Delivery Point, based on the Demonstrated Contract Capacity, Seller shall forfeit, and Buyer shall have the right to retain, a portion of the Collateral Requirement equal to the product of (a) twenty thousand dollars ($20,000.00), multiplied by (b) the Contract Capacity set forth in Section 2.1 less the Demonstrated Contract Capacity.

12.4. Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Collateral Requirement, 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 Collateral Requirement posted with Buyer in the form of cash or Letter of Credit 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 (30) days of the delivery of the Collateral Requirement, 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 Collateral Requirement and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of an Event of Default, an Early Termination Date or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Collateral Requirement, Buyer may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to the Collateral Requirement, as applicable, including any such rights and remedies under Law then in effect; (b) exercise its rights of setoff against any and all property of Seller in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit or retain any cash deposit; and (d) liquidate the Collateral Requirement 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.

12.5. Use of Collateral Requirement. Buyer shall be entitled to draw upon the Collateral Requirement for any damages arising upon Buyer's declaration of an Early Termination Date or as set forth in Sections 12.3.1 and 12.3.2. If Buyer terminates this Agreement and is entitled to draw upon the Collateral Requirement, any amount of Collateral Requirement that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer.

12.5.1. Return of Collateral Requirement. Buyer shall return the unused portion of the Collateral Requirement, including the payment of any interest due thereon to Seller promptly after the following has occurred: (a) the Term of the Agreement has ended, or an Early Termination Date has occurred, as applicable; and (b) all payment obligations of the Seller arising under this Agreement, including but not limited to payments pursuant to the Settlement Amount, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

12.5.2. Full Return of Collateral Requirement. Notwithstanding the foregoing, the full Collateral Requirement will be returned to Seller if this Agreement is terminated in accordance with Section 10.4 or 13.10; provided that a termination under Section 10.4 only entitles Seller to a return of the full Collateral Requirement if the termination is based on a Force Majeure that prevents the Commercial Operation Date from occurring on or before the Guaranteed Commercial Operation Date or prevents Seller from demonstrating full Contract Capacity in accordance with Appendix J.

12.5.3. Payment of Interest. Buyer shall pay simple interest on cash held to satisfy the Collateral Requirements at the rate and in the manner set forth in Section 2.7.9.

12.6. Letter of Credit.

12.6.1. If Seller has provided a Letter of Credit to satisfy the Collateral Requirement, 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 (a) fails to maintain a Credit Rating of at least (i) an A3 by Moody's with a stable designation and at least an A- by S&P with a stable designation, if the issuer is rated by both Moody's and S&P, or (ii) an A3 by Moody's with a stable designation or an A- by S&P with a stable designation, if the issuer is rated by either Moody's or S&P but not both, (b) indicates its intent not to renew such Letter of Credit or has not renewed such Letter of Credit at least twenty-five (25) Business Days prior to its expiration, or (c) 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 Section 12.6.1.1 or 12.6.1.2 below in an amount equal to the Collateral Requirement, and by completing the action within three (3) Business Days of the applicable event (all of which is considered the "Cure"):

12.6.1.1. 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

12.6.1.2. 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 Collateral Requirements of Section 12. If a Letter of Credit has not been renewed at least twenty (20) Business Days prior to its scheduled expiration, Buyer may draw on the Letter of Credit for the full amount of the Collateral Requirement.

12.6.2. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

13. EVENTS OF DEFAULT AND TERMINATION

13.1. Termination. Unless terminated earlier pursuant to Section 10.4 or this Section 13, this Agreement automatically terminates immediately following the last day of the Delivery Term.

13.2. Events of Default. An "Event of Default" means, with respect to a Party, the occurrence of any of the following:

13.2.1. With respect to either Party:

13.2.1.1. A Party becomes Bankrupt;

13.2.1.2. Except for an obligation to make payment when due, if there is a failure of a Party 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 thirty (30) days after Notice thereof from the non-breaching Party to the breaching Party;

13.2.1.3. A 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 from the non-breaching Party to the breaching Party; or

13.2.1.4. Any representation or warranty made by a Party (a) is false or misleading in any material respect when made or (b) becomes false or misleading in any material respect during the Term; provided that the representations and warranties made by Seller in Sections 4.3.2 or 4.3.3 shall be subject to Section 4.3.4.

13.2.2. With respect to Seller:

13.2.2.1. Seller fails to take all corrective actions specified in any Buyer Notice, within the time frame set forth in such Notice, that the Facility is out of compliance with any term of this Agreement; provided that if such corrective action falls under a specific termination right under Section 13.2.2, then the time frame, if any, set forth for such right shall apply;

13.2.2.2. The Facility has not achieved Commercial Operation by the Guaranteed Commercial Operation Date;

13.2.2.3. Subject to Section 10, Seller has not sold or delivered Product greater than 10% of the applicable Contract Quantity from the Facility to Buyer for a period of twelve (12) consecutive months;

13.2.2.4. Subject to Section 3.6, Seller fails to maintain its status as an ERR as set forth in Section 3.5 of the Agreement;

13.2.2.5. Subject to Section 3.7, the Facility fails to maintain its status as a Qualifying Facility;

13.2.2.6. Seller fails to post and maintain the Collateral Requirements pursuant to Section 12 and such failure is not cured within any applicable cure period;

13.2.2.7. Seller abandons the Facility;

13.2.2.8. Seller installs generating equipment at the Facility that exceeds the Contract Capacity and such excess generating capacity is not removed within five (5) Business Days after Notice from Buyer;

13.2.2.9. Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Product that was not generated by the Facility;

13.2.2.10. Seller fails to install any of the equipment or devices necessary for the Facility to satisfy the Contract Capacity of the Facility, as set forth in Section 12.3.1;

13.2.2.11. An unauthorized assignment of the Agreement, as set forth in Section 16;

13.2.2.12. Seller fails to reimburse Buyer any amounts due under this Agreement;

13.2.2.13. Seller breaches the requirements in Section 5.15 regarding incentives.

13.2.2.14. ***[For all Projects except Projects with a High Hazard Fuel Requirement]*** ***[***Seller breaches any of the representations, warranties and/or covenants contained in Section 4.4 or otherwise fails to comply with the Fuel Resource Requirements ("Fuel Resource Failure") in any Contract Year as determined by Buyer, based on: (a) the Annual Fuel Attestation and supporting documentation therefor, requested and received by Buyer, if any, (b) Buyer's inspection of the Facility, or (c) Buyer's reasonable determination that the information contained in any Annual Fuel Attestation does not reflect the actual Fuel Use at the Facility for the prior Contract Year; provided, that Seller may cure such Event of Default according to the requirements set forth in Appendix M of this Agreement; provided, further, that if such Event of Default occurs three times during the Delivery Term, Buyer shall have the right to declare an Event of Default and terminate this Agreement upon the third occurrence of such Event of Default, and Seller shall not have the ability to cure as described in Appendix M. For the avoidance of doubt, Category 2 (Dairy) Facilities do not have an opportunity to cure Fuel Resource Failures;***]***

[For all Projects with a High Hazard Fuel Requirement] ***[***Seller breaches any of the representations, warranties and/or covenants contained in Section 4.4 or otherwise fails to comply with the Fuel Resource Requirements or High Hazard Fuel Requirement ("Fuel Resource Failure") in any Calendar Year, as determined by Buyer, based on (a) the Annual Fuel Attestation, the Verification of Fuel Source and Delivery and supporting documentation therefor, requested and received by Buyer, (b) Buyer's inspection or audit of the Facility, or (c) Buyer's reasonable determination that the information contained in any Annual Fuel Attestation does not reflect the actual Fuel Use at the Facility for the applicable Calendar Year pursuant to Section 4.4.2. In the event of such a breach, Seller shall be subject to a Termination Payment pursuant to Sections 13.3 and 13.5.***]***

13.2.2.15. ***[For all Projects except Projects with a High Hazard Fuel Requirement]*** ***[***Seller fails to submit to Buyer the Annual Fuel Attestation on or before the Annual Fuel Attestation Deadline;***] [For all Projects with a High Hazard Fuel Requirement]*** Seller fails to submit to Buyer the Annual Fuel Attestation and the Verification of Fuel Source and Delivery on or before the Annual High Hazard Fuel Attestation Deadline. In the event of such a breach, Seller shall be subject to a Termination Payment pursuant to Sections 13.3 and 13.5.***]***

13.2.2.16. Seller uses a fuel resource to generate electricity and if applicable, Useful Thermal Energy Output from the Facility that is not one of the Fuel Resource Categories.

13.2.2.17. ***[For Category 3 Projects that do not have an effective Active Interconnection Study prior to the Execution Date] [***Seller fails to submit a new Interconnection Study application for the Project pursuant to Section 4.3.15.***]***

13.2.2.18. ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date] [***Seller's Interconnection Study for the Project has determined that, with the identified interconnection upgrades: (a) the transmission or distribution grid that would serve as the Interconnection Point is inadequate; (b) the Project does not meet all applicable state and local laws, building standards, and Transmission/Distribution Owner's interconnection requirements; or (c) the aggregate of all electric generating facilities on the distribution circuit would adversely impact Transmission/Distribution Owner's operation and load restoration efforts of the electric system.***]***

13.2.2.19. ***[For Projects with a Nameplate Capacity greater than three megawatts][***The Facility's Demonstrated Nameplate Capacity is greater than the lesser of (a) the Nameplate Capacity and (b) five thousand (5,000) kW.***]***

13.3. Declaration of an Event of Default. ***[For all Projects except Projects with a High Hazard Fuel Requirement] [***Except as otherwise set forth in Section 13.2.2.14 above, if an Event of Default has occurred, the non-defaulting Party shall have the right to: (a) send Notice, designating a day, no earlier than five (5) days after such Notice and no later than twenty (20) days after such Notice, 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) collect any Settlement Amount under Section 13.5; and (e) if the defaulting party is the Seller and Buyer terminates the Agreement prior to the start of the Commercial Operation Date, Buyer shall have the right to retain (or if the Collateral Requirement has not been provided, collect) the entire Collateral Requirement.***]***

[For all Projects with a High Hazard Fuel Requirement] [If an Event of Default has occurred, the non-defaulting Party shall have the right to: (a) send Notice, designating a day, no earlier than five (5) days after such Notice and no later than twenty (20) days after such Notice, 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) collect any Termination Payment under Section 13.5; and (e) if the defaulting party is the Seller and Buyer terminates the Agreement prior to the start of the Commercial Operation Date, Buyer shall have the right to retain (or if the Collateral Requirement has not been provided, collect) the entire Collateral Requirement.***]***

13.4. Release of Liability for Termination.

13.4.1. Upon termination of this Agreement, neither Party shall be under any further obligation or subject to liability hereunder, except as provided in Section 2.4.2.

13.4.2. If an Event of Default shall have occurred, the non-defaulting Party has the right to immediately suspend performance under this Agreement and pursue all remedies available at Law or in equity against the defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

13.5. Calculation of Settlement Amount *[*and Termination Payment*] [For all Projects with a High Hazard Fuel Requirement]*.

13.5.1. *[For all Projects except Projects with a High Hazard Fuel Requirement] [*If either Party exercises a termination right under Section 13 after the Commercial Operation Date, the non-defaulting Party shall calculate a Settlement Amount determined as of the Early Termination Date. Prior to the Commercial Operation Date, the Settlement Amount shall be Zero dollars ($0).*]*

*[For all Projects with a High Hazard Fuel Requirement] [*If either Party exercises a termination right under Section 13 after the Commercial Operation Date, the non-defaulting Party shall calculate a termination payment in US dollars equal to the sum of (a) and (b), and, if Seller is the defaulting party, (c) ("Termination Payment"), where (a) equals the Settlement Amount, (b) equals 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, and (c) equals the Fuel Use Default Payment as described in Section 13.5.1.1, determined as of the Early Termination Date. Prior to the Commercial Operation Date, the Termination Payment shall be zero dollars ($0).

13.5.1.1. Fuel Use Default Payment. If Seller is the defaulting Party, then Seller shall pay Buyer an amount that compensates Buyer for Buyer's overpayment for Product resulting from the Seller's failure to meet the High Hazard Fuel Requirement or Fuel Resource Requirements during the applicable Calendar Year(s) ("Fuel Use Default Payment"). The Fuel Use Default Payment is calculated by the number of MWhs of Delivered Energy and Paid Curtailed Product provided by the Seller to Buyer from January 1 of the applicable Calendar Year(s) to the Early Termination Date multiplied by the difference between (a) $199.72/MWh adjusted for TOD Factors and (b) the Contract Price adjusted for TOD Factors. In the event Seller fails to pay the Fuel Use Default Payment when due, Buyer may deduct and offset the Fuel Use Default Payment from the posted Collateral Requirement.*]*

13.5.2. If the non-defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, determined as of the Early Termination Date, the Settlement Amount shall be Zero dollars ($0).

13.5.3. The Buyer shall not have to enter into replacement transactions to establish a Settlement Amount.

13.6. Rights and Remedies Are Cumulative. The rights and remedies of the Parties pursuant to this Section 13 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

13.7. 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.

13.8. Right of First Refusal.

13.8.1. If Seller terminates this Agreement, as provided in Sections 13.10 or 10.4 (based on a Force Majeure as to which Seller is the Claiming Party), or if Buyer terminates this Agreement as provided in Sections 13.2.2.2 and 12.3.1, or due to an Event of Default of

Seller prior to the Guaranteed Commercial Operation Date, neither Seller nor Seller's Affiliates may sell, or enter into a contract to sell, Energy, Renewable Energy Credits, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to a party other than Buyer for a period of two (2) years following the effective date of such termination ("Restricted Period").

13.8.2. This prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than Buyer, Seller or Seller's Affiliate provides Buyer with a written offer to sell the Energy, Renewable Energy Credits, Capacity Attributes and Resource Adequacy Benefits to Buyer at the Contract Price and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and Buyer fails to accept such offer within forty-five (45) days after Buyer's receipt thereof.

13.8.3. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site of the proposed Facility (including the interconnection queue position identified in the Cover Sheet) during the Restricted Period so long as the limitations contained in this Section 13.8 apply, unless the transferee agrees to be bound by the terms set forth in this Section 13.8 pursuant to a written agreement reasonably approved by Buyer.

13.8.4. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach of the covenants contained within this Section 13.8.

13.9. Transmission Costs Termination Right.

13.9.1. Subject to Section 13.9.2, Buyer has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on or before the date that is sixty (60) days after Seller provides to Buyer the results of any Interconnection Study or the interconnection agreement tendered to Seller by the CAISO or the Transmission/Distribution Owner if:

13.9.1.1. Such study or agreement as of the date of the termination Notice estimates, includes, indicates, specifies or reflects that the maximum total cost of transmission upgrades or new transmission facilities to any Transmission/Distribution Owner, including costs reimbursed by any Transmission/Distribution Owner to Seller ("Aggregate Network Upgrade Costs"), may in the aggregate exceed Three Hundred Thousand dollars ($300,000.00) ("Network Upgrades Cap"), irrespective of any subsequent amendment of such study or agreement or any contingencies or assumptions upon which such study or agreement is based; or

13.9.1.2. Buyer must procure transmission service from any other Transmission/Distribution Owner to allow Buyer to Schedule Energy from the Facility and the cost of such transmission service is not reimbursed or paid by Seller.

13.9.2. Notwithstanding Section 13.9.1.1, Buyer shall have no right to terminate this Agreement under Section 13.9.1, if Seller (a) concurrently with its provision of the relevant Interconnection Study or interconnection agreement pursuant to Section 5.12.2, irrevocably agrees, as applicable, to pay to Buyer for (i) the amount which Aggregate Network Upgrade Costs exceed the Network Upgrades Cap ("Excess Network Upgrade Costs"), such payment to be made, at Buyer's election, either directly to the Transmission/Distribution Owner on behalf of Seller or to Buyer for transfer to the Transmission/Distribution Owner at the time due, and (ii) any costs for transmission services specified in Section 13.9.1.2, and (b) enters into an interconnection agreement agreed to by PG&E that contains language

requiring Seller to pay, without reimbursement from Buyer or any other Transmission/Distribution Owner, all Excess Network Upgrade Costs; provided that Buyer shall have a separate right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on or before the date that is ninety (90) days after FERC, CAISO, or any Transmission/Distribution Owner, as applicable, rejects Seller's interconnection agreement, in whole or in part, or modifies Seller's interconnection agreement, in any such case, in a manner that would make Seller unable to comply with the terms of Section 13.9.2(b). If Seller elects to pay, without reimbursement, for any Excess Network Upgrade Costs pursuant to this Section 13.9.2, in no event shall Seller have any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights (as defined in the CAISO Tariff) in connection with the development of the Facility or the delivery of Product to Buyer pursuant to this Agreement.

13.10. Permit Termination Right. Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if Seller has not obtained permits necessary for the construction and operation of the Project within twenty-two (22) months after the Execution Date ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date*:** Interconnection Study Completion Date***]*** and a Notice of termination is given on or before the end of the twenty-third (23rd) month after the Execution Date ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date*:** Interconnection Study Completion Date***]***; provided that prior to any termination by Seller under this Section 13.10, Seller must have taken all commercially reasonable actions (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to obtain such permits.

14. SCHEDULING COORDINATOR; FORECASTING PENALTIES; CAISO CHARGES; GOVERNMENTAL CHARGES

14.1. Scheduling Coordinator. Buyer shall be Seller's designated Scheduling Coordinator (as defined by CAISO Tariff). Seller shall comply with all forecasting and outage notification requirements in Appendix D. Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling and imbalances except as provided in Sections 5.8.2, 14.2 and 14.3. Throughout the Delivery Term, Buyer shall be entitled to all CAISO revenues and credits associated with the Project.

14.2. Forecasting Penalties and CAISO Penalties. Seller is liable for Forecasting Penalties and CAISO Penalties under the following circumstances:

14.2.1. Determining Seller's Liability for Forecasting Penalties. If in any hour of any month in the Delivery Term Seller fails to comply with the requirements in Appendix D of this Agreement with respect to Seller's Expected Generation Output forecasting, and the sum of Energy Deviations for each of the Settlement Intervals in that hour exceed the Performance Tolerance Band described in Section 14.2.2, then Seller is liable for a forecasting penalty ("Forecasting Penalty") equal to one hundred fifty percent (150%) of the Contract Price for each MWh of electric Energy Deviation, or any portion thereof, in that hour.

14.2.2. Performance Tolerance Band. The "Performance Tolerance Band," in MWh, is equal to: (a) three percent (3%) times; (b) Contract Capacity times; (c) one (1) hour.

14.2.3. Seller's Liability for CAISO Penalties. Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller's failure to adhere to its obligations under the CAISO Tariff or any CAISO directive or to perform any covenant or obligation set forth in this Agreement.

14.2.4. Availability Charges. If the Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

14.2.5. 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 reimburse Seller for such Governmental Charges within thirty (30) days of Notice by Seller. 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 reimburse Buyer for such amounts within thirty (30) days of Notice from Buyer. 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.

15. RELEASE OF INFORMATION AND RECORDING CONVERSATION

15.1. Release of Information. Seller authorizes Buyer to release to the FERC, CEC, the CPUC and/or other Governmental Authority information regarding the Facility, including the Seller's name and location, and the size, location and operational characteristics of the Facility, the Term, the ERR type, the Commercial Operation Date, greenhouse gas emissions data and the net power rating of the Facility, as requested from time to time pursuant to the CEC's, CPUC's or applicable Governmental Authority's rules and regulations.

15.2. 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 14.1 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.

16. ASSIGNMENT

16.1. General Assignment. Except as provided in Sections 16.2 and 16.3, 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 (a) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) the transferring Party delivers evidence satisfactory to the non-transferring Party of the

proposed assignee's technical and financial capability to meet or exceed such characteristics in the assigning Party's obligations hereunder and (d) 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 16.2, 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 with at least thirty (30) days' prior written Notice of the assignment. Appendix H is the General Consent to Assignment form that shall be used for this Section 16.1.

16.2. 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) with the prior written consent of the Buyer, which consent shall not be unreasonably withheld or delayed. The Parties agree that, the consent provided to Buyer in accordance with this Section 16.2 shall be in a form substantially similar to the Form of Financing Consent attached hereto as Appendix I; provided that (a) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix I, including extension of any cure periods or additional remedies for financing providers, and (b) Seller shall be responsible at Buyer's request for Buyer's reasonable costs and attorneys' fees associated with the review, negotiation, execution and delivery of documents in connection with such assignment.

16.3. 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).

17. 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. *[Standard term and condition that "may not be modified" pursuant to prior Commission decisions, including Decision 07-11-025, Decision 08-08-028 and Decision 10-03-021, as modified by Decision 11-01-025]*

18. DISPUTE RESOLUTION

18.1. Intent of the Parties. The sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Section 18, except that either Party may seek an injunction in Superior Court in [utility specific location], 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.

18.2. Management Negotiations.

18.2.1. 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.

18.2.2. All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent judicial or arbitration process between the Parties, whether with respect to this dispute or any other.

18.2.3. If the matter is not resolved within forty-five (45) days of commencement of negotiations under Section 18.2.1, or if the Party receiving the written request to meet refuses or does not meet within the ten (10) Business Day period specified in Section 18.2.1, either Party may initiate arbitration of the controversy or claim according to the terms of Section 18.3.

18.3. Arbitration Initiation. If the dispute cannot be resolved by negotiation as set forth in Section 18.2 above, then the Parties shall resolve such controversy through arbitration ("Arbitration"). The Arbitration shall be adjudicated by one retired judge or justice from the JAMS panel. The Arbitration shall take place in [utility specific location], California, and shall be administered by and in accordance with JAMS' Commercial Arbitration Rules. 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 at any time following the unsuccessful conclusion of the management negotiations provided for in Section 18.2.

18.4. Arbitration Process. 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 for depositions. 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.

18.4.1. 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.

18.4.2. 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.

18.4.3. The arbitrator's award shall be made within nine (9) months of the notice of intention to arbitrate 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. At the conclusion of the Arbitration, the arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the arbitrator's decision is based.

18.4.4. The arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered

by a California superior court. The arbitrator's decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error.

18.4.5. 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.

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

18.4.7. 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.

18.4.8. Unless otherwise agreed to by the Parties, all proceedings before the arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter's fees.

18.4.9. 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.

19. MISCELLANEOUS

19.1. 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. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

19.2. 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 may 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.

19.3. General. This Agreement has been approved by the CPUC and modification of the terms and conditions of this Agreement, other than administrative amendments that do not impact the CPUC approved standard terms and conditions of this Agreement, will result in the need to obtain additional CPUC approval of the amended Agreement. In addition to the foregoing, 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.

19.4. Interpretation. Whenever this Agreement specifically refers to any Law, tariff, Governmental Authority, regional reliability council, Transmission/Distribution Owner, or credit rating agency, the Parties hereby agree that the references also refers to any successor to such Law, tariff or organization.

19.5. Construction. The Parties acknowledge and agree that this Agreement has been approved by the CPUC and that the Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof.

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.

	PACIFIC GAS AND ELECTRIC COMPANY
(Seller)	(Buyer)
(Signature)	(Signature)
(Type/Print Name)	(Type/Print Name)
(Title)	(Title)
(Date)	(Date)

APPENDIX A – DEFINITIONS

"Accepted Compliance Costs" has the meaning set forth in Section 3.6.3.

"Active Interconnection Study" has the meaning set forth in Section 4.6(a) of the BioMAT Tariff.

"Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party.

"Aggregate Network Upgrade Costs" has the meaning set forth in Section 13.9.1.1.

"Aggregated Telemetering Cost Cap" has the meaning set forth in Appendix E. ***[Only applicable if Facility is less than 0.5 MW]***

"Aggregated Telemetering System" has the meaning set forth in Appendix E. ***[Only applicable if Facility is less than 0.5 MW]***

"Aggregated Telemetering System Installation Costs" means initial costs to Seller for the purchase and installation of the Aggregated Telemetering System. In no event shall "Aggregated Telemetering System Installation Costs" include ongoing operating expenses of the Aggregated Telemetering System following its initial installation, including but not limited to communication costs and costs associated with maintaining a T-1 line. ***[Only applicable if Facility is less than 0.5 MW]***

"Agreement" means this Power Purchase Agreement between Buyer and Seller, including the Cover Sheet and all appendices, schedules and exhibits attached hereto. For purposes of Section 17, the word "agreement" shall have the meaning set forth in this definition. For purposes of Section 3.3.9, the word "contract" shall have the meaning set forth in this definition.

"Annual Fuel Attestation" means the yearly attestation of the Project's compliance with the Fuel Resource Requirements for the applicable Contract Year in the form of Appendix L. ***[For all Projects except Projects with a High Hazard Fuel Requirement]***

"Annual Fuel Attestation" has the meaning set forth in Section 4.4.3. ***[For all Projects with a High Hazard Fuel Requirement]***

"Annual Fuel Attestation Deadline" has the meaning set forth in Section 4.4.3. ***[For all Projects except Projects with a High Hazard Fuel Requirement]***

"Annual High Hazard Fuel Attestation Deadline" has the meaning set forth in Section 4.4.3. ***[For all Projects with a High Hazard Fuel Requirement]***

"Annual Fuel Attestation Due Date" has the meaning set forth in Section 4.4.3. ***[For all Projects except Projects with a High Hazard Fuel Requirement]***

"Arbitration" has the meaning set forth in Section 18.3.

"Availability Standards" means the program set forth in Section 40.9 of the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible charges and incentive payments for performance thereunder.

"Bankrupt" means with respect to any entity, such entity:

(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;

(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 such entity or any substantial portion of its property or assets; or

(e) Is generally unable to pay its debts as they fall due.

"Biogas" includes digester gas, landfill gas, and any gas derived from a feedstock eligible under the CEC's Renewables Portfolio Standard.

"BioMAT Program" means Buyer's bioenergy market adjusting tariff program described in Buyer's Schedule BioMAT, implemented by Buyer in accordance with CPUC Decisions 14-12-081 and 15-09-004.

"BioMAT Tariff" means Buyer's Schedule BioMAT implemented by Buyer in accordance with CPUC Decisions 14-12-081, 15-09-004, and 16-10-025.

"Bone Dry Ton" or "BDT" means a unit of weight equal to 2,000 pounds of woody material at zero percent (0%) moisture content.

"Business Day" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving 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.

"Buyer" has the meaning set forth in the Cover Sheet.

"Buyer's WREGIS Account" has the meaning set forth in Section 3.3.1. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

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

"CAISO Grid" means the system of transmission lines and associated facilities that have been placed under the CAISO's operational control.

"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 Seller's failure to follow Prudent Electrical Practices. "CAISO Penalties" do not include the costs and charges related to Scheduling and imbalances as addressed in Section 14.1 of this Agreement.

"CAISO Tariff" means the CAISO FERC Electric Tariff, Fifth Replacement Volume No. 1, as amended from time to time.

"California Renewables Portfolio Standard" means the renewable energy program and policies codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public

Resources Code Sections 25740 through 25751, as such provisions may be amended or supplemented from time to time.

"Calendar Quarter" referes to one of the following time periods, as applicable: January 1 through March 31; April 1 through June 30; July 1 through September 30; or October 1 through December 31. ***[For all Projects with a High Hazard Fuel Requirement]***

"Calendar Year" means the time period January 1 through December 31 for the applicable year.

"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.

"Category 1" has the meaning set forth in Section 14 of the BioMAT Tariff.

"Category 2 (Dairy)" has the meaning set forth in Section 14 of the BioMAT Tariff.

"Category 2 (Other Agriculture)" has the meaning set forth in Section 14 of the BioMAT Tariff.

"Category 3" has the meaning set forth in Section 14 of the BioMAT Tariff.

"CEC" means the California Energy Commission or its successor agency.

"CEC Certification" means certification by the CEC that the Facility is an ERR and that all Energy produced by the Facility qualifies as generation from an ERR.

"CEC Pre Certification" means provisional certification of the proposed Facility as an ERR by the CEC upon submission by a facility of a complete CEC-RPS-1B application and required supplemental information.

"CEC Verification" means verification by the CEC based on ongoing reporting by Seller that the Facility is an ERR and that all Energy produced by the Facility qualifies as generation from an ERR.

"Check Meter" means the Buyer revenue-quality meter section(s) or meter(s), which Buyer may require at its discretion, and which will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"Claiming Party" has the meaning set forth in Section 10.2.

"Collateral Requirement" has the meaning set forth in Section 12.1.

"Commercial Operation" means the Facility is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

"Commercial Operation Date" means the date on which the Facility achieves Commercial Operation pursuant to the terms of this Agreement.

"Compliance Action" has the meaning set forth in Section 3.6.1.

"Compliance Expenditure Cap" has the meaning set forth in Section 3.6.

"Contract Capacity" means the lesser of: (a) *[*the of Nameplate Capacity ***[For all Facilities except those with a Nameplate Capacity greater than three megawatts] [***that portion of the Nameplate Capacity which is specified as the Contract Capacity in the Cover Sheet***] [Only for Facilities with a Nameplate Capacity greater than three megawatts]*** and (b) the Demonstrated Contract Capacity.

"Contract Price" has the meaning set forth in Section 2.6.

"Contract Quantity" has the meaning set forth in Section 2.2.

"Contract Quarter" means a period of three (3) consecutive months with the first Contract Quarter commencing on the Commercial Operation Date and each subsequent Contract Quarter commencing on the date that is every three months thereafter. ***[For Category 3 Projects utilizing High Hazard Fuel except Projects with a High Hazard Fuel Requirement]***

"Contract Year" means a period of twelve (12) consecutive months with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the Commercial Operation Date.

"Costs" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace the Transaction; and (b) all reasonable attorneys' fees and expenses incurred in connection with the termination of the Transaction.

"Cover Sheet" means the cover sheet to this Agreement.

"CPUC" means the California Public Utilities Commission, or successor entity.

"Credit Rating" means, with respect to any entity, (a) the rating then assigned to such entity's unsecured senior long-term debt obligations (not supported by third party credit enhancements), or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. If the entity is rated by both S&P and Moody's and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

"Cure" has the meaning set forth in Section 12.6.

"Curtailment Order" means any instruction from Buyer to Seller to reduce the delivery of Energy from the Facility for any reason other than as set forth in Sections 5.8.1(a) or (b).

"Daily Delay Liquidated Damages" has the meaning set forth in Section 1.1.2.4.

"Day-Ahead" has the meaning set forth in the CAISO Tariff.

"Deficient Month" has the meaning set forth in Section 3.3.5. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

"Delay" has the meaning set forth in Section 1.2.1.

"Deliverability Upgrades" means all Network Upgrades necessary for the Facility to receive Full Capacity Deliverability Status.

"Delivered Energy" means all Energy produced from the Project, expressed in MWh, as recorded by the meter specified in Section 5.2.1 or the Check Meter, as applicable.

"Delivery Point" means the point of interconnection to the CAISO Grid and, for payment purposes, the corresponding PNode.

"Delivery Term" has the meaning set forth in Section 2.5.

"Delivery Term Contract Quantity Schedule" has the meaning set forth in the Cover Sheet.

"Demonstrated Contract Capacity" means the Facility's total rated electric alternating current energy generating capacity which will equal the sum of the metered amounts for the Demonstration Hour, as determined in accordance with Appendix J.

"Demonstrated Nameplate Capacity" means the Facility's total rated electric alternating current generating capacity, which will equal the lesser of (a) the sum of the manufacturer's nameplate rating of all installed generators (kW), and (b) the sum of the manufacturer's nameplate power rating of all installed primer movers (kW), as determined in accordance with Appendix J. ***[For Facilities with a Nameplate Capacity greater than three megawatts]***

"Demonstrated Date" has the meaning set forth in Appendix J. ***[For Facilities with a Nameplate Capacity greater than three megawatts]***

"Demonstration Hour" has the meaning set forth in Appendix J

"Distribution Line" has the meaning set forth in Section 14 of the BioMAT Tariff.

"Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

"Early Termination Date" has the meaning set forth in Section 13.3.

"Electric System Upgrades" means any Network Upgrades, Distribution Upgrades, Deliverability Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Transmission/Distribution Owner, as applicable, to physically and electrically interconnect the Project to the Transmission/Distribution 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 Transmission/Distribution Owner's electric system is not part of the CAISO Grid.

"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.

"Eligibility Guidebook" means the CEC's Renewables Portfolio Standard – Eligibility Guidebook (Seventh Edition, California Energy Commission, Efficiency and Renewable Energy Division, Publication Number: CEC-300-2013-005-EDF-CMF-REV), as amended from time to time, or its successor publication.

"Emergency" means (a) an actual or imminent condition or situation which jeopardizes the integrity of the electric system or the integrity of any other systems to which the electric system is connected or any condition so defined and declared by the CAISO; or (b) an emergency condition as

defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

"Energy" means three-phase, 60-cycle alternating current electric energy measured in MWh, net of Station Use and, in the case of Excess Sales arrangements, any Site Host Load.

"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.

"Engineer Report" has the meaning set forth in Appendix J.

"Event of Default" has the meaning set forth in Section 13.2.

"Excess Network Upgrade Costs" has the meaning set forth in Section 13.9.2.

"Excess Sale" means the type of transaction described in Section 2.3.2.

"Execution Date" means the latest signature date found at the end of the Agreement.

"Existing PG&E Transmission Line" has the meaning set forth in Section 14 of the BioMAT Tariff.

"Expected Generation Output" means the amount of power output from the Facility, expressed in megawatts, that is expected to generate Product in a given time period.

"Facility" has the meaning set forth in the Preamble. The terms "Facility" or "Project" as used in this Agreement are interchangeable.

"FERC" means the Federal Energy Regulatory Commission or any successor government agency.

"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.

"Force Majeure" means any occurrence that was not anticipated as of the Execution Date that:

(a) In whole or in part:

(i) Delays a Party's performance under this Agreement;

(ii) Causes a Party to be unable to perform its obligations; or

(iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;

(b) Is not within the control of that Party; and

(c) The Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute

Force Majeure does not include:

(d) 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 of the specific type described in (a) through (c) above

(e) Reductions in generation from the Facility resulting from ordinary wear and tear, deferred maintenance or operator error;

(f) Any delay in providing, or cancellation of, interconnection service by a Transmission/Distribution Owner or the CAISO, except to the extent such delay or cancellation is the result of a force majeure claimed by the Transmission/Distribution Owner or the CAISO.

"Force Majeure Delay" has the meaning set forth in Section 1.1.2.3

"Forecasting Penalty" has the meaning set forth in Section 14.2.1.

"Fuel Attestation" has the meaning set forth in Section 4.4.3.

"Fuel Performance Measurement Period" has the meaning set forth in Appendix M.

"Fuel Resource Category" means any of Category 1, Category 2 (Dairy), Category 2 (Other Agriculture) or Category 3 fuel resources as defined in the BioMAT Tariff.

"Fuel Resource Cure Period" has the meaning set forth in Appendix M.

"Fuel Resource Failure" has the meaning set forth in 13.2.2.14.

"Fuel Resource Requirements" has the meaning set forth in Section 4.4.2.

"Fuel Use" has the meaning set forth in Section 4.4.1.

"Fuel Use Default Payment" has the meaning set forth in Section 13.5.1.1

"Full Buy/Sell" is the type of transaction described in Section 2.3.1.

"Full Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff.

"Full Capacity Option Notice" has the meaning set forth in Section 3.4.3.

"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 13.5. 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 comp arable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

"GEP Damages" has the meaning set forth in Appendix F.

"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.

"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.

"Governmental Charges" has the meaning set forth in Section 14.4.

"Guaranteed Commercial Operation Date" has the meaning set forth in Section 1.1.2.

"Guaranteed Energy Production" or "GEP" has the meaning set forth in Section 11.1.

"High Hazard Fuel Requirement" has the meaning set forth in Section 4.4.2. ***[For all Projects with a High Hazard Fuel Requirement]***

"High Hazard Fuel Use" means High Hazard Fuel that is delivered to the Project for Fuel Use. ***[For all Projects with a High Hazard Fuel Requirement]***

"High Hazard Fuel" has the meaning set forth in Section 14 of the BioMAT Tariff.

"IFM" has the meaning set forth in the CAISO Tariff.

"Interconnection Facilities" has the meaning set forth in the tariff applicable to the Seller's interconnection agreement.

"Interconnection Point" means the location where the Facility first interconnects with the existing electrical system via Distribution Line or Existing PG&E Transmission Line as identified in the Cover Sheet.

"Interconnection Study" means any of the studies defined in the CAISO Tariff or any Transmission/Distribution Owner's tariff that reflect methodology and costs to interconnect the Facility to the Transmission/Distribution Owner's electric grid, by which either CAISO or the Transmission/Distribution Owner evaluates the impacts of a proposed interconnection to the electric grid, and assigns mitigations to offset the identified impacts. Types of study processes include the PG&E System Impact Study in the Independent Study Process, a completed PG&E Distribution Group Study Phase 1 Interconnection Study in the Distribution Group Study Process, a completed PG&E Phase 1 Study in the Cluster Study Process or a completed CAISO Cluster Study, Independent Study or Fast Track Study, or make use of an existing interconnection agreement to the extent permitted by PG&E's or CAISO's tariff.

"Interconnection Study Completion Date" means the date Seller receives an Active Interconnection Study, which shall be the date Seller receives a tendered interconnection agreement from Transmission/Distribution Owner. ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date]***

"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.

"Interim Deliverability Status" has the meaning set forth in the CAISO Tariff.

"JAMS" means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

"kW" means kilowatt.

"kWh" means kilowatt-hour.

"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 during the Delivery Term; or any binding interpretation of the foregoing.

"Letter(s) of Credit" means an irrevocable, non-transferable standby letter of credit issued either by (a) a U.S. commercial bank, or (b) a U.S. branch of a foreign commercial bank, acceptable to Buyer, with either such bank having a Credit Rating of at least: (i) an A- from S&P with a stable designation and an A3 from Moody's with a stable designation, if such bank is rated by both S&P and Moody's; or (ii) an A- from S&P with a stable designation or an A3 from Moody's with a stable designation, if such bank is rated by either S&P or Moody's, but not both, even if such bank was rated by both S&P and Moody's as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies. The Letter of Credit must be substantially in the form as contained in Appendix G to this Agreement; provided that if the Letter of Credit is issued by a branch of a foreign bank, Buyer may require changes to such form.

"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.

"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 13.5. 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 platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

"Manager" has the meaning set forth in Section 18.2.1.

"mmBTU" means one million British thermal units

"Meter Service Agreement" has the meaning set forth in the CAISO Tariff.

"Monthly Period" has the meaning set forth in Appendix C.

"Monthly TOD Payment" has the meaning set forth in 2.7.3."MW" means megawatt.

"MWh" means megawatt-hour.

"Nameplate Capacity" means the lesser of the total alternating current real power rating of the generator nameplate(s) (kW) and the nameplate power rating of the prime movers (kW), as set forth in Section 2.1

"Negative LMP" means in any Settlement Interval, the locational marginal price, as defined in the CAISO Tariff, at the PNode associated with the Facility's Delivery Point that is less than zero dollars ($0). ***[Only for Facilities with a Nameplate Capacity greater than three megawatts]***

"Negative LMP Costs" has the meaning set forth in Section 2.6.2. ***[Only for Facilities with a Nameplate Capacity greater than three megawatts]***

"Network Upgrades" has the meaning set forth in the CAISO Tariff.

"Network Upgrades Cap" has the meaning set forth in Section 13.9.1.1.

"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).

"Paid Curtailed Product" has the meaning set forth in Section 5.8.3. The amount of "Paid Curtailed Product" shall be determined as set forth in Section 5.8.4.

"Partial Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff.

"Participating Generator Agreement" has the meaning set forth in the CAISO Tariff.

"Party" means the Buyer or Seller individually, and "Parties" means both collectively. For purposes of Section 17 (Governing Law) the word "party" or "parties" shall have the meaning set forth in this definition.

"Payment Allocation Factors" shall initially mean the energy-only payment allocation factors set forth in Appendix C. Effective with respect to payments for periods beginning on or after the first day of the calendar month following receipt of a valid Full Capacity Option Notice, "Payment Allocation Factors" shall mean, with respect to such periods, the full capacity deliverability payment allocation factors set forth in Appendix C.

"Payment Limit" has the meaning set forth in Section 2.6.2.***[Only for Facilities with a Nameplate Capacity greater than three megawatts]***

"Performance Measurement Period" has the meaning set forth in Section 11.1.

"Performance Tolerance Band" shall be calculated as set forth in Section 14.2.2.

"Permitting Delay" has the meaning set forth in Section 1.1.2.1.

"Permitted Extensions" has the meaning set forth in Section 1.1.2.

"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.

"PNode" has the meaning set forth in the CAISO Tariff.

"Product" means all electric energy produced by the Facility throughout the Delivery Term, net of Station Use, electrical losses from the Facility to the Delivery Point, and, in the case of Excess Sale arrangements, any Site Host Load; all Renewable Energy Credits; all Capacity Attributes, if any; and all Resource Adequacy Benefits, if any; generated by, associated with or attributable to the Facility throughout the Delivery Term.

"Program Participation Request" or "PPR" means that certain Program Participation Request submitted by Seller to Buyer as part of Seller's application to participate in the BioMAT Program.

"Project" has the meaning set forth in the Preamble. The terms "Facility" and "Project" as used in this Agreement are interchangeable.

"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Laws. Prudent Electrical Practices also includes taking reasonable steps to ensure that:

(a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility's needs;

(b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Facility and Emergencies whether caused by events on or off the Site;

(c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission/Distribution Owner's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR)

loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95 617, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC rules as amended from time to time (18 Code of Federal Regulations Part 292, Section 292.203 et seq.) implementing PURPA and, to the extent required to obtain or maintain Qualifying Facility status, is self-certified as a Qualifying Facility or is certified as a Qualified Facility by the FERC.

"Quarterly Fuel Attestation" has the meaning set forth in Section 4.4.4. ***[For all Projects with a High Hazard Fuel Requirement]***

"Quarterly Fuel Attestation Deadline" has the meaning set forth in Section 4.4.4. ***[For all Projects with a High Hazard Fuel Requirement]***

"Quarterly High Hazard Fuel Attestation Deadline" has the meaning set forth in Section 4.4.4.***[For all Projects with a High Hazard Fuel Requirement]***

"Registered Professional Forester" means a professional forester registered as such through the State of California's Office of Professional Foresters Registration at the time of the Annual Fuel Attestation and the Verification of Fuel Source and Delivery submittal. ***[For all Projects with a High Hazard Fuel Requirement]***

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"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.

"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.

"Resource Adequacy Requirements" has the meaning set forth in Section 3.4.1.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-018, 10-06-036, 10-12-038, 11-06-022, 12-06-025, 13-06-024, 14-06-050 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.

"Restricted Period" has the meaning set forth in Section 13.8.1.

"Schedule," "Scheduled" or "Scheduling" means the action of Buyer in submitting bids to the CAISO and receiving all CAISO markets results from the CAISO; provided that a CAISO market result where the Facility is instructed to deliver zero (0) MWhs is not considered a "Schedule" for purposes of this Agreement.

"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.

"Seller" has the meaning set forth in the Cover Sheet.

"Seller Excuse Hours" means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer's failure to perform, or (c) curtailment under Section 5.8.

"Seller's WREGIS Account" has the meaning set forth in Section 3.3.1. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

"Settlement Amount" is the amount in U.S. dollars equal to the non-defaulting Party's aggregate Losses and Costs less any Gains determined as of the Early Termination Date.

"Settlement Interval" has the meaning set forth in the CAISO Tariff.

"Site" means the real property on which the Facility is, or will be, located, as further described in the Cover Sheet.

"Site Control" means the Seller: (a) owns the Site, (b) leases the Site, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) prior to the Commercial Operation Date, has the unilaterally exercisable contractual right to acquire or cause to be acquired on its behalf any of (a), (b), or (c).

"Site Host Load" means the electric energy produced by or associated with the Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code Section 218(b).

"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.

"Surplus Delivered Energy" has the meaning set forth in Section 2.6.2.

"Telemetering System" means a system of electronic components that collects all required telemetry in accordance with the CAISO's Business Practice Manual for direct telemetry and Buyer operational requirements and communicates this telemetry to the CAISO and Buyer as required by applicable tariff or this Agreement. The Telemetering System does not include other components of the

Facility that do not collect or communicate such required telemetry, including but not limited to, Seller's system control and data acquisition systems.

"Term" has the meaning set forth in Section 2.4.1.

"Termination Payment" has the meaning set forth in section 13.5.1. ***[For all Projects with a High Hazard Fuel Requirement]***

"TOD Periods" means the time of delivery periods set forth in Appendix C.

"Total Fuel Use" means Fuel Use that is delivered to the Project. ***[For all Projects with a High Hazard Fuel Requirement]***

"Transaction" means the particular transaction described in Section 2.3.

"Transmission Delay" has the meaning set forth in Section 1.1.2.2.

"Transmission/Distribution Owner" means any entity or entities responsible for the interconnection of the Facility or transmitting the Delivered Energy on behalf of Seller from the Facility to the Delivery Point.

"Useful Thermal Energy Output" has the meaning set forth in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto. ***[For cogeneration Facilities]***

"Verification of Fuel Source and Delivery" has the meaning set forth in Section 4.4.3. ***[For all Projects with a High Hazard Fuel Requirement]***

"WECC" means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.

"WMDVBE" means women, minority and disabled veteran-owned business enterprise as contemplated by CPUC General Order 156.

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

"WREGIS Certificate Deficit" has the meaning set forth in Section 3.3.5. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

"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. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

"WREGIS Operating Rules" means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

**** End of Appendix A ****

APPENDIX B – COMMERCIAL OPERATION DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase Agreement dated _____("Agreement") for the Facility named _____ by and between Pacific Gas and Electric Company ("Buyer") and _____ ("Seller"), this letter serves to document the Parties further agreement that (i) the conditions precedent to the occurrence of the Commercial Operation Date as required under Section 2.5 have been satisfied, and (ii) Seller has scheduled and Buyer has received the Energy, as specified in the Agreement, as of this _____ day of _____, _____. This letter shall confirm the Commercial Operation 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:

By:	By: **PACIFIC GAS AND ELECTRIC COMPANY**
(Seller)	(Buyer)
(Signature)	(Signature)
(Type/Print Name)	(Type/Print Name)
(Title)	(Title)
(Date)	(Date)

**** End of Appendix B ****

APPENDIX C – TIME OF DELIVERY PERIODS AND PAYMENT ALLOCATION FACTORS

Energy-Only Payment Allocation Factors

Monthly Period	1. Peak	2. Mid-Day	3. Night
July – September	1.000	1.000	1.000
October- February	1.000	1.000	1.000
March – June	1.000	1.000	1.000

Full Capacity Deliverability Payment Allocation Factors

Monthly Period	1. Peak	2. Mid-Day	3. Night
July – September	1.000	1.000	1.000
October- February	1.000	1.000	1.000
March – June	1.000	1.000	1.000

Definitions:

1. **Peak** = hours ending 18 - 22 (Pacific Prevailing Time (PPT)) for all days in the applicable Monthly Period.

2. **Mid-Day** = hours ending 09 - 17 PPT for all days in the applicable Monthly Period.

3. **Night** = hours ending 23 - 08 PPT for all days in the applicable Monthly Period.

**** End of Appendix C ****

APPENDIX D – FORECASTING AND OUTAGE NOTIFICATION REQUIREMENTS

The Parties shall abide by the forecasting and outage requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time-to-time as necessary to (i) comply with Buyer's instructions or the CAISO Tariff, as applicable; (ii) accommodate changes to their respective generation technology and organizational structure; and (iii) address changes in the operating and Scheduling procedures of both Buyer.

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 applicable Transmission/Distribution Owner local switching center and notify Buyer's Real Time Desk by telephone as follows:

- Contact the applicable Transmission/Distribution Owner local switching center and Buyer's Real Time Desk to parallel before any start-up
- Contact the applicable Transmission/Distribution Owner local switching center and Buyer's Real Time Desk again with parallel time after start-up.
- Contact the applicable Transmission/Distribution Owner local switching center and Buyer's Real Time Desk after any separation and report the separation time as well as the date and time estimate for return to service.

Buyer's Real Time Desk Primary Telephone: (415) 973-4500 or (415) 973-7900.

If the primary telephone is unavailable, attempt to make contact using the following numbers in the order listed: (707) 449-6795, (415) 420-6412, (480) 263-6489, (415) 972-5138, (707) 450-3203, (707) 450-3204, (707) 449-6763 or (707) 449-6764.

B. SUBMISSION OF EXPECTED GENERATION OUTPUT AND PROJECT OUTAGES

1. Submit information by posting to PG&E's approved web-based system.
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: Contract Name, Email Purpose, Delivery Date Range, (For example: "XYZ Company Project #2 Daily Forecast of Expected Generation Output for dd/mm/yyyy through dd/mm/yyyy")
   b. For Annual Forecasts of Expected Generation Output, email to DAenergy@pge.com and BilatSettlements@pge.com.
   c. For Monthly and Day-Ahead Forecasts of Expected Generation Output, email to DAenergy@pge.com.
   d. For Day-Ahead Forecasts of Expected Generation Output after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting

Day-Ahead Schedules, call primary phone (415) 973-1971 or backup phone (415) 973-4500. Also send email to DAenergy@pge.com.

e. For Hourly Forecasts of Expected Generation Output, call PG&E's Real Time Desk at (415) 973-4500 and email to RealTime@pge.com. If this phone number is unavailable, see secondary contacts in A of this Appendix.

f. For Planned Outages and prolonged outages, complete the specifics below and submit by email to DAenergy@pge.com and Bilat_Settlements@pge.com.

g. For Forced Outages, complete the specifics below and submit by email to RealTime@pge.com and Bilat_Settlements@pge.com.

i. Email subject Field: XYZ Company Project #2 Outage Notification for dd/mm/yyyy through dd/mm/yyyy

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, Prolonged Outage or Forced Outage.

C. EXPECTED GENERATION OUTPUT FORECASTING.

Seller shall provide the Expected Generation Output forecasts described below.

1. Annual Forecast of Expected Generation Output. No later than (I) the earlier of July 1 of the first calendar year following the Execution Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term ("First Annual Forecast Date"), and (II) on or before July 1 for each calendar year from the First Annual Forecast Date for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Expected Generation Output for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

2. Monthly Forecast of Expected Generation Output. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Expected Generation Output for each day of the following month in a form reasonably acceptable to Buyer.

3. Day-Ahead Forecast of Expected Generation Output. During each month of the Delivery Term, Seller or Seller's agent shall provide a binding Day-Ahead forecast of Expected Generation Output to Buyer via Buyer's internet website 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, "Preschedule Calendar." Each Day-Ahead Expected Generation Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Expected Generation Output pursuant to this Agreement. If the Expected Generation Output changes 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 through the method preferred by Buyer. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Expected Generation Output, the expected end date and time of such event, the Expected Generation Output in MW (AC), and any other necessary information.

Day-Ahead Desk
Primary Telephone: (415) 973-1971
Backup Telephone: (415) 973-4500

If Seller fails to provide Buyer with a Day-Ahead Forecast of Expected Generation Output as required herein, then, (I) until Seller provides a Day-Ahead Forecast of Expected Generation Output, Buyer may rely on the most recent Day-Ahead Forecast of Expected Generation Output submitted by Seller to Buyer and Seller and (II) Seller may be subject to penalties and charges as provided in this Agreement.

4. Hourly Forecast of Expected Generation Output. During the Delivery Term, Seller shall notify Buyer of any changes in Expected Generation Output of one (1) MW (AC) or more through the method preferred by Buyer, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer is required to submit Hour-Ahead schedules to the CAISO. Expected Generation Output 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 Expected Generation Output, the expected end date and time of such event, the Expected Generation Output in MW (AC), 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 within ten (10) minutes of the commencement of the Forced Outage. 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 Expected Generation Output shall be communicated by telephone to Buyer's Hour-Ahead Trading Desk and shall be sent to Buyer's internet website:

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

If this phone number is unavailable, see secondary contacts in A of this Appendix.

5. Buyer Provision of Forecasting Services. Seller may request that Buyer perform forecasting services required by this Appendix D if it is reasonably practicable for such forecasting services to be performed by a person or entity other than Seller. Buyer may perform such services directly or retain a third-party to perform such services. Buyer may charge a reasonable fee for any such services, which, in the case Buyer retains a third-party, may include a reasonable administration fee in addition to the fee any such third-party charges Buyer.

**** End of Appendix D ****

APPENDIX E – TELEMETRY REQUIREMENTS

Telemetering System.

Seller shall install and maintain a Telemetering System at the Facility. ***[Applicable to all Facilities]***

Notwithstanding the foregoing, Seller shall not be required to install a data processing gateway and, if directed by Buyer, Seller shall participate in Buyer's aggregated Telemetering System ("Aggregated Telemetering System"). In no event shall the Aggregated Telemetering System Installation Costs exceed Twenty Thousand dollars ($20,000.00) (the "Aggregated Telemetering Cost Cap"); provided that if the Aggregated Telemetering System Installation Costs exceed the Aggregated Telemetering Cost Cap then Buyer shall have the right, but not the obligation, in its sole discretion, to agree to pay for such costs in excess of the Aggregated Telemetering Cost Cap. To the extent requested by Buyer, Seller shall provide evidence of the Aggregated Telemetering System Installation Costs satisfactory to Buyer. ***[Only applicable if Facility is less than 0.5 MW]***

The above-mentioned connections and data transfer must be included in the systems engineering tasks as a part of the construction of the Facility, and must be fully functional before Commercial Operation Date.

**** End of Appendix E ****

APPENDIX F – GUARANTEED ENERGY PRODUCTION DAMAGES

In accordance with the provisions in Section 11.2, GEP Damages means the liquidated damages payment due by Seller to Buyer, calculated on an annual basis for the applicable Performance Measurement Period as follows:

[(A-B) × (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 IFM 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 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). Once GEP Damages have been paid with respect to a particular Performance Measurement Period, neither Contract Year in such Performance Measurement Period will be included in another Performance Measurement Period.

**** End of Appendix F ****

APPENDIX G – FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. _____

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: _____

[Each page of the Letter of Credit shall contain a header or footer showing the Letter of Credit number and page number]

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: _____

_____

**** End of Appendix G ****

APPENDIX H – FORM OF GENERAL CONSENT TO ASSIGNMENT

CONSENT TO ASSIGNMENT AND AGREEMENT

This Consent to Assignment and Agreement ("CTA") is by and between Pacific Gas and Electric Company ("Buyer"), a California corporation, _____ ***[Counterparty]*** ("Assignor"), _____ ***[Enter type of company]*** and _____ ***[Enter Assignee Name]*** ("Assignee'), _____ ***[Enter type of company]***. Buyer, Assignor and Assignee are sometimes referred to herein individually as "Party" and collectively as the "Parties".

Buyer hereby consents to the assignment by Assignor to Assignee of the entirety of the rights, title and interest Assignor may have in and to the agreements described on Exhibit A attached hereto and incorporated herein by this reference the "Assigned Agreement(s)", for the _____ ***[Capacity_kW] [Fuel]*** project named _____ ***[Facility_description] ([Buyer Identification or Log No.] [Buyer_Lognum]***), located at _____ _____ ***[Facility_Street_Address] [Facility_City], [Facility_State] [Plant_Zip_code]***, as of the date of last signature hereunder (the "Effective Date") under the following terms and conditions:

1. Assignor and Assignee recognize and acknowledge that Buyer makes no representation or warranty, expressed or implied, that Assignor has any right, title, or interest in the Assigned Agreement(s). Assignee is responsible for satisfying itself as to the existence and extent of Assignor's right, title, and interest in the Assigned Agreement(s) and Assignor and Assignee expressly release Buyer from any liability resulting from or related to this CTA, including assignment for security if any, to which Buyer is consenting herein. Assignee and Assignor further release Buyer from any liability for consenting to any future assignments of the Agreement(s) by Assignee or Assignor.

2. Assignee hereby agrees that Assignee shall be jointly and severally liable to Buyer for each and every duty and obligation in the Assigned Agreement(s) now the sole responsibility of Assignor. To this end, Assignee hereby agrees to assume each and every such duty and obligation, including, but not limited to, satisfying the Collateral Requirements in the Assigned Agreements.

3. Assignor and Assignee hereby agree that they shall hold Buyer harmless from, and be jointly and severally liable to Buyer for, any third-party claims, losses, liabilities, damages, costs or expenses (including, without limitation, any direct, indirect or consequential claims, losses, liabilities, damages, costs or expenses, including legal fees) in connection with or arising out of any of the transactions contemplated by the assignment or this CTA.

4. Assignee acknowledges that the assignment of rights to it may be subject to previous assignments, liens or claims executed or arising prior to the Effective Date. Assignee agrees that it takes this assignment subject to any defenses or causes of action Buyer may have against Assignor.

5. Assignee hereby agrees that it will not assign any of the rights, title or interest in, or the duties and obligations under the Assigned Agreement(s) without the prior written consent of Buyer, unless otherwise specifically provided under the Assigned Agreement(s).

6. Assignor hereby requests that Buyer (i) henceforth make any payments which shall become due under the Assigned Agreement(s) to Assignee and (ii) substitute Assignee for Assignor as the notice addressee under the Assigned Agreement(s). Assignor releases Buyer from all liability for

making payment to Assignee, and Assignee releases Buyer from all liability for failure to direct such payments to Assignee rather than Assignor.

7. All notices hereunder shall be in writing and shall be effective when received; for purposes of this CTA, notices shall be deemed received (i) at the close of business on the date of receipt, if delivered by hand, or (ii) at the time and on the date of receipt of a facsimile, or (iii) when signed for by recipient, if sent via registered or certified mail, postage prepaid, or via courier; provided that, 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.

8. Assignee and Assignor each agree that Buyer shall have (and Buyer hereby expressly reserves) the right to set off or deduct from payments due to Assignor, each and every amount due Buyer from Assignor arising out of or in connection with the Assigned Agreements in accordance with the terms of such Assigned Agreements or in accordance with applicable law. Assignee further agrees that it takes this assignment subject to any defenses or causes of action Buyer may have against Assignor.

9. Assignee and Assignor agree that any change in payment notification will become effective within 30 days receipt of written notice.

10. Other than as explicitly provided herein, this CTA is neither a modification of nor an amendment to the Assigned Agreement(s).

11. The Parties hereto agree that this CTA 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.

12. 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.

Pacific Gas and Electric Company,
a California corporation
[Buyer address]

_____

_____

_____

Pacific Gas and Electric Company,
a California corporation

By: _____

Name: _____

Title: _____

Dated: _____

Assignor:

[Mailing_Street_Address]
[Mailing_City], [Mailing_State]
[Mailing_Zip_code]

_____

_____

_____

Attn: ***[Enter title]*** _____

[Counterparty], [Enter type of company]

By: _____

Name: _____

Title: _____

Dated: _____

Assignee:
[Enter Assignee Address]

_____

_____

_____

Attn: [Enter title]_____

[Enter Assignee company name], [Enter type of company]

By:_____
Name:_____
Title:_____
Dated:_____

Exhibit A
Description of Assigned Agreement(s)

1. **(List all relevant agreements between Buyer and Counterparty)**

Exhibit B
Notices List for Assignee

Name: ***[Seller's Name]***, a ***[include place of formation and business type]*** ("Seller")
All Notices: ***[Seller to complete]***
Delivery Address:

Street:
City: State: Zip:

Mail Address: (if different from above)

Attn:
Phone:
Facsimile:
Email:

DUNS:
Federal Tax ID Number:

Invoices:
Attn:

Phone:
Facsimile:
Email:

Scheduling:
Attn:
Phone:
Facsimile:
Email:

Payments:
Attn:

Phone:
Facsimile:
Email:

Wire Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn:
Phone:
Facsimile:
Email:

With additional Notices of an Event of Default to Contract Manager:
Attn:
Phone:
Facsimile:
Email:

*** End of Appendix H ***

APPENDIX I – FORM OF FINANCING CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT ("Consent and Agreement") is entered into as of [_____ __, 2___], between Pacific Gas and Electric Company ("Buyer"), and [_____], as collateral agent (in such capacity, "Financing Provider") providing financing to [_____] ("Seller"). Buyer, 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" and identified in Exhibit A) between Buyer and Seller, Buyer has agreed to purchase energy from Seller.

B. The Financing Provider has 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, Buyer has agreed to enter into this Consent and Agreement for the benefit of Seller and Financing Provider.

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, Buyer consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Financing Documents 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 Buyer a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to Buyer, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as Buyer 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 Buyer. Financing Provider may from time to time, following the occurrence of a Financing Default, notify Buyer 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 Buyer 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 Buyer 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 Buyer. Buyer 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 Buyer, independent of any agreement of Buyer to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by Buyer. 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, Buyer 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 Buyer to Deliver Default Notice. If neither Buyer 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 Buyer or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in Buyer's ability to terminate the Assigned Agreement (in each case only if both Buyer and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of Buyer to deliver any Default Notice shall not waive Buyer's right to take any action under the Assigned Agreement and will not subject Buyer 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 Buyer 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 Buyer 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 Buyer 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 Buyer shall have the right to set off or deduct from payments due to Seller each and every amount due Buyer 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 Buyer may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that Buyer 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 Buyer 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 Buyer may agree with Seller to modify or amend the Assigned Agreement, and that Buyer is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases Buyer 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. Buyer 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, Buyer and Financing Provider agrees that each such payment by Buyer to such depositary agent of amounts due to Seller from Buyer under the Assigned Agreement shall satisfy Buyer'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 Buyer:	
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 Buyer, and shall be binding on and inure to the benefit of the Financing Provider and its respective successors and permitted transferees and assigns under the Financing Documents.

(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 Buyer and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

	PACIFIC GAS AND ELECTRIC COMPANY
(Financing Provider), as collateral agent	(Buyer)
(Signature)	(Signature)
(Type/Print Name)	(Type/Print Name)
(Title)	(Title)
(Date)	(Date)

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 Buyer 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)

_____
(Signature)

_____
(Type/Print Name)

_____
(Title)

_____
(Date)

Exhibit A
Description of Assigned Agreement(s)

1. **(List all relevant agreements between Buyer and Counterparty)**

**** End of Appendix I ****

[The following Appendix J applies to all Facilities except for Facilities with a Nameplate Capacity greater than three megawatts]

APPENDIX J – PROCEDURE FOR DEMONSTRATION OF CONTRACT CAPACITY

1. Seller's Notice of Demonstration Hour.

   Seller shall provide Notice to Buyer of the date and hour selected by Seller during which Seller claims it has demonstrated the applicable Contract Capacity ("Demonstration Hour").

2. Demonstration of Contract Capacity.

   a) Unless Buyer provides timely Notice to Seller that additional days are required to substantiate data, Buyer shall, within thirty (30) days after Seller's Notice of the Demonstration Hour, retrieve interval data downloaded from the meter specified in Section 5.2.1 or Check Meter, as applicable, for the twelve (12) hour periods before and after the Demonstration Hour; and

   b) Buyer may, at its sole discretion, complete a Site visit within thirty (30) days after Buyer's receipt of Seller's Notice of the Demonstration Hour to verify that the Facility was developed in accordance with the Facility and Site description set forth in the Cover Sheet.

3. Demonstrated Contract Capacity.

   Unless Buyer provides timely Notice to Seller that additional days are required to substantiate data, Buyer shall within ten (10) Business Days after Buyer's Site visit pursuant to Section 2 of this Appendix J provide Notice to Seller of the amount of the Demonstrated Contract Capacity.

4. Buyer's Election of Demonstration Method.

   Notwithstanding the foregoing, Buyer may, in its sole discretion, (a) require that Seller, at its own cost, provide a certified statement from a Licensed Professional Engineer verifying that the Facility was developed in accordance with the Facility and Site description set forth in the Cover Sheet and setting forth the Demonstrated Contract Capacity determined in accordance with this Appendix J as of the date of the certification (an "Engineer Report") or (b) waive the requirement to demonstrate the Contract Capacity.

   In the event that the Buyer waives demonstration of the Contract Capacity, the Demonstrated Contract Capacity will be deemed to be equal to the Contract Capacity specified in Section 2.1 of the Agreement.

**** End of Appendix J ****

[The following Appendix J applies ONLY to Facilitieswith a Nameplate Capacity greater than three megawatts]

APPENDIX J – PROCEDURE FOR DEMONSTRATION OF CONTRACT CAPACITY AND NAMEPLATE CAPACITY

1. Seller's Notice of Demonstration Hour.

   Seller shall provide Notice to Buyer of the date and hour selected by Seller during which Seller claims it has demonstrated the applicable Contract Capacity ("Demonstration Hour").

   Seller's Notice of Demonstration Date.

   Seller shall provide at least thirty (30) days prior Notice to Buyer of the date selected by Seller ("Demonstration Date") during which Seller intends to demonstrate the Nameplate Capacity. Upon Buyer's request, Seller shall make reasonable efforts to reschedule the Demonstration Date.

2. Demonstration of Contract Capacity.

   a) Unless Buyer provides timely Notice to Seller that additional days are required to substantiate data, Buyer shall, within thirty (30) days after Seller's Notice of the Demonstration Hour, retrieve interval data downloaded from the meter specified in Section 5.2.1 or Check Meter, as applicable, for the twelve (12) hour periods before and after the Demonstration Hour; and

   b) Subject to Section 4 of this Appendix J, Buyer may, at its sole discretion, complete a Site visit on the Demonstration Date to verify that the Facility was developed in accordance with the Facility and Site description set forth in Appendix E and to determine the Demonstrated Nameplate Capacity.

3. Demonstrated Contract Capacity and Demonstration of Nameplate Capacity

   Unless Buyer provides timely Notice to Seller that additional days are required to substantiate data, Buyer shall within ten (10) Business Days after Buyer's Site visit pursuant to Section 2 of this Appendix J provide Notice to Seller of the amount of the Demonstrated Contract Capacity and the amount of Demonstrated Nameplate Capacity.

4. Buyer's Election of Demonstration Method.

   Notwithstanding the foregoing, Buyer may, in its sole discretion, (a) require that Seller, at its own cost, provide a certified statement from a Licensed Professional Engineer verifying that the Facility was developed in accordance with the Facility and Site description set forth in the Cover Sheet and setting forth the Demonstrated Contract Capacity and the Demonstrated Nameplate Capacity determined in accordance with this Appendix J as of the date of the certification (an "Engineer Report") or (b) waive the requirement to demonstrate the Contract Capacity or the requirement to demonstrate the Nameplate Capacity.

In the event that the Buyer waives demonstration of the Contract Capacity, the Demonstrated Contract Capacity will be deemed to be equal to the Contract Capacity specified in Section 2.1 of the Agreement.

In the event that the Buyer waives demonstration of the Nameplate Capacity, the Demonstrated Nameplate Capacity will be deemed to be equal to the Nameplate Capacity specified in Section 2.1 of the Agreement.

*** *End of Appendix J* ***

APPENDIX K-1 – QF EFFICIENCY MONITORING PROGRAM – COGENERATION DATA REPORTING FORM

[PrevYear]

I. Name and Address of Project
Name: _____
Street: _____
City: _____ State:_____ Zip Code:_____

ID No.:_____ Generation Nameplate (kW): _____

II. In Operation: ☐ Yes ☐ No

III. Can your facility dump your thermal output directly to the environment? ☐ Yes ☐ No

IV. Ownership

	Name	Address	Ownership (%)	Utility
1				Y N
2				Y N
3				Y N
4				Y N
5				Y N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your Useful Thermal Energy Output if other than mBTUs:
  BTUs _____ Therms _____ mmBTUs_____

If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (1) (kWh)	Energy Input (Therms) (mmBTU)	Useful Thermal Energy Output (mmBTU)
Jan			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

(1) Useful Power Output is the electric or mechanical energy made available for use from the facility.

**** End of Appendix K-1 ****

APPENDIX K-2 – FUEL USE STANDARDS – SMALL POWER PRODUCER DATA REPORTING FORM

[PrevYear]

ID No._____

I. **Name and Address of Facility ("Project")**

Name: _____
Street: _____
City: _____ State:_____ Zip Code:_____

Generation Nameplate (kW): _____

II. **Primary Energy:** ☐ **Biomass** ☐ **Biogas**

III. **Ownership**

	Name	Address	Ownership (%)	Utility
1				Y N
2				Y N
3				Y N
4				Y N
5				Y N

IV. **[PrevYear] Monthly Operating Data**

	Useful Power Output (1) (kWh)	Primary Energy Source (2) (mmBTU)	Supplementary Energy Source (3) (mmBTU)	Total Energy Input (4) (mmBTU)
Jan				
Feb				
Mar				
Apr				
May				
Jun				
Jul				
Aug				
Sep				
Oct				
Nov				
Dec				
Total				

(1) Useful Power Output is the electric or mechanical energy made available for use from the facility.
(2) The Primary Energy Source must correspond to the Fuel Resource Category identified in Section A(i) of the Cover Sheet. Use Lower Heating Value (LHV)
(3) Please use Total Energy Input to include all energy sources: primary, supplementary, and auxiliary power from outside the facility.

**** End of Appendix K-2 ****

APPENDIX L – FORM OF FUEL ATTESTATION

[The following Appendix L applies to all Projects EXCEPT Projects with a High Hazard Fuel Requirement. References to Section 4.4.4, Contract Quarter, and the Quarterly Fuel Attestation Deadline are only applicable to HHZ Category 3 Projects]

[Sellers Letterhead]

[Date]

PG&E
Attn:
Street Address
City, State Zip

Subject: Bioenergy Market Adjusting Tariff Power Purchase Agreement ("BioMAT PPA") by and between PG&E and ***[Insert Seller's full legal name]***, a ***[Insert Seller's form of entity and state of registration]*** ("Seller") – Fuel Attestation

Dear Sir or Madam:

Pursuant to Section ***[***4.4.3***][***4.4.4***]*** of the BioMAT PPA, Seller submits to PG&E this Fuel Attestation for the Contract ***[***Year***] [***Quarter***]*** that ended on ***[Date]*** ***[***("Contract Year")***] [***("Contract Quarter")***]***). Seller hereby represents and warrants that:

1. This Fuel Attestation ***[is] [is not]*** submitted on or prior to the ***[Annual Fuel Attestation Due Date] [Quarterly Fuel Attestation Deadline]***.

2. The fuel resource(s) Seller used or caused to be used to operate the Facility during the Contract Year (Fuel Use) ***[met] [did not meet]*** the Fuel Resource Requirements. ***[For Annual Fuel Attestation Only]***

3. Fuel Use during the Contract ***[***Year***] [***Quarter***]*** was as follows:

Fuel Resource Category	**Fuel Volume (1)**	**Fuel Consumption (mmBTU)**	**Total Generation (MWh)**	***[***Annual***] [***Quarter***]*** **Fuel Use Percentage**
Category 1 (wastewater treatment)				
Category 1 (municipal organic waste diversion)				
Category 1 (food processing)				
Category 1 (codigestion)				
Category 2 (Dairy)				
Category 2 (Other Agricultural)				
Category 3 (fire threat reduction)				
Category 3 (fire safe clearance activities)				
Category 3 (infrastructure clearance projects)				

Fuel Resource Category	**Fuel Volume (1)**	**Fuel Consumption (mmBTU)**	**Total Generation (MWh)**	***[Annual]*** ***[Quarter]*** **Fuel Use Percentage**
Category 3 (other sustainable forest management)				
Category 3 (High Hazard Fuel)				
Total				

(1) For Fuel Volume, use Bone Dry Ton for solid fuel and cubic feet (ft^3) for gaseous fuel.

4. The calculation used by the Seller to calculate Fuel Use through the delivery term is as follows:

$$\text{Fuel Use Percentage: } \frac{A}{B}$$

A = Fuel Use during the ***[***("Contract Year")***]*** ***[***("Contract Quarter")***]***

B = Total Fuel Use in the ***[***("Contract Year")***]*** ***[***("Contract Quarter")***]***

Capitalized terms used but not otherwise defined in this letter have the meanings set forth in the BioMAT PPA.

Very truly yours,

[Insert Seller's full legal name, form of entity and state of registration]

By: _____
Name: _____
Title: _____

**** End of Appendix L ****

APPENDIX L – FORM OF FUEL ATTESTATION

[The following Appendix L applies ONLY to Projects with a High Hazard Fuel Requirement.]

[Sellers Letterhead]

[Date]

PG&E
Attn:
Street Address
City, State Zip

Subject: Bioenergy Market Adjusting Tariff Power Purchase Agreement ("BioMAT PPA") by and between PG&E and ***[Insert Seller's full legal name]***, a ***[Insert Seller's form of entity and state of registration]*** ("Seller") – Fuel Attestation

Dear Sir or Madam:

Pursuant to Section ***[***4.4.3***][***4.4.4***]*** of the BioMAT PPA, Seller submits to PG&E this ***[Annual] [Quarterly]*** Fuel Attestation for the Calendar ***[***Year***] [***Quarter***]*** that ended on ***[Date] [***("Calendar Year")***] [***("Calendar Quarter")***]***). Seller hereby represents and warrants that:

1. This ***[Annual] [Quarterly]*** Fuel Attestation ***[is] [is not]*** submitted on or prior to the ***[Annual High Hazard Fuel Attestation Deadline] [Quarterly High Hazard Fuel Attestation Deadline]***.

2. The fuel resource(s) Seller used or caused to be used to operate the Facility during the Calendar Year (Fuel Use) ***[met] [did not meet]*** the Fuel Resource Requirements and High Hazard Fuel Requirement. ***[For Annual Fuel Attestation Only]***

3. Fuel Use during the Calendar ***[Year] [Quarter]*** was as follows:

Fuel Resource Category	**Volume of Fuel Delivered (BDT)**	**Fuel Use (BDT)(1)**	**Total Metered Generation (MWh)**	***[Annual] [Quarterly]* Fuel Use Percentage**
Category 1 (wastewater treatment)				
Category 1 (municipal organic waste diversion)				
Category 1 (food processing)				
Category 1 (codigestion)				
Category 2 (Dairy)				
Category 2 (Other Agricultural)				
Category 3 (fire threat reduction)				
Category 3 (fire safe clearance activities)				
Category 3 (infrastructure clearance projects)				

Fuel Resource Category	Volume of Fuel Delivered (BDT)	Fuel Use (BDT)[1]	Total Metered Generation (MWh)	*[Annual]* *[Quarterly]* Fuel Use Percentage
Category 3 (other sustainable forest management)				
Category 3 (High Hazard Fuel)				
Total				

[1] If Fuel Use is eligible for more than one subcategory within a Fuel Resource Category, choose the most relevant subcategory to prevent double counting.

4. The calculation used by the Seller to calculate Fuel Use Percentage for each applicable Fuel Resource Category throughout the Delivery Term is as follows:

$$\underline{\text{Fuel Use Percentage:}}\ \frac{A}{B}\ x\ 100$$

A = Fuel Use during the ***[("Calendar Year")] [("Calendar Quarter)]*** from the applicable Fuel Resource Category

B = Total Fuel Use during the ***[("Calendar Year")] [("Calendar Quarter)]***

5. ***[Annual Fuel Attestation Only]*** Fuel Use during the Calendar Year is documented in the attached Microsoft Excel Spreadsheet ("Annual Fuel Usage Log"), using the template provided by Buyer after execution of this Agreement. Buyer may make reasonable changes to the template to accommodate additional information on High Hazard Fuel and Fuel Use during the Calendar Year. Seller and Buyer will use the Fuel Use Log to calculate the Category 3 Fuel Use Percentage and High Hazard Fuel Use Percentage to determine compliance with the Fuel Resource Requirements and High Hazard Fuel Requirement, respectively, using the formulas below:

$$\underline{\text{Category 3 Fuel Use Percentage:}}\ \frac{A}{B}\ x\ 100$$

A = Category 3 Fuel Use delivered to and used by the Project during the ***[("Calendar Year")]***

B = Total Fuel Use delivered to and used by the Project during the ***[("Calendar Year")]***

$$\underline{\text{High Hazard Fuel Use Percentage:}}\ \frac{A}{B}\ x\ 100$$

A = High Hazard Fuel Use delivered to and used by the Project during the ***[("Calendar Year")]***

B = Total Fuel Use delivered to and used by the Project during the ***[("Calendar Year")]***

6. ***[Quarterly Fuel Attestation Only]*** Fuel volume delivered during the Calendar Quarter, and progress toward meeting the Fuel Resource Requirements and High Hazard Fuel Requirement, is documented in the attached Microsoft Excel Spreadsheet ("Quarterly Fuel Usage Log"), using the template provided by Buyer after execution of this Agreement. Buyer may make reasonable changes to the template to accommodate additional information on High Hazard Fuel and Fuel Use during the

Calendar Year. Seller and Buyer will use the Quarterly Fuel Usage Log and the data provided in Section 3 of this Appendix L to monitor progress with the Fuel Resource Requirements and High Hazard Fuel Requirement. Data from the Quarterly Fuel Usage Log is accurately summarized in Section 3 of this Quarterly Fuel Attestation.

Capitalized terms used but not otherwise defined in this letter have the meanings set forth in the BioMAT PPA.

Very truly yours,

[Insert Seller's full legal name, form of entity and state of registration]

By: _____
Name: _____
Title: _____

*** *End of Appendix L* ***

APPENDIX L-1 – Verification of Fuel Source and Delivery

[The following Appendix L-1 applies ONLY to Projects with a High Hazard Fuel Requirement. This Appendix L-1 must be submitted with the Annual Fuel Attestation only]

I, _____, am a Registered Professional Forester. I have reviewed the Seller's ***[date]*** Annual Fuel Attestation, including the Annual Fuel Usage Log, and I have verified (1) that the High Hazard Fuel was harvested from the specific designated High Hazard Zone(s) as provided in the Seller's ***[date]*** Annual Fuel Attestation; and (2) the volume of High Hazard Fuel from each referenced High Hazard Zone was delivered to the Project.

Capitalized terms used but not otherwise defined in this verification have the meanings set forth in the BioMAT PPA.

[Registered Professional Forester]

By:_____

Name: _____

Title: _____

**** End of Appendix L-1 ****

APPENDIX M – FUEL RESOURCE FAILURE CURE REQUIREMENTS

[The following Appendix M applies to all Projects except Projects with a High Hazard Fuel Requirement]

1. Seller may cure a Fuel Resource Failure as identified in Seller's Annual Fuel Attestation if a), b) and c) are met:

    a) Within five (5) Business Days of Buyer's Notice of an Event of Default pursuant to Section 13.2.2.14, Seller notifies Buyer of Seller's intent to utilize sufficient fuel eligible for the Facility's Fuel Resource Category such that the Fuel Resource Requirements are met over the Fuel Performance Measurement Period as outlined in Section 1(b) herein;

    b) For a period not to exceed six (6) months immediately following Seller's Notice above ("Fuel Resource Cure Period"), Seller submits to Buyer a monthly report within 10 days of the end of calendar month and in a form to be specified by Buyer that demonstrates compliance with the Fuel Resource Requirements; and

    c) At the end of the Fuel Resource Cure Period Seller demonstrates Fuel Use measured over the period that commences at the beginning of the previous Contract Year to the end of the Fuel Resource Cure Period ("Fuel Performance Measurement Period") such that A ≥ 80%, where:

        A = B/C;

        B = Fuel Use from the Fuel Resource Category identified in Section A(i) of the Cover Sheet over the Fuel Performance Measurement Period (as provided in the monthly report); and

        C = Total Fuel Use from all Fuel Resource Categories over the Fuel Performance Measurement Period (as provided in the monthly report)

2. At Buyer's request Seller shall provide supporting documentation sufficient to verify that Seller's claims in any attestations or reports are complete and accurate.

3. If in any Seller monthly compliance report, as referenced in Section 1.b of this Appendix M, Buyer determines, in its reasonable discretion, that it would be impossible for Seller to cure the Fuel Resource Failure during the remainder of the Fuel Resource Cure Period, Buyer shall have the right to terminate this Agreement.

If Seller demonstrates to Buyer's reasonable satisfaction that Seller has cured the Fuel Resource Failure at the end of the Fuel Resource Cure Period, Buyer will provide Notice within thirty (30) days of receipt of the applicable report.

**** End of Appendix M ****

Electric Sample Form 79-1207 Sheet 1 (N)
GREEN TARIFF SHARED RENEWABLES ("GTSR") PROGRAM (N)
POWER PURCHASE AGREEMENT (N)

Please Refer to Attached
Sample Form

(Continued)

GREEN TARIFF SHARED RENEWABLES ("GTSR") PROGRAM POWER PURCHASE AGREEMENT

Appendix B: RAM PROGRAM: Form of Power Purchase Agreement

Standard contract terms and conditions shown in shaded text are those that "may not be modified" per CPUC Decisions ("D.") 07-11-025; D.10-03-021, as modified by D.11-01-025; and D.13-11-024.

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

_____
(as "Seller")

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 Form of Progress Report

Appendix IV Construction Start and Commercial Operation Certification Forms and Procedures

Appendix IV-1 Construction Start Form of Certification

Appendix IV-2 Commercial Operation Certification Procedure

Attachment A Commercial Operation Form of Certification

Appendix IV-3 Capacity Test Procedure ***[For Baseload Product only]***

Appendix V GEP Damages Calculation

Appendix VI Notification Requirements for Available Capacity and Project Outages

Appendix VII Form of Consent to Assignment

Appendix VIII Seller Documentation Condition Precedent

Appendix IX Form of Actual Availability Report ***[For As-Available Product only]***

Attachment A Form of Actual Availability Report

Appendix X Telemetry Parameters for Wind or Solar Facility

Appendix XI Form of Letter of Concurrence

Appendix XII Supplier Diversity Program

Appendix XIII Project Specifications and Contract Capacity Calculation

Appendix XIV Section 3.3(e) Liquidated Damages Calculation

POWER PURCHASE AGREEMENT

COVER SHEET

This Power Purchase Agreement ("Agreement") is entered into between Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E"), and _____ ***[insert name of Seller]***, a _____ ***[include place of formation and business type]*** ("Seller"), as of the Execution Date. The information contained in this Cover Sheet shall be completed by Seller and incorporated into the Agreement.

A. Transaction Type

Seller may not modify the Transaction Type designated in this Part A of the Cover Sheet at any time after the Execution Date.

Program: ☐ GTSR Program

Product: ☐ As-Available Non-Peaking
☐ As-Available Peaking
☐ Baseload

Deliverability:

☐ Energy Only Status

☐ Partial Capacity Deliverability Status ("PCDS")

a) If PCDS is selected, provide the Expected PCDS Date, or the date the Project received a PCDS finding if already received: _____ (mm/dd/yyyy);

b) The Partial Capacity Deliverability Status Amount the Project will obtain is _____MW.

☐ Full Capacity Deliverability Status ("FCDS")

a) If FCDS is selected, provide the Expected FCDS Date, or the date the Project received a FCDS finding if already received: _____ (mm/dd/yyyy).

Seller shall elect one of the following types of transactions pursuant to Section 3.1(b) of the Agreement:

☐ Full Buy/Sell
☐ Excess Sale

Seller shall elect one of the following Delivery Terms:

☐ ten (10) Contract Years
☐ fifteen (15) Contract Years
☐ twenty (20) Contract Years

B. Project Description Including Description of Site

Contract Capacity: [_____] MW ***[Provide the maximum capacity to be made available to PG&E pursuant to the transaction, which in the case of an Excess Sale transaction, may be less than the maximum capacity of the Project]***

(i) Project Development:

(a) The Project is an:

[An existing or repowered Project with substantial changes, including but not limited to, new major permits, a new interconnection study, or the construction of new generators, should check "New Project" instead of "Existing Project."]

☐ Existing Project

☐ New Project ***[GTSR Projects must be New Projects]***

(1) If the Project is a New Project:

(A) The date on which the Commercial Operation Date of the Project is expected (must be no later than the Guaranteed Commercial Operation Date):

(B) The Expected Construction Start Date of the Project:

(2) If the Project is an Existing Project:

(A) The Expected Initial Energy Delivery Date (which shall be no later than the Guaranteed Commercial Operation Date) is:

(b) Project development Milestone schedule ***[to be completed by Buyer and Seller. Insert additional rows if necessary]:***

Identify Milestone	Date for Completion

(ii) Supplier Diversity. For the purpose of Section 4 of the Supplier Diversity Program obligation set forth in Appendix XII of this Agreement, Seller's supplier diversity spend target for work supporting the Project is ___%.

C. Contract Price

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

Contract Year	Contract Price ($/MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

D. Delivery Term Contract Quantity Schedule

Length of Delivery Term (in Contract Years):

Contract Year	Contract Quantity (MWh)[1]
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

[1]For a Baseload Product, the minimum qualifying Contract Quantity should be equivalent to at least an eighty percent (80%) Capacity Factor.

E. **Collateral** (as described in the RAM Protocol Agreement, under Section V.C. RAM PPA Terms and Conditions)

- Project Development Security (provide dollar amount)

  Dollar Amount: $ _____

  - Cash, or
  - Letter of Credit

- Delivery Term Security (provide dollar amount)

  Dollar Amount: $ _____

  - Cash, or
  - Letter of Credit

- Term Security (provide dollar amount) *[Applies to GTSR Projects 3MW or less]*

  Dollar Amount: $ _____

  - Cash, or
  - Letter of Credit

F. **Buyer Bid Curtailment and Buyer Curtailment Orders.**

Operational characteristics of the Project for Buyer Bid Curtailment and Buyer Curtailment Orders are listed below. Buyer, as the Scheduling Coordinator, may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project. In addition, Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are based on the true physical characteristics of the resource.

- PMax of the Project: ____MW
- Minimum operating capacity: ____MW
- Ramp Rate: ____MW/Minute

[For As-Available Products]

- Advance notification required for Buyer Bid Curtailment and Buyer Curtailment Order: Not greater than the shortest Dispatch Interval in the Real-Time Market (as defined in the CAISO Tariff).
- Maximum number of Start-ups per calendar day (if any such operational limitations exist): _____

[For Baseload Products]

- Maximum number of Start-ups per calendar day, month, year (if any such operational limitations exist): ____
- Advance notification required for Buyer Bid Curtailment and Buyer Curtailment Order: Not greater than the shortest Dispatch Interval in the Real-Time Market (as defined in the CAISO Tariff).

Other Requirements:

- Maximum number of hours annually for Buyer Curtailment Periods: unlimited hours
- The Project will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 3.1(q).
- Start-Up Time (if applicable): _____Minutes
- Minimum Run Time after Start-Up (if applicable): _____Minutes
- Minimum Down Time after Shut-Down (if applicable):_____Minutes

Note: Sellers should enter the maximum flexibility the Project can offer given the operational constraints of the technology.

G. Damage Payment (as described under Damage Payment definition in Section 1.61)

☐ Ten (10) year Delivery Term. Dollar amount: $_____

☐ Fifteen (15) year Delivery Term. Dollar amount: $_____

☐ Twenty (20) year Delivery Term. Dollar amount: $_____

H. 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: City: State: Zip:	77 Beale Street, Mail Code N12E 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: Candice Chan (CWW9@pge.com) Director, Contract Mgmt & Settlements
Phone: Facsimile: Email:	Phone: (415) 973-7780 Facsimile: (415) 972-5507
DUNS: Federal Tax ID Number:	DUNS: Federal Tax ID Number:
Invoices: Attn: Phone: Facsimile: Email:	**Invoices:** Attn: Azmat Mukhtar (ASM3@pge.com) Manager, Electric Settlements Phone: (415) 973-4277 Facsimile: (415) 973-2151
Scheduling: Attn:	**Scheduling:** Attn: Christopher McNeece (CMM4@pge.com)

Phone:
Facsimile:
Email:

Phone: (415) 973-4072
Facsimile: (415) 973-0400

Payments:
Attn:

Phone:
Facsimile:
Email:

Payments:
Attn: Azmat Mukhtar (ASM3@pge.com)
Manager, Electric Settlements
Phone: (415) 973-4277
Facsimile: (415) 973-2151

Wire Transfer:
BNK:
ABA:
ACCT:

Wire Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn:

Phone:
Facsimile:
Email:

Credit and Collections:
Attn: Justice Awuku (J2AT@pge.com)
Manager, Credit Risk Management
Phone: (415) 973-4144
Facsimile: (415) 973-4071

With additional Notices of an Event of Default to Contract Manager:
Attn: _____

Phone: _____
Facsimile: _____
Email: _____

Contract Manager:

Attn: Ted Yura (THY1@pge.com)
Senior Manager, Contract Management
Phone: (415) 973-8660
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

PREAMBLE

This Power Purchase Agreement, together with the Cover Sheet, appendices and any other attachments referenced herein, is made and entered into between PG&E and Seller, as of the Execution Date set forth in the Cover Sheet. 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)(G). ***[For As-Available Product only]***

1.2 "Additional Extension" has the meaning set forth in Section 3.1(c)(ii).

1.3 "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.

1.4 "Agreement" means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Cover Sheet, 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.

1.5 "Ancillary Services" has the meaning set forth in the CAISO Tariff.

1.6 "Arbitration" has the meaning set forth in Section 12.3.

1.7 "As-Available Non-Peaking" Product is As-Available Product with a Capacity Factor of eighty percent (80%) or less averaged over all TOD Periods and less than ninety-five percent (95%) of expected output is in the Peak and Shoulder periods, as defined in Section 4.2.

1.8 "As-Available Peaking" Product is As-Available Product with a Capacity Factor of eighty percent (80%) or less averaged over all TOD Periods and ninety-five percent (95%) or more of expected output is in the Peak and Shoulder periods, as defined in Section 4.2.

1.9 "As-Available Product" means an As-Available Non-Peaking Product or an As-Available Peaking Product that is powered by one of the following sources, except for a *de minimis* amount of Energy from other sources: (a) wind, (b) solar energy, (c) hydroelectric potential derived from small conduit water distribution facilities that do not have storage capability, or (d) other variable sources of energy that are contingent upon natural forces other than geothermal. Subject to the terms of this Agreement, (i) Seller is obligated to sell and deliver and (ii) Buyer is obligated to purchase and receive, the Energy component of As-Available Product from the Project whenever such Energy is capable of being generated from the Project. In contrast to Baseload Product, the Seller does not control the availability of fuel supply to the Project producing As-Available Product and lacks the ability to store energy and control the rate of output.

1.10 "Availability Workbook" has the meaning set forth in Appendix IX.

1.11 "Available Capacity" means the capacity from the Project, expressed in whole megawatts, that is available to generate Product. ***[For As-Available Product facilities only]***

1.12 "Available Capacity" means the expected amount of Energy to be produced from the Project, expressed in megawatts. ***[For Baseload Product facilities and small hydro facilities]***

1.13 "Balancing Authority" has the meaning set forth in the CAISO Tariff.

1.14 "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.

1.15 "Baseload" means a Product for which the Energy delivery levels are uniform twenty-four (24) hours per day, seven (7) days per week and has a Capacity Factor (averaged over all TOD Periods) greater than or equal to eighty percent (80%).

1.16 "Bid" has the meaning set forth in the CAISO Tariff.

1.17 "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.

1.18 "Buyer" has the meaning set forth in the Cover Sheet.

1.19 "Buyer Bid Curtailment" means Buyer as SC communicates a curtailment instruction to the Seller, requiring Seller to produce less Energy from the Project than the CAISO final market forecast amount to be produced from the Project for a period of time, and Buyer as the SC either (a) submitted a CAISO final market Energy Supply Bid and such curtailment is solely a result of the CAISO implementing the Energy Supply Bid; or (b) submitted a CAISO final market Self-Schedule for less than the amount of the final-market Energy forecasted to be produced from the Project. However, if the Project is subject to a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same period of time, then Buyer Bid Curtailment shall not include any Energy that is subject to such Planned Outage, Forced Outage, Force Majeure or Curtailment Period.

1.20 "Buyer Curtailment Order" means the instruction from Buyer to Seller to reduce generation from the Project by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Order.

1.21 "Buyer Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Project pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order. The Buyer Curtailment Period shall be inclusive of the

time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.22 "Buyer's Notice of First Offer Acceptance" has the meaning set forth in Section 3.9(e)(ii) or Section 11.1(b)(ii), as applicable.

1.23 "Buyer's WREGIS Account" has the meaning set forth in Section 3.1(k)(i).

1.24 "CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.

1.25 "CAISO Global Resource ID" means the number or name assigned by the CAISO to the Project.

1.26 "CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

1.27 "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 Imbalance Energy as addressed in Section 4.6(b) of this Agreement.

1.28 "CAISO Revenues" means the net amount resulting from (a) the credits and other payments received by Buyer, as Seller's Scheduling Coordinator, as a result of test energy from the Project delivered 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, which amount may result in a negative or positive value.

1.29 "CAISO Tariff" means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.30 "California Renewables Portfolio Standard" means the renewable energy program and policies established by California State Senate Bills 1038 and 1078 as amended by Senate Bill SB1X, and codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.31 "Capacity Attributes" means any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, or dispatchability 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 any and all Product, including any accounting construct so that the maximum amount of 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.

1.32 "Capacity Factor" has the meaning set forth in Section 4.3. ***[For Baseload Product only]***

1.33 "Capacity Test" has the meaning set forth in Appendix IV-3 attached hereto. ***[For Baseload Product only]***

1.34 "CEC" means the California Energy Commission or its successor agency.

1.35 "CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Project has commenced commercial operation (as such term is defined by and according to the CEC), 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.

1.36 "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.

1.37 "Commercial Operation" means the Project is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement and in the case of Baseload Product, as further provided in Appendix IV-3.

1.38 "Commercial Operation Date" means **[*For As-Available Products use the following language*]**the date on which Seller (a) notifies Buyer that Commercial Operation has commenced, (b) notifies Buyer that all Reliability Network Upgrades identified in the Project's Generator Interconnection Agreement have been completed, and (c) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix IV-2, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix IV-2 hereto. **[*For Baseload Products use the following language*]** the date on which (a) Seller notifies Buyer that Commercial Operation has commenced, (b) Seller notifies Buyer that all Reliability Network Upgrades identified in the Project's Generator Interconnection Agreement have been completed, (c) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix IV-2, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix IV-2 hereto, and (d) Buyer accepts in writing the results of Seller's initial Capacity Test report in compliance with the Capacity Test Procedure as provided in Appendix IV-3 hereto.

1.39 "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), including 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. Compliance Costs do not include any amounts designated in the Project's full capacity deliverability study to obtain FCDS nor any costs and expenses incurred by Seller for FCDS studies.

1.40 "Compliance Cost Cap" has the meaning set forth in Section 3.1(o).

1.41 "Condition Precedent" means each of, or one of, the conditions set forth in Section 2.5(a)(i) through (iv) and "Conditions Precedent" shall refer to all of the conditions set forth in Section 2.5(a)(i) through (iv).

1.42 "Confidential Information" has the meaning set forth in Section 10.7(a)

1.43 "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 Appendix IV-1.

1.44 "Contract Capacity" has the meaning set forth in Section 3.1(f).

1.45 "Contract Capacity Commitment" means the amount of the Contract Capacity that may be constructed pursuant to the Governmental Approvals received or obtained by Seller as of, for a New Project, the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 3.9(c)), and for an Existing Project, the Expected Initial Energy Delivery Date specified on the Cover Sheet.

1.46 "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 the Cover Sheet.

1.47 "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) and Cover Sheet Section D .

1.48 "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.

1.49 "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.

1.50 "Cover Sheet" means the cover sheet to this Agreement, completed by Seller and incorporated into the Agreement.

1.51 "CPUC" or "Commission" means the California Public Utilities Commission, or successor entity.

1.52 "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.

1.53 "CRS" means the Center for Resource Solutions or any successor entity performing similar functions.

1.54 "Credit Rating" means, with respect to any entity, (a) the rating then assigned to such entity's unsecured senior long-term debt obligations (not supported by third party credit enhancements) or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. If the entity is rated by both S&P and Moody's and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

1.55 "Cure" has the meaning set forth in Section 8.5(b).

1.56 "Cured Performance Measurement Period" has the meaning set forth in Section 3.1(e)(ii)(C).

1.57 "Cure Payment Period" has the meaning set forth in Section 3.1(e)(ii)(C)(III).

1.58 "Curtailment Order" means any of the following:

(a) the CAISO, Reliability Coordinator, Balancing Authority or any other entity having similar authority or performing similar functions during the Delivery Term, orders, directs, alerts, or communicates via any means, to a Party to curtail Energy deliveries, which may come in the form of a request to return to Schedule consistent with the CAISO Tariff, for reasons including, (i) any 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, or (iii) any warning, forecast, or anticipated over-generation conditions, including a request from CAISO to manage over-generation conditions, provided that this subsection (a)(iii) shall not include Buyer Bid Curtailment;

(b) a curtailment ordered by the Participating Transmission Owner, distribution operator (if interconnected to distribution or sub-transmission system), or any other entity having similar authority or performing similar functions during the Delivery Term, for reasons including (i) any situation that affects normal function of the electric system including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (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;

(c) scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's or distribution operator's transmission or distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Generator Interconnection Agreement with the Participating Transmission Owner or distribution operator.

For the avoidance of doubt, if Buyer or Third-Party SC submitted a Self-Schedule and/or an Energy Supply Bid that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced from the Project for any time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

1.59 "Curtailment Period" means the period of time during which Seller reduces generation from the Project, pursuant to a Curtailment Order. The Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.60 "Damage Payment" means ***[***for a ten year Delivery Term the dollar amount that equals six (6) months minimum expected revenue of the Project based on Guaranteed Energy Production and the estimated average TOD-adjusted Contract Price, which will be calculated prior to the Execution Date***] [***for a fifteen year Delivery Term the dollar amount that equals nine (9) months minimum expected revenue of the Project based on Guaranteed Energy Production and the estimated average TOD-adjusted Contract Price, which will be calculated prior to the Execution Date***] [***for a twenty year or greater Delivery Term the dollar amount that equals twelve (12) months minimum expected revenue of the Project based on Guaranteed Energy Production and the estimated average TOD-adjusted Contract Price, which will be calculated prior to the Execution Date***]. [Select bracketed language appropriate for the length of the Delivery Term]***

1.61 "DA Price" means the resource specific locational marginal price ("LMP") applied to the PNode applicable to the Project in the CAISO Day-Ahead Market.

1.62 "DA Scheduled Energy" means the Day-Ahead Scheduled Energy as defined in the CAISO Tariff.

1.63 "Day-Ahead Availability Notice" has the meaning set forth in Section 3.4**[**(b)**][**(c)**]**(iii)(C).

1.64 "Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

1.65 "Deemed Delivered Energy" means ***[For As-Available Products use the following language]*** the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, the result of the equation provided pursuant to Section 3.1(l)(i)(G) and using relevant Project availability, weather and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the

CAISO revenue meter for the Project, the Deemed Delivered Energy shall be zero (0). ***[For Baseload Products use the following language]*** the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be determined by reference to the most recent Day-Ahead Availability Notice Buyer has received from Seller at the time Buyer issues a Buyer Curtailment Order.

1.66 "Defaulting Party" means the Party that is subject to an Event of Default.

1.67 "Deficient Month" has the meaning set forth in Section 3.1(k)(v).

1.68 "Deliverability Assessment" has the meaning set forth in the CAISO Tariff.

1.69 "Deliverability Finding Deadline" shall be two (2) calendar years after the RA Start Date. The Deliverability Finding Deadline shall be no later than December 31, 2024.

1.70 "Delivered Energy" means all Energy produced from the Project as measured in MWh at the CAISO revenue meter of the Project and in accordance with the CAISO Tariff, which shall include any applicable adjustments for power factor and Electrical Losses.

1.71 "Delivery Network Upgrade" has the meaning set forth in the CAISO Tariff.

1.72 "Delivery Point" means the point at which Buyer receives Seller's Product, as identified in Section 3.1(d).

1.73 "Delivery Term" has the meaning set forth in Section 3.1(c)(i) and shall be of the length specified in the Cover Sheet.

1.74 "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.

1.75 "Disclosing Party" has the meaning set forth in Section 10.7.

1.76 "Dispatch Instruction" has the meaning set forth in the CAISO Tariff.

1.77 "Dispatch Interval" has the meaning set forth in the CAISO Tariff.

1.78 "Distribution Loss Factor" is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of interconnection, where the Participating Transmission Owner's meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

1.79 "Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

1.80 "DUNS" means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun & Bradstreet, Inc.

1.81 "Early Termination Date" has the meaning set forth in Section 5.2.

1.82 "Effective Date" means the date on which all of the Conditions Precedent set forth in Section 2.5(a) have been satisfied or waived in writing by both Parties.

1.83 "Effective FCDS Date" means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Full Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Full Capacity Deliverability Status.

1.84 "Effective PCDS Date" means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Partial Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Partial Capacity Deliverability Status.

1.85 "EIRP Forecast" means the final forecast of the Energy to be produced by the Project prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol and communicated to Buyer or Third-Party SC for use in submitting a Schedule for the output of the Project in the Real-Time Market.

1.86 "Electrical Losses" means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter(s) and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

1.87 "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 connecting to a part of the Participating TO's electric system that is not part of the CAISO Grid.

1.88 "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.

1.89 "Eligible Intermittent Resources Protocol" or "EIRP" means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

1.90 "Eligible LC Bank" means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must have a Credit Rating of at least: (a) "A-, with a stable designation" from S&P and "A3, with a stable designation" from Moody's, if such bank is rated by both S&P and Moody's; or (b) "A-, with a stable designation" from S&P or "A3, with a stable designation" from Moody's, if such bank is rated by either S&P or Moody's, but not both, even if such bank was rated by both S&P and Moody's as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

1.91 "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.

1.92 "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).

1.93 "Energy Deviation(s)" means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid submitted for the Project; and (b) Delivered Energy.

1.94 "Energy Only Status Seller" or "EOS Seller" means a Seller that has selected Energy Only Status in the Cover Sheet. For avoidance of doubt, an EOS Seller does not have an obligation to have or obtain a Full Capacity Deliverability Status Finding.

1.95 "Energy Supply Bid" has the meaning set forth in the CAISO Tariff.

1.96 "EPC Contract" means the Seller's engineering, procurement and construction contract with the EPC Contractor.

1.97 "EPC Contractor" means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, 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.

1.98 "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.

1.99 "Event of Default" has the meaning set forth in Section 5.1.

1.100 "Excess Deemed Delivered Energy" has the meaning set forth in Section 4.5(a)(i). ***[For As-Available Product only]***

1.101 "Excess Deemed Delivered Energy Price" has the meaning set forth in Section 4.5(a)(ii)(B). ***[For As-Available Product only]***

1.102 "Excess Delivered Energy" has the meaning set forth in Section 4.5(a)(i). ***[For As-Available Product only]***

1.103 "Excess Delivered Energy Price" has the meaning set forth in Section 4.5(a)(ii)(A). ***[For As-Available Product only]***

1.104 "Excess Energy" has the meaning set forth in Section 4.5(a)(i). ***[For As-Available Product only]***

1.105 "Excess Network Upgrade Costs" has the meaning set forth in Section 3.9(f)(ii).

1.106 "Excess Sale" means the type of transaction described in Section 3.1(b)(ii).

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

1.108 "Execution Date" means the latest signature date found on the signature page of this Agreement.

1.109 "Executive(s)" has the meaning set forth in Section 12.2(a).

1.110 "Exempt Wholesale Generator" has the meaning provided in 18 C.F.R. Section 366.1.

1.111 "Existing Project" is a Project that has achieved Commercial Operation on or prior to the Execution Date.

1.112 "Expected Construction Start Date" has the meaning set forth in the Cover Sheet.

1.113 "Expected FCDS Date" means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Full Capacity Deliverability Status.

1.114 "Expected PCDS Date" means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Partial Capacity Deliverability Status.

1.115 "Expected Initial Energy Delivery Date" is the date specified on the Cover Sheet for an Existing Project.

1.116 "Expected Net Qualifying Capacity" means an estimate of the amount of Net Qualifying Capacity the Project would have received had it obtained deliverability according to the deliverability type selected in Section A of the Cover Sheet, as determined in accordance with Appendix XIV.

1.117 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.118 "Final True-Up" means the final payment made pursuant to this Agreement settling all invoices by the Party with an outstanding net amount due to the other Party for Product delivered prior to the end of the Delivery Term or other amounts due pursuant to this Agreement incurred prior to the end of the Delivery Term.

1.119 "First Offer" has the meaning set forth in Section 3.9(e)(1) or Section 11.1(b)(i), as applicable.

1.120 "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 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)(viii) 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(p).

(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, including a delay that could constitute a Permitting Delay unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(iv) Seller's inability to complete interconnection or Electric System Upgrades by the Guaranteed Commercial Operation Date, including a delay that could constitute a Transmission Delay, unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(v) 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 of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vi) 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;

(vii) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) 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;

(ix) 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

(x) 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.

1.121 "Force Majeure Extension" has the meaning set forth in Section 3.9(c)(ii)(C).

1.122 "Force Majeure Failure" has the meaning set forth in Section 11.1(a).

1.123 "Forced Outage" means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Product in whole or in part from a Unit in response to any control system trip or operator-initiated trip in response to an alarm or equipment malfunction; or any other unavailability of the Project or 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.

1.124 "Forecasting Penalty" has the meaning set forth in Section 4.6(c)(iii), and "Forecasting Penalties" means more than one Forecasting Penalty. ***[For As-Available Product only]***

1.125 "Full Buy/Sell" is the type of transaction described in Section 3.1(b)(i).

1.126 "Full Capacity Deliverability Status" or "FCDS" has the meaning set forth in the CAISO Tariff except that it applies to any Generating Facility (as defined in the CAISO Tariff).

1.127 "Full Capacity Deliverability Status Finding" or "FCDS Finding" means a written confirmation from the CAISO that the Project is eligible for FCDS.

1.128 "Full Capacity Deliverability Status Seller" or "FCDS Seller" means a Seller that selected Full Capacity Deliverability Status in the Cover Sheet and either has previously obtained, or is obligated to obtain per the terms of the Agreement, a Full Capacity Deliverability Status Finding.

1.129 "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 5.3 hereof. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including 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 platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.130 "Generally Accepted Accounting Principles" means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

1.131 "Generator Interconnection Agreement" or "GIA" means, for Projects interconnecting at the transmission level, the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and the CAISO governing the terms and conditions of Seller's interconnection with the CAISO Grid, including any description of the plan for interconnecting to the CAISO Grid. For Projects interconnecting at the distribution level, it means the agreement and associated documents (or any successor agreement and associated documentation) by and between Seller and the Participating

Transmission Owner governing the terms and conditions of Seller's interconnection with the Participating TO's distribution system, including any description of the plan for interconnecting to Participating TO's distribution system.

1.132 "Generator Interconnection Process" or "GIP" means the Generator Interconnection Procedures set forth in the CAISO Tariff or Participating TO's tariff, as applicable, and associated documents; provided that if the GIP is replaced by such other successor procedures governing interconnection (a) to the CAISO Grid or Participating TO's distribution system, as applicable, or (b) of generating facilities with an expected net capacity equal to or greater than the Project's Contract Capacity, the term "GIP" shall then apply to such successor procedure.

1.133 "Geothermal Reservoir Report" means a report obtained by Seller from an expert independent consulting firm qualified in geothermal reservoir assessment which assesses the geothermal potential at the Site. ***[For Geothermal Projects only]***

1.134 "GEP Cure" has the meaning set forth in Section 3.1(e)(ii)(C).

1.135 "GEP Damages" has the meaning set forth in Appendix V.

1.136 "GEP Failure" means Seller's failure to produce Delivered Energy plus Deemed Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

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

1.138 "Good Utility Practice" has the meaning provided in the CAISO Tariff.

1.139 "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.

1.140 "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.

1.141 "Governmental Charges" has the meaning set forth in Section 9.2.

1.142 "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: (a) 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; (b) any avoided emissions of carbon dioxide (CO_2), methane (CH_4), 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] (c) 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.

1.143 "Green-e® Energy Certification" means the independent certification and verification program for renewable energy and greenhouse gas emission reductions as administered by CRS.

1.144 "GTSR Program" means the Green Tariff Shared Renewables program implemented per Senate Bill (SB) 43 (Stats. 2013, ch. 413 (Wolk)) and CPUC Decision 15-01-051.

1.145 "GTSR Project" means a Project procured for the GTSR Program in accordance with Green-e® Energy Certification.

1.146 "Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(i).

1.147 "Guaranteed Energy Production" or "GEP" has the meaning set forth in Section 3.1(e)(ii).

1.148 "Guaranty" means a guaranty issued by an entity and in a form acceptable to Buyer in Buyer's sole discretion.

1.149 "Imbalance Energy" has the meaning set forth in the CAISO Tariff.

1.150 "Initial Energy Delivery Date" has the meaning set forth in Section 3.1(c)(i).

1.151 "Initial Extension" has the meaning set forth in Section 3.1(c)(ii).

1.152 "Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

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[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.

1.153 "Interconnection Customer's Interconnection Facilities" has the meaning set forth in the CAISO Tariff or Participating TO's tariff, as applicable.

1.154 "Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

1.155 "Interconnection Point" means the physical interconnection point of the Project as identified by Seller in the Cover Sheet.

1.156 "Interconnection Study" means any of the studies defined in the CAISO Tariff or, if applicable, any distribution provider's tariff that reflect the methodology and costs to interconnect the Project to the Participating Transmission Owner's electric grid.

1.157 "Integrated Forward Market" has the meaning set forth in the CAISO Tariff.

1.158 "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.

1.159 "Interest Payment Date" means the date of returning unused Performance Assurance held in the form of cash.

1.160 "Interest Period" means the monthly period beginning on the first day of each month and ending on the last day of each month.

1.161 "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.

1.162 "JAMS" means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

1.163 "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 1.52 "CPUC Approval," 10.2(b), "Seller Representations and Warranties" and 10.12 "Governing Law", the term "law" shall have the meaning set forth in this definition.

1.164 "Letter of Credit" means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix I to this Agreement; provided, that, if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of Credit amount may not be greater than the Maximum Issuing Amount if the total amount of collateral posted by the Seller in the form of Letter of Credit exceeds ten million dollars ($10,000,000.00) on the date of Transfer.

1.165 "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.

1.166 "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 5.3 hereof. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including 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 platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

1.167 "Manager" has the meaning set forth in Section 12.2(a).

1.168 "Master File" has the meaning set forth in the CAISO Tariff.

1.169 "Maximum Issuing Amount" means the amount of a Letter of Credit to be issued by an Eligible LC Bank, which cannot exceed the lesser of (a) sixty percent (60%) of the total collateral posted by Seller in the form of Letter of Credit including the Letter of Credit to be issued or (b) twenty-five million dollars ($25,000,000.00), without Buyer's prior written consent.

1.170 "Milestone(s)" means the key development activities required for the construction and operation of the Project, as set forth in Section B(i)(b) of the Cover Sheet.

1.171 "Minimum Load" has the meaning set forth in the CAISO Tariff.

1.172 "Minimum Down Time" has the meaning set forth in the CAISO Tariff.

1.173 "Monthly Payment for Excess Energy" has the meaning set forth in Section 4.5(b). ***[For As-Available Product only]***

1.174 "Monthly Period" has the meaning set forth in Section 4.2.

1.175 "Monthly TOD Payment" has the meaning set forth in Section 4.4.

1.176 "Moody's" means Moody's Investors Service, Inc., or its successor.

1.177 "MW" means megawatt in alternating current or AC.

1.178 "MWh" means megawatt-hour.

1.179 "NERC" means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

1.180 "Net Rated Output Capacity" means the Project's Energy production capability as measured at the CAISO revenue meter in any Capacity Test inclusive of deductions for all applicable Electrical Losses. ***[Applies to Baseload Product only]***

1.181 "Net Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

1.182 "Network Upgrades" has the meaning set forth in the CAISO Tariff or the Participating TO's tariff, as applicable.

1.183 "New Project" is a Project that has not achieved Commercial Operation on or prior to the Execution Date.

1.184 "NOAA" means National Oceanic and Atmospheric Administration or successor thereto.

1.185 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.186 "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). The Cover Sheet contains the names and addresses to be used for Notices.

1.187 "Notice to Proceed" means the full notice to proceed, 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 mobilization and construction of the Project without any delay or waiting periods.

1.188 "Operational Deliverability Assessment" has the meaning set forth in the CAISO Tariff.

1.189 "Outage Notification Procedures" means the procedures specified in Appendix VI, attached hereto. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.

1.190 "Partial Capacity Deliverability Status" or "PCDS" has the meaning set forth in the CAISO Tariff.

1.191 "Partial Capacity Deliverability Status Amount" means the number of MW that the Project will obtain, as stated in the Deliverability type selected in Section Aof the Cover Sheet.

1.192 "Partial Capacity Deliverability Status Finding" or "PCDS Finding" means a written confirmation from the CAISO that the Project is eligible for PCDS.

1.193 "Participating Intermittent Resource" or "PIRP" has the meaning set forth in the CAISO Tariff. ***[For As-Available Product only]***

1.194 "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.

1.195 "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.

1.196 "Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations hereunder and includes Project Development Security, Delivery Term Security, and Term Security, as applicable. Acceptable forms of collateral are cash or a Letter of Credit as designated in

Section E of the Cover Sheet. The required form of Letter of Credit is attached hereto in Appendix I. ***[Existing ERRs to replace Project Development Security with Pre-Delivery Term Security]***

1.197 "Performance Measurement Period" has the meaning set forth in Section 3.1(e)(ii).

1.198 "Performance Tolerance Band" shall be calculated as set forth in Section 4.5(c)(ii).

1.199 "Permit Failure" has the meaning set forth in Section 3.9(d). ***[For New Projects only]***

1.200 "Permitting Delay" has the meaning set forth in Section 3.9(c)(ii)(A).

1.201 "Permitted Extensions" means extensions to the Guaranteed Commercial Operation Date due to Permitting Delay, Transmission Delay, or Force Majeure Extension, as applicable, pursuant to Section 3.9(c).

1.202 "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.

1.203 "PMax" has the meaning set forth in the CAISO Tariff.

1.204 "PNode" has the meaning set forth in the CAISO Tariff.

1.205 "Preamble" means the paragraph that precedes Article One: General Definitions to this Agreement.

1.206 "Preschedule Day" has the meaning set forth in Section 3.4[(b)][(c)](iii).

1.207 "Product" means the Energy, capacity, Ancillary Services, and all products, services and/or attributes similar to the foregoing which are or can be produced by or associated with the Project, including renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

1.208 "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.

1.209 "Progress Report" means the report similar in form and content to that attached hereto as Appendix III.

1.210 "Project" means all of the Unit(s) and the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described in the Cover Sheet.

1.211 "Project Development Security" is the collateral required of Seller, as specified and referred to in Section 8.4(a). ***[Existing ERRs to replace Project Development Security with Pre-Delivery Term Security]***

1.212 "Project Specifications" has the meaning set forth in Appendix XIII.

1.213 "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.

1.214 "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.

1.215 "RA Deficiency Amount" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.3(e)(ii).

1.216 "RA Shortfall Period" means the period of consecutive calendar months that starts with the calendar month in which the RA Start Date occurs and concludes with the second calendar month following the calendar month in which the Effective FCDS Date or Effective PCDS Date occurs. The RA Shortfall Period shall not exceed twenty-six (26) months.

1.217 "RA Shortfall Month" means the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.3(e)(ii).

1.218 "RA Start Date" shall be the later of the Initial Energy Delivery Date or the Expected PCDS Date or FCDS Date according to the deliverability type selected in Section A of the Cover Sheet.

1.219 "RA Value" means the value in U.S. dollars per MW of Expected Net Qualifying Capacity for each RA Shortfall Month, as set forth in Appendix XIV.

1.220 "Ramp Rate" has the meaning set forth in the CAISO Tariff.

1.221 "Real-Time Market" means any existing or future intra-day market conducted by the CAISO occurring after the Day-Ahead Market.

1.222 "Real-Time Price" means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

1.223 "Reductions" has the meaning set forth in Section 4.7(b).

1.224 "Referral Date" has the meaning set forth in Section 12.2(a).

1.225 "Reliability Coordinator" has the meaning set forth in the CAISO Tariff.

1.226 "Reliability Must-Run Contract" has the meaning set forth in the CAISO Tariff. ***[For Baseload Product only]***

1.227 "Reliability Network Upgrade" has the meaning set forth in the CAISO Tariff.

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

1.229 "Replacement Capacity Rules" means the replacement requirement for Resource Adequacy Capacity (as defined in the CAISO Tariff) associated with a Planned Outage as set forth in the CAISO Tariff or successor replacement requirements as prescribed by the CPUC, CAISO and/or other regional entity.

1.230 "Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-01-050, 04-10-035 and 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, and any other existing or subsequent decisions, resolutions or rulings 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.

1.231 "Resource Adequacy Plan" has the meaning set forth in the CAISO Tariff.

1.232 "Resource Adequacy Requirements" has the meaning set forth in Section 3.3.

1.233 "Resource Adequacy Standards" means (a) the Program set forth in Section 40.9 of the CAISO Tariff and (b) any future program or provision under the CAISO Tariff providing for availability standards or similar standards with respect to any flexible Resource Adequacy resource, product, or procurement obligation; in the case of (a) or (b), as any such program or provision may be amended, supplemented, or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible changes and incentive payments for performance thereunder.

1.234 "Resource-Specific Settlement Interval LMP" has the meaning set forth in the CAISO Tariff.

1.235 "Retained Revenues" has the meaning set forth in Section 4.7(c).

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

1.237 "S&P" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

1.238 "Satisfaction Date" has the meaning set forth in Section 2.6.

1.239 "Schedule" has the meaning set forth in the CAISO Tariff.

1.240 "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.

1.241 "SEC" means the U.S. Securities and Exchange Commission.

1.242 "Self-Schedule" has the meaning set forth in the CAISO Tariff.

1.243 "Seller" has the meaning set forth in the Cover Sheet.

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

1.245 "Seller's WREGIS Account" has the meaning set forth in Section 3.1(k)(i).

1.246 "Settlement Amount" means the amount in US dollars equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.

1.247 "Settlement Interval" has the meaning set forth in the CAISO Tariff.

1.248 "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. ***[For As-Available Product only]***

1.249 "Shared Contract Year" has the meaning set forth in section 3.1(e)(ii)(C)(I).

1.250 "Site" means the location of the Project as described in the Cover Sheet.

1.251 "Start-up" means the action of bringing a Unit from non-operation to operation at or above the Unit's Minimum Load, or with positive generation output if Minimum Load is zero.

1.252 "Surplus Delivered Energy" means, in any Settlement Interval, the Delivered Energy that exceeds the product of one hundred percent (100%) of Contract Capacity multiplied by a Settlement Interval.

1.253 "Supply Plan" has the meaning set forth in the CAISO Tariff.

1.254 "System Emergency" has the meaning set forth in the CAISO Tariff.

1.255 "Term" has the meaning provided in Section 2.6.

1.256 "Term Security" means for GTSR Projects with Contract Capacities 3MW or less, the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.

1.257 "Terminated Transaction" means the Transaction terminated in accordance with Section 5.2 of this Agreement.

1.258 "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.

1.259 "Test Period" means the period of not more than ninety (90) consecutive days, as extended by the Initial Extension and Additional Extension according to Section 3.1(c)(ii), as applicable, which period shall commence upon the first date that the following have occurred (a) the CAISO informs Seller in writing that Seller may deliver Energy from the Project to the CAISO Grid, and (b) the items in Section 3.4(a)(i)(E) have been fulfilled and implemented, and shall end upon the Initial Energy Delivery Date.

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

1.261 "TOD" means time of delivery of Delivered Energy from Seller to Buyer.

1.262 "TOD Factors" has the meaning set forth in Section 4.4(a).

1.263 "TOD Periods" has the meaning set forth in Section 4.2.

1.264 "Transaction" means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.

1.265 "Transfer" with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder, if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.

1.266 "Transmission Delay" has the meaning set forth in Section 3.9(c)(ii)(B).

1.267 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

1.268 "Uninstructed Imbalance Energy" shall have the meaning set forth in the CAISO Tariff.

1.269 "Unit" means the technology used to produce the Products, which are identified in the Cover Sheet for the Transaction entered into under this Agreement.

1.270 "Variation(s)" means the absolute value of the difference, in MWh, in any Settlement Interval between (a) DA Scheduled Energy; and (b) Delivered Energy for the Settlement Interval. ***[For Baseload Product only]***

1.271 "WECC" means the Western Electricity Coordinating Council or successor agency.

1.272 "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.

1.273 "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

1.274 "WREGIS Certificate Deficit" has the meaning set forth in Section 3.1(k)(v).

1.275 "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.

1.276 "WREGIS Operating Rules" means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Cover Sheet, 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" or "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 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.

(h) 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.

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 Separation of Functions. The Parties acknowledge that this Agreement is between (a) Seller and (b) Buyer acting solely in its merchant function. The Parties further acknowledge that they have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as Participating Transmission Owner, including orders or instructions relating to Electric System Upgrades and/or Curtailment Periods.

2.5 Conditions Precedent.

(a) Conditions Precedent. Subject to Section 2.7 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 VIII (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.

2.6 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.5(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 2.5(b), Section 5.2 or Section 11.1 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 pursuant to the Final True-Up, 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,Delivery Term Security or 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 three (3) years.

2.7 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 3.9(a)(vii), 5.1(a)(iv)-(v), and 5.1(b)(iv);

(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 2.7;

(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 10.16; 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 set forth in the Cover Sheet. Buyer shall have exclusive rights to all Product during the Delivery Term.

(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, pursuant to Seller's election in the Cover Sheet of a Full Buy/Sell or Excess Sale arrangement as described in paragraphs 3.1(b)(i) and 3.1(b)(ii) below. Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right (1) 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 Variations, as applicable, or (2) sell Product from the Project to a third party other than in connection with Energy Deviations or Variations, as applicable. 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. Seller shall comply with Buyer's Supplier Diversity Program in accordance with Appendix XII. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(i) Full Buy/Sell. If "Full Buy/Sell" is elected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product measured in kilowatt-hours, net of station use and transformation and transmission losses to and at the Delivery Point. Seller shall purchase all Energy required to serve the Project's on-site load, net of station use, from Buyer or applicable retail service provider pursuant to its applicable retail rate schedule.

(ii) Excess Sale. If "Excess Sale" is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product as measured in kilowatt-hours, net of station Use, any on-site load and transformation and transmission losses to the Delivery Point. Seller agrees to convey to Buyer all elements of Product associated with the Energy sold to Buyer.

(c) Delivery Term.

(i) Delivery Term and Initial Energy Delivery Date. As used herein, "Delivery Term" shall mean the period of Contract Years specified on the Cover Sheet, beginning on the first date that Buyer accepts delivery of the Product from the Project in connection with this Agreement following Seller's demonstration of satisfaction of the items listed below in this Section 3.1(c)(i) ("Initial

Energy Delivery Date") and continuing until the end of the tenth, fifteenth, or twentieth Contract Year (as applicable, based on the Cover Sheet election) unless terminated pursuant to the terms of this Agreement; provided that the Expected Initial Energy Delivery Date may be extended pursuant to Section 3.1(c)(ii). The Initial Energy Delivery Date shall be the later of the (A) date that the Buyer receives the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix II and (B) the date listed as the Initial Energy Delivery Date on the Initial Energy Delivery Date Confirmation Letter. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (I) Seller notifies Buyer that Commercial Operation has occurred; (II) Buyer shall have received and accepted the Delivery Term Security or Term Security, as applicable, in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; (III) Seller shall have obtained the requisite CEC Certification and Verification for the Project ***[***and Seller shall have demonstrated submission and approval of documents and information to CRS necessary for the GTSR Project to receive an eligibility designation for Buyer's Green-e® Energy Certification***][Bracketed language only applies to GTSR Projects]*** (IV) all of the applicable Conditions Precedent in Section 2.5(a) have been satisfied or waived in writing; (V) for resources that are already under a contract as of the Execution Date, that existing contract must have expired by its own terms before the Initial Energy Delivery Date; (VI) Seller shall have demonstrated satisfaction of Seller's other obligations in this Agreement that commence prior to or as of the Delivery Term; and (VII) unless Seller has been directed by Buyer to not participate in the Participating Intermittent Resource Program, Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource to the extent the Participating Intermittent Resource Program exists for the Project's technology type at such time as the conditions in subsections (I) through (VI) of this Section 3.1(c)(i) are satisfied. ***[Subsection (VII) applicable to solar, wind, or hydro Projects only]***

(ii) Extensions of Test Period and Initial Energy Delivery Date. In the event that Seller cannot satisfy the requirements for the Initial Energy Delivery Date by the Expected Initial Energy Delivery Date, as set forth in Section 3.1(c)(i), then Seller may provide Buyer with a one-time Notice of a thirty (30) day extension of the Test Period and Expected Initial Energy Delivery Date ("Initial Extension") along with a written explanation of the basis for the extension, no later than five (5) Business Days prior to the Expected Initial Energy Delivery Date. In the event that Seller requires an additional extension of the Test Period and Expected Initial Energy Delivery Date beyond the Initial Extension, Seller may request a further extension of the Test Period and Expected Initial Energy Delivery Date from Buyer no later than ten (10) days prior to the expiration of the Initial Extension of up to sixty (60) days by providing Notice to Buyer along with a detailed written explanation of the basis for such request ("Additional Extension"). Buyer shall provide Seller with Notice of Buyer's acceptance or rejection, in its sole discretion, of such Notice of Additional Extension within ten (10) days of receipt of Seller's Notice of Additional Extension. If Buyer fails to provide a Notice of Buyer's acceptance or rejection, then Seller's Notice of Additional Extension shall be deemed accepted. If Buyer provides Seller with Notice of Buyer's rejection of the Additional Extension, then Seller may be subject to an Event of Default. 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.

(d) Delivery Point. The Delivery Point shall be the PNode designated by the CAISO for the Project.

(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 Section D of the Cover Sheet ("Delivery Term Contract Quantity Schedule"), which amount is inclusive of outages.

[Use the following bracketed language for As-Available Product delivered by all facilities]

[(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to provide to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" is equal to the product of (x) and (y), where (x) is one hundred sixty percent (160%) of the average of the Contract Quantities applicable to the two (2) Contract Years comprising the Performance Measurement Period ***[Photovoltaic facilities only to use the then-applicable Contract Quantities for the Performance Measurement Period]***, and (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% × average of the Contract Quantities in MWh in Performance Measurement Period) × [(Hrs in Performance Measurement Period – Seller Excuse Hrs in Performance Measurement Period) / Hrs in Performance Measurement Period] ***]***

[Use the following bracketed language for Baseload Product only]

[(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to provide to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, no less than the Guaranteed Energy Production in each Contract Year during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" is equal to the product of (x) and (y), where (x) is ninety percent (90%) of the Contract Quantity, and (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 = (90% × Contract Quantity in MWh) × [(Hrs in Performance Measurement Period – Seller Excuse Hrs in Performance Measurement Period) / Hrs in Performance Measurement Period] ***]***

[Use the following subparts (B) and (C) to Section 3.1(e)(ii) for both As-Available and Baseload Products and all technologies]

(B) In no event shall any amount of Delivered Energy plus Deemed Delivered Energy in any Settlement Interval that exceeds the Contract Capacity be credited toward or added to Seller's Guaranteed Energy Production requirement.

(C) GEP Failure, Cure, Damages.

(I) 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 provide Notice to Seller of such failure, provided that Buyer's failure to provide Notice shall not constitute as a waiver of Buyer's rights to collect GEP damages. Seller may cure the GEP Failure by providing to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, that is no less than ninety percent (90%) of the Contract Quantity, subject to adjustment for Seller Excuse Hours over the next following Contract Year, as set forth in the formula below ("GEP Cure").

GEP Cure = (90% × Contract Quantity in MWh) × [(Hrs in next following Contract Year – Seller Excuse Hrs in next following Contract Year) / Hrs in next following Contract Year]

If Seller fails to provide sufficient Delivered Energy plus Deemed Delivered Energy, if any, as adjusted by Seller Excuse Hours, to qualify for the GEP Cure for a given Performance Measurement Period, Seller shall pay GEP Damages, calculated pursuant to Appendix V ("GEP Damages Calculation"). ***[***If Seller provides a GEP Cure or pays GEP Damages for the Contract Years in a particular Performance Measurement Period ("Cured Performance Measurement Period"), then for purposes of calculating the Guaranteed Energy Production in the following Performance Measurement Period, the amount of Delivered Energy plus Deemed Delivered Energy in the second Contract Year of the Cured Performance Measurement Period, which is also the first Contract Year of the following Performance Measurement Period ("Shared Contract Year"), shall be deemed equal to the greater of (X) the Delivered Energy plus Deemed Delivered Energy, if any, for the Shared Contract Year, subject to adjustment for Seller Excuse Hours, or (Y) eighty percent (80%) of Contract Quantity in the Shared Contract Year, where X and Y are calculated as follows:

X = (Delivered Energy + Deemed Delivered Energy in Shared Contract Year) × [Hrs in Shared Contract Year / (Hrs in Shared Contract Year– Seller Excuse Hours in Shared Contract Year)] or;

Y = 80% × Contract Quantity in Shared Contract Year

For the avoidance of doubt, the calculation set forth above for the amount of Delivered Energy plus Deemed Delivered Energy for the Shared Contract Year shall not apply to the cumulative GEP Shortfall under Section 5.1(b)(vi)(B).***]***

[Bracketed text above applies to As-Available Product only.]

(II) 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.

(III) 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 (the "Cure Payment Period"). If Seller does not pay the GEP Damages within the Cure Payment Period, then Buyer may, at its option, declare an Event of Default pursuant to Section 5.1(b)(vi)(A) within ninety (90) days following the Cure Payment Period. If Seller has failed to pay the GEP Damages, and Buyer does not (1) notify Seller of the GEP Failure or (2) declare an Event of Default pursuant to Section 5.1(b)(vi) within the ninety (90) day period, 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).

[The following bracketed version of Section 3.1(f) "Contract Capacity" applies to Full Buy/Sell transactions of As-Available Product only]

[(f) Contract Capacity. The generation capability designated for the Project shall be the contract capacity in MW designated in the Cover Sheet, (the "Contract Capacity"), which shall be equal to the result of the Contract Capacity calculation performed in accordance with Section II of

Appendix XIII. Throughout the Delivery Term, Seller shall sell and deliver all Product produced by the Project solely to Buyer. In no event shall Buyer be obligated to receive, in any Settlement Interval, any Surplus Delivered Energy. Seller shall not receive payment for any Surplus Delivered Energy. To the extent Seller delivers Surplus Delivered Energy to the Delivery Point in a Settlement Interval in which the Real-Time Price for the applicable PNode is negative, Seller shall pay Buyer an amount equal to the Surplus Delivered Energy (in MWh) during such Settlement Interval, multiplied by the absolute value of the Real-Time Price per MWh for such Settlement Interval.***]***

[The following bracketed version of Section 3.1(f) "Contract Capacity" applies to all Baseload Products and Excess Sale transactions of As-Available Products.]

[(f) Contract Capacity.

(i) Contract Capacity. The capacity of the Project at any time shall be the lower of the following: (A) the contract capacity in MW designated in the Cover Sheet or (B) the Net Rated Output Capacity of the Project (the "Contract Capacity"), which shall be equal to the result of the Contract Capacity calculation performed in accordance with Section II of Appendix XIII. Throughout the Delivery Term, Seller shall sell all Product produced by the Project solely to Buyer. In no event shall Buyer be obligated to receive, in any Settlement Interval, any Surplus Delivered Energy. Seller shall not receive payment for any Surplus Delivered Energy. To the extent Seller delivers Surplus Delivered Energy to the Delivery Point in a Settlement Interval in which the Real-Time Price for the applicable PNode is negative, Seller shall pay Buyer an amount equal to the Surplus Delivered Energy (in MWh) during such Settlement Interval, multiplied by the absolute value of the Real-Time Price per MWh for such Settlement Interval.

(ii) Net Rated Output Capacity Testing. Buyer shall have the right to request a Capacity Test as set forth in Appendix IV-3, to determine the Net Rated Output Capacity no more than one time per Contract Year. The resulting Net Rated Output Capacity shall be used to determine the Contract Capacity, in accordance with Section 3.1(f)(i) above, and shall remain in effect until the next Capacity Test requested by Buyer. Appendix IV-3 sets forth the agreements of Buyer and Seller with respect to the performance of Capacity Tests.***]***

(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 XIII.

(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.

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 Generator 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 GIP and applicable agreements or procedures provided under the GIP in order to obtain the applicable Electric System Upgrades and (D) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project.

(ii) Coordination with Buyer.

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

(B) Excess Network Upgrade Costs. Seller shall provide Buyer within ten (10) Business Days of receipt thereof, copies of any Interconnection Study or the interconnection agreement tendered to Seller by the Participating Transmission Owner that may give rise to a termination right of Buyer under Section 3.9(f)(i). Within that same period Seller shall also provide Buyer a Notice of its irrevocable election to exercise or not exercise its right to assume financial responsibility for any Excess Network Upgrade Cost pursuant to Section 3.9(f)(i), with a failure to provide such an election deemed to be an election not to exercise such rights for purposes of administration and enforcement of the terms of this Agreement.

(i) Performance Excuses.

(i) Seller Excuse. For Seller selling As-Available Product, Seller shall be excused from achieving the Guaranteed Energy Production only for the applicable time period during Seller Excuse Hours. For Seller selling Baseload Product, Seller shall be excused from achieving the Guaranteed Energy Production and the Capacity Factor only for the applicable time period during Seller Excuse Hours.

(ii) Buyer Excuses. Buyer shall be excused from (A) receiving and paying for the Product only (I) during periods of Force Majeure, (II) by Seller's failure to perform, (III) during Curtailment Periods and (B) receiving Product during Buyer Curtailment Periods.

(iii) Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project during any Curtailment Period or Buyer Curtailment Period.

(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 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. Nothing in this Section 3.1(j) shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

(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 transfer the Renewable Energy Credits to Buyer even if Buyer does not accept and/or pay for the underlying energy per Section 3.1(f) or for Baseload Product only, pays something other than the Contract Price. Seller shall comply with all Laws, including 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 with 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 data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Term, which changes Buyer determines are necessary to forecast output from the Project, and/or comply with Law:

(A) read-only access to meteorological measurements, ***[***inverter***]*** ***[bracketed language applies to solar photovoltaic Projects only]*** and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (G) of this list;

(B) read-only access to energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project; provided that if Buyer is unable to access the Project's SCADA system, then upon written request from Buyer, Seller shall provide energy output information and meteorological measurements to Buyer in 1-minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

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

(D) full, real-time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application, or its successor system;

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

[Subparts (F) through (G) below shall only apply to wind and solar facilities]

(F) instantaneous data measurements at sixty (60) second or increased frequency for the parameters set forth in Appendix X ("Telemetry Parameters for Wind or Solar Facilities"), which measurements shall be provided by Seller to Buyer in consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup; and

(G) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of ***[the following bracketed language applies to solar facilities only] [***solar insolation, temperature, wind speed, and, if applicable, wind direction***] [the following bracketed language applies to wind facilities only] [***wind speed, wind direction , ambient temperature, atmospheric pressure***]***. Such equation shall take into account the expected availability of the facility.

[The following bracketed language applies to As-Available Product only]

[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 IX ("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 scheduling 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.

[The following Sections 3.1(l)(iv) – (vi) apply to As-Available Product only]

[(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, and for wind Projects, each wind turbine must be equipped with meteorological measurement equipment (e.g. anemometers) which are individually linked to Seller's plant information system. 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) to enable Buyer or the Third-Party SC to meet current CAISO scheduling requirements. 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 verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, 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 ninety (90) 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) ***[Include the following bracketed language for solar Projects only] [***total global horizontal irradiance, plane of array or direct normal insolation as is applicable for project type, air temperature, wind speed and direction, precipitation, barometric pressure, visibility in fog areas (forward scatter sensor) and humidity at the Site***] [Include the following bracketed language for wind Projects only] [***wind speed and direction (as close to hub height as possible), standard deviation of wind direction, peak instantaneous values, air temperature, barometric pressure, 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 ***[Include the following bracketed language only if winter season output of solar Project is an issue] [***and visibility in fog areas***]*** All data, except peak values, should be 1-second samples averaged into 10-minute periods; (B) elevation, latitude and longitude of the weather station; and (C) any other data reasonably requested by Buyer.**]**

(m) Prevailing Wage. Seller shall use reasonable efforts to ensure that all Electricians hired by Seller, Seller's 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 Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code.

(n) Obtaining and Maintaining CEC Certification and Verification. Subject to the Compliance Cost Cap, Seller shall take all necessary steps including 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 definition of "Compliance Costs" and are new costs associated with a change in Law occurring after the Execution Date. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term shall be capped annually at ten thousand dollars ($10,000.00) per MW of Contract Capacity and in the aggregate throughout the Delivery Term at twenty thousand dollars ($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 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-referenced CPUC approval until such time as the CPUC issued its approval of the reimbursement payment in final and non-appealable form.

(p) Curtailment Requirements.

(i) Order. Seller shall reduce generation from the Project as required pursuant to a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, provided that (A) a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order shall be consistent with the operational characteristics set forth in Section F of the Cover Sheet; (B) the Buyer Curtailment Period shall be for unlimited hours cumulatively per Contract Year (which may or may not be consecutive); and (C) Buyer shall pay Seller for Deemed Delivered Energy associated with a Buyer Curtailment Period pursuant to Article 4. Seller agrees to reduce the Project's generation by the amount and for the period set forth in the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(ii) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order provided in compliance with Section 3.1(p)(i), then, for each MWh of Delivered Energy that the Project generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh (for example, the Contract Price adjusted by TOD Factors) and, (B) is the absolute value of the Real-Time Price for the applicable PNode, if such price is negative, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(q) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Units as directed by the Buyer and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 3.1(p)(ii) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order,

Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

[The following bracketed section only applies to GTSR Projects]

[(r) Green-e® Energy Certification.

(i) As of the Effective Date, Seller represents and warrants that (A) the Project is eligible for Green-e® Energy Certification and (B) the WREGIS Certificates associated with the Renewable Energy Credits corresponding to Delivered Energy have not been separately sold, separately marketed or otherwise separately represented by Seller or its Affiliates as renewable energy attributable to the Project other than to Buyer.

(ii) From the Execution Date, and for the duration of the Delivery Term, Seller covenants that it shall, at its sole expense, but subject to the Compliance Cost Cap, take all actions, including complying with all applicable registration, attestation, eligibility, auditing, and reporting requirements, and execute all documents or instruments necessary (A) to be eligible for and maintain the Green-e® Energy Certification during the Delivery Term, and (B) to enable Buyer to meet its obligation for a GTSR Program with Green-e® Energy Certification during the Delivery Term.***]***

3.2 Green Attributes.

(a) 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.

(b) Biomethane Transactions.

(i) For all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient renewable and environmental attributes of biomethane production and capture to ensure that there are zero net emissions associated with the production of electricity from the generating facility using the biomethane.

(ii) For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by Law. If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.

3.3 Resource Adequacy.

(a) 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 and/or other regional entity may prescribe, including submission of a Supply Plan or Resource Adequacy Plan ("Resource Adequacy Requirements"). From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the capacity of the Project, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements during the Delivery Term.

(b) Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Resource Adequacy Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Resource Adequacy Standards, if applicable.

(c) Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules, if applicable, provided that Seller has given Buyer Notice of the outages subject to the Replacement Capacity Rules by the earlier of ninety (90) days before the first day of the month for which the outage will occur or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC. If Seller fails to provide such Notice, then Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules for such outage.

(d) To the extent Seller has an exemption from the Resource Adequacy Standards or the Replacement Capacity Rules under the CAISO Tariff, Sections 3.3(b) and 3.3(c) above shall not apply. If Seller would like to request an exemption for this Agreement from the CAISO, Seller shall provide to Buyer, as Seller's Scheduling Coordinator, Notice specifically requesting that Buyer seek certification or approval of this Agreement as an exempt contract pursuant to the CAISO Tariff; provided that Buyer's failure to obtain such exemption shall not be an Event of Default and Buyer shall not have any liability to Seller for such failure.

(e) Resource Adequacy Failure.

(i) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 3.4(a)(i)(A) or anything to the contrary herein, the Parties acknowledge and agree that:

(A) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the RA Start Date, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer; and

(B) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the Deliverability Finding Deadline, then Seller shall be in breach of this Agreement and subject to an Event of Default under Sections 5.1(b)(vii) - (viii), regardless of Seller's payment of any RA Deficiency Amount hereunder.

(ii) RA Deficiency Amount Calculation.

(A) Buyer shall calculate the RA Deficiency Amount for each RA Shortfall Month using the formula set forth in Section 3.3(e)(ii)(B). Buyer shall notify Seller of the RA Deficiency Amount for a given RA Shortfall Month no later than the last day of that RA Shortfall Month. The Parties agree that these liquidated damages shall be paid to Buyer for each RA Shortfall Month and constitute a reasonable approximation of the harm or loss suffered by Buyer. The Parties further agree that Buyer may use such liquidated damages for any purpose in its sole discretion. Seller shall pay the RA Deficiency Amount for a given RA Shortfall Month in the form of a deduction from the amount invoiced by Seller in such month pursuant to Section 6.1. In the event that the RA Deficiency Amount for a given RA Shortfall Month exceeds the amount invoiced pursuant to Section 6.1, Buyer shall make no payment to Seller for that month, and the difference between the invoiced amount and the RA Deficiency Amount shall be deducted from the amount(s) invoiced in the succeeding month(s) until all of the RA Deficiency Amount for such RA Shortfall Month has been deducted. Any dispute regarding Buyer's calculation of any RA Deficiency Amount shall be resolved in accordance with Article Twelve.

(B) The RA Deficiency Amount for a given RA Shortfall Month shall be equal to the product of the RA Value and the Expected Net Qualifying Capacity, as calculated in accordance with Appendix XIV. The RA Deficiency Amount is represented by the following equation:

RA Deficiency Amount ($/Month) = RA Value ($/MW/Month) × Expected Net Qualifying Capacity (MW)

To the extent the Project obtains Net Qualifying Capacity that Seller applies towards its obligations under Section 3.3(a) before the Project obtains the deliverability type selected in Section A of the Cover Page (e.g., through the CAISO's Operational Deliverability Assessment), then the RA Deficiency Amount calculated above for a given RA Shortfall Month shall be reduced accordingly (e.g. the RA Deficiency Amount would equal the product of (x) the RA Value and (y) the difference between the Expected Net Qualifying Capacity and the actual Net Qualifying Capacity):

RA Deficiency Amount ($/Month) = RA Value ($/MW/Month) × [Expected Net Qualifying Capacity (MW) – actual Net Qualifying Capacity (MW)].

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller's Transmission Service Obligations. Throughout the Term, and consistent with the terms of this Agreement, Seller shall:

(A) 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. Seller's interconnection, distribution and/or transmission arrangements shall provide for the deliverability type selected in Section A of the Cover Sheet as of the RA Start Date and throughout the Delivery Term.

(B) If Seller has elected Energy Only Status on the Cover Sheet, this Section 3.4(a)(i)(B) is not applicable. An FCDS or PCDS Seller shall have either previously obtained, or is obligated to obtain per the terms of the Agreement, a FCDS or PCDS Finding. If Seller's Project has not attained Full Capacity Deliverability Status or Partial Capacity Deliverability Status prior to the Execution Date, Seller shall take all actions necessary or appropriate to cause the Delivery Network Upgrades necessary for it to obtain Full Capacity Deliverability Status or Partial Capacity Deliverability

Status to be constructed and placed into service. The cost of each Deliverability Assessment and any necessary Delivery Network Upgrades to ensure Full Capacity Deliverability Status or Partial Capacity Deliverability Status shall be borne solely by Seller and shall not be subject to the Compliance Cost Cap. When the CAISO advises Seller that the Project has Full Capacity Deliverability Status or Partial Capacity Deliverability Status, Seller shall Notify Buyer of such status within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO. The Effective FCDS Date or Effective PCDS Date must occur on or before the Deliverability Finding Deadline; a failure to do so shall constitute an Event of Default under Section 5.1(a)(iii). The Termination Payment for an Event of Default caused by Seller's failure to achieve the Effective FCDS Date or Effective PCDS Date on or before the Deliverability Finding Deadline shall be capped at the amount of Seller's Delivery Term Security or Term Security obligation under Section 8.4(a)(ii) or (iii), as applicable.

(C) if the Project has or obtains FCDS, Seller shall Notify Buyer of such status as of the Execution Date, if applicable, or within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO. If Seller has elected Energy Only Status or Partial Capacity Deliverability Status on the Cover Sheet, Seller shall continue to receive payment based on the Energy Only Status TOD Factors set forth in Section 4.4 regardless of whether or not Seller obtains FCDS.

(D) bear all risks and costs associated with such transmission service, including any transmission outages or curtailment to the Delivery Point.

(E) 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 from the Project according to the terms of this Agreement.

(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 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.

[The following Section (b) "EIRP Requirements" applies to EIRP-eligible facilities only]

[(b) EIRP Requirements. 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. As of the first date of the Test Period and until the Project receives certification as a Participating Intermittent Resource, Seller, at its sole cost, shall comply with EIRP and additional protocols issued by the CAISO for Eligible Intermittent Resources. Throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with EIRP and all additional protocols issued

by the CAISO for a Participating Intermittent Resource. Throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with all other protocols issued by the CAISO for generating facilities providing energy on an intermittent basis; provided that, if multiple options exist, then Seller shall comply with any such protocols, rules or regulations as directed by Buyer. Throughout the Delivery Term, Buyer in its limited capacity as Seller's Scheduling Coordinator shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to satisfy Seller's obligations as Seller's Scheduling Coordinator and to the extent such actions are at *de minimis* cost to Buyer.***]***

[(b)**][**(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 CAISO Tariff, and all requirements of EIRP (if applicable).

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. ***[The following bracketed language applies to As-Available solar or wind Projects only] [***Seller's availability forecasts below shall include Project availability and updated status of ***[The following bracketed language applies to solar Projects only] [***photovoltaic panels, inverters, transformers, and any other equipment that may impact availability***]*** or ***[The following bracketed language applies to wind Projects only] [***transformers, wind turbine unit status, and any other equipment that may impact availability***].] [The following bracketed language applies to As-Available Product only] [***To avoid Forecasting Penalties set forth in Section 4.6(c)(iii),***]*** 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 automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of July 1 of the first calendar year following the Execution Date or one hundred and eighty (180)

days before the first day of the first Contract Year of the Delivery Term ("First Annual Forecast Date"), and (II) on or before July 1 for each calendar year from the First Annual Forecast Date 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 each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Available Capacity. Seller shall provide to Buyer and Third-Party SC (if applicable), pursuant to subsections (I) and (II) below, a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer:

(I) by the earlier of ninety (90) days before the beginning of the Test Period or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC, and

(II) throughout the Delivery Term, by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC.

(C) Daily Forecast of Available Capacity. During the Test Period and thereafter during 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 VI, 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, "Preschedule 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 less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for submittal of Schedules into the Day-Ahead Market 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 VI. 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.

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, 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 to the extent Seller's failure contributes to Imbalance Energy, Seller shall be subject to the Forecasting Penalties set forth in Section 4.6(c).

(D) Real-Time Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the CAISO rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must likewise notify Buyer. 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 within ten (10) minutes of the commencement of the Forced Outage. Seller shall inform Buyer of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. These notices and changes to Available Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than 60 days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 3.4[(b)][(c)](iii)(D), then Seller shall send such communications by telephone to Buyer's Real-Time Desk and shall be sent to Buyer's internet site as set forth in Appendix VI.

(E) To the extent that Seller obtains, in the normal course of business, other forecasts of energy production at the Project not otherwise specified in this Section 3.4, then Seller shall grant Buyer read-only access to such forecasts.

(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, safety, ownership and/or operation of the Project). In the event Seller requires any data or information from Buyer in order to comply with any applicable requirements of Law, including the requirements of CAISO, NERC and WECC, relating to the Project (including those related to construction, safety, ownership and/or operation of the Project), then Seller shall request in writing such data from Buyer no less than forty-five (45) calendar days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith

effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.

(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 Electric 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 must be delivered through a single CAISO revenue meter located on the high-voltage side of the Project's final step-up transformer (which must be dedicated solely to the Project) nearest to the Interconnection Point that exclusively measures output for the Project described herein. All Delivered Energy 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). Buyer, in its capacity as Scheduling Coordinator, is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Buyer's schedules or cancels previously approved outages and for entering Project outages in the Scheduling and Logging system for the CAISO ("SLIC") or successor system. As Scheduling Coordinator, Buyer shall put forth commercially reasonable efforts to secure and communicate CAISO approvals for Project outages in a timely manner to Seller.

(b) Planned Outages. During the Delivery Term, Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with ***[***Section 3.4[(b)][(c)](iii)(A), ("Annual Forecast of Available Capacity") and Section 3.4[(b)][(c)](iii)(B), (Monthly Forecast of Available Capacity")***] [Applies to intermittent facilities only] [***3.4[(b)][(c)](iii)(A), ("Annual Forecast of Available Capacity") and Section 3.4[(b)][(c)](iii)(B), (Monthly Forecast of Available Capacity")***] [Applies to all facilities other than intermittent facilities]*** and implementing the notification procedures set forth in Appendix VI no later than July 1st of each year during the Delivery Term. Seller shall also notify Buyer of the proposed Planned Outage schedule for the Project by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC. 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 by the earlier of fourteen (14) days prior to each Planned Outage or two (2)

Business Days prior to the CAISO deadline for submitting Planned Outages. Seller shall not conduct Planned Outages during the months of January, May 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. Subject to Section 3.7(a), after any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may direct that Seller change its outage schedule as ordered by CAISO. For non-CAISO ordered changes to a Planned Outage schedule requested by Buyer, 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) Forced Outages. Seller shall notify Buyer of a Forced Outage as promptly as possible, but no later than ten (10) minutes after the commencement of the Forced Outage and in accordance with the notification procedures set forth in Appendix VI. Buyer shall put forth commercially reasonable efforts to submit such outages to CAISO.

(d) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the notification provisions in Appendix VI. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis also in accordance with the notification provisions in Appendix VI.

(e) 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. 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.

(f) Communications with CAISO. Buyer 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.

(g) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7, 3.8, or 10.13, or Appendix VI, and consistent with Section 3.5, Seller understands and acknowledges that the specified access to data and installation and maintenance of weather stations, transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and scheduling, forecast, bidding, notification and operating procedures described in the above-referenced sections are subject to change. If such changes are provided by (i) Notice from Buyer, then Seller shall implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increased cost of performance to Seller hereunder other than *de minimis* amounts, or (ii) Law, then the Parties shall implement such changes as necessary for Seller and Buyer to perform their respective rights and obligations in accordance with the Law.

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 information on power production, ***[***fuel consumption***,][Bracketed language for applicable Baseload Product only]*** 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, the Participating Transmission Owner, and the applicable distribution provider 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 the 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) Seller shall Notify Buyer of the Construction Start Date by sending to Buyer a written Certification substantially in the form provided in Appendix IV-1 as soon as practical upon issuance of Notice to Proceed.

(vii) Within fifteen (15) days after the close of each quarter from the first quarter following the Execution Date, until the month in which the Construction Start Date has occurred, provide to Buyer a quarterly Progress Report and agree to regularly scheduled meetings between

representatives of Buyer and Seller to review such quarterly reports and discuss Seller's construction progress. The quarterly Progress Report shall indicate whether Seller is on target to meet the Guaranteed Commercial Operation Date.

(viii) Within fifteen (15) days after the close of each month following the Construction Start 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 is on target to meet the Guaranteed Commercial Operation Date.

[The following Section 3.9(a)(ix) applies to geothermal Projects only]

[(ix) Provide to Buyer copies of all Geothermal Reservoir Reports and any revisions thereto, 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 performed pursuant to Section 3.9(a)(v) 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) Guaranteed Commercial Operation Date.

(i) The Parties agree time is of the essence in regards to the Agreement. As such, Seller shall have demonstrated Commercial Operation per the terms of Appendix IV-2 by the date that is no later than twenty-four (24) months after the Effective Date of this Agreement, except as such date may be extended on a day for day basis for not more than a cumulative six (6) month period for a Permitted Extension (the "Guaranteed Commercial Operation Date").

(ii) Permitted Extensions. The Permitted Extensions to the Guaranteed Commercial Operation Date are as follows:

(A) Permitting Delay. The Guaranteed Commercial Operation Date may be extended on a day for day basis for not more than six (6) months if Seller has used commercially reasonable efforts (including 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 and Seller has worked diligently to resolve the delay ("Permitting Delay");

(B) Transmission Delay. The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than six (6) months if Seller has used commercially reasonable efforts (including compliance with all CAISO, PTO, FERC or other requirements, as applicable, and Seller's timely submission of all required documents and applicable fees) to have the Project physically interconnected to the CAISO Grid and to complete all Electric System Upgrades, if any, but such interconnection or Electric System Upgrades cannot be completed by the Guaranteed Commercial Operation Date, and such delay is not caused by Seller, and Seller has worked diligently to resolve the delay ("Transmission Delay");

(C) Force Majeure Extension. The Guaranteed Commercial Operation Date may be extended on a day for day basis in the event of Force Majeure ("Force Majeure Extension"); 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; provided further that Seller may not claim Force Majeure for any reason that was the basis for or would qualify as a Permitting Delay or a Transmission Delay.

(iii) Notwithstanding the foregoing, if Seller claims more than one Permitted Extension under Section 3.9(c)(ii), such extensions cannot cumulatively exceed six (6) months and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(iv) Notice of Permitted Extension.

(A) In order to request a Permitting Delay or Transmission Delay (individually and collectively, "Delay"), Seller shall provide Buyer with Notice of the requested Delay no later than sixty (60) days prior to the Guaranteed Commercial Operation Date, which Notice must clearly identify the Delay being requested, the length of the Delay requested (up to six (6) months), and include information necessary for Buyer to verify the length and qualification of the Delay. Buyer shall use reasonable discretion to grant or deny the requested extension, and shall provide Seller Notice of its decision within a reasonable time.

(B) In the case of a Force Majeure Extension, if sixty (60) days prior Notice is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(v) Failure to Meet Guaranteed Commercial Operation Date. 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 the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions or Force Majeure, then Buyer shall be entitled to declare an Event of Default and collect a Termination Payment pursuant to Article Five.

[The following subsections (d) and (e) shall only apply to a New Project:]

[(d) Resize of Project Due to Permit Failure.

(i) If Seller has not received or obtained by the earlier of the Expected Construction Start Date and the date that is six (6) months after the Effective Date final and non-appealable Governmental Approvals required for the construction of the Project with the Contract Capacity set forth in the Cover Sheet, after using commercially reasonable efforts to do so (including timely filings with all applicable Governmental Authorities and timely payment of any required fees) ("Permit Failure"), Seller may make a Contract Capacity Commitment on the Expected Construction Start Date (as may be extended), equal to, at a minimum, seventy percent (70%) of the Contract Capacity set forth in the Cover Sheet, provided that such amount shall also be the maximum amount of the generation capacity permitted under the final and non-appealable Governmental Approvals that Seller has received as of the Expected Construction Start Date (as may be extended), and may not be under one (1) MW, 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 Contract Capacity set forth in the Cover Sheet 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 Expected Construction Start Date.

(ii) In the event that the Contract Capacity is reduced pursuant to Section 3.9(d)(i) above, the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Schedule in the Cover Sheet 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 the amount of Guaranteed Energy Production under Section 3.1(e) and the amount of Delivery Term Security or 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 Sections 3.1(e)(ii) and 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 three (3) 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 Contract Capacity set forth in the Cover Sheet, 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 of First Offer Acceptance"), 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. 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.**/**

(f) Excess Network Upgrade Cost Termination Right.

(i) Buyer has the right to terminate this Agreement by Notice on or before the date that is sixty (60) days after Seller provides to Buyer the results of any Interconnection Study, or the GIA tendered to Seller by the Participating Transmission Owner, if such Interconnection Study or GIA as of the date of the termination Notice, estimates, includes, specifies or reflects that the maximum total cost of the Network Upgrades to Buyer, or any Participating Transmission Owner under the jurisdiction of the CAISO, including costs reimbursed to Seller by Buyer or any Participating Transmission Owner under the jurisdiction of the CAISO ("Aggregate Network Upgrade Costs"), may in the aggregate exceed one hundred and ten percent (110%) of the amount identified in the Interconnection Studies that were submitted with Seller's original bid offer (package) so long as the exceeded dollar amount is equal to or greater than one hundred thousand dollars ($100,000.00) ("Network Upgrades Cap"), and Seller has not agreed to assume financial responsibility for Excess Network Upgrade Costs. This termination right is irrespective of any subsequent amendments of such Interconnection Study or GIA or any contingencies or assumptions upon which such Interconnection Study or GIA is based. Buyer's Notice to terminate will be effective five (5) Business Days after such Notice is given to Seller.

(ii) Notwithstanding anything to the contrary in this Section 3.9(f)(ii), Buyer shall have no right to terminate this Agreement under Section 3.9(f)(i), if (A) Seller concurrently with its provision of the relevant Interconnection Study or GIA, as applicable, pursuant to Section 3.1(h)(ii)(B), irrevocably agrees to pay to the Participating Transmission Owner the amount by which the Aggregate Network Upgrade Costs exceed the Network Upgrades Cap ("Excess Network Upgrade Cost") and (B) Seller enters into a GIA that states that Seller must pay all Excess Network Upgrade Costs without reimbursement from the Participating Transmission Owner. For sake of certainty, if Seller agrees to the above-described payment for the Excess Network Upgrade Costs pursuant to this Section 3.9(f)(ii), such agreement shall not independently convey to Seller any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights (as defined in the CAISO Tariff) in connection with the development of the Project or the delivery of Product to Buyer pursuant to this Agreement.

(iii) Buyer shall have the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, (A) if Seller elects to exercise its right to pay for any Excess Network Upgrade Costs, but (B) FERC, CAISO, or any Participating Transmission Owner, as applicable, rejects Seller's interconnection agreement, in whole or in part, or modifies Seller's interconnection agreement in a manner that would make Seller unable to comply with Seller's obligation pursuant to Section 3.9(f)(i). In order to be effective, Buyer's Notice of termination must be given on or before the date that is ninety (90) days after such rejection or modification by FERC, CAISO, or any Participating Transmission Owner.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Price.

(a) Contract Price. The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year is set forth in Section C of the Cover Sheet.

For the avoidance of doubt, Seller shall not be compensated for any Surplus Delivered Energy.

(b) 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 to Seller in accordance with the schedule described in Section 6.1.

4.2 TOD Periods. The time of delivery periods ("TOD Periods") specified below shall be referenced by the following designations:

	TOD PERIOD		
Monthly Period	**1. Peak**	**2. Shoulder**	**3. Night**
A. July – Sept.	A1	A2	A3
B. Oct. – Mar.	B1	B2	B3
C. Apr. – June	C1	C2	C3

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

A. July – September;

B. October – March; and

C. April – June.

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

1. **Peak** = hours ending 16 - 21 (Pacific Prevailing Time (PPT)) all days in the applicable Monthly Period.
2. **Shoulder** = hours ending 7 - 15 PPT all days in the applicable Monthly Period.
3. **Night** = hours ending 1 - 6, 22, 23 and 24 PPT all days in the applicable Monthly Period.

[Section 4.3 "Capacity Factor" below applies to Baseload Product only]

[4.3 Capacity Factor. The Capacity Factor shall be calculated by TOD Period and defined as the percentage amount resulting from Delivered Energy plus Deemed Delivered Energy, if any, in the applicable TOD Period divided by the product resulting from multiplying the Contract Capacity times the number of hours in the applicable TOD Period minus Seller Excuse Hours in the applicable TOD Period ("Capacity Factor"):

*Capacity Factor = (Delivered Energy + Deemed Delivered Energy) / (Contract Capacity × (Hours in TOD Period minus Seller Excuse Hours)).**]***

4.4 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 and Deemed 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 or Deemed Delivered Energy is delivered:

RPS TOD FACTORS – Full Capacity Deliverability Status			
Period	**1. Peak**	**2. Shoulder**	**3. Night**
A. July – Sept.	2.2304	0.8067	0.9569
B. Oct – Mar.	1.1982	0.7741	0.9399
C. Apr. – June	1.1941	0.6585	0.9299

RPS TOD FACTORS – Energy Only Status			
Period	**1. Peak**	**2. Shoulder**	**3. Night**
A. July – Sept.	1.4514	0.8317	1.0144
B. Oct – Mar.	1.2855	0.8312	1.0092
C. Apr. – June	1.1327	0.7036	0.9977

(b) Monthly TOD Payment. ***[The following bracketed clause is applicable to As Available products only] [***(Except as provided in Section 4.5,)***]*** For each month in each Contract Year, Buyer shall pay Seller for Delivered Energy and Deemed Delivered Energy in each TOD Period ("Monthly TOD Payment") the amount resulting from (i) multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the sum of Delivered Energy (exclusive of Surplus Delivered Energy) for such TOD Period plus (ii) for each hour in the TOD Period, the Deemed Delivered Energy Price applicable to that hour times the TOD Factor for the applicable TOD Period, times the amount of Deemed Delivered Energy for such hour:

$$\text{Monthly TOD Payment} = \sum_{hour=1}^{n} \left([\text{Contract Price \$}] \times \text{TOD Factor} \times \text{Delivered Energy } MWh_{hour} \right) + \left([\text{Deemed Delivered Energy Price}_{hour} \text{ \$}] \times \text{TOD Factor} \times \text{Deemed Delivered Energy } MWh_{hour} \right)$$

For the avoidance of doubt, ***[The following bracketed clause is applicable to As-Available products only] [***Excess Energy shall be compensated as set forth in Section 4.5 and shall not be included in the determination of payment set forth above; and***]*** "Delivered Energy" as used in the formula above excludes Surplus Delivered Energy, for which Seller will receive no compensation,

(c) Annual TOD Payment Adjustment. ***["Annual TOD Payment Adjustment" below applies to Baseload Products only.]*** In any Contract Year, if the sum of the Monthly TOD Payments ("Annual TOD Payment") exceeds the product of (i) Delivered Energy (exclusive of Surplus Delivered Energy) and Deemed Delivered Energy in such Contract Year multiplied by (ii) one hundred and five percent (105%) of the Contract Price ("Annual Maximum TOD Payment"), Seller shall pay Buyer the Excess Payment Amount, as defined below within fifteen (15) days of receipt of Buyer's invoice for such amounts; provided that if Seller fails to pay such amount Buyer may net the Excess Payment Amount from the next following payment that would be due from Buyer to Seller and all subsequent payments until Buyer has recouped the entire Excess Payment Amount.

If Annual TOD Payment > Annual Maximum TOD Payment, Seller refunds the amount resulting from subtracting the Annual TOD Payment from the Annual Maximum TOD Payment which amount shall be the "Excess Payment Amount."

Where Annual TOD Payment = sum of Monthly TOD Payment for each month of the applicable Contract Year, and

Where Annual Maximum TOD Payment = ([Contract Price $] × 1.05 × [Delivered Energy MWh_{hour} + Deemed Delivered Energy MWh_{hour}])

For the avoidance of doubt, "Delivered Energy" as used in the formula above excludes Surplus Delivered Energy.

(d) Applicability of Full Capacity Deliverability Status TOD Factors. This Section 4.4(d) only applies to Sellers that elected to be FCDS Sellers in the Cover Sheet. The Full Capacity Deliverability Status TOD Factors shall apply as of the first day of the month immediately following the date that is forty-five (45) calendar days from the Effective FCDS Date.

[Section 4.5 Excess Delivered Energy below applies to Full Buy-Sell transactions of As-Available Product only]

[4.5 Excess Delivered and Deemed Delivered Energy.

(a) Excess Energy Price. If, at any point in any Contract Year, the amount of Delivered Energy (exclusive of Surplus Delivered Energy) plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the annual Contract Quantity amount, then:

(i) each MWh of additional Delivered Energy during such Contract Year shall be deemed "Excess Delivered Energy" and each MWh of additional Deemed Delivered Energy during such Contract Year shall be deemed "Excess Deemed Delivered Energy" (Excess Delivered Energy and Excess Deemed Delivered Energy, cumulatively, "Excess Energy") and

(ii) for the remainder of such Contract Year:

(A) for every MWh of Excess Delivered Energy, the price paid to Seller shall be the lesser of (I) or (II), where (I) is seventy-five percent (75%) of the Contract Price for such Contract Year times the TOD Factor for the applicable TOD Period and (II) is the hourly DA Price at the Delivery Point (the "Excess Delivered Energy Price"); and

(B) for every MWh of Excess Deemed Delivered Energy the price paid to Seller shall be the lesser of (I) and (II) where (I) is seventy-five percent (75%) of the Deemed Delivered Energy Price times the TOD Factor for the applicable TOD Period and (II) is the hourly DA Price at the Delivery Point (the "Excess Deemed Delivered Energy Price").

Excess Delivered Energy $Price_{hour}$ = the lesser of ([75% × Contract Price x TOD Factor] ***OR*** *DA $Price_{hour}$)*

Excess Deemed Delivered Energy $Price_{hour}$ = the lesser of ([75% × Deemed Delivered Energy $Price_{hour}$ × TOD Factor] **OR** *DA $Price_{hour}$)*

For the avoidance of doubt, Excess Energy shall not include any Surplus Delivered Energy.

(b) Monthly Payment for Excess Energy. Buyer shall pay Seller for Excess Energy in each hour ("Monthly Payment for Excess Energy") the amount resulting from (i) multiplying the Excess Delivered Energy Price applicable to that hour times the Excess Delivered Energy for such hour plus (ii) the Excess Deemed Delivered Energy Price applicable to that hour times the amount of Excess Deemed Delivered Energy for such hour:

$$\textit{Monthly Payment for Excess Energy} = \sum_{hour=1}^{n} (\textit{Excess Delivered Energy Price}_{hour} \times \textit{Excess Delivered Energy MWh}_{hour}) + (\textit{Excess Deemed Delivered Energy Price}_{hour} \times \textit{Excess Deemed Delivered Energy MWh}_{hour})$$ ***]***

4.6 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 as a result of Buyer's actions, including those resulting in a Buyer Curtailment Period.

(b) Buyer, as Scheduling Coordinator, shall (i) be responsible for all costs and charges assessed by the CAISO with respect to scheduling and Imbalance Energy, subject to Sections 4.6(a) and (c) and (ii) retain the credits and other payments received as a result of Energy from the Project delivered to the Integrated Forward Market or Real-Time Market, including revenues associated with CAISO dispatches. Seller and Buyer shall cooperate to minimize such charges and Uninstructed Imbalance Energy 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 Energy and costs 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[(b)][(c)](iii), and the sum of Energy Deviations for each of the 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 three percent (3%) multiplied by Contract Capacity multiplied by one (1) hour.

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to the greater of (A) one hundred fifty percent (150%) of the Contract Price or (B) the absolute value of the Real-Time Price, in each case 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 4.6(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.

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 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.

[Section 4.7(c) below applies to Baseload Product only]

(c) Reliability Must-Run Contract and Capacity Procurement Mechanism Obligations. Seller with an existing RMR Contract will assign all of the proceeds of any RMR Contract affecting the Project to Buyer, except as provided below. Buyer shall retain all revenues from said RMR Contract, except for Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch ("Retained Revenues"), as each is defined in the applicable RMR Contract, all of which shall be remitted to Seller. If the CAISO and/or Seller wish to negotiate or renegotiate an RMR Contract or contract related to the Capacity Procurement Mechanism (as defined in the CAISO Tariff) or similar capacity commitment under the CAISO Tariff that pertains to Unit(s) under this Agreement as of the Execution Date of this Agreement, Seller shall include Buyer in any such negotiations. If Seller enters into any new RMR Contract or contract related to the Capacity Procurement Mechanism or similar capacity commitment affecting the Project, Seller shall assign the revenues from such contract, except for Retained Revenues, Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch to Buyer.

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 Commercial Operation Date, as extended by any Permitted Extensions due solely to Seller's inability to achieve, after the use of commercially reasonable efforts, by the Guaranteed Commercial Operation Date the permits necessary to construct or operate the Project, the physical interconnection of the Project to the CAISO or any necessary Electric System Upgrades;

(iii) failure by Seller for any reason other than those explicitly provided in Section 5.1(b)(ii) above and Section 11.1(a)(ii) to meet the Guaranteed Commercial Operation Date as may be extended by Permitted Extensions;

(iv) 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;

(v) if Seller has provided and Buyer has accepted, a Guaranty to satisfy the collateral obligations under this Agreement, then with respect to such guarantor or the Guaranty, if Seller had not replaced the Guaranty in accordance with Section 8.6 within five (5) Business Days following Buyer's Notice of a request for replacement;

(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 preceding 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 calculation of the cumulative GEP Shortfall for purposes of this subsection.

(vii) Seller has not obtained the deliverability type selected in Section A (FCDS or PCDS) of the Cover Sheet by the Deliverability Finding Deadline.

(viii) Seller has not obtained the Partial Capacity Deliverability Status Amount identified in Section A of the Cover Sheet by the Deliverability Finding Deadline.

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") on which to (i) collect the Damage Payment (in the case of any Event of Default of Seller that arose at any time prior to the commencement of the Delivery Term, including an Event of Default of Seller pursuant to Section 5.1(b)(ii)), or (ii) collect the Termination Payment (in the case of any Event of Default of Seller that arose during the Delivery Term or in the case of any Event of Default of Buyer at any time);

(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 Section 5.1(b)(ii), 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 (including the collection of monetary damages) 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) In the case where the Non-Defaulting Party is entitled to collect the Termination Payment pursuant to Section 5.2(a)(ii), 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 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 shall be obtained in a commercially reasonable manner and shall be: (i) for a like amount, (ii) of the same Product, (iii) at the same Delivery Point, and (iv) for the remaining Delivery Term. 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) associated with Seller's failure to achieve the 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 the applicable provisions of Article Four. Seller shall continue to provide to Buyer an invoice of CAISO charges, net any sums Buyer owes Seller under this Agreement, on or about the tenth (10th) day of each month until the date of the Final True-Up. Buyer shall pay the undisputed amount of such invoices less the amount of any RA Deficiency Amount and 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. During the Test Period, and for twelve (12) months following the Test Period only, Buyer shall provide to Seller a statement of the CAISO Revenues and any true-ups of CAISO Revenues from prior months and Buyer shall forward to Seller the CAISO Revenues from such statement, according to the invoice and payment schedules described in this Section 6.1. 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; provided that, such waiver shall not apply to any adjustment or dispute related to Seller's performance under any applicable RMR Contract; and provided further that, any disputes with respect to a statement of CAISO Revenues is waived unless Seller notifies Buyer in accordance with this Section 6.2 within one (1) month after the last statement of CAISO Revenues is provided. 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. EXCEPT AS MAY OTHERWISE BE EXPRESSLY 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 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.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

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 Buyer, a copy of Buyers's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of Buyer's first three fiscal quarters of each fiscal year, a copy of Buyers'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 Buyer's website 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 or Seller's guarantor's, if applicable, 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.

[For purposes of Sections 8.3 and 8.4, existing ERRs to replace Project Development Security with Pre-Delivery Term Security]

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security, Delivery Term Security, or 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 (30) days of the delivery of the Project Development Security, Delivery Term Security, or 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, Delivery Term Security, or 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, Delivery Term Security, or 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) 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 $60/kW for As-Available resources or $90/kW for Baseload resources multiplied by the capacity of the Project as reflected in Section B of the Cover Sheet, within five (5) Business Days following the Effective Date of this Agreement until Seller posts Delivery Term Security pursuant to Section 8.4(a)(ii) below with Buyer.

(ii) Delivery Term Security pursuant to this Section 8.4(a)(ii) in the amount of five percent (5%) of expected total Project revenues from the date required pursuant to Section 3.1(c)(i) as a condition precedent to the Initial Energy Delivery 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)(i) toward the Delivery Term Security posted pursuant to this Section 8.4(a)(ii).

[For purposes of Section 8.4(a), GTSR Projects 3 MWs or less only need to comply with the following bracketed language.]

[(iii) Term Security pursuant to this Section 8.4(a)(iii) in the amount of $20/kW for GTSR Projects with Contract Capacity of three (3) MW and under multiplied by the capacity of the Project as reflected in Section B of the Cover Sheet, within thirty (30) days following the Effective Date of this Agreement until the end of the Term.***]***

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 or Term Security. Buyer shall be entitled to draw upon the Project Development Security or Term Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Initial Energy Delivery 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). 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, as applicable unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Delivery Term Security posted pursuant to Section 8.4(a)(ii), as applicable.***[Section 8.4(c) does not apply to GTSR Projects 3 MWs or less.]***

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security, Delivery Term Security or Term Security, as applicable, at the Interest Rate; provided that, the interest on Project Development Security shall be retained by Buyer until Seller posts the Delivery Term Security pursuant to Section 8.4(a)(ii). Upon Seller's posting of the Delivery Term Security, all accrued interest on the unused portion of Project Development Security shall be transferred from Buyer to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in the Cover Sheet (Notices List). After Seller posts the Delivery Term Security or 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 or Term Security.

(e) Return of Performance Assurance. Buyer shall return the unused portion of Project Development Security, Delivery Term Security or Term Security, as applicable, 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 payments pursuant to Section 4.6 ("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 or Term Security , as applicable, shall be proportionally and automatically adjusted in connection with any resizing of the Project under Section 3.9(d), and Buyer shall promptly return to Seller the unused portion of Delivery Term Security or Term Security in connection with any such adjustment.

8.5 Letter of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(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 in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of

Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (A) or (B) below is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer's Notice to Seller in Section 8.5(b) above, 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 or collateral requirements of Article Eight.

(c) Notwithstanding the foregoing in Section 8.5(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on "credit watch" negative or developing by S&P, or is on Moody's "watch list" under review for downgrade or uncertain ratings action (either a "Watch"), then Buyer may make a demand to Seller by Notice ("LC Notice") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch ("Substitute Letter of Credit"). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit ("Substitute Bank Period").

(i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period ("Ineligible LC Bank Notice Period") that either:

(A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank ("Ineligible LC Bank") and Buyer will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer's Notice to Cure pursuant to Section 8.5(b) and, if Seller fails to Cure, then the last paragraph in Section 8.5(b) shall apply to Seller.

(ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

(d) 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.

8.6 Guaranty. If at any time Seller's guarantor or Guaranty is no longer acceptable to Buyer in its sole discretion, Seller shall replace the Guaranty with Performance Assurance as provided herein. Within five (5) Business Days following Buyer's written request for replacement of the Guaranty, Seller shall deliver to Buyer replacement Performance Assurance in the form of a replacement Guaranty, Letter of Credit or cash in an amount equal to the applicable amount of the Guaranty issued pursuant to this Agreement. In the event Seller shall fail to provide replacement Performance Assurance to Buyer as required in the preceding sentence, then Buyer may declare an Event of Default pursuant to Section 5.1(b)(v) by providing Notice thereof to Seller in accordance with Section 5.2.

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 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**[**(b)**][**(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) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

(iv) 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 Laws applicable to it;

(v) 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;

(vi) 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;

(vii) 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;

(viii) 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;

(ix) 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

(x) 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 and/or Participating TO tariff requirements, as applicable, that are applicable to an Interconnection Customer (as defined in the CAISO Tariff or Participating TO's tariff, as applicable) and shall take any other necessary action, including payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the RA Start Date.

[The following clause (iii) applies to Existing Projects only:]

(iii) Seller covenants that the Initial Energy Delivery Date shall occur no later than the Expected Initial Energy Delivery Date specified in Section B of the Cover Sheet, except as provided pursuant to Section 11.1(a)(ii).

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 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 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 with the prior written consent of the Buyer, which consent shall not be unreasonably withheld. If Buyer gives its consent, then such consent shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix VII provided that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix VII, including extension of any cure periods or additional remedies for financing providers, and (ii) 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, attorneys' fees.

(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.

(a) Neither Party shall disclose the non-public terms or conditions of this Agreement (the "Confidential Information") 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);

(vi) in order to comply with *any* applicable regulation, rule, or order of the CPUC, CEC, or the FERC;

(vii) to the extent necessary for Buyer to exercise its exclusive rights to the Product during the Delivery Term, including its rights to resell any or all portions of the Product as set forth in Section 3.1(a), other than the Contract Price;

(viii) for disclosure by Buyer to publicly release generation information of GTSR Projects, in the aggregate with three or more GTSR or RPS-eligible Projects on an annual basis; or

(ix) for disclosure by Buyer to CRS in connection with Buyer's Green-e® Energy Certification of the GTSR Program.

(b) 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 non-public information exchanged between the Parties related directly or indirectly to this Agreement 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, the number of bids per company, Project size, resource type, Delivery Term, Project location, Capacity Factor and Contract Capacity, Commercial Operation Date, Expected Initial Energy Delivery Date, Contract Quantity, Delivery Point, and the achievement of Project development Milestones.

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. The obligations of the Seller in this Section 10.10 constitute material obligations of the Agreement.

(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 one million dollars ($1,000,000.00) 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 three million dollars ($3,000,000.00) 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) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller. 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 (blanket or otherwise) 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 one million dollars ($1,000,000.00) 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) All Risk Property Insurance.

(i) During construction, an All Risk Property insurance policy including earthquake and flood (with sublimits as appropriate) shall be maintained during the course of Work being performed and include Start-up and testing for installed equipment and delayed opening coverage. Such policy shall include coverage for materials and equipment while under the care, custody and control of the Seller during the course of Work, at the Site, offsite or while in transit to the Site.

(e) Additional Insurance Requirements.

(i) Before commencing performance of the Work, Seller shall furnish Buyer 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 Buyer.

(iii) Buyer uses a third party vendor, EXIGIS,LLC to confirm and collect insurance documents. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to issue certificates of insurance and endorsements on its behalf, and submitted via email or fax to:

Certificate Holder:
Pacific Gas &Electric Company
c/o EXIGIS, LLC
support@exigis.com
Fax: 646-755-3327

(iv) Reviews of such insurance may be conducted by Buyer on an annual basis.

(v) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(f) Form And Content.

All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against Buyer, 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.

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. 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. The Parties acknowledge and agree that this Agreement is a "forward contract" (within the meaning of the Bankruptcy Code, as in effect as of the Execution Date). 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 any of the following: (each constituting a "Force Majeure Failure"):

(i) If prior to the Delivery Term, Seller is unable, due solely to a Force Majeure event, to achieve the Commercial Operation Date or place the Project into Commercial Operation by the Guaranteed Commercial Operation Date, after applicable extensions or cure periods have run, as set forth in Section 3.9(c); provided that if a Force Majeure event is caused by a catastrophic natural disaster, then upon Buyer's written request to Seller, Seller shall have not more than ninety (90) days from the date of such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller shall provide Buyer a copy of the engineer's report, at no cost to Buyer; provided further that if such engineer's report concludes that the Project is capable of being repaired or replaced within twenty-four (24) months from the date of the Seller provides the engineer's report to Buyer and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the repair or replacement period deemed necessary by the engineer's report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and Seller has resumed and is satisfying its obligations under this Agreement.

(ii) If during the Delivery Term:

(A) the Project fails to deliver at least forty percent (40%) of the Contract Quantity 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 and Buyer has provided Notice to Seller of such failure; provided that, if Seller within forty-five (45) days of receipt of Notice from Buyer, presents Buyer with a plan for mitigation of the effect of the Force Majeure within a period not to exceed six (6) months from the above-mentioned Notice date, which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer's written acknowledgement of such plan, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the mitigation period deemed necessary by Seller to repair the Project (which shall not exceed six (6) months); provided that Seller diligently pursues such mitigation plan throughout the mitigation period, and after which time Buyer may terminate this Agreement unless the Project has been repaired, and the Seller has resumed and is satisfying all of its obligations under this Agreement; or

(B) the Project is destroyed or rendered inoperable by a Force Majeure event caused by a catastrophic natural disaster; provided that Seller shall have up to ninety (90) days following such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced no later than twenty-four (24) months from the date of the report and Seller shall provide Buyer with a copy of the engineer's report, at no cost to Buyer; provided further that if such engineer's report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such

repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the period deemed necessary by the engineer's report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying all of its obligations under this Agreement.

(b) Termination and Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Sections 2.6(a) and (b). The Parties agree that for a period of three (3) years from the date on which Buyer Notifies Seller of termination due to the Force Majeure Failure ("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 of First Offer Acceptance"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice of First Offer Acceptance 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. 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 VI, 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, website, or contact, including such information in Appendix VI and the "Notices List" in the Cover Sheet, 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: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX I

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

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 **[insert name of the agreement]** (the "Agreement"), dated **[insert date of the Agreement]**, between Beneficiary and **[insert name of Seller under the Agreement],** Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the Agreement]** under the Agreement; or

   B. "Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the Agreement]** 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; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

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) Buyer has accepted delivery of 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: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX III

FORM OF PROGRESS REPORT

Progress Report

of

_____
("Seller")

provided to

Pacific Gas and Electric Company
("Buyer")

[Date]

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").

Seller shall review the status of each Milestone of the construction schedule for the Project and Seller shall 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 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 Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

For guidance, each "overview" subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each "recent activities" subsection shall include details of activities during the previous month. Each "expected activities" subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Progress Report to [_____], together with all attachments and exhibits, with copies of this report delivered to GCMTGroup@pge.com and [_____].

1. Executive Summary

Please provide an overview of the Project, including technology, size, location, and ownership.

Please provide a brief chronological cumulative summary of the **major** activities completed for each of the following aspects of the Project. Include the date each item was added to the summary (*e.g., in Milestone section "January 2012 – notice of Construction Start Date milestone achieved was reported to PG&E on January 15, 2012" and in Construction section "January 2012 - Notice to Proceed was issued to EPC contractor on January 10, 2012"*):

1.1 Milestones

1.2 Governmental Approvals

1.3 Financing

1.4 Property Acquisition

1.5 Design and Engineering

1.6 Major Equipment procurement

1.7 Construction

1.8 Interconnection

1.9 Startup

2. Milestones

In this section, please include information on each Milestone listed in the Cover Sheet, plus any additional significant milestones related to the project.

2.1 Milestone schedule

Please state the status and progress of each Milestone. Provide the date of completion of completed Milestone(s) and the expected date of completion of uncompleted Milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

2.2 Remedial Action Plan (applicable if Seller fails to achieve a Milestone by the Milestone Date)

Please describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates. Describe the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor). Describe Seller's Remedial Action Plan which shall include detailed plans to achieve the missed Milestone and subsequent Milestones.

3. Governmental Approvals

In this section, please include information on each of the Governmental Approvals required for the construction of the Units and the status thereof. List the applicable government agency, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes, but is not limited to, application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents and/or approvals, final documents and/or approvals, notice of determination, and/or issuance of permit. If the government agency maintains a website with information on the approval process for the Project, please provide a link.

3.1 Environmental Impact Report/Statement (EIR/EIS)

Please describe the environmental review process and each of the Governmental Approval(s) to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity in the process.

3.2 Other Governmental Approvals

Please describe each of the other Governmental Approvals to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity.

3.3 Recent Governmental Approval activities

Please describe in detail the Governmental Approval activities that occurred during the previous calendar month.

3.4 Expected Governmental Approval activities

Please list all Governmental Approval activities that are expected to be performed during the current calendar month.

3.5 Governmental Approval Notices received

Please attach to this Progress Report copies of any Notices related to Governmental Approval activities received during the previous calendar month.

4. Financing Activities

In this section, please include information on each separate phase of financing for the Project. Include information on debt, equity, and/or federal or state loans or grants.

4.1 Overview of financing activities

Please provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

4.2 Recent financing activities

Please describe in detail the financing activities that occurred during the previous calendar month.

4.3 Expected financing activities

Please list the financing activities that are expected to be performed during the current calendar month.

5. Property Acquisition Activities

In this section, please include information on property acquisition or site control activities for the Project.

5.1 Overview of property acquisition activities

Please provide a summary of the status and progress of each major property acquisition activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

5.2 Recent property acquisition activities

Please describe in detail the property acquisition activities that occurred during the previous calendar month.

5.3 Expected property acquisition activities

Please list the property acquisition activities that are expected to be performed during the current calendar month.

6. Design and Engineering Activities

In this section, please include information on the status of design and engineering for the Project.

6.1 Overview of design activities

Please provide a summary of the status and progress of each major design or engineering activity, including dates of completion of significant activities and expected timing of future activities.

6.2 Recent design activities

Please describe in detail the design activities that occurred during the previous calendar month.

6.3 Expected design activities

Please list the design activities that are expected to be performed during the current calendar month.

7. Major Equipment Procurement

In this section, please include information on all major equipment to be procured for all portions of the Project to be completed by Seller, including switchyards, substations and any other interconnection equipment, in addition to generating and auxiliary equipment.

7.1 Overview of major equipment procurement activities

For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item (to be) procured or delivered in each month.

7.2 Recent major equipment procurement activities

Please describe in detail the major equipment procurement activities that occurred during the previous calendar month.

7.3 Expected major equipment procurement activities

Please list the major equipment procurement activities that are expected to be performed during the current calendar month.

8. Construction Activities

In this section, please include information on the status of any construction-related factors that may affect the ability of the Project to deliver Product to the Buyer. Include information on the Project infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other interconnection facilities that are the direct responsibility of the Project.

8.1 Overview of major construction activities

Please provide a summary of the status and progress of each major construction activity for all portions of the Project, including a schedule showing expected or actual dates as applicable. 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). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each month.

8.2 Recent construction activities

Please describe in detail the construction activities that occurred during the previous calendar month.

8.3 Expected construction activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

8.4 EPC Contractor Progress Report

Please attach a copy of the Progress Reports received during the previous calendar month 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.

8.5 Look-ahead construction schedule

Please provide a look-ahead construction schedule covering at least three months.

8.6 OSHA Recordables

Please list all OSHA recordables from the previous calendar month.

8.7 Work stoppages

Please describe any work stoppage from the previous calendar month and its effect on the construction schedule.

9. Interconnection Activities

In this section, please include information on interconnection-related factors that may affect the ability of the Project to deliver Product to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of Interconnection Facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Project construction information in Section 8), Network Upgrades, and grid outage and/or interconnection schedules.

9.1 Overview of interconnection activities

Please provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.

9.2 Recent interconnection activities

Please describe in detail the interconnection activities that occurred during the previous calendar month.

9.3 Expected interconnection activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

10. Startup

In this section, please include information on the status of activities related to preparation for Commercial Operation, including equipment testing, commissioning, release to operations, requirements of the grid operator, and any other activities that must be conducted before the Project may deliver Energy to the grid and/or declare Commercial Operation.

10.1 Overview of startup activities

Please provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

10.2 Recent startup activities

Please describe in detail the startup activities that occurred during the previous calendar month.

10.3 Expected startup activities

Please list the startup activities that are expected to be performed during the current calendar month.

I, _____, on behalf of and as an authorized representative of _____, do hereby certify that any and all information contained in this Seller's Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By:_____

Name:_____

Title:_____

Date:_____

APPENDIX IV

CONSTRUCTION START AND COMMERCIAL OPERATION CERTIFICATION FORMS AND PROCEDURES

Appendix IV-1: CONSTRUCTION START FORM OF CERTIFICATION

Appendix IV-2: COMMERCIAL OPERATION CERTIFICATION PROCEDURE

Attachment A Commercial Operation Form of Certification

Appendix IV-3: CAPACITY TEST PROCEDURE ***[Use for Baseload Product only]***

[Use this Appendix IV—1 for BOTH As-Available and Baseload Products]

APPENDIX IV–1

CONSTRUCTION START
FORM OF CERTIFICATION

__(Date)___

Director Contract Management and Settlements
Pacific Gas and Electric Company
77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Re: Construction Start Date

This certification ("Certification") of the Construction Start Date 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 all of the following:

a) the EPC Contract related to the Project was executed on _____;
b) [permitting agency name] _ issued grading permits to the Seller on _____; and
c) the Notice to Proceed was issued on _____ (attached), and.
d) mobilization at the Project Site commenced on _____.

IN WITNESS WHEREOF, the undersigned has executed this certificate on behalf of the Seller as of the ___ day of _____.

_____
(Seller)

_____
(Name)

_____
(Position)

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV–2

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

In accordance with the terms of that certain Power Purchase Agreement dated _____, 20__ by and between Pacific Gas and Electric Company ("Buyer") and _____ ("Seller") to declare and recognize the Commercial Operation Date of the Project, Seller shall provide all of the documents set forth herein to Buyer as of the Commercial Operation Date. All terms not defined herein shall have the meaning set forth in the Agreement.

(1) A certification from an authorized officer of Seller, substantially in the form of Attachment A to this Appendix IV-2, dated as of the Commercial Operation Date; and

(2) A certificate or report from a Licensed Professional Engineer containing all of the following:

(a) A statement that the Project has achieved Mechanical Completion and the date on which it was achieved;

(b) A statement that the Project has successfully completed Project Testing and the dates on which Seller has accepted the test results; and

(c) A statement that the Project has achieved Substantial Completion and the date on which it was achieved.

(3) Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the CAISO agreement, interconnection agreement, and metering requirements in Sections 3.4 and 3.6 and has enabled Buyer to schedule the Facility with the CAISO for the Facility's full unrestricted output.

(4) Definitions.

(a) "Mechanical Completion" means that (i) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (ii) the Project is ready for startup testing and commissioning; (iii) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.

(b) "Project Testing Completion" means the written acceptance to the EPC Contractor of the completion of startup testing / commissioning, emissions testing (as applicable), and performance / acceptance / warranty testing (all such testing shall be collectively referred to as "Project Testing") as required under the EPC Contract. The objectives of the tests shall be generally (i) to verify that the Project has been properly designed and constructed to meet the performance and operating requirements of the EPC Contract; (ii) to assure warranty coverage for equipment and systems over their warranty periods.

(c) "Substantial Completion" means when the following has occurred: (i) the Project is sufficiently complete, in accordance with the EPC Contract, that Seller has full and unrestricted use and benefit of the Project in the use for which it is intended; (ii) the Project has achieved Mechanical Completion; (iii) utilities are fully connected and operating normally; (iv) all necessary permits have been issued; (v) the Project is fully and properly interconnected and synchronized with the electrical grid and is capable of producing electricity in accordance with the EPC Contract; (vi) the operating manual has been approved by Seller; (vii) all work other than incidental corrective and incidental punch list work is complete; and (viii) Seller has provided written acceptance to the EPC Contractor of substantial completion as that term is specifically defined in the EPC Contract.

APPENDIX IV–2 –Attachment A

COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation 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:

(1) Mechanical Completion of the Project was achieved on ____[DATE]____.

(2) Project Testing Completion successfully occurred on:

[Seller to indicate each type of Project Testing and date completed]

(a) NAME OF TEST [DATE]
(b) NAME OF TEST [DATE]
(c) NAME OF TEST [DATE]

(3) Substantial Completion of the Project was achieved on ____[DATE]____

(4) Pre-parallel inspection of the Project was successfully completed on __[DATE]__

(5) Authorization to parallel the Project was obtained on ____[DATE]____

(6) Telemetering / SCADA visibility with PTO and CAISO grid control and power dispatch centers was obtained for the Project on ____[DATE]____

(7) Reliability Network Upgrades (as defined in the CAISO Tariff) were completed on the Project on ____[DATE]____

(8) Power system stabilizer testing and calibration was obtained for the Project on _____[DATE]____ or, ☐ was not required

(9) Full Capacity Deliverability Status Finding from CAISO was obtained for the Project on ____[DATE]____ or, ☐ was not required because the Project is Energy Only.

(10) The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____[DATE]_____.

(11) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on _____[DATE]_____.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated herein.

EXECUTED by SELLER this _____ day of _____, 20__.

		[Licensed Professional Engineer]	
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
		Date:	_____
		License Number and LPE Stamp	_____

[Use for Baseload Product only]

APPENDIX IV–3

CAPACITY TEST PROCEDURE

[To be developed by Buyer and Seller by using CAISO test procedures for the applicable technology]

APPENDIX V

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 plus Deemed Delivered Energy, if any, over the Performance Measurement Period, in MWh

C= Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff), in which the PNode resides, plus (b) $50/MWh

D = the unweighted Contract Price specified in the Cover Sheet for the Performance Measurement Period, in $/MWh

The Parties agree that in the above calculation of GEP Damages, the result of "(C-D)" is less than $20/MWh, the "(C-D)" will be replaced with $20/MWh.

APPENDIX VI

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR ROUTINE START-UP AND SHUTDOWNS

Prior to paralleling or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify the applicable Participating Transmission Owner's (PTO) switching center

- Call the applicable Participating Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk to advise of the intent to parallel before any Start-up.

- Call the applicable Participating Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk after the unit has been paralleled and report the parallel time and intended unit output.

- Call the applicable Participant Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk after any routine separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PLANNED OUTAGES

1. Submit information by posting to PG&E's approved web-based system, which is located at www.pge.com under "Business to Business," or alternative website designated by PG&E (both, "PG&E's Website"). Once directed to the appropriate page, enter the username and password assigned by PG&E's Bilateral Settlements Group. If PG&E's 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, Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through 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.

    c. For Monthly and 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 Schedules into the Day-Ahead Market, call primary phone (415) 973-1971 or backup phone (415) 973-4500. Also send email to DAenergy@pge.com.

    e. For Hourly Forecasts of Available Capacity, call PG&E's Real Time Desk at (415) 973-4500 and email to RealTime@pge.com.

f. For Planned Outages and Prolonged Outages, complete the specifics below and submit by email to MerchantOutages@pge.com, DAenergy@pge.com, ESMOutageCoordinator@pge.com, and Bilat_Settlements@pge.com.

i. ***Email subject field*: Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity")**

ii. Email body:

1. ***Type of Outage: Planned Outage or Prolonged Outage***
2. ***Start Date and Start Time***
3. ***Estimated or Actual End Date and End Time for Outage***
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.***
6. ***Contact name: first and last name of the individual at the Unit to contact regarding the outage(s) at issue in the email.***

C. FORCED OUTAGE REPORTING

1. Forced Outages – Seller shall notify PG&E Merchant Generation desk verbally at (415) 973-4500 within ten (10) minutes of event or as soon as reasonably possible, after the safety of all personnel and securing of all facility equipment.

   a. Verbal notification shall include time of forced outage, cause, current availability and estimated return date and time.

   b. After verbally notifying PG&E Merchant Generation desk of the forced outage, Seller shall also put forth commercially reasonable efforts to notify PG&E Settlements via PG&E's Website, as defined above.

   c. If PG&E's Website is unavailable, submit the following information via email to Bilat_Settlements@pge.com.

   i. ***Email subject field*: Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity")**

   ii. Email body:

   1. ***Type of Outage: Forced 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.***

6. ***Primary and secondary causes of Forced Outage, including a detailed description of specific equipment involved and the nature of the problem or condition.***

7. ***Equipment description and nature of work being performed. For generation outages, include NERC Generation Availability Data System (GADS) numbers (as available) that identify the specific equipment and type of work that affect restrictions. Include additional equipment designations as available.***

8. ***Text description of additional information as needed, including, but not limited to, changes to a previously scheduled Outage, links/cross-references to related outage cards and log entries, outage classifications per the CAISO Tariff, etc.***

9. ***Associated events, e.g. operation of Special Protection Schemes.***

10. ***Impact on CAISO-controlled Grid.***

APPENDIX VII

FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

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 as 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 Loan Agreement and/or 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 depositary 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/or 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 VIII

SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer all of the following documentation 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, or anticipated to be in effect, on the Execution Date.

2. A certificate signed by an authorized officer of Seller (who must be a different person than the officers listed in clause (C) below), dated no earlier than ten (10) Business Days prior to 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 no earlier than ten (10) Business Days prior to 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.

7. An executed Letter of Concurrence substantially in the form specified in Appendix XI.

[Appendix IX applies to As-Available Product only]

APPENDIX IX

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(l)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix IX.

(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 IX.

APPENDIX IX

Attachment A

Form of Actual Availability Report

Seller's Actual Availability Report

All amounts are in MWs

Settlement Interval No.	Date	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								
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6	mm/dd/yyyy																								
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								

Date/Time of Submittal _____

APPENDIX X

TELEMETRY PARAMETERS FOR WIND OR SOLAR FACILITY

Technology Type	Telemetry Parameters	Units
Solar Photovoltaic	Back Panel Temperature	˚C
	Global Horizontal Irradiance	W/m^2
	Plane of Array Irradiance (If PV is fixed) Direct Normal Irradiance (If PV is Tracking)	W/m^2
	Wind Speed	m/s
	Peak Wind Speed (Within 1 minute)	m/s
	Wind Direction	Degrees
	Ambient Air Temperature	˚C
	Dewpoint Air Temperature or Relative Humidity	˚C
	Horizontal Visibility	m
	Precipitation (Rain Rate)	mm/hr
	Precipitation (Running 30 day total)	mm
	Barometric Pressure	Millibars or Hecto Pascals (HPa)
Solar Thermal or Solar Trough	Global Horizontal Irradiance	W/m^2
	Plane of Array Irradiance (If PV is fixed) Direct Normal Irradiance (If PV is Tracking)	W/m^2
	Wind Speed	m/s
	Peak Wind Speed (Within 1 minute)	m/s
	Wind Direction	Degrees
	Ambient Air Temperature	˚C
	Dewpoint Air Temperature or Relative Humidity	˚C
	Horizontal Visibility	m
	Precipitation (Rain Rate)	mm/hr
	Precipitation (Running 30 day total)	mm
	Barometric Pressure	Millibars or Hecto Pascals (HPa)
	Individual Tracking Assembly Angle Set Points (Solar Trackers Only)	Degrees
	Actual Tracking Assembly Angles (Solar Trackers Only)	Degrees
Wind	Wind Speed (measured at hub height)	m/s
	Peak Wind Speed (Within 1 minute, measured at hub height)	m/s
	Wind Direction	Degrees
	Wind Speed Standard Deviation	--
	Wind Direction Standard Deviation	--
	Barometric Pressure (measured at hub height)	Millibars or Hecto Pascals (HPa)
	Ambient Temperature (measured at hub height)	˚C

APPENDIX XI

FORM OF LETTER OF CONCURRENCE

[Date]

[Name]
[Position]
[Company]
[Address]

Re: Letter of Concurrence Regarding Control of [Name] Facility

This letter sets forth the understanding of the degree of control exercised by Pacific Gas and Electric Company ("PG&E") and [Company Name] with respect to [Facility Name (the "Facility")] for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission's ("Commission") Order No. 697.[1] Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.[2] The Commission further requires that "a seller making such an affirmative statement seek a 'letter of concurrence' from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing."[3]

PG&E and [Company Name] have executed a [power purchase and sale agreement (the "Agreement")] with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] maintains sole control of the Facility. [Company Name] agrees to provide subsequent Letters of Concurrence as may be necessary should any of the information provided herein change after the execution date of this letter.

If you concur with the statements made in this letter, please countersign the letter and send a copy to me.

Best regards,

_____
[Author]
[Position]
Pacific Gas and Electric Company

---

[1] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 186-187, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

[2] Order No. 697 at P 186.

[3] Order No. 697 at P 187.

Concurring Statement

On behalf of [Company Name], I am authorized to countersign this letter in concurrence with its content.

By: _____
[Name]
[Company Position]
[Company Name]

APPENDIX XII

SUPPLIER DIVERSITY PROGRAM

1. Seller shall provide Women-, Minority-, and service Disabled Veteran-, and Lesbian, Gay, Bisexual and/or Transgender-owned Business Enterprises, as verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156 ("WMDVLBE"), the maximum practicable opportunity to participate in the performance of work supporting Seller's construction, operation, and maintenance of the Project. General Order 156 can be found on http://www.cpuc.ca.gov/puc/documents/go.htm .

2. Upon request from Buyer, Seller shall provide a separate "Supplier Plan" consisting of a specific list of suppliers that may participate in the performance of the work supporting the construction of the Project prior to the Commercial Operation Date and operation and maintenance of the Project after the Initial Energy Delivery Date, and a statement setting forth any additional efforts Seller will employ to increase the participation of WMDVLBE suppliers supporting the construction, operation and maintenance of the Project.

3. Upon request from Buyer, but no less than once per 365 day period of time between the Execution Date and the end of the Delivery Term, Seller shall report its spending with WMDVLBE suppliers per instructions to be provided by PG&E.

4. Targets.

   a) Seller's supplier diversity spending target for Work supporting the construction of the Project prior to the Commercial Operation Date is ____ percent (___%) as measured relative to Seller's total expenditures on construction of the Project prior to the Commercial Operation Date, and;

   b) Seller's annual supplier diversity spending target for Work supporting the operation and maintenance of the Project after the Initial Energy Delivery Date is ____percent (___%) as measured relative to the net payments made by Buyer to Seller in each Contract Year.

5. Seller shall use good faith efforts in meeting the requirements of this Appendix XII which efforts shall be material obligations.

[Bracketed language applicable to WMDVLBE ***Sellers only]***

6. Seller is a WMDVLBE, as certified by _____ **[**please identify the certifying agency**]**.

APPENDIX XIII
PROJECT SPECIFICATIONS AND CONTRACT CAPACITY CALCULATION

I. PROJECT SPECIFICATIONS

"MVA" means megavolt ampere, the unit of apparent power.

"Nameplate Rated Output" means, with respect to an inverter or electric generator, the MVA that the manufacturer of the inverter or generator has designed such equipment to produce under normal operating conditions as specified by such manufacturer.

"Designated Power Factor" means, with respect to an inverter or electric generator, the power factor required to satisfy the portion of the Project's reactive power requirements that are specified in ***[please identify the applicable source, such as the PTO's Interconnection Handbook, the CAISO's Phase II Study, or the Generator Interconnection Agreement for the Project]*** and are not being satisfied by other sources of reactive power within the Project.

"Nameplate Rated Power" means, with respect to an inverter or electric generator, the multiplication product of the Nameplate Rated Output and the Designated Power Factor for such inverter or generator, in MWs.

The project specifications shall consist of the following eleven (11) items (each item of which shall be a "Project Specification"). As provided in Section 3.1(g), Seller shall not make any change or modification to any Project Specification without Buyer's prior written consent.

1. Project name:
2. Project Site name:
3. Project physical address:
4. Total number of Units at the Project:
5. Technology Type:
6. Interconnection Point of Project:
7. Service Territory of Project:
8. Substation:
9. Description of Units: ***[delete inapplicable project types]***

- **For a Solar PV Project**

    a. For each type of inverter in the Project, specify in the table below the type, the number of inverters, the Nameplate Rated Output, the total Nameplate Rated Output, the Designated Power Factor, the Nameplate Rated Power and the total Nameplate Rated Power: ***[add rows as needed]***

Inverter Type	Number of Inverters	Nameplate Rated Output (MVA)		Designated Power Factor	Nameplate Rated Power (MW)	
		Per Inverter	Total		Per Inverter	Total
Total		N/A			N/A	

b. For each type of panel technology (e.g., multi-crystalline silicon, mono-crystalline silicon, thin-film CdTe, multi-junction, bifacial, concentrating, etc.) and each type of panel orientation (e.g., fixed-mount, tilt-angle, azimuth, single-axis tracker, double axis tracker, etc.) specify in the table below the technology, the type of orientation and the total DC rating at Standard Test Conditions: ***[add rows as needed]***

Panel Technology	**Orientation**	**DC Rating at STC (MW_{DC})**
Total	N/A	

"Standard Test Conditions" means, with respect to determining the nameplate DC rating of a solar PV panel in a factory flash test, an irradiance of 1,000 W/m2, a panel temperature of 25°C, and an air mass of 1.5.

- **For a Solar Thermal Project**

  a. Specify the total area (square meters) of solar mirrors (or of apertures for parabolic mirrors):

  b. Specify the technology (e.g., parabolic trough, power tower, parabolic disk) and the storage medium and capacity, etc.:

  c. For each steam turbine, specify the rated conditions (MW rating, steam inlet temperature, steam inlet pressure, condensing temperature, mass flow rate):

  d. For each electric generator, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power:

- **For a Wind Project**

  For each type of turbine, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power and the rated output wind speed (m/s):

- **For a Biomass or Geothermal Steam Project**

  a. For each steam turbine, specify the rated conditions (MW rating, steam inlet temperature, steam inlet pressure, condensing temperature, mass flow rate):

  b. For each electric generator, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power:

10. Description of Land:

    The Site contains the following Assessor Parcel Numbers upon which the Project is located and as identified on the topographical map included in this Appendix XIII: [Insert Map]

11. Description of Interconnection Facilities and metering:

    The Project will use the following Interconnection Facilities and metering configuration as identified in this one-line diagram included in this Appendix XIII:

[Insert One-Line Diagram for Interconnection Facilities and Metering]

12. Maps: The Site is identified in the following topographical map:

[INSERT MAP]

II. CONTRACT CAPACITY CALCULATION

The Contract Capacity specified in Section B of the Cover Sheet shall be the factor (A) minus each of the factors (B) through (E) provided below:

A	Sum of the Nameplate Rated Power of all inverters/generators	_____ MW
B	Calculated electrical losses from inverter/generator output terminals to Delivery Point (with all inverters/generators operating at Nameplate Rated Outputs)	_____ MW
C	Electrical Losses	_____ MW
D	Auxiliary and station loads coincident with inverters/generators operating at Nameplate Rated Outputs	_____ MW
E	Other factors (explain below)	_____ MW
F	Contract Capacity at the Delivery Point (F = A – B – C – D – E), which shall be the same as the MW amount specified for the Contract Capacity in Section B of the Cover Sheet	_____ MW

Inputs for the Nameplate Rated Power calculation:

Designated Power Factor:

	Leading	Lagging
Project power factor requirements	_____	_____
Seller's Designated Power Factor for inverters/generators	_____	_____

Power factor requirement is measured at (check one):

☐ inverter/generator terminals; ☐ Point of Interconnection; ☐ Other:_____

APPENDIX XIV

SECTION 3.3(e) LIQUIDATED DAMAGES CALCULATION

I. Equation and Formulas for Calculating RA Deficiency Amount

As provided in Section 3.3(e)(ii)(B), the formula for calculating the RA Deficiency Amount in a given RA Shortfall Month is:

RA Deficiency Amount ($/Month) = RA Value ($/MW/Month) × Expected Net Qualifying Capacity (MW)

Where the:

A. RA Value shall be $4,010/MW/Month in calendar year 2016 and shall escalate at 2.5% per year for each succeeding calendar year; and

B. Expected Net Qualifying Capacity for projects that selected Full Capacity Deliverability Status shall be the product of the Contract Capacity and the applicable monthly Qualifying Capacity factor in the table below; or

C. Expected Net Qualifying Capacity for Projects seeking Partial Capacity Deliverability Status shall be the minimum of (a) the Expected Net Qualifying Capacity values as calculated in Section B above; or, (b) the product of the Contract Capacity and the Partial Capacity Deliverability Status Amount.

Table XIV-1 Monthly Qualifying Capacity Factor

Month	Biomass	Geothermal	Solar	Wind
Jan	70.61%	84.92%	0.79%	4.43%
Feb	72.50%	85.34%	6.62%	8.25%
March	70.79%	82.42%	15.12%	21.36%
April	62.13%	80.44%	60.43%	23.90%
May	65.57%	81.99%	64.13%	31.04%
June	73.55%	78.59%	80.03%	27.31%
July	76.32%	78.74%	80.39%	17.04%
Aug	75.31%	78.37%	74.86%	15.31%
Sept	74.67%	78.78%	73.05%	9.20%
Oct	71.80%	79.05%	48.29%	7.22%
Nov	70.86%	81.08%	2.49%	4.43%
Dec	74.25%	83.15%	1.33%	4.50%

II. Example of Calculation of the RA Deficiency Amount (for illustrative purposes only) if:

- RA Shortfall Month is June 2019
- Project is a solar system
- Contract Capacity is 20 MW
- RA Start Date is based on the Expected FCDS Date, which is January 1, 2019
- FCDS is achieved on August 14, 2019

RA Value ($/MW/Month) = $4,010.00, escalated at 2.5% per year for 3 years, from 2016 to 2019

$4,010 × (1.025)3 = $4,318/MW/Month.

Monthly Qualifying Capacity factor for a solar project in June is 86.74% (from table above).

Expected Net Qualifying Capacity =

Contract Capacity (MW) × monthly Qualifying Capacity factor =

20 MW × 86.74% = 17.35 MW

RA Deficiency Amount ($/Month) =

RA Value ($/MW/Month) × Expected Net Qualifying Capacity (MW) =

$4,318/MW/Month × 17.35 MW = $74,917.30

In this example, the RA Shortfall Period is from January through October 2019. The calculations above would be performed and the result applied for each month in this RA Shortfall Period.

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Rate Schedules		45400**,**46112**,**45402**,**45403**,**45742**,**45405,43935,44177-E	
Preliminary Statements		45406,44687,42856*,43670,41723,40591,44724,46682-E	
Rules		46827,46828,46109-E	
Maps, Contracts and Deviations		37960-E	
Sample Forms		40925*,37631,45743,41573*, 37632,41152*,41153,37769,**46872**,42829,37169-E	(T)

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79-1075	Notice to Add or Delete Customers Participating in the Capacity Bidding Program	42640**-E	
79-1076	Agreement for Aggregators Participating in the Capacity Bidding Program	46307-E	
79-1120	Standard Contract for Eligible CHP Facilities	**46866**-E	(T)
79-1121	Power Purchase and Sales Agreement - Contract For Eligible CHP Facilities with Net Output of Not Greater Than 5 MW	**46867**-E	(T)
79-1126	Off-Bill and On-Bill Financing Loan Agreement for Self-Installed Projects	32500-E	
79-1127	Agreement to Perform Tariff Schedule Related Work, Rule 20A General Conditions	42822-E	
79-1128	Affidavit in Support of Customer Claim as Qualifying as a Small Business Customer under Government Code Section 14837*	43950-E	
79-1138	Power Purchase and Sale Agreement - Contract For Eligible CHP Facilities with Power Rating of Less Than 500 KW	**46868**-E	(T)
79-1141	Agreement for Schedule A-15 Fixed Usage Estimate	33683-E	
79-1143	California State Government Customers On-Bill Financing Loan Agreement	32501-E	
79-1147	Authorization or Revocation of Authorization to Receive Customer Usage Information	42826-E	
79-1149	Election to Withdraw From the Capacity Bidding Program Form	42828-E	
79-1150	Renewable Market Adjusting Tariff Power Purchase Agreement	45535-E	
79-1156	Authorization To Add Loan Charges To Utility Bill (Residential)	35611-E	
79-1157	Authorization To Add Loan Charges To Utility Bill (Non-Residential)	35612-E	
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79-1171	Authorization to Add MCE Storage Charges to Utility Bill	35099-E	
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79-1173	Energy Efficiency Financing Pilot Programs Authorization or Revocation of Authorization to Release Customer Information	42836-E	
79-1178	Plug-In Electric Vehicle Submetering Pilot Phase 2 Submeter MDMA Registration Agreement	37699-E	
79-1179	Plug-In Electric Vehicle Submetering Pilot Phase 2 Single Customer-of-Record Enrollment Agreement	45546-E	
79-1180	Plug-In Electric Vehicle Submetering Pilot Phase 2 Multiple Customer-of-Record Enrollment Agreement	45547-E	
79-1186	Share My Data Customer Authorization or Revoction of Authorization Form	41784-E	
79-1187	Bioenergy Market Adjusting Tariff Program (BioMAT Program) - Fuel Resource Attestation	37766-E	
79-1207	Green Tariff Shared Renewables ("GTSR") Program Power Purchase Agreement	**46870**-E	(N)

(Continued)

Advice 5896-E
July 31, 2020

Attachment 2

Redline Tariffs

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

Standard Contract for Eligible CHP Facilities

TERMS THAT ARE BOXED AND SHADED IN LIGHT YELLOW AND/OR BRACKETED AND IN BLUE FONT ARE EITHER BUYER COMMENTS OR GENERATING FACILITY-TYPE SPECIFIC COMMENTS THAT SHOULD BE REMOVED, ACCEPTED OR COMPLETED, AS APPLICABLE.

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POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID# [Number])

PREAMBLE

This Power Purchase and Sale Agreement by and between **[Buyer's name]**, a California corporation ("Buyer"), and **[Seller's name]**, a [Seller's form of business entity and state of registration] ("Seller"), together with the exhibits, attachments, and any applicable referenced collateral agreement between the Parties (collectively, this "Agreement"), is made, effective and binding as of [Date of execution] (the "Effective Date").

Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement the provisions of Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill Buyer's obligations under the Act and CPUC Decisions issued in R. 08-06-024 ("AB 1613 Decisions"), and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

ARTICLE ONE. SPECIAL CONDITIONS

{Buyer Comment: If the Term is greater than or equal to five years, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in CPUC D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends [Number of months] months after the Term Start Date (the "Term End Date").

(a) The Term Start Date must be on the first day of a calendar month.

(b) Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least one year before such Term Start Date; provided, however, that notwithstanding any change to the Term Start Date, the Term may not exceed [Number of months in the Term] months; *provided further*, that if the Generating Facility is (i) a New Eligible CHP Facility, the Term Start Date must occur within 60 months of the Effective Date, or (ii) an Existing Eligible CHP Facility, the Term Start Date must occur within 24 months of the Effective Date, in each case subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03) and Section 4(c)(ii) of Exhibit D.

(c) The Term shall be no less than one (1) year and no more than ten (10) years. Seller designates the Term Start Date and the Term End Date.

1.02 Generating Facility.

(a) Name. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility]. To be eligible for this Agreement, the Generating Facility must be an Eligible CHP Facility during the entire Term, (1) satisfies the provisions of AB 1613, as implemented by the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA, unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

(b) Location. The Generating Facility is located at [Generating Facility address], and is further described in Exhibit B. To be eligible for this Agreement, the Generating Facility must be located in Buyer's electric service territory.

(c) Contract Capacity. The As-Available Contract Capacity is [__] kW. The Power Rating of the Generating Facility must be less than or equal to 20 MW. If the Generating Facility has more than one Generating Unit, the Power Rating of all such Generating Units must be less than or equal to 20MW.

(d) Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [____] kWh. The Expected Term Year Energy Production may

be revised based on changes in the Site Host Load or the Site Host thermal requirements; provided, however, that such change must be supported by a certification from a California-licensed professional engineer qualified to make a representation affirming that such revision is reasonable and based on changes in the Site Host Load or the Site Host thermal requirements. Such certification must include all data relied on to support the revised Expected Term Year Energy Production.

{Buyer Comment: Expected Term Year Energy Production cannot exceed As-Available Contract Capacity at 100% capacity factor applied over the Term Year.}

(e) Site Host Load. The Site Host Load is expected to equal, on average, [___] kW annually. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year.

1.03 Delivery Point. The point of delivery of the Power Product is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept the Power Product at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs, exclusive of line losses (if any) and interconnection costs, to deliver the power from the Delivery Point to the point of interconnection between the Buyer's distribution or transmission facilities and the CAISO-Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement) and any line losses from the Delivery Point to the Interconnection Point. Any line losses incurred or avoided from the Delivery Point to the Interconnection Point are determined as part of the interconnection process.

1.04 Planned Outages. All Planned Outages must be scheduled by Seller in accordance with the procedures set forth in Exhibit N. Seller shall make reasonable efforts not to schedule a Planned Outage during the Peak Months. Should it become necessary for Seller to schedule a Planned Outage during the Peak Months, Seller shall only schedule such Planned Outage during the non-peak hours of the Peak Months. In no event may Seller schedule or utilize a Planned Outage that is more than 12 non-peak hours per Peak Month.

1.05 Power Product Prices.

(a) The Monthly Contract Payment for the Power Product shall be calculated in accordance with Exhibit C.

(b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit C (1).

(c) A Generating Facility subject to paragraph 1.05(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof.

(d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.05(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit C.

1.06 Credit and Collateral Requirements.

(a) Seller shall post and thereafter maintain the Development Security in accordance with Section 4(b) of Exhibit D.

(b) Seller shall post and thereafter maintain the Performance Assurance, in accordance with Section 2(a) of Exhibit D, in an amount equal to 5% of expected revenue of the Generating Facility under this Agreement (the "Performance Assurance Amount"). The initial amount of Performance Assurance equals $[___]. The Performance Assurance Amount will be revised upon any change to the Expected Term Year Energy Production.

(c) Seller shall comply with all of the provisions of Exhibit D.

(d) Seller's Guarantor, if any, is [Name of Guarantor].

(e) Guarantor shall guarantee $[Performance Assurance Amount x 1.25].

(f) The Cross Default Amount, if any, equals $[___].

1.07 Scheduling Coordinator. Buyer is the Scheduling Coordinator under this Agreement.

1.08 GHG Emissions Allowances. Seller elects one of the following, provided, however, that this Section 1.08 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit C (1): [____][1]

(a) Seller shall manage its own GHG Emissions Allowances and request payment from Buyer in accordance with Section 3.03.

(b) PG&E shall purchase GHG Emissions Allowances on behalf of Seller upon the CPUC's adoption of the necessary procedure. Until such time, Buyer will reimburse Seller per section (a), above.

1.09 Decertification from AB 1613 Program. In the event of Seller's default pursuant to Section 6.01(c)(xvi), due to CEC decertification under Public Utilities Code 2843, so long as at the time of default, Seller demonstrates qualifying facility status under PURPA and notwithstanding Section 2.02(b), upon termination of this Agreement, Seller's continued conveyance of Power Product and acceptance of payment shall constitute Seller's acceptance of any applicable mandatory must-purchase contract available to qualifying facilities under PURPA. Seller shall be

[1] See D.10-12-055 ordering paragraph 5.

paid the short run avoided cost rate for energy and as-available capacity applicable under such contract at the time of decertification.

**** End of Article One ****

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS BEFORE THE TERM START DATE; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Seller shall satisfy each of the following obligations before the Term Start Date:

(a) The Generating Facility is or becomes an Eligible CHP Facility;

(b) Seller enters into all agreements, obtains all Governmental Authority approvals and Permits, and takes all steps necessary for it to:

(i) Operate the Generating Facility;

(ii) Deliver electric energy from the Generating Facility to the Delivery Point; and

(iii) Have Buyer Schedule the electric energy produced by the Generating Facility with the CAISO;

(c) Seller satisfies its obligation to install the CAISO-Approved Meters, as set forth in Section 3.09(a);

(d) Seller furnishes to Buyer the insurance documents required under Section 9.10;

(e) Seller enters into all agreements required by the CAISO Tariff;

(f) Seller enters into and fulfills all of its obligations under (i) the applicable interconnection agreements with the applicable Transmission Provider that are required to enable Parallel Operation of the Generating Facility with the interconnected electric system and the CAISO Controlled Grid, and (ii) any transmission, distribution or other service agreement that are required to enable Seller to transmit electric energy from the Generating Facility to the Delivery Point;

(g) Seller furnishes to Buyer the documents required under Section 3.06;

(h) Seller has posted with Buyer the Performance Assurance Amount;

(i) If the Term is equal to or greater than five years, the Generating Facility meets the GHG EPS and, at any time upon Buyer's request, Seller provides to the CPUC documentation evidencing its compliance with the GHG EPS;

(j) Seller shall have taken all steps to ensure that Buyer is authorized as Scheduling Coordinator by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO; and

(k) Seller shall provide instructions to the CAISO granting authorizations or other documents sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR as required to implement the Agreement.

2.02 Termination Rights of the Parties.

(a) Termination Right of Seller. Seller has the right to terminate this Agreement if Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation.

(b) Event of Default. Except as provided in Section 1.09, in the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.02 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or Related Products from the Generating Facility to Buyer or any other California investor-owned utility for a period of 365 days following the date of such termination. For purposes of this Section 2.02(b), "control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power.

(c) End of Term. This Agreement automatically terminates at midnight of the Term End Date.

2.03 Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement, including:

(a) The obligation of Buyer to make all outstanding Monthly Contract Payments for periods before termination of this Agreement;

(b) The obligation of Buyer to invoice Seller for all payment adjustments for periods before termination of this Agreement, as set forth in Section 4.02;

(c) The obligation of Seller to pay any Buyer payment-adjustment invoice described in Section 4.03(b) for periods before termination of this Agreement within thirty (30) days of Seller's receipt of such invoice;

(d) The obligation to make a Termination Payment, as set forth in Section 6.03;

(e) The indemnity obligations, as set forth in Section 9.03;

(f) The obligation of confidentiality, as set forth in Section 9.09;

(g) The right to pursue remedies under Section 6.02(c);

(h) The limitation of damages under Article Seven; and

(i) The obligation of Seller to post Performance Assurance in accordance with Exhibit D.

**** End of Article Two ****

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Power Product and Related Products; Retained Benefits.

(a) Power Product. During the Term, Seller shall provide and convey the Power Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Power Product and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Power Product purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of such Power Product.

(b) Green Attributes. Seller hereby agrees to provide and convey all Green Attributes associated with the Related Products as part of the Product being delivered during the Term. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Related Products, 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.

(c) Related Products. Seller hereby agrees to provide and convey to Buyer all Related Products during the Term. Seller represents and warrants that Seller holds the rights to all Related Products and Seller agrees to convey and hereby conveys all such Related Products to the Buyer. Buyer shall have the exclusive right to the Related Products and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Related Products purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of such Related Products.

(d) Further Action by Seller. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term, which actions may include:

(i) Cooperating with the Governmental Authority responsible for Resource Adequacy administration to certify the Generating Facility for Resource Adequacy purposes;

(ii) Testing the Generating Facility as may be required to certify the Generating Facility for Resource Adequacy purposes in accordance with the requirements set forth in the CAISO Tariff or as otherwise agreed to by the Parties; and

(iii) Complying with Applicable Laws regarding the registration, transfer or ownership of Green Attributes associated with the Related Products, including, if applicable to the Generating Facility, participation in the Western Renewable Energy Generation Information System or other process recognized under Applicable Laws.

(e) Retained Benefits. Seller shall retain for its own use or disposition all Financial Incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced therefrom, other than the Power Product and the Related Products.

Nothing in this Agreement restricts Seller's ability to use, provide and convey any energy, capacity, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the Term.

{Buyer Comment: Insert this sentence only if Seller has a FERC jurisdictional interconnection agreement.}

Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Power Product and the Related Products to any Person other than Buyer (unless the FERC determines that a party holding a state jurisdictional interconnection agreement may sell Related Products to a Person other than Buyer).

{Buyer Comment: Insert this sentence if Seller does not have a FERC jurisdictional interconnection agreement.}

3.02 Resource Adequacy Rulings. During the Term, Seller shall grant, pledge, assign and otherwise commit to Buyer the generating capacity of the Generating Facility associated with the Related Products in order for Buyer to use in meeting its Resource Adequacy obligations under any Resource Adequacy Ruling. Seller:

(a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer;

(b) Will not during the Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer; and

(c) Shall take all reasonable action, including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings, and execute all documents that are reasonable and necessary to effect the use of the generating capacity of the Generating Facility associated with the Related Products for Buyer's sole benefit throughout the Term.

(d) Shall comply with CPUC and CAISO requirements to count towards Resource Adequacy; *provided, however*,

(i) If such requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge.

(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.

(e) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.

3.03 GHG Compliance Costs.

(a) Direct GHG Compliance Costs. During the Term, Buyer shall reimburse Seller for any Direct GHG Compliance Costs, other than GHG Emissions Allowances, which are separately addressed in the sections below, attributable to the Generating Facility for GHG emissions associated with the Power Product, within forty-five (45) days of Buyer's receipt from Seller of reasonable documentation, in form and substance acceptable to Buyer, establishing that:

(i) Seller is actually liable for the Direct GHG Compliance Costs for GHG emissions attributed to the Power Product;

(ii) Direct GHG Compliance Costs were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose Direct GHG Compliance Costs where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility.

(iii) Buyer is not liable for reimbursement to Seller for Direct GHG Compliance Costs for GHG emissions associated with the Power Product if the GHG emissions for which Seller seeks reimbursement exceed the GHG Emissions Cap based on the actual delivered Power Product.

(iv) The Generating Facility's GHG emissions has been allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended.

(b) GHG Emissions Allowance Costs. Buyer shall bear the cost of GHG Emissions Allowances for GHG emissions attributable to the Generating Facility and associated with the Power Product through either reimbursement, or direct procurement, as indicated at Section 1.08, provided that:

(i) Seller is actually required to procure such GHG Emissions Allowances for GHG emissions attributed to the Power Product;

(ii) Such GHG Emissions Allowances compliance requirements were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose GHG emissions allowances requirements where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility;

(iii) The Generating Facility's GHG emissions, less any Free Allowance for which the Generating Facility is eligible, shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended;

(iv) Buyer's responsibility for GHG Emissions Allowances is limited to GHG emissions associated with the Power Product for which the Seller or the Generating Facility was not eligible to receive Free Allowances;

(v) Buyer's responsibility for GHG Emissions Allowances will not exceed the GHG Emissions Cap based on the actual delivered Power Product.

(c) Reimbursement of Seller for GHG Emissions Allowances. If Seller has elected to manage its own GHG Emissions Allowances in Section 1.08, then, during the Term, Buyer shall reimburse Seller to the extent of Buyer's responsibility for GHG Emissions Allowances in accordance with Section 3.03(b) ("applicable quantity") within forty-fine (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, requesting reimbursement. If the CPUC has specified an index for use in determining the price to be paid for GHG Emissions Allowances, in no event shall Buyer's total payment to Seller for the applicable quantity exceed the total payment that would be due to Seller if the applicable quantity were purchased at the index price at the relevant time period.

(d) Buyer's Purchase of GHG Emissions Allowances. If Seller has elected to have Buyer purchase GHG Emissions Allowances for the Generating Facility in Section 1.08, then, during the Term and upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to the AB 1613 Decisions, Buyer shall purchase GHG Emissions Allowances for Seller for the applicable quantity for the remainder of the Term in accordance with and subject to such guidelines, as may be revised from time to time.

(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is calculated in accordance with Exhibit C (1).

3.04 Site Control.

(a) Within sixty (60) days of the Effective Date and at all times during the Term, Seller shall have Site Control and shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.

(b) If the Generating Facility is a New Eligible CHP Facility, Seller shall provide Buyer with Notice of the status of its Site Control before commencing construction of the Generating Facility.

3.05 Permits. Seller shall obtain and maintain any and all Permits necessary for the Operation of the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.06 Transmission.

(a) Interconnection Studies. Upon Buyer's request, Seller shall provide to Buyer true and complete copies of all Interconnection Studies received by Seller for the Generating Facility after the date that is twenty-four (24) months before the Effective Date.

(b) Seller's Responsibility. Seller shall, at its sole cost, obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable Parallel Operation of the Generating Facility with the Transmission Provider's electric system and the applicable Control Area operator's electric grid and to effect Scheduling of the electric energy from the Generating Facility and transmission and delivery to the Delivery Point.

Except as otherwise provided in its interconnection agreement, the CAISO Tariff, or the Transmission Provider's tariff, rules or regulations, Seller shall pay all Transmission Provider charges or other charges directly caused by, associated with, or allocated to the following:

(i) All required Interconnection Studies, facilities upgrades, and agreements;

(ii) Interconnection of the Generating Facility to the Transmission Provider's electric system;

(iii) Any costs or fees associated with obtaining and maintaining a wholesale distribution access tariff agreement, if applicable; and

(iv) The transmission and delivery of electric energy from the Generating Facility to the Delivery Point.

(c) Acknowledgement. The Parties acknowledge and agree that any other agreement between Seller and Buyer, including any interconnection agreement, is separate and apart from this Agreement and does not modify or add to the Parties' obligations under this Agreement, and that any Party's breach under such other agreement does not excuse such Party's nonperformance under this Agreement, except to the extent that such breach constitutes a Force Majeure under this Agreement.

3.07 CAISO Relationship. Seller shall comply with the applicable requirements of the CAISO Tariff, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

(a) If the Generating Facility is PIRP-eligible, then the Generating Facility shall be certified as a PIRP resource by the CAISO.

3.08 Generating Facility Modifications.

(a) Seller is responsible for the design, procurement and construction of all modifications necessary for the Generating Facility to meet the requirements of this Agreement and to comply with any restriction set forth in any Permit.

(b) Seller shall provide thirty (30) days advance Notice to Buyer if there is any modification (other than a routine fluctuation in output or consumption) of the Generating Facility, the Site Host Load or operations related to the Site Host Load changing:

(i) Energy output by five percent (5%) of Expected Term Year Energy Production; or,

(ii) The type of Primary Fuel consumed by the Generating Facility.

(c) Seller acknowledges that nothing in this Section 3.08 excuses Seller from any requirements of the CAISO's interconnection process, or any other applicable interconnection process.

3.09 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test all CAISO-Approved Meters pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one or more Check Meters, as applicable, on the high voltage side of the substation associated with the Generating

Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. More than one Check Meter may be necessary if there is more than one CAISO-Approved Meter. The Check Meter shall be interconnected with Buyer's communication network to permit:

(i) Periodic, remote collection of revenue quality meter data; and

(ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.10.

Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal shall be broken only by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every thirty-six (36) months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes.

(i) Buyer shall routinely compare the Check Meter data to the CAISO-Approved Meter data.

(ii) If the deviation between the CAISO-Approved Meter data (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable.

(iii) Each Party shall bear its own costs for any meter check or recertification.

(iv) Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.

(v) For the avoidance of doubt, the Check Meter is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and Check Meter data shall only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is checked or recertified.

(d) Multiple Points of Metering at a Single Customer Site. Notwithstanding any other provision of this Agreement, Seller, at its sole expense and with the consent of Buyer and in compliance with the tariffs, rules and regulations of Buyer and the CAISO (including the CAISO Tariff), may establish for the Generating Facility more than a single point of metering at the number of locations, at a single customer site, that the Generating Facility interconnects with the CAISO Controlled Grid or Buyer's electrical system. The metered delivery of the Power Product pursuant to this Agreement will be determined as the meter readings for all such metering netted on an individual settlement interval basis.

3.10 Telemetry System. Seller is responsible for designing, furnishing, installing, maintaining and testing a real time Telemetry System in accordance with the CAISO Tariff.

3.11 Provision of Information.

(a) Upon Buyer's reasonable request by written Notice, Seller shall provide to Buyer (to the extent not already in Buyer's possession) within a commercially reasonable amount of time and subject to Section 9.09:

(i) All currently operative agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;

(ii) Any Permits concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;

(iii) Each of the following engineering documents for the Generating Facility:

1) Site plan drawings;

2) Electrical one-line diagrams;

3) Control and data acquisition details and configuration documents;

4) Major electrical equipment specifications;

5) Process flow diagrams;

6) Piping and instrumentation diagrams;

7) General arrangement drawings; and

8) Aerial photographs of the Site, if any;

(iv) Instrument specifications, installation instructions, operating manuals, maintenance procedures and wiring diagrams for the CAISO-Approved Meter(s) and the Telemetry System reasonably requested by Buyer; and

(v) Any currently operative filings, rulings, orders or other pleadings or papers concerning the qualification of the Generating Facility as an Eligible CHP Facility.

(b) If applicable and subject to Section 9.09, as soon as possible, Seller shall provide to Buyer (i) engineering specifications and design drawings for the Telemetry System, and (ii) annual test reports for the CAISO-Approved Meters.

(c) Subject to Section 9.09 and upon Buyer's request, Seller shall make commercially reasonable efforts to provide Buyer with all documentation necessary for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.12 Progress Reporting. If the Generating Facility is a New Eligible CHP Facility, Seller shall use commercially reasonable efforts to meet the Milestone Schedule and shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware which may materially impact its ability to meet the Milestone Schedule. No later than the 10th day of each month until the Term Start Date, Seller shall, in accordance with Exhibit F, prepare and provide to Buyer a written report detailing Seller's progress toward meeting the Milestone Schedule. Seller shall include in such report a list of all letters, notices and Permits to or from any Governmental Authority (and the CAISO) applicable to Seller's effort to meet the Milestone Schedule, and shall provide any such documents as may be reasonably requested on Notice from Buyer.

3.13 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.14 Operation and Record Keeping. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) Comply with the Forecasting requirements, as set forth in Exhibit G;

(c) Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit G;

(d) Pay all CAISO Charges, as set forth in Exhibit H;

(e) Pay all SDD Adjustments for which Seller is responsible, as set forth in Exhibit I;

(f) Comply with the Planned Outage scheduling procedures, as set forth in Section 1.04;

(g) Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit N;

(h) Use reasonable efforts to comply with CAISO orders for delivery of the Power Product during an Emergency;

(i) Use reasonable efforts to reschedule any Planned Outage that occurs during an Emergency;

(j) Keep all Operating records required of a CHP Eligible Facility by any applicable CPUC order, as well as any additional information that may be required of a CHP Eligible Facility in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the CPUC;

(k) Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to Buyer within twenty (20) days of a request by Notice from Buyer, including:

(i) Real and reactive power production;

(ii) Changes in Operating status;

(iii) Protective apparatus operations; and

(iv) Any unusual conditions found during inspections.

(l) Provide, upon Buyer's request, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract to supply electric energy;

(m) Pay all Scheduling Fees, as set forth in Exhibit E;

(n) Not participate in the CAISO Station Power Protocol;

(o) If applicable, register with the NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to register pursuant to the NERC Registration Criteria;

(p) If applicable, maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with the NERC Reliability Standards applicable to protection systems for electric generators if Generator Owner or Generator Operator is required to maintain such documentation under the NERC Reliability Standards; and

(q) Maintain data to demonstrate compliance with the Qualifying Facility efficiency monitoring program adopted by Decision ("D.")10-12-035;

(r) At least thirty (30) days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator.

3.15 Power Product Curtailments at Transmission Provider's or CAISO's Request.

(a) Seller shall promptly curtail the production of the Power Product upon receipt of a curtailment notice or instruction from the Transmission Provider or the CAISO (which may be communicated by Buyer), which notice shall only be provided when it reasonably believes that curtailment of the Power Product is required to comply with (i) the Transmission Provider's maintenance requirements and operating orders, (ii) a CAISO Declared Over-Generation Condition, or (iii) an Emergency.

(b) Notwithstanding Section 3.14(a), except as may be required in order to respond to any Emergency, Buyer shall (i) use reasonable efforts to coordinate the Transmission Provider's curtailment needs with Seller to the extent Buyer can influence such needs, or (ii) request that the Transmission Provider and the CAISO limit the curtailment duration.

{Buyer Comment: This Section is applicable if Seller does not execute a FERC jurisdictional interconnection agreement. If this Section is deleted, replace with "[Intentionally omitted]".}

3.16 Report of Lost Output. To the extent the conditions set forth in Sections 3.16(a) through (d) occur, Seller shall prepare and provide to Buyer, by the fifth (5th) Business Day following the end of each month during the Term, a lost output report. The lost output report shall identify the date, time, duration, cause and amount by which the Metered Energy was reduced below the Seller's Forecast due to:

(a) Planned Outages;

(b) CAISO or Transmission Provider-ordered curtailments;

(c) Force Majeure; or

(d) Forced Outages.

3.17 Eligible CHP Facility Status.

(a) To the extent required by Applicable Law, administration of this Agreement or program eligibility guidelines established by the CEC within thirty (30) Business Days following the Term Start Date or Notice from Buyer, Seller shall provide to Buyer certification from the CEC that the Generating Facility meets the applicable operating and efficiency standards for Eligible CHP Facilities for the applicable year.

(b) Seller shall take all necessary steps, including making or supporting timely filings with the appropriate Governmental Authority in order to maintain certification of the Eligible CHP Facility status of the Generating Facility throughout the Term.

(c) Seller shall provide to Buyer copies of all documentation, including calculations and verifiable supporting data provided to the appropriate Governmental Authority, which demonstrates the compliance of the Generating Facility with the Eligible CHP Facility operating and efficiency standards for the applicable year. Notwithstanding the

foregoing, Seller shall provide Buyer with a copy of its Annual Performance Reporting Forms (CEC Form 2843 or its successor) within 5 days of submission to the CEC.

(d) Seller, unless a public agency, shall take all necessary steps, including making or supporting timely filings with FERC in order to maintain the qualifying facility status of the Generating Facility as required by 18 CFR §292.201, et seq., throughout the Term.

(e) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, each QF Seller shall provide to Buyer:

(i) Subject to Section 9.09, a completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form", substantially in the form of Exhibit O, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with qualifying cogeneration facility operating and efficiency standards set forth in 18 CFR Part 292, Section 292.205 "Criteria for Qualifying Cogeneration Facilities", for the applicable year; and,

(ii) A copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.

3.18 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one (1) Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to:

(a) Interconnect with the Transmission Provider's electric system;

(b) Transmit and deliver electric energy to the Delivery Point; or

(c) Own and operate any CAISO-Approved Meter.

3.19 Buyer's Access Rights. Upon providing at least five (5) Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Buyer has the right to examine the Site, the Generating Facility and the Operating records, provided that Buyer follows Seller's safety policies and procedures that Seller has communicated to Buyer, does not interfere with or hinder Seller's Operations, and agrees to escorted access to the Generating Facility during regular business hours for:

(a) Any purpose reasonably connected with this Agreement;

(b) The exercise of any and all rights of Buyer under Applicable Law or its tariff schedules and rules on file with the CPUC; or

(c) The inspection and testing of any Check Meter, CAISO-Approved Meter or the Telemetry System.

Seller hereby grants Buyer reasonable access to all CAISO-Approved Meters and Check meters for meter readings and any purpose necessary to effectuate this Agreement. Seller shall provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request, as necessary to effectuate this Agreement. Seller shall inform buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO.

Notwithstanding anything to the contrary set forth in this Section 3.19, in the case of an Emergency which, in Buyer's reasonable discretion, requires Buyer to examine the Site or the Generating Facility, the Notice requirements of this Section 3.19 do not apply.

3.20 Seller Financial Information.

(a) The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Financial Accounting Standard Boards Interpretation No. 46(R), "Consolidation of Variable Interest Entities" or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement. If, as a result of this review (or subsequent reviews as required), the Parties determine that such consolidation is required for a given period, or in the event the Parties cannot agree on whether consolidation is required, then the Parties agree to the following provisions for such period.

(i) Within thirty (30) days following the end of each year, Seller shall deliver to Buyer in a format mutually agreeable to the Parties: (1) unaudited financial statements together with related footnotes as necessary to comply with GAAP, and (2) a completed annual disclosure checklist with supporting financial schedules necessary for Buyer to prepare its annual filing with the SEC. Buyer will provide to Seller such checklist before the end of each year and include only items considered material to Buyer. If audited financial statements are prepared for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.

(ii) Within twenty (20) days following the end of each calendar quarter, Seller shall deliver to Buyer in a format mutually agreeable to the Parties: (1) an unaudited condensed statement of income for the calendar quarter and year-to-date, (2) an unaudited condensed statement of cash flows for the calendar quarter and year-to-date, (3) an unaudited condensed balance sheet at the end of such calendar quarter, and (4) a completed quarterly disclosure checklist with supporting financial schedules necessary for Buyer to prepare its quarterly filing with the United States Securities and Exchange Commission. Buyer will provide to Seller such checklist before the end of each quarter and include only items considered material to Buyer.

(iii) Seller shall prepare its financial statements to be delivered in accordance with this Section 3.20 in accordance with GAAP.

(iv) Promptly upon Notice from Buyer, Seller shall allow Buyer's internal auditors and independent registered public accounting firm reasonable access to Seller's records and personnel, so that Buyer's internal auditors and independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. Buyer shall take reasonable steps to ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 3.20(a)(iv), (2) such information is used solely for purposes of conducting the audits described in this Section 3.20(a)(iv), (3) disclose any information received only to personnel responsible for conducting the audits. Within 30 days of Seller's receipt of Notice from Buyer, Seller shall remediate any material deficiency in Seller's internal controls of financial reporting identified by Buyer or Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 3.20(a)(iv), provided that Seller has the right to challenge the appropriateness of any determination of deficiency. All reasonable expenses for the foregoing shall be borne by Buyer.

(v) Within two (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing. Such items may include the following:

1) Acquisition or disposition of a material amount of assets outside of the ordinary course of Seller's business;

2) Creation of a material "direct financial obligation" or "off-balance sheet financing arrangement", as such terms are defined in Item 2.03 of the Form 8-K, as amended from time to time;

3) Existence of "material legal proceedings", as defined in Item 103 of Regulation S-K, as amended from time to time; and

4) Entry into, or termination of, a material contract upon which Seller's business is substantially dependent and outside of the ordinary course of Seller's business.

(b) Buyer shall treat Seller's financial statements or other financial information provided under the terms of this Section 3.20 in strict confidence and, accordingly:

(i) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which

Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain Credit Ratings; and

(ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Sections 9.09(a)(vi) and 9.09(a)(vii).

3.21 NERC Electric System Reliability Standards.

(a) During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility, Seller (or an agent of Seller as agreed to by Buyer in its reasonable discretion) must be registered with the NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that Buyer, in its capacity as Scheduling Coordinator is required to perform under this Agreement or under the CAISO Tariff.

(b) Notwithstanding anything to the contrary set forth in this Section 3.21 and subject to the indemnity obligations set forth in Section 9.03(g), each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by the NERC, the WECC, the CAISO, or a Governmental Authority in order to comply with the NERC Reliability Standards.

(c) Buyer as Scheduling Coordinator will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller's compliance with the NERC Reliability Standards referenced above. Buyer's cooperation will include providing to Seller, or such other Person as Seller designates in writing, information in Buyer's possession that Buyer as Scheduling Coordinator has provided to the CAISO related to the Generating Facility or actions that Buyer has taken as Scheduling Coordinator related to Seller's compliance with the NERC Reliability Standards referenced above (e.g., Seller's notices and updates provided by Buyer to the CAISO via SLIC). Buyer may, in its reasonable discretion (depending upon the quantity of information requested by Seller and the timeframe established by Seller for compliance), comply with the requirement to provide information set forth in the previous sentence, by making such information available for inspection by Seller or by providing responsive summaries or excerpts of same, so long as the foregoing enables Seller to comply with the NERC Reliability Standards. In addition, Buyer may redact any information or data that is confidential to Buyer from materials or information to be supplied to Seller.

3.22 Allocation of Availability Incentive Payments and Non-Availability Charges. If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, or

Availability Incentive Payments as defined and provided for by the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

**** End of Article Three ****

ARTICLE FOUR. BUYER'S OBLIGATIONS

4.01 Obligation to Pay. For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit C or Exhibit C (1), as determined pursuant to Section 1.05.

4.02 Payment Adjustments.

(a) Buyer shall adjust each Monthly Contract Payment to Seller to account for:

(i) Scheduling Fees owed by Seller to Buyer, as set forth in Exhibit E;

(ii) Any SDD Energy Adjustment or SDD Administrative Charge, as set forth in Exhibit I;

(iii) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit H;

(iv) Any payment adjustments (including adjustments to CAISO Charges) provided for under this Agreement;

(v) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02; and

(vi) The agreement of the Parties that Buyer shall have no liability to make any payments to Seller for any electricity deliveries from the Generating Facility in a Term Year that exceed one hundred and twenty percent (120%) of Expected Term Year Energy Production.

(b) During the Term, any payment adjustments will be added to or deducted from a subsequent regular Monthly Contract Payment that is made by Buyer to Seller after the expiration of a 30-day period which begins upon Buyer's receipt of all of the information required in order to calculate the payment adjustment.

(c) After the Term End Date, Buyer shall invoice Seller for any payment adjustments within sixty (60) days of Buyer's receipt of all of the information required in order to calculate the payment adjustment.

4.03 Payment Statement and Payment.

(a) No later than thirty (30) days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is not a Business Day, Buyer shall mail to Seller:

(i) A table showing the hourly electric energy quantities for each of the following, in MWh per hour:

1) Seller's Energy Forecast;

2) Seller's Day-Ahead Forecast;

3) Metered Energy;

4) The final Buyer Energy Schedule; and

5) The final Buyer Parent Energy Schedule.

(ii) A statement showing:

1) TOD Period subtotals and overall monthly totals for each of the items set forth in Section 4.03(a)(i);

2) A calculation of the Monthly Contract Payment, as set forth in Exhibit C or Exhibit C (1), as determined pursuant to Section 1.05;

3) A calculation of any payment adjustments pursuant to Section 4.02; and

4) A calculation of the net dollar amount due for the month.

(iii) Buyer's payment to Seller, in accordance with Section 9.15, in the net dollar amount owed to Seller for the month; provided, however, in the event the statement shows a net amount owed to Buyer, Seller shall pay such amount within twenty (20) days of the statement date.

(b) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO in the CAISO's meter-data acquisition and processing system, Buyer shall promptly recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading in accordance with the CAISO Tariff.

Buyer shall then promptly recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to the next monthly statement that is calculated after Buyer's recomputation using corrected measurements.

If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's monthly statement until such amount is fully collected by Buyer.

At Buyer's sole discretion, Buyer may offset any remaining amount owed to Buyer in any subsequent monthly payments to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within twenty (20) days of receipt of such invoice.

(c) Buyer reserves the right to deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer:

(i) Under this Agreement; or

(ii) Arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if, within ninety (90) days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the CAISO after the expiration of the original 90-day period, Seller shall have an additional ninety (90) days from the date on which it receives the information from the CAISO in which to give Notice to Buyer of the error identified by such settlement, audit or other information.

If Seller identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to the next monthly statement that is calculated.

If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to the next monthly statement that is calculated.

If the recomputation results in a net amount still owing to Buyer after applying the overpayment, the next monthly statement shall show a net amount owing to Buyer.

At Buyer's sole discretion, Buyer may apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within twenty (20) days of receipt of such invoice.

The Parties shall negotiate to resolve any disputes regarding claimed errors in a statement. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

(e) Nothing in this Section 4.03 limits a Party's rights under applicable tariffs, other agreements or Applicable Law.

4.04 No Representation by Buyer. Any review by Buyer of the design, engineering, construction, testing and Operation of the Generating Facility is solely for Buyer's information. Buyer makes no representation that:

(a) It has reviewed the financial viability, technical feasibility, operational capability, or long term reliability of the Generating Facility;

(b) The Generating Facility complies with any Applicable Laws; or

(c) The Generating Facility will be able to meet the terms of this Agreement.

Seller shall in no way represent to any third party that any such review by Buyer constitutes any such representation.

4.05 Buyer's Responsibility. Buyer shall, at its sole cost, obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable transmission and delivery of electric energy at and after the Delivery Point. Buyer shall pay, in accordance with Applicable Laws and Buyer's tariffs, any costs associated with maintaining its electric system in order to allow delivery of the Power Product from the Delivery Point to the CAISO-Controlled Grid.

4.06 Buyer As Scheduling Coordinator. Buyer shall take all steps necessary to become the Scheduling Coordinator for the Generating Facility during the Term.

**** End of Article Four ****

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected.

In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must timely provide evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure.

In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform.

This Article Five will not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party.

When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The non-Claiming Party may terminate this Agreement on Notice, which Notice will be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which materially interferes with the Claiming Party's ability to perform its obligations under this Agreement and which extends for more than three hundred and sixty-five (365) consecutive days, or for more than a total of three hundred and sixty-five (365) days in any consecutive 540-day period.

**** End of Article Five ****

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement that 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:

1) Remedied within ten (10) Business Days after Notice from the Non-Defaulting Party to the Defaulting Party; or

2) Capable of a cure, but the Non-Defaulting Party's damages resulting from such misrepresentation or breach of warranty can reasonably be ascertained and the payment of such damages is not made within ten (10) Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 30-day cure period, the Defaulting Party shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as such Defaulting Party promptly commences and diligently pursues such cure;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankrupt; or

(v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement to which such Party 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's Guarantor, if any (each event listed below to be deemed an Event of Default with respect to Seller):

(i) Any representation or warranty made by a Guarantor in connection with this Agreement 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 and the misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice;

(ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty Agreement and such failure is not remedied within three (3) Business Days after Notice is provided by the Non-Defaulting Party to the Guarantor;

(iii) A Guarantor becomes Bankrupt and replacement credit support is not provided within three (3) Business Days after Notice;

(iv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming immediately due and payable and replacement credit support is not provided within three (3) Business Days after Notice;

(v) The failure of any Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) and replacement credit support is not provided within three (3) Business Day after Notice; or

(vi) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to Buyer and replacement credit support is not provided within three (3) Business Days after Notice.

(c) With respect to Seller:

(i) Seller does not own or lease the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.04, and Seller has not cured a failure with respect to Section 3.04(a) within thirty (30) days after providing Notice to Buyer in accordance with Section 3.04(a);

(ii) The total quantity of Metered Energy in any Term Year is less than 10% percent the Expected Term Year Energy Production, and Seller fails to demonstrate a legitimate reason for such failure within ten (10) Business Days after Notice from Buyer;

(iii) Except as provided for in Section 3.01(e), Seller (1) conveys, transfers, allocates, designates, awards, reports or otherwise provides any and all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than

Buyer (except as may relate to transactions in the imbalance market arising from ordinary course deviations between Metered Energy and energy Scheduled to Buyer), or (2) starts up or Operates the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);

(iv) Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;

(v) Seller removes from the Site equipment upon which the As-Available Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair, repowering or maintenance, and such equipment is not returned within five (5) Business Days after Notice from Buyer to Seller;

(vi) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system for transmission and delivery of the electric energy from the Generating Facility to the Delivery Point, or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation;

(vii) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Section 3.20, and such failure is not remedied within ten (10) days after Notice from Buyer to Seller;

(viii) Seller fails to remediate any material deficiency in internal controls over financial reporting in accordance with Section 3.20;

(ix) Seller fails to take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term as specified in Section 3.01, if such failure is not remedied within ten (10) days after Notice of such failure is provided by Buyer to Seller, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 10-day cure period, Seller shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as Seller promptly commences and diligently pursues such cure;

(x) The occurrence and continuation of a default, event of default or other similar condition or event under any loan agreement with any Lender, or under any other related agreement or instrument with or for the benefit of any Lender, which results in any indebtedness under those agreements or instruments becoming immediately due and payable; provided, however, if Seller, Buyer and a Lender have entered into a Collateral Assignment Agreement with substantially the provisions set forth in Section 9.05, and the terms of such Collateral Assignment

Agreement conflict or are inconsistent with this Section 6.01(c)(x), the provisions of the Collateral Assignment Agreement control;

(xi) If any failure by Seller to comply with the CAISO Tariff materially impacts Buyer's ability to comply with this Agreement, the CAISO Tariff or other Applicable Laws, and such failure by Seller (including any consequences suffered by Buyer) is not cured within thirty (30) days after Notice from Buyer to Seller;

(xii) If Seller materially modifies the Generating Facility without Buyer's prior written consent;

(xiii) Seller fails to satisfy the creditworthiness and collateral requirements in Sections 2 and 3 of Exhibit D and such failure is not cured within five (5) Business Days after Notice is provided by Buyer to Seller of such failure;

(xiv) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender;

(xv) Seller fails to post and maintain the Development Security pursuant to Section 4(b) of Exhibit D and such failure is not cured within five Business Days after Notice of such failure;

(xvi) Seller fails to maintain its status as an Eligible CHP Facility during the Term; or

(xvii) If Seller fails to satisfy all of the conditions set forth in Section 2.01 before the Term Start Date, and such failure is not cured within 30 Business Days after Notice from Buyer to Seller.

6.02 Early Termination. There shall be no opportunity to cure a default other than as specifically provided in Section 6.01. If this Agreement is terminated pursuant to Section 2.02(b), then Buyer or the Non-Defaulting Party, as applicable, will have the right to:

(a) Designate by Notice to the Defaulting Party a date, no later than twenty (20) days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");

(b) Immediately suspend performance under this Agreement; and

(c) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

6.03 Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party under this Agreement, including Forward Settlement Amounts, less any amounts owed by the Non-Defaulting Party to the Defaulting Party under this Agreement (the "Termination Payment"). The Notice shall include a written statement, setting forth, in reasonable detail, the calculation of such Termination Payment together with appropriate supporting documentation. If the Generating Facility is a New Eligible CHP Facility, no Forward Settlement Amount is assessed for any Termination Payment due to Buyer as the Non-Defaulting Party by Seller as the Defaulting Party if this Agreement is terminated before the Term Start Date.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within 10 Business Days after the Notice is provided.

The Parties shall negotiate to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

**** End of Article Six ****

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH IN THIS ARTICLE SEVEN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. 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 IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS 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 FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE VALUE OF ANY PRODUCTION TAX CREDITS DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

THE VALUE OF ANY INVESTMENT TAX CREDITS DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 9.03, 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.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS ARTICLE SEVEN 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 UNDER THIS AGREEMENT 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 UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTHING IN THIS ARTICLE SEVEN PREVENTS, OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTEREST IN COLLATERAL.

**** End of Article Seven ****

ARTICLE EIGHT. GOVERNMENTAL CHARGES

8.01 Cooperation to Minimize Tax Liabilities. Each Party shall use diligent 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.

8.02 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility ("Governmental Charges").

Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Power Product at and after the Delivery Point.

If Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer's responsibility under this Agreement, Buyer shall promptly reimburse Seller for such Governmental Charges.

If Buyer is required by Applicable Law or regulation to remit or pay Governmental Charges which are Seller's responsibility under this Agreement, Buyer may deduct such amounts from payments to Seller made pursuant to Article Four.

If Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon Notice from Buyer of the amount to be reimbursed.

Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

8.03 Providing Information to Taxing Governmental Authorities. To the extent required by Applicable Law and subject to Section 9.09(b), each Party shall provide information concerning the Generating Facility to any requesting taxing Governmental Authority.

**** End of Article Eight ****

ARTICLE NINE. MISCELLANEOUS

9.01 Representations and Warranties. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(e) There is not pending, or to its knowledge threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

(f) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement;

(g) It is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;

(h) It has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and

(i) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or receive the Power Product as contemplated by this Agreement.

9.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It will have Site Control as of the earlier of (i) the Term Start Date or (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term;

(b) During the Term, it or its subcontractors will own or lease and Operate the Generating Facility unless otherwise agreed to by the Parties;

(c) It will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person throughout the Term;

(d) It will hold throughout the Term the rights to all of the Product, subject to the terms of this Agreement;

(e) During the Term, it does not, and will not (1) convey, transfer, allocate, designate, award, report or otherwise provides any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (2) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);

(f) During the Term, the Generating Facility qualifies as an Eligible CHP Facility;

(g) The Generating Facility meets all applicable greenhouse gas emissions standards, as such standards may change from time to time during the Term; and

(h) As of the Effective Date, there is not pending, or to its knowledge threatened against it or any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

9.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, claim, cost, charge, demand or expense to the extent resulting from its negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 9.01 and Section 9.02.

(c) The provisions of this Section 9.03 may not be construed to relieve any insurer of its obligations to pay any insurance Claims in accordance with the provisions of any valid insurance policy.

(d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Sections 3.20(a)(v) or 9.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Sections 3.20(a)(v) and 9.10.

The inclusion of this Section 9.03(d) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 9.10.

(e) Each Party shall defend, save harmless and indemnify the other Party against any Governmental Charges for which such indemnifying Party is responsible under Article Eight.

(f) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02.

(g) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations for which Seller is responsible, in accordance with Section 3.21, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, Claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to Seller's actions or inactions that result in NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses and reasonable costs and expenses (which shall include reasonable costs of outside and in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent they are due to Buyer's negligence or willful misconduct in performing its role as Seller's Scheduling Coordinator during the Term.

(h) All indemnity rights will survive the termination of this Agreement for twelve (12) months.

9.04 Assignment. Neither Party may assign this Agreement or its rights under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Any direct or indirect change of control of either Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding anything to the contrary in this Section 9.04, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder):

(a) Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements in accordance with Section 9.05; and

(b) Transfer or assign this Agreement to an Affiliate of Seller which Affiliate's creditworthiness is equal to or higher than that of Seller.

9.05 Consent to Collateral Assignment. Subject to the provisions of this Section 9.05, Seller has the right to assign this Agreement as collateral to a Lender for any financing or refinancing of the Generating Facility, including a Sale-Leaseback Transaction or Equity Investment and, in connection therewith, Buyer shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement or to a Sale-Leaseback Transaction or Equity Investment, as applicable ("Collateral Assignment Agreement").

The Collateral Assignment Agreement shall be in form and substance reasonably agreed to by Buyer, Seller and Lender, and shall include, among others, the following provisions (together with such other commercially reasonable provisions required by any Lender that are reasonably acceptable to Buyer):

(a) Buyer shall give, to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, simultaneously with the Notice to Seller and before exercising its right to terminate this Agreement, written Notice of any event or circumstance known to Buyer which would, if not cured within the applicable cure period specified in Article Six, constitute an Event of Default (an "Incipient Event of Default");

(b) Lender shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement as apply to Seller;

(c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to (although Lender may, but shall have no obligation, subject to 9.05(g)) provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan;

(d) Seller or Lender shall provide the report to Buyer within 10 Business Days after Notice from Buyer requesting the report. Buyer shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(e) Lender shall have the right to cure an Event of Default or Incipient Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender's intention to cure. Lender may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period for Lender shall be extended for each day Buyer does not provide the Notice to Lender referred to in Section 9.05(a). In addition, such cure period may, in Buyer's reasonable discretion, be extended by no more than an additional one hundred and eighty (180) days. If possession of the Generating Facility is necessary to cure such Incipient Event of Default or Event of Default, Lender has commenced foreclosure proceedings within sixty (60) days after receipt of such Notice from Buyer, and Lender is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Lender or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed one hundred and eighty (180) days after Lender's commencement of foreclosure. Additionally, if Lender is prohibited from curing any Incipient Event of Default or Event of Default by any process, stay or injunction issued by a Governmental Authority or pursuant to any bankruptcy, insolvency or similar proceedings, then the time period for curing such Incipient Event of Default or Event of Default shall be extended for the period of the prohibition provided that Lender is exercising reasonable diligence in having such process, stay or injunction removed;

(f) Lender shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default or the end of the Term;

(g) Lender shall receive prior Notice of, and shall have the right to approve material amendments to this Agreement, which approval may not be unreasonably withheld, delayed or conditioned;

(h) In the event Lender, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the Person taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided, however*, that Lender (or such Person) shall have no liability for any monetary obligations of Seller under this Agreement which are due and owing to Buyer as of the assumption date (but this provision may not be interpreted to limit Buyer's rights to proceed against Seller as a result of an Event of Default) and Lender's (or such Person's) liability to Buyer after such assumption shall be limited to its interest in the Generating Facility; *provided further*, that before such assumption, if Buyer advises Lender (or such Person) that Buyer will require that Lender (or such Person) cure (or cause to be cured) one or more monetary or non-monetary Incipient Event(s) of Default or Event(s) of Default existing as of the date such Person takes title in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Incipient Event(s) of Default or Event(s) of Default, then Lender (or such Person) at its

option and in its sole discretion may elect to either (i) cause such Incipient Event(s) of Default or Event of Default to be cured, or (ii) not assume this Agreement;

(i) If Lender has assumed this Agreement as provided in Section 9.05(h) and elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender or an agent of or representative of Lender (excluding any foreclosure sale where a third party other than Lender, Seller, an Affiliate of Lender or an Affiliate of Seller is the buyer), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer excluding, however, a foreclosure (unless the transferee or buyer is Lender, Seller, an Affiliate of Lender or an Affiliate of Seller). Lender shall be released from all further obligations under the Agreement and all related documents following such assumption. Such sale or transfer (excluding a foreclosure) may be made only to a Person reasonably acceptable to Buyer; and

(j) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its representative or designee, directly or indirectly, takes title to the Generating Facility, then, at the request of either Buyer or Lender, Buyer and Lender (or its designee or representative) shall promptly enter into a new agreement, wherein Buyer shall have substantially the same contractual rights as found in this Agreement. for the term that would have been remaining under this Agreement, provided that Lender's (or its designee's or representative's) liability under such new agreement shall be limited to its interest in the Generating Facility and neither Lender (or its designee or representative) nor Buyer shall have any personal liability to the other for any amounts owing and neither Buyer nor Lender (or its designee or representative) shall have any obligation to cure any defaults under the original Agreement that was rejected in, or otherwise terminated in connection with Seller's Bankruptcy.

9.06 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE 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.

9.07 Notices. All notices, requests, statements or payments shall be made as specified in Exhibit J. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 9.07 are deemed given as follows:

(a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day;

(b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out;

(c) Notice by first class United States mail is deemed given two (2) Business Days after the postmarked date;

(d) Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement;

(e) A Party may change its designated representatives, addresses and other contact information by providing notice of same in accordance herewith; and

(f) All notices, requests, statements or payments for this Generating Facility must reference the identification number set forth on the cover page of this Agreement.

9.08 General.

(a) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(b) This Agreement will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

(c) Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

(f) The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.

(g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(h) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Articles", "Sections" and "Exhibits" refer to the corresponding Articles, Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Articles" or "Sections" in Exhibits A through Exhibit O refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

(i) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(j) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as shall inure to a successor or permitted assignee.

(k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between the Parties covering transmission, distribution, metering, scheduling or interconnection of electric energy. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.

(l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(m) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

(n) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.

(o) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.

9.09 Confidentiality.

(a) Neither Party shall disclose any Confidential Information to a third party, other than:

(i) To such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;

(ii) To potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; *provided, however*, that disclosure (1) of cash flow and other financial projections to any potential Lender or investor in connection with

a potential loan or tax equity investment; or (2) to potential Lenders or investors with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, will not require such consent of Buyer; *provided further*, that in each case such potential Lender or investor has a need to know such information and has agreed to keep such terms confidential;

(iii) To Buyer's Procurement Review Group, as defined in D.02-08-071, subject to a protective order applicable to Buyer's Procurement Review Group;

(iv) With respect to Confidential Information other than nonpublic financial information of Seller supplied to Buyer pursuant to Section 3.20, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information;

(v) In order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party, other than to those entities set forth in Section 9.09(a)(vi);

(vi) In order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC; and

(vii) To representatives of a Party's credit ratings agencies who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes or with respect to the potential impact of this Agreement on the Party's financial reporting obligations, in each case subject to confidentiality restrictions no less stringent than as set forth in this Agreement.

(b) In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Sections 8.03 and 9.09(a)(vi) (all to be considered a "Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to (i) notify the other Party before disclosing the confidential information, and (ii) prevent or limit such disclosure. After using such reasonable efforts, the disclosing party may not be (x) prohibited from complying with a Disclosure Order, or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of any terms or conditions of this Agreement which are the subject of such Disclosure Order.

(c) Except as provided in clause (y) of Section 9.09(b), the Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 9.09.

(d) This Section 9.09 shall remain in effect for three (3) years following the termination of this Agreement.

9.10 Insurance.

(a) Seller shall, at its own expense and at all times from the Effective Date until the Term End Date, maintain in effect the following insurance policies and minimum limits of coverage (and such additional coverage as may be required by Applicable Law), in each case with insurance companies authorized to do business in California having an A.M. Best's Insurance Rating of A minus: VII or better:

(i) Workers' compensation insurance, with statutory limits as required by California;

(ii) Employer's liability insurance, with at least the following limits: (1) bodily injury by accident - $1,000,000 each accident; (2) bodily injury by disease - $1,000,000 policy limit; and (3) bodily injury by disease - $1,000,000 each employee;

(iii) Commercial general liability insurance, written on an "occurrence" (not a claims-made) basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement. This commercial general liability insurance must (1) bear a combined single limit per occurrence and annual aggregate of not less than $1,000,000, exclusive of defense costs, for all coverages, (2) contain standard cross-liability or severability of interest provisions, and (3) contain no explosion, collapse, or underground exclusion.

(iv) Commercial automobile liability insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence. This commercial automobile liability insurance must cover liability arising out of the use of all owned, non-owned and hired automobiles.

(v) Excess liability insurance, written on an "occurrence" (not claims-made) basis and providing coverage excess of the underlying employer's liability, commercial general liability and commercial automobile liability insurance, on terms at least as broad as the underlying coverage with limits of not less than $4,000,000 per occurrence and in the annual aggregate.

(b) The insurance required in this Section 9.10 applies as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, despite of any provision in Seller's insurance to the contrary. Carriers furnishing the required insurance must waive all rights of recovery from or subrogation against Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, employees and insurers. The insurance required in Section 9.10(a) must name Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents and employees additional insureds with respect to all third party liabilities arising out of Seller's construction, use or

ownership of the Generating Facility. The insurance required in this Section 9.10 may be provided by any combination of Seller's primary and excess liability policies.

(c) Within 30 days of the Effective Date, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to the Buyer certificates of insurance in forms reasonably acceptable to Buyer, establishing that Seller's policies provide the coverage and limits of insurance required under this Section 9.10 and that these policies will be in full force and effect as of the Effective Date, continuing until the end of the Term. Seller's insurance obtained in accordance with this Section 9.10 may only be terminated, expire or materially altered upon 30 days' prior Notice to Buyer.

(d) If any of the required insurance coverages contain aggregate limits applying to other operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, claim, settlement or judgment against such insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

(e) If Seller fails to comply with any of the provisions of this Section 9.10, Seller shall, among other things and without restricting Buyer's remedies under the law or otherwise, at its own cost, defend, indemnify and hold harmless Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property to the extent that Buyer would have been protected had Seller complied with all of the provisions of this Section. Nothing in this Section 9.10(e) affects or diminishes Seller's obligation to indemnify SCE under any other section of this Agreement.

9.11 Nondedication. Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and such service shall cease upon termination of this Agreement.

9.12 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party will seek, nor will they support any third party in seeking, to prospectively or retroactively revise the rates, terms, or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206, or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

Further, absent the prior 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 Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 US 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 US 348 (1956).

9.13 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in

support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

9.14 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

9.15 Payments. Payments to be made under this Agreement shall be made, at Seller's option, by check or electronic wire funds transfer.

9.16 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 3.01, 3.02, 3.04, 9.09 and Section 4(e) of Exhibit D in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all Claims for monetary damages under this Agreement) to arbitration pursuant to Section 10.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Section 10.01, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for such breach of the provision, or if this Agreement does not specify a remedy for such breach, all other remedies available at law or equity to the Parties for such breach.

**** End of Article Nine ****

ARTICLE TEN. DISPUTE RESOLUTION

10.01 Dispute Resolution. Other than requests for provisional relief under Section 9.16, any and all disputes, Claims or controversies arising out of, relating to, concerning, or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Disputes"), which Disputes the Parties have been unable to resolve by informal methods, will first be submitted to mediation in accordance with the procedures described in Section 10.02, and if the Dispute is not resolved through mediation, then for final and binding arbitration in accordance with the procedures described in Section 10.03.

10.02 Mediation. Either Party may initiate mediation by providing Notice to the other Party of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within forty-five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred and twenty (120) days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; *provided, however*, that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.03 Arbitration. Either Party may initiate binding arbitration with respect to the matters first submitted to mediation in accordance with Section 10.02 by providing Notice of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") at any time following the unsuccessful conclusion of the mediation provided for in Section 10.02.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred and eighty (180) days from the date of Notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party's demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for in this Section 10.03, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Francisco, California, and discovery will be limited as follows:

(a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);

(b) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;

(c) Discovery may commence at any time after the Parties' initial disclosure;

(d) The Parties will not be permitted to propound any interrogatories or requests for admissions;

(e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three lay witness depositions, and three expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);

(f) Each Party is allowed a maximum of three expert witnesses, excluding rebuttal experts;

(g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;

(h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two rebuttal experts;

(i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and

(j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 3.01, 3.02, 3.04, 9.09 or Section 4(e) of Exhibit D.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

**** End of Article Ten ****

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[SELLER'S NAME],

a [Seller's business registration]

By:_____

Name:_____

Title:_____

[BUYER'S NAME],

a California corporation

By:_____

Name:_____

Title:_____

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"AB 1613 Decisions" means the decisions issued in R.08-06-024.

"Act" has the meaning set forth in Recital A.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this Agreement, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Ambient Conditions" means reductions in capacity due to that status of, or variations in, Site Host Load or ambient weather conditions.

"Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.

"Arbitrator" has the meaning set forth in Article Ten.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.02(c).

"Availability Standards" means the standard set forth in the CAISO Tariff setting forth criteria for determining if a Resource Adequacy Resource is subject to Non-Availability Charges or Availability Incentive Payments (each as defined in the CAISO Tariff), under the CAISO Tariff.

"Average Higher Heating Value MPR Heat Rate" means the heat rate equal to 6,924 Btu/kWh, or 6.924 mmbtu/MWh, per CPUC Resolution E-4298, which heat rate will be modified in this Agreement if there is any modification thereto by the CPUC or other authorized Governmental Authority.

"Bankrupt" means with respect to any Person, such Person:

(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 (which petition is not dismissed within 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.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Tariffs" means the entire body of effective rates, fees, rentals, charges, and rules collectively of PG&E, including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, rules, and sample forms.

"Buyer Energy Schedule" means the schedule of electric energy that Buyer submits to the CAISO for electric energy produced by the Generating Facility.

"Buyer Parent Energy Schedule" means the schedule of electric energy that Buyer submits to the CAISO for electric energy delivered to the CAISO for the CAISO Global Resource ID associated with the Generating Facility.

"Buyer Projected Energy Forecast" has the meaning set forth in Section 2(a) of Exhibit E.

"CAISO" means the California Independent System Operator Corporation or successor entity that dispatches certain generating units, supplies certain loads and controls the transmission facilities of entities that (a) own, operate and maintain transmission lines and associated facilities or have entitlements to use certain transmission lines and associated facilities, and (b) have transferred to the CAISO or its successor entity operational control of such facilities or entitlements.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter furnished by Seller, that (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) includes all of the associated metering transformers and related appurtenances that are required in order to measure the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy that Buyer Schedules with the CAISO and the CAISO approves in its final schedule, which is published in accordance with the CAISO Tariff.

"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling, Availability Standards or deliveries from the Generating Facility under this Agreement.

"CAISO Charges Invoice" has the meaning set forth in Section 5 of Exhibit E.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

"CAISO Forced Outage Report" means a complete copy of a forced outage report in a form reasonably acceptable to Buyer which includes detailed information regarding the event, including the affected Generating Unit, outage start date and time, estimation of outage duration, MW unavailable and summary of work to be performed.

"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.

"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

"CAISO Station Power Protocol" means the CAISO protocol that the CAISO filed with the FERC in Docket ER05-849, including all revisions, amendments and successor protocols that would allow a generating facility to self-supply its Station Power (as defined in the CAISO Tariff) by any means other than permitted netting, when permitted netting allows netting of generator output with Station Power load that is electrically connected to the generator at the same time when the generator is on-line.

"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

"CARB" means the California Air Resources Board.

"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

"CEC" means the California Energy Commission, or any successor entity.

"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may furnish at its discretion, as set forth in Section 3.09(b) and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"CHP" means combined heat and power.

"Claiming Party" has the meaning set forth in Section 5.02.

"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 before or after the termination of this Agreement.

"Collateral Assignment Agreement" has the meaning set forth in Section 9.05.

"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

"Control Area" means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.

"CPUC" means the California Public Utilities Commission, or any successor entity.

"Credit Rating" means with respect to any Person, on the relevant date of determination, the respective ratings then assigned to such Person's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody's. If no rating is assigned to such Person's unsecured, senior long-term debt or deposit obligation by either S&P or Moody's, then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned to the Person by S&P or Moody's, as the case may be.

"Cross Default Amount" is the amount set forth in Section 1.06(f).

"Daily Delay Liquidated Damages" has the meaning set forth in Section 4(c)(ii) of Exhibit D.

"Day-Ahead" has the meaning set forth in the CAISO Tariff.

"Decision" means CPUC Decision D. 07-09-040.

"Defaulting Party" has the meaning set forth in Section 6.01(a).

"Delivery Point" has the meaning set forth in Section 1.03.

"Development Security" has the meaning set forth in Section 4(b)(i) of Exhibit D.

"Direct GHG Compliance Costs" mean any taxes, charges or fees imposed by an authorized Governmental authority with jurisdiction over the Seller or the Generating Facility, and levied directly on the Generating Facility for GHG emissions attributable to its Operations.

"Disclosure Order" has the meaning set forth in Section 9.09(b).

"Dispute" has the meaning set forth in Section 10.01.

"Early Termination Date" has the meaning set forth in Section 6.02(a).

"Effective Date" has the meaning set forth in the Preamble.

"Eligible CHP Facility" means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, (1) meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code §2843 and, (2) meets the requirements of 18 Code of Federal Regulations §292.201, et seq., unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Emergency" means an actual or imminent condition or situation which:

(a) Is defined and declared by the CAISO or Transmission Provider;

(b) Jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider's electric system;

(c) Requires automatic or immediate manual action to prevent or limit loss of load or generation supply; or

(d) Poses a threat to public safety.

"Equitable Defense" means any Bankruptcy or other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

"Equity Investment" means an acquisition by a Lender of an ownership interest, in the form of stock, membership or partnership interest, in Seller or the immediate parent of Seller under which Seller retains the right to act in all matters relating to the control and Operation of the Site and the Generating Facility for the Term, subject to Lender's rights to enforce its ownership interest in Seller or the immediate parent of Seller, as applicable, in the event of a default by Seller or the immediate parent of Seller under Lender's equity acquisition agreement or the partnership agreement, operating agreement, or other agreement governing the relationship between the equity owners of the Generating Facility.

"Event of Default" has the meaning set forth in Section 6.01.

"Existing Eligible CHP Facility" means an Eligible CHP Facility that first commenced Operation on or after January 1, 2008 but before the Effective Date.

"Expected Term Year Energy Production" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.02(d).

"Federal Funds Effective Rate" means the rate for that day opposite the caption "Federal Funds (effective)" as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

"FERC" means the Federal Energy Regulatory Commission, or any successor entity.

"Financial Incentives" means any and all financial incentives, benefits or credits associated with the Generating Facility, or the ownership or Operation thereof, or the electrical or thermal output of the Generating Facility, including any production or investment tax credits, real or personal property tax credits or sales or use tax credits, but not including any Green Attributes, Capacity Attributes or Resource Adequacy Benefits.

"Firm Operation Date" means the date that is six months after the Term Start Date.

"Force Majeure" means any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome.
Force Majeure does not include:

(a) A failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event;

(b) Failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility;

(c) Breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or

(d) A lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

"Forced Outage" has the meaning set forth in the CAISO Tariff.

"Forecast" means the hourly forecast of (a) the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible net of the Site Host Load and Station Use.

"Forward Settlement Amount" means the Non-Defaulting Party's Costs and Losses on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be zero dollars. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Defaulting Party. The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

"Free Allowance" means any GHG Emissions Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

"GAAP" means generally accepted accounting principles for financial reporting in the United States, consistently applied.

"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), as of the Early Termination Date resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner.

"Generating Facility" means the Generating Unit(s) comprising Seller's power plant, as more particularly described in Section 1.02 and Exhibit B, including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

"Generation Operations Center" means the location of Buyer's real-time operations personnel.

"Generator Operator" means the Person that Operates the Generating Facility and performs the functions of supplying energy and interconnected operations services within the meaning of the NERC Registration Criteria.

"Generator Operator Obligations" means the obligations of a Generator Operator as set forth in all applicable NERC Reliability Standards.

"Generator Owner" means the Person that owns the Generating Facility and has registered with the NERC as the Person responsible for complying with all NERC Reliability Standards applicable to the owner of the Generating Facility.

"Generator Owner Obligations" means the obligations of a Generator Owner as set forth in all applicable NERC Reliability Standards.

"GHG" is an abbreviation for "greenhouse gas" which means emissions released into the atmosphere of carbon dioxide (CO2), nitrous oxide (N2O) and methane (CH4), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a metric ton of CO2-equivalent, in order to allow comparison between the different effects of gases on the environment; provided, however, that the definition of the term "Greenhouse Gas", as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority

"GHG Emissions Allowance" means a limited tradable authorization (whether in the form of a credit, allowance, or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a

Related Entity of Seller, which respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

"GHG Emissions Cap" means the product of (a) the rate for tonnes of CO2 per MMBtu of natural gas, 0.0531 tonnes/mmbtu, times (b) the Average Higher Heating Value MPR Heat Rate in mmbtu/MWh.

"GHG EPS" means the Greenhouse Gas Emissions Performance Standard set forth in CPUC D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, as well as revisions to these standards set forth in any subsequent CPUC-established precondition to the execution of this Agreement.

"Governmental Authority" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

"Governmental Charges" has the meaning as set forth in Section 8.02.

"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;

(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.

"Guarantor" means that certain guarantor of Seller set forth in Section 1.06(d).

"Guaranty Agreement" means a guaranty agreement substantially in the form of Exhibit K.

"High-Value Area" means a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC, as defined in Exhibit C, Section 6.

"Holidays" means "NERC Holidays" as defined in Exhibit C, Section 5. "Time of Delivery Periods and Allocation Factors."

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

"Incipient Event of Default" has the meaning set forth in Section 9.05(a).

"Interconnection Study or Interconnection Studies" means a study or studies prepared by or on behalf of the Transmission Provider or the CAISO to evaluate the impact of the interconnection of the Generating Facility to the Transmission Provider's electric system or the applicable Control Area operator's electric grid.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; provided, however, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"JAMS" means the Judicial Arbitration and Mediation Services, Inc. or any successor entity.

"kW" means a kilowatt (1,000 watts) of electric capacity or power output.

"kWh" means a kilowatt-hour (1,000 watt-hours) of electric energy.

"Lease" means one or more agreements whereby Seller leases the Site(s) described in Section 1.02 and Exhibit B from a third party, the term of which lease begins on or before the Term Start Date and extends at least through the Term End Date.

"Lender" means any third-party institution or entity or successor in interest or assignee that either (i) purchases the Generating Facility and then leases it to Seller under a Sale-Leaseback Transaction, or (ii) provides development, bridge, construction, or permanent debt or tax equity financing or refinancing (including an Equity Investment) for the Generating Facility to Seller or credit support in connection with this Agreement.

"Letter of Credit" means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least "A-" from S&P and "A3" from Moody's, substantially in the form of Exhibit L. All costs to establish and maintain the Letter of Credit shall be borne by Seller.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:

(a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P and "A3" by Moody's;

(b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;

(c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;

(d) Such Letter of Credit fails or ceases to be in full force and effect at any time;

(e) Seller fails to provide an extended or replacement Letter of Credit within 20 Business Days before such Letter of Credit expires or terminates; or

(f) The issuer of such Letter of Credit becomes Bankrupt;

provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

"Location Bonus" is described in Section 6 of Exhibit C.

"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), as of the Early Termination Date, resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner.

"Market Price" means the real-time price for Uninstructed Imbalance Energy (as defined in the CAISO Tariff) or any successor price for short-term imbalance energy, as such price or successor price is defined in the CAISO Tariff, that would apply to the Generating Facility, which values are, as of the Effective Date, posted by the CAISO on its website. The values used in this Agreement will be those appearing on the CAISO website on the third Business Day of the calendar month following the month for which such prices are being applied.

"Mediator" has the meaning set forth in Section 10.02.

"Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

"Metered Energy" means the total electric energy, expressed in kWh, measured by any or all of the CAISO-Approved Meters or Check Meters, as applicable, at the Generating Facility for the specified Metering Interval, after adjusting for any compensation factors introduced by the CAISO into the CAISO-approved meter.

"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters.

"Milestone Schedule" means Seller's milestone schedule, the form of which is attached to this Agreement as Exhibit M.

"Monthly Contract Payment" has the meaning set forth in Section 4.01.

"Monthly Scheduling Fee" is described in Section 4(b) of Exhibit E.

"Moody's" means Moody's Investor Services, Inc.

"MW" means a megawatt (1,000,000 watts) of electric capacity or power output.

"MWh" means a megawatt-hour (1,000,000 watt-hours) of electric energy or power output.

"NERC" means the North American Electric Reliability Corporation, or any successor entity.

"NERC Registration Criteria" means the most recent NERC Statement of Compliance Registry Criteria, which is available on NERC's website.

"NERC Reliability Standards" means those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by the NERC and approved by the applicable regulatory authorities, which are available on NERC's website.

"NERC Standards Non-Compliance Penalties" means any and all monetary fines, penalties, damages, interest or assessments by the NERC, the CAISO, the WECC, a Governmental Authority or any Person acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator or Generator Owner as set forth in the NERC Reliability Standards.

"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.

"Non-Defaulting Party" has the meaning set forth in Section 6.02.

"Non-Peak Hours" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in Exhibit C, "5. Time of Delivery Periods and Allocations Factors" or Exhibit C (1), "4. Time of Delivery Periods," as determined pursuant to Section 1.05.

"Notice" means notices, requests, statements or payments provided in accordance with Section 9.07 and Exhibit J.

"OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement-quality meter data or its successor.

"Operate", "Operating", and "Operation" mean to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

"Outage" has the meaning set forth in the CAISO Tariff.

"Outage Schedule" has the meaning set forth in Section 2(a) of Exhibit N.

"Outage Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer 24 months in advance, as set forth in Exhibit N.

"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

"Party or Parties" has the meaning set forth in the Preamble.

"Peak Months" means June, July, August and September.

"Performance Assurance" means collateral (in the amount of the Performance Assurance Amount) for Seller's performance under this Agreement in the form of cash, Letter(s) of Credit, or other security acceptable to Buyer.

"Performance Assurance Amount" has the meaning set forth in Section 1.06(b).

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

"Person or Persons" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Physical Trade" has the meaning set forth in the CAISO Tariff.

"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

"Planned Outage" means a disconnection, separation or reduction in the capacity of the Generating Facility which is not the result of a Forced Outage.

"PNode" has the meaning set forth in the CAISO Tariff.

"Power Product" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

"Power Rating" means the electrical power output value indicated on the generating equipment nameplate.

"Primary Fuel" means the fuel or combination of fuels that are provided for in the Permits applicable to the Generating Facility.

"Product" means the Power Product and the Related Products.

"Project" means the Generating Facility.

"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that:

(a) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;

(b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;

(c) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Prevailing Pacific Time, which is the Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, codified at 16 United States Code ("USC") §824a-3, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC decisions, orders, and rules implementing PURPA, as amended from time to time, including 18 Code of Federal Regulations ("CFR") Part 292.201, et seq., unless the Qualifying Facility is a public agency exempt from FERC jurisdiction under 16 USC §824(f).

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Related Products" means (i) with respect to Resource Adequacy Benefits that portion of the Resource Adequacy Benefits that are in excess of those Resource Adequacy Benefits used by Seller or by a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the Resource Adequacy Benefits are to be used, Resource Adequacy obligation under any Resource Adequacy Ruling, and (ii) any Green Attributes, Capacity Attributes and all other attributes associated with the electric energy or capacity of the Generating Facility (but not including any Financial Incentives) that are in excess of those Green Attributes, Capacity Attributes or other attributes used, or retained for future use, by Seller or a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the relevant attribute(s) are to be used or retained, obligation under Applicable Law.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(e)(2), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in Resource Adequacy Rulings, 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.

"Resource Adequacy Benefits" means the rights and privileges attached to the Generating Facility that satisfy any Person'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 Generating Facility.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 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 CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.

"Responsible Officer" means the chief financial officer, treasurer or any assistant treasurer of a Party or its Guarantor or any employee of a Party or its Guarantor designated by any of the foregoing officers.

"S&P" means the Standard & Poor's Rating Group.

"Sale-Leaseback Transaction" means a transaction in which Seller (i) sells the Generating Facility to a Lender providing tax equity financing to Seller and then (ii) leases the Generating Facility back from the Lender under an agreement authorizing Seller to act on behalf of the Lender in all matters relating to the control and Operation of the Site and the Generating Facility for the Term, subject to Lender's right to terminate the lease in the event of a default by Seller as set forth in the agreement between Seller and Lender.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy.

"Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

"Scheduling Coordinator" means the Buyer as certified by the CAISO for the purposes of undertaking the functions specified in Exhibit E.

"Scheduling Fee" means the Monthly Scheduling Fee and the SC Set-Up Fee.

"SC Set-Up Fee" is described in Section 4(a) of Exhibit E.

"SC Replacement Date" has the meaning set forth in Section 7 of Exhibit E.

"SEC" means the United States Securities and Exchange Commission, or any successor entity.

"Security Interest" has the meaning set forth in Section 3 of Exhibit D.

"Seller" has the meaning set forth in the Preamble.

"Seller's Day-Ahead Forecast" means the most recently update Forecast submitted by 5:00 p.m. PPT on the day before the Trading Day.

"Seller's Energy Forecast" means Seller's most recently updated Forecast submitted in accordance with Exhibit G.

"Seller's Final Energy Forecast" means Seller's energy Forecast as may be updated for Forced Outages that occur after the Hour Ahead Scheduling Deadline, but not for Ambient Conditions.

"Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035.

"Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective.

"Settlement Interval" has meaning set forth in the CAISO Tariff.

"Simple Interest Payment" means a dollar amount calculated by multiplying the:

(a) Dollar amount on which the Simple Interest Payment is based; by

(b) Federal Funds Effective Rate or Interest Rate as applicable; by

(c) The result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02(b) and Exhibit B.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a Lease, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

"Site Host" means the Person or Persons purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code Section 218(b).

"SLIC" means Scheduling and Logging system for the CAISO.

"SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

"Station Use" means electric energy produced by the Generating Facility that is:

(a) Used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation; and

(b) Consumed as losses within the low voltage, electrical distribution system of the Generating Facility including:

i. The Generating Facility's, or, if applicable, each Generating Unit's [____]kV electric voltage step-up transformer; and

ii. The portion of the electric bus work that:

1. Connects the high voltage side of the Generating Facility's, or, if applicable, each Generating Unit's electric voltage step-up transformer to the [Substation name]; and

2. Is located on the Generating Facility side of the measurement points for the CAISO-Approved Meters.

"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility in accordance with the CAISO's applicable requirements as set forth in Section 3.10.

"Term" has the meaning set forth in Section 1.01.

"Term End Date" has the meaning set forth in Section 1.01.

"Termination Payment" has the meaning set forth in Section 6.03.

"Term Start Date" has the meaning set forth in Section 1.01.

"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

"TOD Period" means the time of delivery period used to calculate the Monthly Contract Payment set forth in Exhibit C or Exhibit C (1), as determined by Section 1.05.

"Trading Day" means the day in which Day-Ahead trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).

"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Buyer from the Delivery Point to the CAISO-controlled grid.

"Uninstructed Deviation GMC Rate" means the administrative grid management charge applied by the CAISO to Uninstructed Deviations (as defined in the CAISO Tariff) using the absolute value for the Uninstructed Deviations by Settlement Interval.

"Uninstructed Deviation Penalty" means the penalty set forth in the CAISO Tariff.

"Web Client" has the meaning set forth in Section 2(a) of Exhibit N.

"WECC" means the Western Electricity Coordinating Council, the regional reliability council for the western United States, northwestern Mexico, and southwestern Canada, or any successor entity.

**** End of Exhibit A ****

ID# [Number], [Seller's Name]

EXHIBIT B
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

**** End of Exhibit B ****

ID# [Number], [Seller's Name]

EXHIBIT C

Monthly Contract Payment Calculation

These Price Inputs are based upon the 2011 Market Price Referent (MPR)

This Exhibit C establishes the avoided cost price adopted and implemented by the CPUC in CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033).

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period payment 1st TOD Period +
TOD Period payment 2nd TOD Period +
TOD Period payment 3rd TOD Period +
Location Bonus

All TOD Period Payments shall be calculated as set forth in Section 2 of this Exhibit C.

The "1st TOD Period," "2nd TOD Period," and "3rd TOD Period" subscripts refer to the three TOD Periods that apply for the applicable calculation month, as set forth in Section 5 of this Exhibit C.

The Location Bonus, if applicable, shall be calculated as set forth in Section 6 of this Exhibit C.

2. TOD Period Payment Calculation

Each monthly TOD Period Payment is calculated in dollars using the terms defined below as follows:

(Fixed price component + Variable price component) * TOD Factor *
metered kWh exported during the TOD Period during the month

Once 120% of the Expected Term Year Net Energy Production is achieved, no further payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

3. Fixed Price Component

The Fixed Price Component of the Monthly Contract Payment for all TOD Periods shall be the amount in the following table for the year of the Term Start Date. The fixed price component does not escalate during the term of the Agreement.

Year	$/kwh
2012	0.02000
2013	0.02033
2014	0.02068
2015	0.02104
2016	0.02140

Year	$/kwh
2017	0.02142
2018	0.02145
2019	0.02147
2020	0.02149
2021	0.02151
2022	0.02153
2023	0.02155

4. Variable Price Component Calculation

The Variable Price Component is calculated in dollars as follows:

[(Monthly bidweek gas price + Intrastate gas transportation rate)/1,000,000* Heat Rate] + Variable O&M

(a) Monthly bidweek gas price shall be calculated as the average of monthly bidweek gas price indices at PG&E Citygate as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly

(b) Intrastate gas transportation rate shall be the tariffed intrastate gas transportation rate for large electric generators as published in the PG&E Gas Tariffs G-EG and G-SUR.

(c) Heat Rate, pursuant to D. 09-12-042, shall be equal to:

6,924 Btu/kWh

(d) Variable O&M shall be the amount in the following table for the year in which the payment is being calculated. For years after 2023, Variable O&M shall be the 2023 payment multiplied by 1.02, compounded for each year beyond 2023.

Variable O&M	
Year	$/kwh
2012	0.00311
2013	0.00316
2014	0.00322
2015	0.00329
2016	0.00335
2017	0.00342
2018	0.00349
2019	0.00356
2020	0.00364
2021	0.00371
2022	0.00377
2023	0.00384

5. Time of Delivery Periods and Allocation Factors.

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

	TOD PERIOD		
Monthly 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 paragraph, 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. In accordance with all other terms of this Exhibit C, the following Time of Delivery Factors ("TOD Factors") shall be used in the TOD Period Payment Calculation for each of the specified TOD Periods in which Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	2.38	1.12	0.59
B. Oct. – Dec.; Jan. & Feb.	1.10	0.94	0.66
C. Mar. – May	1.22	0.90	0.61

6. Location Bonus.

If the Generating Facility is located in a "High-Value Area" as set forth below, each Monthly Contract Payment for the entire Term shall receive a Location Bonus calculated as follows:

Location Bonus = Sum of monthly TOD Periodn Payments * 0.10

The Generating Facility shall be deemed to be located in a High-Value Area if it is interconnected to Buyer's electric system at a location which, in the year of the Effective Date, is identified pursuant to CPUC D. 09-12-042 (as modified by other AB 1613 Decisions) as a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC.

**** End of Exhibit C****

Exhibit C (1)

Monthly Contract Payment Calculation

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period Energy Payment $_{\text{1st TOD Period}}$ +
TOD Period Energy Payment $_{\text{2nd TOD Period}}$ +
TOD Period Energy Payment $_{\text{3rd TOD Period}}$ +
TOD Period Energy Payment $_{\text{4th TOD Period}}$ +
TOD Period Capacity Payment $_{\text{1st TOD Period}}$ +
TOD Period Capacity Payment $_{\text{2nd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{3rd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{4th TOD Period}}$

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit C (1).

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit C (1).

The "1st TOD Period," "2nd TOD Period," "3rd TOD Period" and "4th TOD Period" subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit C (1).

2. TOD Period Energy Payment Calculation.

(a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{FirstHour}^{LastHour} [(EP-LA) \times APE + LA \times MA]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit C (1), in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit C (1).

LA = Hourly Location Adjustment price, as set forth in SRAC.

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no additional hourly energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

(b) Factor "EP" in Section 2(a) of this Exhibit C (1). The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in SRAC.

(c) Factor "APE" in Section 2(a) of this Exhibit C (1). The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = ACP x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit C (1), in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision:

Capacity Payment Allocation Factors		
Season	*TOD Period*	*Factor*
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

(b) Factor "ACP" in Section 3(a) of this Exhibit C (1). The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars

= AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit C (1), in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	*Price $/kW-yr*
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

(c) Factor "AAC" in Section 3(b) of this Exhibit C (1). The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit C (1), in kWh per hour.

(d) Factor "MAC" in Section 3(c) of this Exhibit C (1). The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit C (1), in kWh.

PH = The total number of hours in the TOD Period (period hours).

(e) Factor "LE" in Section 3(d) of this Exhibit C (1). The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{FirstHour}^{LastHour} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit C (1), in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor "E" in Section 3(e) of this Exhibit C (1). The Allowed Hourly Energy is calculated as follows:
ALLOWED HOURLY ENERGY in kWh = 1 hour x CC

Where:

CC = The Contract Capacity, as set forth in Section 1.02(c), in kW.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	**Period A – Summer May 1 - October 31**	**Period B - Winter November 1 - April 30**	**Applicable Days**
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

*** End of Exhibit C (1) ***

EXHIBIT D
Credit and Collateral Requirements

1. Financial Information.

(a) If requested by Buyer, Seller shall deliver to Buyer the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:

(i) Within one hundred and twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year; and

(ii) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous fiscal year;

provided, however, that if Seller is not an SEC reporting company or if the financial statements required under Sections 1(a)(i) or (ii) of this Exhibit D are not audited financial statements, a Responsible Officer of Seller will certify such financial statements as being in accordance with all Applicable Laws, prepared in accordance with GAAP and fairly stated in all material respects (subject to normal year-end audit adjustments for the quarterly financial statements); *provided further*, that such information must be provided only to those employees of Buyer that need to know such information for financial risk management purposes and may not be disclosed to third parties except as permitted under Section 9.09.

(b) For purposes of the requirement set forth in Section 1(a) of this Exhibit D:

(i) If Seller's or its Guarantor's financial statements are publicly available electronically on the website of Seller, its Guarantor or the SEC, then Seller is deemed to have met this requirement; and

(ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay is not an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

2. Performance Assurance.

(a) Posting Performance Assurance. On or before the Term Start Date, Seller shall post Performance Assurance with Buyer and shall maintain the Performance Assurance

Amount at all times on and after the Term Start Date until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed three hundred and sixty-five (365) days following the Term End Date.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to Buyer; *provided, however*, that if, as of the Term Start Date, Seller has posted the Development Security in the form of cash or a Letter of Credit and Buyer has either not returned the Development Security to Seller or given Seller Notice, in accordance with this Exhibit D, of its determination regarding the disposition of the Development Security by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by Buyer until three Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 4(c) or (e) of this Exhibit D, after which Seller shall be obligated to post the full Performance Assurance Amount.

In lieu of cash or a Letter of Credit, Buyer may accept a Guaranty Agreement, in accordance with Section 2(c) of this Exhibit D, from a Guarantor acceptable to Buyer, to satisfy Seller's Performance Assurance obligation.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit is subject to the following provisions:

(i) Each Letter of Credit must be maintained for the benefit of Buyer;

(ii) Seller shall:

(1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;

(2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to Buyer at least thirty (30) days before the expiration of the outstanding Letter of Credit or within five (5) Business Days of such indication by the bank, whichever is later; and

(3) If the bank issuing a Letter of Credit fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to Buyer within three Business Day after such refusal;

(iii) Upon, or at any time after, the occurrence of a Letter of Credit Default, Seller shall provide to Buyer either a substitute Letter of Credit or alternative Performance Assurance acceptable to Buyer, in each case on or before the third Business Day after the occurrence thereof (or the fifth Business Day after the occurrence thereof if only Section a) in the definition of "Letter of Credit Default" in Exhibit A applies); and

(iv) Upon the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit by submitting to the bank issuing such Letter of Credit one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 3 of this Exhibit D with respect to such cash proceeds.

Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any (1) failure to provide or maintain sufficient Performance Assurance, or (2) any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

(v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.

(c) Guaranty Agreement. If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit K executed by the Guarantor identified in Section 1.06(d) or other party, in each case acceptable to Buyer and meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:

(i) "BBB-" from S&P and "Baa3" from Moody's, if it is rated by both S&P and Moody's; or

(ii) "BBB-" from S&P or "Baa3" from Moody's if it is rated by either S&P or Moody's but not by both.

If at any time the Guarantor fails to maintain such Credit Ratings, Seller shall provide to Buyer Performance Assurance in the form of cash or a Letter of Credit, or a replacement Guaranty Agreement from a party acceptable to Buyer, within five Business Days of such failure by the Guarantor.

3. First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security (if applicable), Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 2 and 4 of this Exhibit D and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer's Security

Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller, Buyer may do any one or more of the following:

(a) Exercise any of its rights and remedies with respect to all Development Security and Performance Assurance, including any such rights and remedies under law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit; and

(c) Liquidate all Development Security and Performance Assurance 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 this Agreement (Seller shall remain liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

4. Development Security.

(a) Introduction. Development Security shall be held by Buyer as security for Seller's meeting the Term Start Date. Before the Term Start Date, Seller must deliver to Buyer certificates from a California-licensed professional engineer qualified to make a representation that that Seller has installed the equipment sufficient to provide the As-Available Contract Capacity designated by Seller.

(b) Development Security. Seller shall post such Development Security in accordance with the following terms and conditions:

(i) Seller shall post a development fee (the "Development Security") in the amount of $20 per kW of the As-Available Contract Capacity on or before the 30th day following the Effective Date. The Development Security shall be held by Buyer and shall be in the form of either a cash deposit or a Letter of Credit; and

(ii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be substantially in the form of Exhibit L.

(c) Forfeiture of Development Security for Failure to Commence Term by the Term Start Date; Extension of the Term Start Date.

(i) Failure to Meet the Term Start Date. Subject to Seller's right to extend the Term Start Date as provided in Section 4(c)(ii) of this Exhibit D or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), if the Term does not commence on or before the Term Start Date, Buyer may retain the entire Development Security (if applicable) and, if not already terminated, terminate this Agreement, and neither Party shall have liability for

damages for failure to deliver or purchase the Product after the effective date of such termination.

(ii) Daily Delay Liquidated Damages to Extend Term Start Date. Subject to limitations set forth in Section 1.01(b), Seller may elect to delay the Term Start Date by paying to Buyer liquidated damages in an amount equal to one percent of the Development Security per day for each day (or portion thereof) from and including the original Term Start Date to and excluding the actual Term Start Date ("Daily Delay Liquidated Damages").

To extend the Term Start Date, Seller must, at the earliest possible time, but no later than 6:00 a.m. on the first day of the proposed extension, provide Buyer with Notice of its election to extend the Term Start Date along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Term Start Date extension period.

Seller may further extend the Term Start Date beyond the original Term Start Date extension period subject to the same terms applicable to the original Term Start Date extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Term Start Date extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Term Start Date was actually extended.

In no event may Seller extend the Term Start Date for more than a total of 180 days by the payment of Daily Delay Liquidated Damages.

(d) Full Return of Development Security. The Development Security shall be returned to Seller in accordance with the following procedure:

(i) Subject to Seller commencing the Term by the Term Start Date, as the Term Start Date may have been extended in accordance with Section 4(c)(ii) of this Exhibit D or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), Seller demonstrates the As-Available Contract Capacity on or before the Firm Operation Date by delivering to Buyer certificates from a California-licensed professional engineer qualified to make a representation that Seller has installed the equipment sufficient to provide the entire As-Available Contract Capacity designated by Seller.

(e) Deficient Installation of As-Available Contract Capacity; Partial Forfeiture and Partial Return of the Development Security. If, on or before the Firm Operation Date, Seller does not demonstrate any portion of the As-Available Contract Capacity or only demonstrates a portion of the As-Available Contract Capacity by delivering to Buyer certificates from a California-licensed professional engineer qualified to make a

representation setting forth the As-Available Contract Capacity, then Seller will only be entitled to a return of the portion of the Development Security posted by Seller equal to the product of $20 per kW times the kilowatts of As-Available Contract Capacity which Seller has demonstrated, if any.

Seller shall forfeit and Buyer shall be entitled to retain the balance of the Development Security.

In addition, as of the Firm Operation Date, the Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 2 of this Exhibit D shall be calculated using the adjusted As-Available Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted As-Available Contract Capacity shall be returned to Seller.

(f) Seller shall provide Notice to Buyer of its request for a refund of the Development Security.

5. Interest Payments on Cash Deposits.

(a) Buyer shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the Development Security and Performance Assurance.

(b) Upon receipt of a monthly invoice that sets forth the calculation of the Simple Interest Payment amount due, Buyer shall make payment thereof on or before the third Business Day of the first month after the last month to which the invoice relates, so long as such date is after the day on which such invoice is received; ***provided, however***, that:

(i) No Event of Default has occurred and is continuing with respect to Seller; and

(ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.

(c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, Buyer shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:

(i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or

(ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

**** End of Exhibit D ****

EXHIBIT E
Scheduling Coordinator Services

1. Designation of Buyer as Scheduling Coordinator.

   (a) At least thirty (30) days before the Term Start Date, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Scheduling Coordinator with the CAISO effective as of the Term Start Date.

   (b) During the Term, Seller may 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.

   (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff and the Eligible CHP Facility's Participating Generator Agreement.

   (d) Buyer shall submit all required notices and updates regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO in accordance with the CAISO procedures.

   (e) Seller is not entitled to any Monthly Capacity Payment until Buyer is fully authorized as Scheduling Coordinator for the Generating Facility; *provided, however*, that Buyer may not take, or not refrain from taking, any action if the result would be to delay such authorization.

2. Buyer's Scheduling Responsibilities. Pursuant to the CAISO Tariff, Buyer shall be responsible for the following:

   (a) Using the Forecast submitted by Seller to Buyer pursuant to Exhibit G, including updated Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using Buyer's forecasting model ("Buyer Projected Energy Forecast") in any given hour;

   (b) Adjusting Buyer Projected Energy Forecast for forecasted electric energy line losses in accordance with the amount of electric energy Seller is expected to deliver to the Delivery Point;

   (c) Submitting the adjusted Forecasts to the CAISO as Scheduling Coordinator Schedules (as defined in the CAISO Tariff); and

   (d) Receiving notification of the final Schedules from the CAISO.

3. Notices. As Scheduling Coordinator, Buyer shall submit all notices and updates required under the CAISO Tariff and Applicable Laws regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO, including all SLIC Outage requests, SLIC Forced Outages, or CAISO Forced Outage Reports.

4. Scheduling Fees. In accordance with Section 4.02, Buyer shall invoice to Seller and Seller shall pay to Buyer the following Scheduling Fees:

   (a) SC Set-Up Fee. The SC Set-Up Fee is equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable, in accordance with the CAISO Tariff. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee, including separate line items for registration charges, equipment costs, software costs, and labor costs (including hourly rate if applicable) itemized for registration, equipment installation, configuration, testing and software related charges. Buyer estimates that the SC Set-up Fee for this Agreement will equal $[___].

   (b) Monthly Scheduling Fee. The Monthly Scheduling Fee will be as forth in the following table.

As-Available Contract Capacity (kW)	Monthly Scheduling Fee
Less than 10,000	$2,500
10,000 – 20,000	$5,000

5. CAISO Settlements. As Scheduling Coordinator, Buyer shall be responsible for all settlement functions with the CAISO related to the Generating Units or the Generating Facility, as applicable. Seller shall cooperate with Buyer in Buyer's performance of any settlement functions, and Seller shall promptly deliver to Buyer, or provide Buyer access to, all Generating Unit or the Generating Facility, as applicable, data necessary for CAISO settlements and any correspondence or communications with CAISO related to the Generating Units or the Generating Facility, as applicable, including any invoices or settlement data, in the mutually agreed upon format reasonably requested by Buyer.

   Buyer shall render a separate invoice to Seller for all CAISO Charges ("CAISO Charges Invoice") for which Seller is responsible under this Agreement as described in Exhibit H, in accordance with the applicable billing and payment methodologies utilized for the specific CAISO Charge as set forth in the CAISO Tariff. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges. At Seller's request, Buyer shall provide Seller with an invoice detailing all Generating Facility CAISO Charges by individual CAISO Charge codes or types used by CAISO to identify individual CAISO Charges including a copy of all supplemental and/or supporting documentation provided by the CAISO to Buyer in the settlement process.

   Seller shall pay the amount of CAISO Charges Invoices on or before the later of the 20th day of each month, or tenth day after receipt of the CAISO Charges Invoice or, if such day is not a Business Day, then on the next Business Day. If Seller fails to pay a CAISO Charges Invoice within such timeframe, Buyer may offset any amounts owing to it for these CAISO Charges Invoices as set forth in Section 4.02.

6. Disputes and Adjustments of CAISO Invoices. The Parties agree that all CAISO Charges Invoices are subject to the CAISO Tariff and may be adjusted by the CAISO, or disputed by Buyer, as Scheduling Coordinator, in accordance with the CAISO Tariff. The Parties agree that all CAISO Charges Invoices are subject to dispute between the Parties in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the obligations under this Exhibit E with respect to the payment of CAISO Charges Invoices, or the adjustment of such CAISO Charges Invoices, shall survive the expiration or termination of this Agreement for a period of three hundred and sixty-five (365) days beyond the time period which CAISO may adjust, modify or change any previously issued invoice, or any charges or revenues set forth on such invoice pursuant to the CAISO Tariff.

7. Termination of Buyer as Scheduling Coordinator. At least 30 days before the expiration of the Term or as soon as an Early Termination Date is declared (regardless of which Party declared it), the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator as of 11:59 p.m. on the final date of the Term ("SC Replacement Date"). Such actions include the following: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator effective as of the SC Replacement Date.

**** End of Exhibit E ****

EXHIBIT F
Milestone Progress Reporting Form

1. Introduction. This Exhibit F is only applicable if the Generating Facility is a New Eligible CHP Facility. Seller shall prepare a written milestone progress report as set forth in Section 3.12 on its progress relative to the:

   (a) Installation of the CAISO-Approved Meters and Telemetry System;

   (b) Installation of the Telemetry System as required by the CAISO Tariff; and

   (c) Work on other agreements with the CAISO and the Transmission Provider.

2. Format. The report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer's Contract Administrator, as noted in Exhibit J, on the fifth Business Day of each month. Each such milestone progress report must include the following items:

   (a) Cover page;

   (b) Brief Generating Facility description;

   (c) Site plan of the Generation Facility;

   (d) Description of any planned changes to the Generating Facility and Site Description in Exhibit B;

   (e) Bar chart schedule showing progress on achieving the Milestone Schedule;

   (f) PERT or GANT chart showing critical path schedule of major items and activities;

   (g) Summary of activities during the previous month;

   (h) Forecast of activities scheduled for the current month;

   (i) Written description about the progress relative to the Milestone Schedule;

   (j) List of issues that could potentially impact the Milestone Schedule;

   (k) Enumeration and schedule of any support or actions requested of Buyer;

   (l) Progress and schedule of all material agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages; and

   (m) List of items required under Section 3.11.

**** End of Exhibit F ****

EXHIBIT G

Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements for all Generating Facilities.

   (a) 30-Day Forecast.

   In the case of a New Eligible CHP Facility, no later than 30 days before the Term Start Date (or, in the case of a New Eligible CHP Facility no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the start of the Term (or, if applicable, Parallel Operation) using the Web Client.

   In the case of a New Eligible CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), if Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

   If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit J.

   The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

   (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and

   (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

   (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section

2(a) of this Exhibit G, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit J.

(c) Further Update to 30-Day Forecast. As soon as reasonably practicable, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage, and a Real-Time Forced Outage, which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit G must be submitted to Buyer via the Web Client by no later than:

(i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;

(ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or

(iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change, with notification also by phone to Seller's Real Time Scheduling Desk.

Seller's updated Forecast must contain the following information:

(w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected energy production change;

(x) The expected ending date and time of the event:

(y) The expected energy production, in MWh; and

(z) Any other information required by the CAISO as communicated to Seller by Buyer.

**** End of Exhibit G ****

ID# [Number], [Seller's Name]

EXHIBIT H
CAISO Charges

Buyer, as Scheduling Coordinator for the Generating Facility, shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if at any time after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or,

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to: (a) curtail output, or (b) reschedule a Planned Outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

4. If the Generating Facility is PIRP eligible and is not certified as a PIRP resource for any reason, then Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the energy generated and delivered from the Generating Facility.

5. Buyer as Seller's Scheduling Coordinator is subject to either Non-Availability Charges or Availability Incentive Payments, or both, during a month within the Resource Adequacy compliance year, as defined by CAISO Tariff, then any such charges or payments shall be offset and the net value shall be entered into Seller's Account for the applicable month pursuant to Section 3.22.

If any of Sections 1 through 4 of this Exhibit H apply and the Generating Facility is subject to an Uninstructed Deviation Penalty, Seller will not be required to pay the SDD Energy Adjustment and, instead, shall be responsible for all applicable Uninstructed Deviation Penalty charges for the Generating Facility.

**** End of Exhibit H ****

EXHIBIT I

Scheduling and Delivery Deviation Adjustments

Seller or Buyer, as the case may be, shall be responsible for the following Scheduling and Delivery Deviation ("SDD") Adjustments with respect to the Generating Facility:

1. SDD Energy Adjustment. An Adjustment will be calculated for each Settlement Interval in a month if the Metered Energy is either (a) less than the Performance Tolerance Band Lower Limit in any Settlement Interval or (b) greater than the Performance Tolerance Band Upper Limit in any Settlement Interval. When the SDD Energy Adjustment is negative, Seller shall make a payment to Buyer and when the SDD Energy Adjustment is positive, Seller shall receive a credit from Buyer. The SDD Energy Adjustment is calculated as follows:

   If A < D, then SDD Energy Adjustment= (D – A) x (EP – P)

   or

   If A > E, then SDD Energy Adjustment = (A – E) x (P – EP)

   Otherwise, the SDD Energy Adjustment = 0

   where:

   A = Metered Energy for the Settlement Interval;

   B = Seller's Final Energy Forecast based on the hourly forecasts made pursuant to Exhibit G corresponding to the Settlement Interval;

   C = Performance Tolerance Band =

   Three percent of the Seller's Final Energy Forecast divided by the number of Settlement Intervals in such hour;

   D = Performance Tolerance Band Lower Limit = (B – C);

   E = Performance Tolerance Band Upper Limit = (B + C);

   EP = TOD Period Payment divided by Metered Energy applicable to the Settlement Interval specified in Exhibit C or TOD Period Energy Price applicable to the Settlement Interval specified in Section 2 (b) of Exhibit C (1); and

   P = Market Price for the Generator's PNode as published by the CAISO on OASIS for the Settlement Interval.

2. SDD Administrative Charge. Seller shall make a payment to Buyer (the "SDD Administrative Charge") for each Settlement Interval in a month if Metered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, in any Settlement Interval. The SDD Administrative Charge is calculated as follows:

   If A > (B + C) or A < (B – C), then:

   SDD Administrative Charge = (Absolute Value (B – A) – C) x Uninstructed Deviation GMC Rate.

   Otherwise, the SDD Administrative Charge = 0.

**** End of Exhibit I ****

ID# [Number], [Seller's Name]

EXHIBIT J
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	

CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Guarantor: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit J ****

EXHIBIT K
Form of Guaranty Agreement

1. Guaranty. For valuable consideration, *[Guarantor's legal name]*, *[legal status]* ("Guarantor") guarantees payment to *[Buyer's legal name]*, a California corporation ("Beneficiary"), its successors and assigns, of all amounts owed to Beneficiary by *[Seller's legal name]*, *[legal status]* ("Principal") under that certain Power Purchase and Sale Agreement between Beneficiary and Principal dated *[date]*, as amended from time to time ("Agreement") (said amounts are hereinafter referred to as the "Obligations").

   Initially capitalized words that are used but not otherwise defined in this agreement ("Guaranty") shall have the meanings given them in the Agreement.

   Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

   Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, that all cure periods have expired, and with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

   Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

   The obligations of Guarantor hereunder are not subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

   A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. Guaranty Limit. Subject to Paragraph 13, the liability of Guarantor hereunder may not exceed $_____ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

3. Guaranty Absolute. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and is not affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

   (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectability, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;

   (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;

(c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;

(d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and

(e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:

(i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;

(ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;

(iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;

(iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;

(v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;

(vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;

(vii) Beneficiary's exercise of any other rights available to it under the Agreement;

(viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;

(ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;

(x) [Intentionally omitted;] and

(xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

(f) Guarantor agrees that upon a demand for payment under this Guaranty in accordance with Section 1 hereof, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, statute of frauds, statute of limitations and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.

4. Termination; Reinstatement.

(a) The term of this Guaranty is continuous until the date on which the Obligations have been performed or paid in full.

(b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy; Post-Petition Interest.

(a) So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal.

The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations.

Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

6. Subrogation. Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, provided that Guarantor postpones the exercise of such rights until all Obligations have been irrevocably paid in full to the Beneficiary.

If any amount is paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder have not been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary (provided that no fiduciary duty shall be deemed to arise in connection herewith) and shall promptly pay such amount to Beneficiary.

7. [Intentionally omitted.]

8. Waivers of Guarantor.

(a) [Intentionally omitted.]

(b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.

(c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:

(i) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property.

This means, among other things:

a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.

b. If the creditor forecloses on any real property collateral pledged by the debtor:

(1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(ii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.

(e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability of the Principal, failure of consideration or any defense based on or arising out of the lack of validity or enforceability of the Obligations;

(f) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;

(g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerate guarantors, provide any legal or equitable discharge of Guarantor's obligations hereunder, or which may conflict with the terms of this Guaranty;

(i) Other than demand for payment, the Guarantor expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and

(j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.

9. No Waiver of Rights by Beneficiary. No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

10. Assignment, Successors and Assigns. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors, assigns and creditors. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided*, *however*, that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.

    The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

11. Representations of Guarantor. Guarantor represents and warrants that:

    (a) It is a corporation duly organized, validly existing and in good standing in all necessary jurisdictions and has full power and authority to execute, deliver and perform this Guaranty;

    (b) It has taken all necessary actions to execute, deliver and perform this Guaranty;

    (c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;

    (d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and

    (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

12. Financial Statements. If requested by Beneficiary, Guarantor shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:

    (a) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and

(b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and: (i) certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission ("SEC") rules and regulations, if Guarantor is an SEC reporting company; or (ii) certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.

(c) For the purposes of the requirement in this Paragraph 12, if Guarantor's financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.

13. Attorneys' Fees. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 is not subject to, and does not count toward, the guaranty limit set forth in Paragraph 2 above.

14. Governing Law. This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

15. Construction. All parties to this Guaranty are represented by legal counsel. The terms of this Guaranty and the language used in this Guaranty shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Guaranty. No rule of strict construction will be applied against any party.

16. Amendment; Severability. Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

If any provision in or obligation under this Guaranty is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, is not in any way be affected or impaired thereby.

17. Third Party Rights. This Guaranty may not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.

18. Notices. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary:	*[Buyer]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:
with a copy to:	*[Name]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:
Guarantor:	*[Guarantor]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:
Principal:	*[Principal]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

ID# [Number], [Seller's Name]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of _____, ____.

_____*[legal name]*___

By: _____

Name: _____

Title: _____

*** *End of Exhibit K* ***

EXHIBIT L
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

_____
_____
_____
_____

Ladies and Gentlemen:

_____ (the "Bank") establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of _____, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# ___ (the "Applicant"), for the amount of XXX AND XX/100 Dollars ($_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on _____ (the "Expiration Date").

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

ID# [Number], [Seller's Name]

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations may not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference may not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

Name:_____

Title:_____

ID# [Number], [Seller's Name]

ATTACHMENT A
Drawing Certificate

TO *[ISSUING BANK NAME]*

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number:

The undersigned _____, an authorized representative of _____ (the "Beneficiary"), certifies to *[Issuing Bank Name]* (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {_____}, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to $_____, for the following reason(s) [check applicable provision]:

   [ ]A. An Event of Default, as defined in that certain Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of *[Date of Execution]* (the "Agreement"), with respect to the Applicant has occurred and is continuing.

   [ ]B. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

   [ ]C. The Letter of Credit will expire in fewer than 30 days from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

   [ ]D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within 30 days following the date of the Notice of Non-renewal.

[ ]E. The Beneficiary is entitled to retain the entire Development Security (i) as a result of Applicant's failure to commence the Term by the Term Start Date, or (ii) the Agreement has terminated due to an Event of Default by Applicant before the Term Start Date.

[ ]F. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of $20 per kW of As-Available Contract Capacity that Seller failed to demonstrate times the kilowatts of As-Available Contract Capacity which Seller failed to demonstrate.

2. Based upon the foregoing, the Beneficiary makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: [BENEFICIARY NAME]

By: _____

Name:_____

Title:_____

**** End of Exhibit L ****

ID# [Number], [Seller's Name]

EXHIBIT M
Seller's Milestone Schedule

No.	*Target Date*	*Milestones*

**** End of Exhibit M ****

EXHIBIT N
Outage Schedule Submittal Requirements

1. General Requirements.

The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to:

(a) Comply with the CAISO Tariff;

(b) Accommodate changes to their respective generation technology and organizational structure; and

(c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements for all Generating Facilities.

Seller shall submit maintenance and Planned Outage schedules in accordance with the following schedule:

(a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed Planned Outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client") only if web-based system is not available.

(b) Seller shall provide the following information for each proposed Planned Outage:

(i) Start date and time;

(ii) End date and time; and

(iii) Capacity online, in MW, during the Planned Outage in addition to the information required by the CAISO, as indicated by the Buyer-provided web-based system.

(c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any Planned Outage.

(d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

(e) In the event a condition occurs at the Generating Facility which causes Seller to revise its Planned Outages, Seller shall provide Notice to Buyer, using the Web Client, of such change

(including, an estimate of the length of such Planned Outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

(f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

**** End of Exhibit N ***

EXHIBIT O

QF Efficiency Monitoring Program – Cogeneration Data Reporting Form

[Buyer's address]
Buyer's telephone number and email address]

[PrevYear]

I. Name and Address of Project

Name:
Street:
City: _____ State: _____ Zip Code: _____

ID No.: _____ Generation Nameplate (KW): _____

II. In Operation: Yes ☐ No ☐

III. Can your facility dump your thermal output directly to the environment? ☐Yes ☐No

IV. Ownership

	Name	Address	Ownership (%)	Utility	
1				Y	N
2				Y	N
3				Y	N
4				Y	N
5				Y	N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your useful thermal output if other than mBTUs:
  BTUs _____ Therms _____ mmBTUs _____
- If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (kWh)	Energy Input (Therms)	Useful Thermal Output (mBtu)
JAN			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

**** End of Exhibit O ***

Pacific Gas and Electric Company

DISTRIBUTION:
☐ XXXX
☐ XXXX
☐ XXXX
☐ XXXX
☐ _____

REFERENCE:
_____
_____
_____
_____
_____

POWER PURCHASE AND SALE AGREEMENT

CONTRACT FOR ELIGIBLE CHP FACILITIES WITH NET OUTPUT OF NOT GREATER THAN 5 MW

~~**[Note: Modifications to this agreement have been made to address United States Bankruptcy Court Northern District Chapter 11 cases 19-30088 (DM) and 19-30089 (DM) in accordance with CPUC Resolution E-4995, issued March 18, 2019.]**~~

PREAMBLE

This Power Purchase and Sale Agreement (this "Agreement") by and between [Buyer's name], a California corporation ("Buyer"), and [Seller's name], a [Seller's form of business entity and state of registration] ("Seller"), is dated as of [Date of execution] (the "Effective Date"). Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A. Exhibits A through G inclusive are hereby incorporated into and made a part of this Agreement.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill its obligations under the Act and the Decisions issued in Rulemaking ("R.") 08-06-024 ("AB 1613 Decisions"), and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

{Buyer Comment: If the Term is greater than or equal to five years and if the Generating Facility provides baseload generation, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

ARTICLE ONE. SPECIAL CONDITIONS

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends on [Date] (the "Term End Date"). The Term Start Date must be on the first day of a calendar month. If the Generating Facility is (a) a New Eligible CHP Facility, the Term Start Date must occur within 18 months of the Effective Date, or (b) an Existing Eligible CHP Facility, the Term Start Date must occur within 6 months of the Effective Date. Subject to the limitation set forth in the immediately preceding sentence, Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least

three months before such Term Start Date. The Term must be no less than one year and no more than 10 years.

1.02 Generating Facility. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility], and which is further described in Exhibit G. The Generating Facility is located at [Generating Facility address], which must be located within Buyer's electric service territory. To be eligible for this Agreement, the Generating Facility must be an Eligible CHP Facility that, during the entire Term, (1) satisfies the provisions of AB 1613, as implemented by the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA. However, public agency sellers exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f) are not subject to the requirements of 18 CFR §292.201.

1.03 As-Available Contract Capacity; Power Rating. The As-Available Contract Capacity equals [___] kW. (The As-Available Contract Capacity must be no greater than 5 MW.) The Power Rating of the Generating Facility must be no more than 20 MW. Seller has no obligation under this Agreement to produce or deliver firm energy or capacity.

1.04 Site Host Load. The Site Host Load is expected to equal, on average, [___] kW. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year, which amount may change from time to time; *provided, however*, that Seller shall provide Notice to Buyer at least 30 days, or as soon as otherwise is practicable, before any such change that Seller reasonably anticipates will be greater than 4,380,000 kWh, on an annual basis; and *provided further*, that the As-Available Contract Capacity shall never exceed 5 MW.

1.05 Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [___] kWh. The actual energy production of the Generating Facility may change from time to time; *provided, however*, that (a) Seller shall provide Buyer with 30 days advance Notice of any change to the actual energy production that Seller reasonably anticipates will be greater than 4,380,000 kWh, on an annual basis, and (b) the Expected Term Year Energy Production may not exceed the As-Available Contract Capacity at 100% capacity factor applied over the Term Year.

1.06 Delivery Point. The point of delivery of the Power Product is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept the Power Product at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs, exclusive of line losses (if any) and interconnection costs, to deliver the power from the Delivery Point to the point of interconnection between the Buyer's distribution or transmission facilities and the CAISO- Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement) and any line losses from the Delivery Point to the Interconnection Point. Any line losses incurred or avoided from the Delivery Point to the Interconnection Point are determined as part of the interconnection process.

1.07 Power Product Prices.

(a) Monthly Contract Payment for the Power Product shall be calculated in accordance with Exhibit B.

(b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit B(1).

(c) A Generating Facility subject to paragraph 1.07(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof.

(d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.07(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit B.

1.08 Scheduling Coordinator. Buyer is the Scheduling Coordinator under this Agreement. Buyer shall take all steps necessary to be authorized as the Scheduling Coordinator during the Term. Seller shall cooperate with Buyer in good faith to assure that Buyer is authorized as the Scheduling Coordinator during the Term. In accordance with Section 4.01, Buyer shall invoice to Seller and set off against future payments to Seller:

(a) $1,500.00 per month in consideration for Buyer rendering its services to Seller as the Scheduling Coordinator; *provided, however*, that if the As-Available Contract Capacity is less than 1 MW, Seller shall not be required to pay this fee; and

(b) A fee (the "SC Set-Up Fee") equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee. The actual cost will be a simple pass-through to Seller of Buyer's actual costs. Buyer estimates that the SC Set-up Fee for this Agreement will equal $2,000.00 or less.

1.09 GHG Emissions Allowances. Seller elects one of the following: ___(a) __(b), provided however, that this Section 1.09 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

(a) Seller shall manage its own GHG Emissions Allowances and request payment from Buyer in accordance with Section 3.03.

(b) PG&E shall purchase GHG Emissions Allowances on behalf of Seller upon the CPUC's adoption of the necessary procedure. Until such time, Buyer will reimburse Seller per section 1.09(a), above.

1.10 Decertification from AB 1613 Program. In the event of Seller's default pursuant to Section 6.01(b)(vi) due to CEC decertification under the Public Utilities Code 2843, so long as at the time of default, Seller demonstrates qualifying facility status under PURPA and notwithstanding Section 2.02(b), upon termination of this Agreement, Seller's continued conveyance of Power Product and acceptance of payment shall constitute Seller's acceptance of any applicable mandatory must-purchase contract available to qualifying facilities under PURPA. Seller shall be paid the short run avoided cost rate for energy and as-available capacity applicable under such contract at the time of decertification.

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Before the Term Start Date, Seller must demonstrate to Buyer that Seller has satisfied all of the requirements necessary for Seller to Operate the Generating Facility in accordance with the terms of this Agreement (including Section 7.10), Applicable Law, the CAISO Tariff (to the extent applicable), and any other applicable tariff, legal, and regulatory requirements.

2.02 Termination Rights of the Parties.

(a) Termination Rights of Seller. Seller has the right to terminate this Agreement on Notice:

(i) If Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation; or

(ii) If Seller's Site Host relocates its business outside the State of California or terminates its business operations in California; provided, however, that if Seller terminates this agreement in accordance with this Section 2.02(a)(ii), Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year from the effective date of such termination. The termination of this Agreement becomes effective five Business Days after Seller delivers such Notice.

(b) Event of Default. Except as provided in Section 1.10, in the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.03 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year following the date of such termination.

(c) End of Term. This Agreement terminates at midnight of (i) the Term End Date, or (ii) a termination date agreed to in writing by the Parties.

(d) Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement.

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for Buyer's benefit throughout the Term.

3.02 Resource Adequacy. In accordance with Public Utilities Code section 2841(f), Seller grants, pledges, assigns and otherwise commits to Buyer the generating capacity of the Generating Facility to the extent necessary in order for Buyer to count such generating capacity to meet its Resource Adequacy obligations. Seller shall comply with CPUC and CAISO requirements to count towards Resource Adequacy; provided however,

(i) If such requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge.

(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.

(iii) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.

3.03 GHG Compliance Costs.

(a) Direct GHG Compliance Costs. During the Term, Buyer shall reimburse Seller for any Direct GHG Compliance Costs, other than GHG Emissions Allowances, which are separately addressed in the sections below, attributable to the Generating Facility for GHG emissions associated with the Power Product, within forty-five (45) days of Buyer's receipt from Seller of reasonable documentation, in form and substance acceptable to Buyer, establishing that:

(i) Seller is actually liable for the Direct GHG Compliance Costs for GHG emissions attributed to the Power Product;

(ii) Direct GHG Compliance Costs were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose Direct GHG Compliance Costs where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility.

(iii) Buyer is not liable for reimbursement to Seller for Direct GHG Compliance Costs for GHG emissions associated with the Power Product if the GHG emissions for which Seller seeks reimbursement exceed the GHG Emissions Cap and based on the actual delivered Power Product.

(iv) The Generating Facility's GHG emissions has been allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended.

(b) GHG Allowance Costs. Buyer shall bear the cost of GHG Emissions Allowances for GHG emissions attributable to the Generating Facility and associated with the Power Product through either reimbursement, or direct procurement, as indicated at Section 1.08, provided that:

(i) Seller is actually required to procure such GHG Emissions Allowances for GHG emissions attributed to the Power Product;

(ii) Such GHG Emissions Allowances compliance requirements were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose GHG emissions allowances requirements where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility;

(iii) The Generating Facility's GHG emissions, less any Free Allowance for which the Generating Facility is eligible, shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended;

(iv) Buyer's responsibility for GHG Emissions Allowances is limited to GHG emissions associated with the Power Product for which the Seller or the Generating Facility was not eligible to receive Free Allowances;

(v) Buyer's responsibility for GHG Emissions Allowances will not exceed the GHG Emissions Cap based on the actual delivered Power Product.

(c) Reimbursement of Seller for GHG Emissions Allowances. If Seller has elected to manage its own GHG Emissions Allowances in Section 1.09, then, during the Term, Buyer shall reimburse Seller to the extent of Buyer's responsibility for GHG Emissions Allowances in accordance with Section 3.03(b) ("applicable quantity") within forty-fine (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, requesting reimbursement. If the CPUC has specified an index for use in determining the price to be paid for GHG Emissions Allowances, in no event shall Buyer's total payment to Seller for the applicable quantity exceed the total payment that would be due to Seller if the applicable quantity were purchased at the index price at the relevant time period.

(d) Buyer's Purchase of GHG Emissions Allowances. If Seller has elected to have Buyer purchase GHG Emissions Allowances for the Generating Facility in Section 1.09, then, during the Term and upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to the AB 1613 Decisions, Buyer shall purchase GHG Emissions Allowances for Seller for the applicable quantity for the remainder of the Term in accordance with and subject to such guidelines, as may be revised from time to time.

(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

3.04 Exclusive Rights. Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Product to any Person other than Buyer.

3.05 Site Control. Within 60 days of the Effective Date and until the Term End Date, Seller shall have Site Control.

3.06 Permits. Seller shall obtain and maintain all Permits necessary for the Seller to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.07 Interconnection. Seller shall, at its own cost, obtain and maintain all interconnection rights and an interconnection agreement and any related Governmental Authority approval(s) required to enable interconnection with Buyer's electric system and Parallel Operation of the Generating Facility.

3.08 CAISO Relationship. Seller shall comply with all applicable provisions of the CAISO Tariff, including securing and maintaining in full force all CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

3.09 Generating Facility Modifications. Seller shall provide at least 30 days advance Notice to Buyer before making any material modification to the Generating Facility, which Notice will include a description of any change in actual energy production of the Generating Facility and in the Site Host Load anticipated as a result of the modification. Notwithstanding the foregoing, Seller shall make no modification to the Generating Facility that would prevent Seller from complying with the terms of this Agreement.

3.10 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test the CAISO-Approved Meter pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one Check Meter on the high voltage side of the substation associated with the Generating Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. The Check Meter shall be interconnected with Buyer's communication network to permit (i) periodic, remote collection of revenue quality meter data, and (ii) back-up real time transmission of operating-quality meter data through the Telemetry System. Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal may only be broken by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every 36 months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes. Buyer may compare the Check Meter data to the CAISO-Approved Meter data. If the deviation between the CAISO-Approved Meter data and the Check Meter data (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter) for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests. For the avoidance of doubt, the Check Meter is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and Check Meter data shall only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is checked or recertified.

3.11 Provision of Information. Seller shall promptly provide to Buyer all documents reasonably requested by Buyer relating to the Generating Facility (including site plan drawings and single-line diagrams), the administration of this Agreement, or in order for Buyer to comply with any discovery or data request for

information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.12 Operation. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) Comply with the requirements set forth in Exhibit C and Exhibit D;

(c) Use its commercially reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit C;

(d) Pay the CAISO Charges for which it is responsible under Exhibit E;

(e) Use reasonable efforts to respond to any instruction issued by the CAISO or the Transmission Provider or delivered to Seller by Buyer in response to an Emergency;

(f) Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to Buyer within 20 days of a request by Notice from Buyer, including records showing (i) real and reactive power production, (ii) changes in Operating status, (iii) protective apparatus operations, and (iv) any unusual conditions found during inspections;

(g) Keep all Operating records to the extent required of an Eligible CHP Facility by any applicable CPUC or CEC order;

(h) At least 75 days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and

(i) Comply with all NERC reliability standards and requirements applicable to the generator owner and generator operator of the Generating Facility, if any.

3.13 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.14 Power Product Curtailments at Request of Scheduling Coordinator, Transmission Provider, or CAISO. Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from Seller's Scheduling Coordinator, the Transmission Provider, or the CAISO; *provided, however*, that Buyer, in its role as Scheduling Coordinator, shall issue such an instruction only when Buyer is expressly directed to curtail production of the Power Product by the CAISO or where Buyer reasonably believes that curtailment of the Power Product is required to comply with (a) its maintenance requirements and operating orders, (b) a CAISO Declared Over-Generation Condition, or (c) an Emergency. Whenever practicable, Buyer will use commercially reasonable efforts to provide Seller reasonable advance notice of the possibility that a reduction or interruption of deliveries may be required.

3.15 Eligible CHP Facility Status.

(a) To the extent required by Applicable Law, administration of this Agreement or program eligibility guidelines established by the CEC within thirty (30) Business Days following the Term Start Date or Notice from Buyer, Seller shall provide to Buyer certification from the CEC that the Generating

Facility meets the applicable operating and efficiency standards for Eligible CHP Facilities for the applicable year.

(b) Seller shall take all necessary steps, including making or supporting timely filings with the appropriate Governmental Authority in order to maintain certification of the Eligible CHP Facility status of the Generating Facility throughout the Term.

(c) Seller shall provide to Buyer copies of all documentation, including calculations and verifiable supporting data provided to the appropriate Governmental Authority, which demonstrates the compliance of the Generating Facility with the Eligible CHP Facility operating and efficiency standards for the applicable year. Notwithstanding the foregoing, Seller shall provide Buyer with a copy of its Annual Performance Reporting Forms (CEC Form 2843 or its successor) within 5 days of submission to the CEC.

(d) Seller, unless a public agency, shall take all necessary steps, including making or supporting timely filings with FERC in order to maintain the qualifying facility status of the Generating Facility as required by 18 CFR §292.201, et seq., throughout the Term.

(e) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, each QF Seller shall provide to Buyer a copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.

3.16 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to (a) interconnect with the Transmission Provider's electric system, (b) transmit and deliver electric energy to the Delivery Point, or (c) own and operate any CAISO-Approved Meter.

3.17 Buyer's Access Rights. Buyer has the right to examine the Site, the Generating Facility and the Operating records for any purpose connected with this Agreement upon providing Seller with reasonable advance Notice under the circumstances. Seller hereby grants Buyer reasonable access to all CAISO-Approved Meters and Check meters for meter readings and any purpose necessary to effectuate this Agreement. Seller shall provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request, as necessary to effectuate this Agreement. Seller shall inform Buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO. Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR.

3.18 Planned Outages. Seller shall schedule and utilize all planned outages in accordance with the procedures and subject to the limitations set forth in Exhibit D.

3.19 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

3.20 Regulation of Net Output of the Generating Facility. In its sole discretion, Buyer may require that Seller install, at Seller's sole cost, a device or equipment that will disable the Generating Facility from delivering electric energy at a rate greater than 5,000 kWh per hour of Metered Energy. At Buyer's request, Seller shall install such device before the Term Start Date or within 60 days if Buyer's request is made any time after the Term Start Date. Unless otherwise agreed to by the Parties, Buyer shall own, operate, and maintain such device at Seller's sole cost. Any such device shall be agreed upon by Seller and Buyer and must, in accordance with Prudent Electrical Practices, be suitable to the purpose for which it is installed and meet the Transmission Provider's interconnection requirements.

3.21 Allocation of Availability Incentive Payments and Non-Availability Charges. If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, or Availability Incentive Payments as defined and provided for by the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

ARTICLE FOUR. BUYER'S OBLIGATION TO PAY

4.01 Obligation to Pay.

(a) For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit B or Exhibit B (1), as determined pursuant to Section 1.07 *provided, however*, Buyer is not obligated to issue a payment to Seller until the amount due to Seller pursuant to this Agreement exceeds $5,000.00 after set-offs and adjustments in accordance with this Agreement. Buyer shall adjust each Monthly Contract Payment in accordance with the terms of this Agreement, including making adjustment for the fees set forth in Section 1.08 and any CAISO Charges.

(b) Subject to Section 4.01(a), Buyer shall provide a payment statement within 30 days after the last Business Day of each calendar month, which statement shall include Buyer's payment to Seller and a calculation thereof.

(c) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO, Buyer shall recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading. Buyer shall then recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to a subsequent monthly statement that is calculated after Buyer's recomputation using corrected measurements. If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on a subsequent monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's statement until such amount is fully collected by Buyer.

(d) Buyer may deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(e) Except as otherwise provided for in this Agreement, if, within 90 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete. If Seller timely identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the

underpayment caused by the error and add the underpayment to a subsequent monthly statement that is calculated. If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to a subsequent statement that is calculated. If the recomputation results in a net amount still owing to Buyer after applying the overpayment, a subsequent statement shall show a net amount owing to Buyer.

(f) Notwithstanding anything to the contrary in this Agreement, if any payment statement shows amounts owed by Seller to Buyer, Buyer may, at its option, apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

(g) Notwithstanding anything to the contrary in this Agreement, for the entire period during which Seller fails to materially comply with any provision set forth in Exhibit C, Seller shall be responsible for all CAISO Charges; *provided, however*, that if Seller complies fully with Exhibit C, Buyer shall pay all CAISO Charges (except those CAISO Charges for which Seller is responsible under Exhibit E) for up to 1 MW of deviation of Seller's Forecast from the Metered Energy, and Seller shall be responsible only for CAISO Charges attributable to such deviations in excess of 1 MW.

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement 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 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankrupt; or ~~provided that, this Section 6.01(a)(iv) shall not apply with respect to Buyer until Buyer's exit from the Chapter 11 Cases has occurred; or~~

(v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; ~~provided that, this Section 6.01(a)(v) shall not apply with respect to Buyer until Buyer's exit from the Chapter 11 Cases has occurred.~~

(b) With respect to Seller:

(i) The total quantity of Metered Energy in any Term Year is less than 10% of the Expected Term Year Energy Production;

(ii) Seller delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement, electric energy that was not generated by the Generating Facility;

(iii) The Term Start Date does not occur within 18 months of the Effective Date, if Seller is a New Eligible CHP Facility, or within 6 months of the Effective Date, if Seller is an Existing Eligible CHP Facility; *provided, however*, that this 18-month or 6-month period shall be extended on a day-for-day basis for any delay caused solely by Buyer's failure to perform its obligation(s) under this Agreement or excused solely as a result of Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), as to which, in either case, Seller has notified Buyer of the new expected Term Start Date;

(iv) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation;

(v) Seller materially fails to comply with any provision of Exhibit C and such failure is not cured within 30 days after Notice is provided by Buyer to Seller; or

(vi) Seller fails to maintain its status as an Eligible CHP Facility during the Term.

6.02 Site Host Changes. Notwithstanding Section 6.01 above, with respect to Seller, an Event of Default shall not include (a) cessation of operation by the Site Host, or (b) the inability of Site Host to use the waste heat from the Generating Facility in a manner that is consistent with the requirements of the Act. If the Site Host ceases operation or is unable to use the waste heat from the Generating Facility in a manner that is consistent with the Act for a period of 365 days or more, either Party may terminate this Agreement. If Seller terminates this Agreement pursuant to this Section 6.02, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one following the effective date of such termination.

6.03 Early Termination. There shall be no opportunity to cure a default other than as expressly provided in Section 6.01. If this Agreement is terminated pursuant to Section 2.02(b), then Buyer or the Non-Defaulting Party will have the right to (a) designate by no more than twenty (20) days' Notice to the Defaulting Party a date for the early termination of this Agreement (an "Early Termination Date"), (b) immediately suspend performance under this Agreement, and (c) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), subject to the terms of this Agreement.

ARTICLE SEVEN. MISCELLANEOUS

7.01 Representations, Warranties and Covenants. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;

(e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement; ~~*[Intentionally omitted]*;~~

(f) It is acting for its own account, and its decision to enter into this Agreement is based on its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and

(g) It has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement.

7.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It does not, and will not (i) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (ii) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party, except in order to satisfy the Site Host Load, or as required by other Applicable Laws.

(b) Throughout the Term: (i) it or its subcontractors will own or lease and Operate the Generating Facility; (ii) it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person; (iii) it will hold the rights to all of the Product; (iv) the Generating Facility will maintain its qualification as an Eligible CHP Facility; and (v) the Generating Facility will meet all applicable greenhouse gas emissions standards, as such standards may change from time to time.

(c) As of the Effective Date, there is not pending, or to its knowledge, threatened against it or any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement

7.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, Claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, Claim, cost, charge, demand or expense to the extent resulting from its own negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, Claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 7.01 and Section 7.02. Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 7.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, Claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other

costs of litigation), resulting from injury or death to any Person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 7.10. The inclusion of this Section 7.03(b) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 7.10.

(c) Each Party shall defend, save harmless and indemnify the other Party against any taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility for which such indemnifying Party is responsible.

(d) All indemnity rights survive the termination of this Agreement for 12 months.

7.04 Assignment. Seller may not assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld; *provided, however*, that Seller may, without the consent of Buyer (and without relieving Seller from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender(s) in connection with any financing if (a) such Lender(s) assumes the payment and performance obligations provided under this Agreement with respect to Seller, (b) such Lender(s) agree in writing to be bound by the terms and conditions of this Agreement, and (c) Seller delivers such tax and enforceability assurance as Buyer may reasonably request.

7.05 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE 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.

7.06 Arbitration. Except for matters relating to specific performance, injunctive relief or other equitable remedies, the Parties agree to submit to arbitration any and all matters in dispute or controversy among them concerning the terms of this Agreement. Unless the Parties agree to alternative arrangements, the selection of arbitrators and the procedure shall be in accordance with the commercial arbitration rules then in effect of the Judicial Arbitration and Mediation Services, Inc. Any award rendered shall be final and conclusive upon the Parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the Parties; *provided, however*, that each Party shall pay for and bear the costs of its own experts, evidence and counsel's fees. Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Francisco, California.

7.07 Notices. All Notices shall be made in accordance with this Section 7.07 and Exhibit F. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 7.07 are deemed given as follows: (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day; (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out; and (c) Notice by first class United States mail is deemed given two Business Days after the

postmarked date. Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

7.08 General.

(a) Except as may otherwise be 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. Unless expressly provided for in this Agreement, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages. This Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof. Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(b) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.

(c) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

(f) The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.

(g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(h) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(i) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties.

(j) Whenever this Agreement refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(k) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by

facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

(l) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Sections" and "Exhibits" refer to the corresponding Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Sections" in Exhibits A through G refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

(m) This agreement at all times shall be subject to such modifications as the California Public Utilities Commission may direct from time to time in the exercise of its jurisdiction.

7.09 Confidentiality. Neither Party may disclose any Confidential Information to a third party, other than: (a) to such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential; (b) to potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; (c) to Buyer's Procurement Review Group, as defined in D.02-08-071, subject to any applicable limitations and subject to a protective order applicable to Buyer's Procurement Review Group; (d) with respect to Confidential Information, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information; (e) in order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party; and (f) in order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC. In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Section 7.09(f), each Party shall use reasonable efforts to (i) notify the other Party before disclosing the Confidential Information, and (ii) prevent or limit such disclosure.

7.10 Insurance.

(a) General Liability Coverage. Seller shall, at its own expense and at all times from the Effective Date until the Term End Date, maintain in effect the following insurance policies and minimum limits of coverage (and such additional coverage as may be required by Applicable Law), in each case with insurance companies authorized to do business in California having an A.M. Best's Insurance Rating of A minus: VII or better, and in each case specifying Buyer as an insured on the policy. The insurance required in this Section 7.10 may be provided by any combination of Seller's primary and excess liability policies.

(i) Workers' compensation insurance, with statutory limits as required by California;

(ii) Employer's liability insurance, with at least the following limits: (1) bodily injury by accident - $1,000,000 each accident; (2) bodily injury by disease - $1,000,000 policy limit; and (3) bodily injury by disease - $1,000,000 each employee;

(iii) Commercial general liability insurance, written on an "occurrence" (not a claims-made) basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement. This commercial general liability insurance must (1) bear a combined single

limit per occurrence and annual aggregate of not less than $1,000,000, exclusive of defense costs, for all coverages, (2) contain standard cross-liability or severability of interest provisions, and (3) contain no explosion, collapse, or underground exclusion;

(iv) Commercial automobile liability insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence. This commercial automobile liability insurance must cover liability arising out of the use of all owned, non-owned and hired automobiles; and

(v) Excess liability insurance written on an "occurrence" (not "claims made") basis and providing coverage excess of the underlying employer's liability, commercial general liability, and commercial automobile liability insurance, on terms at least as broad as the underlying coverage with limits of not less than $4,000,000 per occurrence and in the annual aggregate.

(b) The insurance required in this Section 7.10 applies as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, despite of any provision in Seller's insurance to the contrary. Carriers furnishing the required insurance must waive all rights of recovery from or subrogation against Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, employees and insurers. The insurance required in Section 7.10(a) must name Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents and employees additional insureds with respect to all third party liabilities arising out of Seller's construction, use or ownership of the Generating Facility.

(c) Within 30 days of the Effective Date, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to the Buyer certificates of insurance in forms reasonably acceptable to Buyer, establishing that Seller's policies provide the coverage and limits of insurance required under this Section 7.10 and that these policies will be in full force and effect as of the Effective Date, continuing until the end of the Term. Seller's insurance obtained in accordance with this Section 7.10 may only be terminated, expire or materially altered upon 30 days' prior Notice to Buyer.

(d) If any of the required insurance coverages contain aggregate limits applying to other operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, Claim, settlement or judgment against such insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. Governmental entities that have an established record of self-insurance may provide the required coverage through self insurance.

(e) If Seller fails to comply with any of the provisions of this Section 7.10, Seller shall, among other things and without restricting Buyer's remedies under the law or otherwise, at its own cost, defend, indemnify and hold harmless Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, from and against any and all liability, damages, losses, Claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property to the extent that Buyer would have been protected had Seller complied with all of the provisions of this Section.

7.11 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

This agreement is effective when accepted and executed by PG&E.

Seller's Name	Buyer's Name **A California Corporation**
Seller's business registration	Buyer's business registration
Authorized by (Print)	Authorized by (Print)
Signature	Signature
Title	Title
Date	Date

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"AB 1613 Decisions" means the decisions issued in R.08-06-024.

"Act" has the meaning set forth in the Recitals.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this definition, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Applicable Law" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to any Party, the Generating Facility or the terms of this Agreement.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.03, as may be adjusted from time to time.

"Availability Standards" means the standard set forth in the CAISO Tariff setting forth criteria for determining if a Resource Adequacy Resource is subject to Non-Availability Charges or Availability Incentive Payments (each as defined in the CAISO Tariff), under the CAISO Tariff.

"Average Higher Heating Value MPR Heat Rate" means the heat rate equal to 6,924 Btu/kWh, or 6.924 mmbtu/MWh, per CPUC Resolution E-4298, which heat rate will be modified in this Agreement if there is any modification thereto by the CPUC or other authorized Governmental Authority.

"Bankrupt" means with respect to any Person, such Person:

(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 (which petition is not dismissed within 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.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Tariffs" means the entire body of effective rates, fees, rentals, charges, and rules collectively of PG&E, including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, rules, and sample forms.

"CAISO" means the California Independent System Operator Corporation.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter system(s), including all associated metering transformers and related appurtenances, as required by the CAISO (or, to the extent that the CAISO's metering requirement does not apply, Prudent Electrical Practices) and furnished by Seller, and which (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) is a time-of-use meter capable of measuring the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy the Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO-declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling, Availability Standards or deliveries from the Generating Facility under this Agreement.

"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.

"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

"CARB" means the California Air Resources Board

"CEC" means the California Energy Commission.

~~"Chapter 11 Cases" means Buyer's Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19-30089 (DM).~~

"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may furnish at its discretion, as set forth in Section 3.10(b), and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"Claiming Party" has the meaning set forth in Section 5.02.

"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 before or after the termination of this Agreement.

"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

"Control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power

"CPUC" means the California Public Utilities Commission.

"Decision" means CPUC Decision ("D") 07-09-040.

"Defaulting Party" has the meaning set forth in Section 6.01(a).

"Delivery Point" has the meaning set forth in Section 1.06.

"Direct GHG Compliance Costs" mean any taxes, charges or fees imposed by an authorized Governmental Authority with jurisdiction over the Seller or the Generating Facility, and levied directly on the Generating Facility for GHG emissions attributable to its Operations.

"Early Termination Date" has the meaning set forth in Section 6.03(a).

"Effective Date" has the meaning set forth in the Preamble.

"Eligible CHP Facility" means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, (1) meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code §2843 and, (2) meets the requirements of 18 Code of Federal Regulations §292.201, et seq., unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Emergency" means an actual or imminent condition or situation which (a) is defined and declared by the CAISO or Transmission Provider, (b) jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider's electric system, (c) requires automatic or immediate manual action to prevent or limit loss of load or generation supply, or (d) poses a threat to public safety.

"Event of Default" has the meaning set forth in Section 6.01.

"Existing Eligible CHP Facility" means an Eligible CHP Facility that, during the entire Term, (1) satisfies the provisions of the Act as implemented by the CEC pursuant to Public Utilities Code Section 2843 in the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA, unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Expected Term Year Energy Production" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.05.

"FERC" means the Federal Energy Regulatory Commission.

"Forced Outage" has the meaning set forth in the CAISO Tariff.

"Force Majeure" means any event or circumstance (that is not anticipated as of the Effective Date) to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Force Majeure does not include: (a) a failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure; (b) failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility (provided, however, that failure or delay in the granting of permits, to the extent such failure or delay is not caused by action or inaction of Seller, qualifies as a Force Majeure for purposes of this Agreement); (c) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or (d) a lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

"Forecast" means the hourly forecast of the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, net of the Site Host Load and Station Use.

"Free Allowance" means any GHG Emissions Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

"Generating Facility" means the Generating Unit(s) comprising Seller's power plant (as more particularly described in Section 1.02 and Exhibit G), including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

"Generation Operations Center" means the location of Buyer's real-time operations personnel.

"GHG" is an abbreviation for "greenhouse gas" which means emissions released into the atmosphere of carbon dioxide (CO2), nitrous oxide (N2O) and methane (CH4), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a metric ton of CO2-equivalent, in order to allow comparison between the different effects of gases on the environment; provided, however, that the definition of the term "Greenhouse Gas", as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority

"GHG Emissions Allowance" means a limited tradable authorization (whether in the form of a credit, allowance, or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a Related Entity of Seller, which respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

"GHG Emissions Cap" means the product of (a) the rate for tonnes of CO2 per MMBtu of natural gas, 0.0531 tonnes/mmbtu, times (b) the Average Higher Heating Value MPR Heat Rate in mmbtu/MWh.

"Governmental Authority" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

"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;

(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.

"High-Value Area" means a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC, as defined in Exhibit B, Section 6.

"Holidays" means "NERC Holidays" as defined in Exhibit B, Section 5. "Time of Delivery Periods and Allocation Factors."

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; *provided, however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"Lender" means any financial institutions or successors in interest or assignees that provides development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.

"Location Bonus" is described in Section 6 of Exhibit B.

"Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

"Metered Energy" means the total electric energy expressed in kWh, in excess of Station Use and Site Host Load and measured by the CAISO-Approved Meter(s) or Check Meter(s), (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter), as applicable, at the Generating Facility for the specified Metering Interval.

"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters, as applicable.

"Monthly Contract Payment" has the meaning set forth in Section 4.01(a).

"NERC" means the North American Electric Reliability Corporation.

"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.

"Non-Defaulting Party" has the meaning set forth in Section 6.03.

"Non-Peak Hours" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in Exhibit B, "5. Time of Delivery Periods and Allocations Factors" or Exhibit B(1), "4. Time of Delivery Periods" as determined pursuant to Section 1.07.

"Notice" means notices, requests, statements or payments provided in accordance with Section 7.07 and Exhibit F.

"OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement-quality meter data or its successor.

"Operate", "Operating" and "Operation" mean to provide all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

"Outage Schedule" has the meaning set forth in Section 2(a) of Exhibit D.

"Outage Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer in accordance with Exhibit D.

"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Peak Months" means June, July, August and September.

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

"Person" or "Persons" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Physical Trade" has the meaning set forth in the CAISO Tariff.

"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

"Power Product" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

"Power Rating" means the electrical power output value indicated on the generating equipment nameplate.

"Product" means the Power Product, Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

"Project" means the Generating Facility.

"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could

reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that: (a) equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs; (b) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site; (c) preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools; (d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (e) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (f) equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, codified at 16 United States Code ("USC") §824a-3, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC decisions, orders, and rules implementing PURPA, as amended from time to time, including 18 Code of Federal Regulations ("CFR") Part 292.201, et seq., unless the Qualifying Facility is a public agency exempt from FERC jurisdiction under 16 USC §824(f).

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(e)(2), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in Resource Adequacy Rulings, 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.

"Resource Adequacy Benefits" means the rights and privileges attached to the generating capacity of the Generating Facility that, in accordance with Public Utilities Code Section 2841(f), count toward satisfying Buyer's Resource Adequacy obligations.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 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 CPUC decisions, rulings, laws, rules or regulations may be Amended or modified from time to time during the Term.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of preparing a schedule based on Seller's forecast and notifying, requesting, and confirming the CAISO-Approved Quantity with the CAISO, the electric energy delivered from the Generating Facility.

"Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

"Scheduling Coordinator" means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.

"SC Set-Up Fee" has the meaning set forth in Section 1.08.

"Seller" has the meaning set forth in the Preamble.

"Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035.

"Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective.

"Simple Interest Payment" means a dollar amount calculated by multiplying the: (a) dollar amount on which the Simple Interest Payment is based; by (b) the Interest Rate; by (c) the result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02 and Exhibit G.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a lease, the term of which begins on or before the Term Start Date and extends at least through the Term End Date, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

"Site Host" means any Person purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties pursuant to California Public Utilities Code Section 218(b).

"SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

"Station Use" means the electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, including transformation losses to power such equipment and other necessary loads.

"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility, all in accordance with the CAISO Tariff.

"Term" has the meaning set forth in Section 1.01.

"Term End Date" has the meaning set forth in Section 1.01.

"Term Start Date" has the meaning set forth in Section 1.01.

"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

"TOD Period" means the time of delivery period used to calculate the Monthly Contract Payment set forth in Exhibit B or Exhibit B(1), as determined by Section 1.07.

"Trading Day" means the day in which Day-Ahead (as defined in the CAISO Tariff) trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).

"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Buyer from the Delivery Point to the CAISO-Controlled Grid.

"Web Client" has the meaning set forth in Section 2(a) of Exhibit D.

"WECC" means the Western Electricity Coordinating Council.

**** End of Exhibit A ****

EXHIBIT B

This Exhibit B establishes the avoided cost price adopted and implemented by the CPUC in CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033).

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period payment 1st TOD Period +
TOD Period payment 2nd TOD Period +
TOD Period payment 3rd TOD Period +
Location Bonus

All TOD Period Payments shall be calculated as set forth in Section 2 of this Exhibit B.

The "1st TOD Period," "2nd TOD Period," and "3rd TOD Period" subscripts refer to the three TOD Periods that apply for the applicable calculation month, as set forth in Section 5 of this Exhibit B.

The Location Bonus, if applicable, shall be calculated as set forth in Section 6 of this Exhibit B.

2. TOD Period Payment Calculation

Each monthly TOD Period Payment is calculated in dollars, using the terms defined below, as follows:

(Fixed price component + Variable price component) * (TOD Factor) *
metered kWh exported during the TOD Period during the month

The Metered Energy per hour used for payments shall be limited to 5,000 kW times 1 hour. Additionally, once the Metered Energy delivered during any Term Year equals the As-Available Contract Capacity at 100% capacity factor applied over 8,760 hours, no further payments will be calculated or paid for the remaining TOD Periods within any remaining months of the current Term Year.

3. Fixed Price Component

The Fixed Price Component for all TOD Periods shall be the amount in the following table for the year of the Term Start Date. The fixed price component does not escalate during the term of the Agreement.

Year	$/kwh
2012	0.02000
2013	0.02033
2014	0.02068
2015	0.02104
2016	0.02140
2017	0.02142
2018	0.02145

Year	$/kwh
2019	0.02147
2020	0.02149
2021	0.02151
2022	0.02153
2023	0.02155

4. Variable Price Component Calculation

(a) Monthly bidweek gas price shall be calculated as the average of monthly bidweek gas price indices at PG&E Citygate as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly

(b) Intrastate gas transportation rate shall be the tariffed intrastate gas transportation rate for large electric generators as published in the PG&E Gas Tariffs G-EG and G-SUR.

(c) Heat Rate, pursuant to D. 09-12-042, shall be equal to:

6,924 Btu/kWh

(d) Variable O&M shall be the amount in the following table for the year in which the payment is being calculated. For years after 2023, Variable O&M shall be the 2023 payment multiplied by 1.02, compounded for each year beyond 2023.

Variable O&M	
Year	**$/kwh**
2012	0.00311
2013	0.00316
2014	0.00322
2015	0.00329
2016	0.00335
2017	0.00342
2018	0.00349
2019	0.00356
2020	0.00364
2021	0.00371
2022	0.00377
2023	0.00384

5. Time of Delivery Periods and Allocation Factors.

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

	TOD PERIOD		
Monthly 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 paragraph, 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. In accordance with all other terms of this Exhibit B, the following Time of Delivery Factors ("TOD Factors") shall be used in the TOD Period Payment Calculation for each of the specified TOD Periods in which Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	2.38	1.12	0.59
B. Oct. – Dec.; Jan. & Feb.	1.10	0.94	0.66
C. Mar. – May	1.22	0.90	0.61

6. <u>Location Bonus</u>.

If the Generating Facility is located in a "High-Value Area" as set forth below, each Monthly Contract Payment for the entire Term shall receive a Location Bonus calculated as follows:

Location Bonus = Sum of monthly TOD Periodn Payments * 0.10

The Generating Facility shall be deemed to be located in a High-Value Area if it is interconnected to Buyer's electric system at a location which, in the year of the Effective Date, is identified pursuant to CPUC D. 09-12-042 (as modified by other AB 1613 Decisions) as a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC.

**** End of Exhibit B****

Exhibit B (1)
Monthly Contract Payment Calculation

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period Energy Payment $_{\text{1st TOD Period}}$ +
TOD Period Energy Payment $_{\text{2nd TOD Period}}$ +
TOD Period Energy Payment $_{\text{3rd TOD Period}}$ +
TOD Period Energy Payment $_{\text{4th TOD Period}}$ +
TOD Period Capacity Payment $_{\text{1st TOD Period}}$ +
TOD Period Capacity Payment $_{\text{2nd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{3rd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{4th TOD Period}}$

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit B (1).

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit B (1).

The "1st TOD Period," "2nd TOD Period," "3rd TOD Period" and "4th TOD Period" subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit B (1).

2. TOD Period Energy Payment Calculation.

(a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{FirstHour}^{LastHour} [(EP-LA) \times APE + LA \times MA]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit B (1), in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit B (1).

LA = Hourly Location Adjustment price, as set forth in SRAC.

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no additional hourly energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

(b) Factor "EP" in Section 2(a) of this Exhibit B (1). The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in SRAC.

(c) Factor "APE" in Section 2(a) of this Exhibit B (1). The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = ACP x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit B (1), in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision:

Capacity Payment Allocation Factors		
Season	*TOD Period*	*Factor*
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

(b) Factor "ACP" in Section 3(a) of this Exhibit B (1). The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars

= AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit B (1), in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	*Price $/kW-yr*
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

(c) Factor "AAC" in Section 3(b) of this Exhibit B (1). The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit B (1), in kWh per hour.

(d) Factor "MAC" in Section 3(c) of this Exhibit B (1). The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit B (1), in kWh.

PH = The total number of hours in the TOD Period (period hours).

(e) Factor "LE" in Section 3(d) of this Exhibit B (1). The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{FirstHour}^{LastHour} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit B (1), in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor "E" in Section 3(e) of this Exhibit B (1). The Allowed Hourly Energy is calculated as follows:
ALLOWED HOURLY ENERGY in kWh = 1 hour x CC

Where:

CC = The As-Available Contract Capacity, as set forth in Section 1.03, in kW.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	**Period A – Summer May 1 - October 31**	**Period B - Winter November 1 - April 30**	**Applicable Days**
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

*** End of Exhibit B (1) ***

EXHIBIT C
Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff, as applicable;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements.

   (a) 30-Day Forecast.

   No later than 30 days before the Term Start Date (or, in the case of a New Eligible CHP Facility, no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the Term Start Date (or, if applicable, Parallel Operation) using the Web Client.

   In the case of a New Eligible CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

   If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center at the e-mail address or telephone number(s) listed in Exhibit F.

   The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

   (i) Not include any anticipated or expected electric energy losses between the Delivery Point and the CAISO-Controlled Grid; and

   (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

   (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit C, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall

use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit F.

(c) Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage and a Real-Time Forced Outage, which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit C must be submitted to Buyer via the Web Client by no later than:

(i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;

(ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or

(iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change, with notification also by phone to Seller's Real Time Scheduling Desk.

Seller's updated Forecast must contain the following information:

(w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected energy production change;

(x) The expected ending date and time of the event:

(y) The expected energy production, in MWh; and

(z) Any other information required by the CAISO as communicated to Seller by Buyer.

**** End of Exhibit C ****

EXHIBIT D
Outage Schedule Submittal Requirements

1. General Requirements. The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to (a) comply with the CAISO Tariff, (b) accommodate changes to their respective generation technology and organizational structure, and (c) address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements. Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

   (a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client") only if web-based system is not available.

   (b) Seller shall provide the following information for each proposed planned outage: (i) Start date and time; (ii) End date and time; and (iii) Capacity online, in MW, during the planned outage in addition to the information required by the CAISO, as indicated by the Buyer-provided web-based system.

   (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.

   (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

   (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

   (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

3. Restriction on Planned Outages. During the Peak Months, Seller may schedule and utilize no more than 12 hours of outages per Peak Month, and only during the non-peak hours of the Peak Months.

**** End of Exhibit D ***

EXHIBIT E
CAISO Charges

Subject to Section 4.01(g), Buyer shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if, on or after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller in violation of this Agreement, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site Host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or,

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to curtail output, or reschedule a planned outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

5. Buyer as Seller's Scheduling Coordinator is subject to either Non-Availability Charges or Availability Incentive Payments, or both, during a month within the Resource Adequacy compliance year, as defined by CAISO Tariff, then any such charges or payments shall be offset and the net value shall be entered into Seller's Account for the applicable month pursuant to Section 3.21.

**** End of Exhibit E ****

EXHIBIT F
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	

Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit F ****

EXHIBIT G
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

**** End of Exhibit G ****

(End of Simplified Contract for Eligible CHP)

Pacific Gas and Electric Company

DISTRIBUTION:
- ☐ XXXX
- ☐ XXXX
- ☐ XXXX
- ☐ XXXX
- ☐ _____

REFERENCE:
_____
_____
_____
_____
_____

POWER PURCHASE AND SALE AGREEMENT

CONTRACT FOR ELIGIBLE CHP FACILITIES WITH A POWER RATING OF LESS THAN 500 KW

~~**[Note: Modifications to this agreement have been made to address United States Bankruptcy Court Northern District Chapter 11 cases 19-30088 (DM) and 19-30089 (DM) in accordance with CPUC Resolution E-4995, issued March 18, 2019.]**~~

PREAMBLE

This Power Purchase and Sale Agreement (this "Agreement") by and between [Buyer's name], a California corporation ("Buyer"), and [Seller's name], a [Seller's form of business entity and state of registration] ("Seller"), is dated as of [Date of execution] (the "Effective Date"). Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A. Exhibits A through G inclusive are hereby incorporated into and made a part of this Agreement.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill its obligations under the Act and the Decisions issued in Rulemaking ("R.") 08-06-024 ("AB 1613 Decisions"), and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

{Buyer Comment: If the Term is greater than or equal to five years and if the Generating Facility provides baseload generation, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

ARTICLE ONE. SPECIAL CONDITIONS

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends on [Date] (the "Term End Date"). The Term Start Date must be on the first day of a calendar month. If the Generating Facility is (a) a New Eligible CHP Facility, the Term Start Date must occur within 18 months of the Effective Date, or (b) an Existing Eligible CHP Facility, the Term Start Date must occur within 6 months of the Effective Date. Subject to the limitation set forth in the immediately preceding sentence, Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least three months before such Term Start Date. The Term must be no less than one year and no more than 10 years.

1.02 Generating Facility. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility], and which is further described in Exhibit G. The Generating Facility is located at [Generating Facility address], which must be located within Buyer's service territory.

1.03 As-Available Contract Capacity; Power Rating. The As-Available Contract Capacity equals [___] kW. (The As-Available Contract Capacity must be less than 500 kW.) The Power Rating of the Generating Facility must be less than 500 kW. Seller has no obligation under this Agreement to produce or deliver firm energy or capacity.

1.04 Site Host Load. The Site Host Load is expected to equal, on average, [___] kW. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year, which amount may change from time to time; *provided, however*, that the As-Available Contract Capacity shall always be less than 500 kW.

1.05 Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [___] kWh. The actual energy production of the Generating Facility may change from time to time; *provided, however*, that the Expected Term Year Energy Production may not exceed the As-Available Contract Capacity at 100% capacity factor applied over the Term Year.

1.06 Delivery Point. The delivery point is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept the Power Product at the Delivery Point. Title to and risk of loss related to the Power Product shall transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs, exclusive of line losses (if any) and interconnection costs, to deliver the power from the Delivery Point to the point of interconnection between the Buyer's distribution or transmission facilities and the CAISO- Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement) and any line losses from the Delivery Point to the Interconnection Point. Any line losses incurred or avoided from the Delivery Point to the Interconnection Point shall be determined as part of the interconnection process.

1.07 Power Product Prices.

(a) Monthly Contract Payment for the Power Product shall be calculated in accordance with Exhibit B.

(b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit B(1).

(c) A Generating Facility subject to paragraph 1.07(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof.

(d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.07(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit B.

1.08 Scheduling Coordinator. Buyer may elect to become the Scheduling Coordinator under this Agreement by providing 30 days prior notice to Seller. If Buyer elects to become the Scheduling Coordinator under this Agreement, Buyer shall take all steps necessary to be authorized as the Scheduling Coordinator during the

Term (or remaining portion thereof, as applicable) and Seller shall cooperate with Buyer in good faith to assure that Buyer is authorized as the Scheduling Coordinator during the Term (or remaining portion thereof, as applicable). If Buyer elects to become the Scheduling Coordinator under this Agreement, in accordance with Section 4.01, Buyer shall invoice to Seller and set off against future payments to Seller a fee (the "SC Set-Up Fee") equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable. Such Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee. The actual cost will be a simple pass-through to Seller of Buyer's actual costs. If Buyer elects to become the Scheduling Coordinator under this Agreement, Buyer estimates that the SC Set-up Fee for this Agreement will equal $2,000.00 or less.

1.09 GHG Emissions Allowances. Seller elects one of the following: ___(a) ___(b), provided however, that this Section 1.09 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

(a) Seller shall manage its own GHG Emissions Allowances and request reimbursement from Buyer for such GHG Emissions Allowances in accordance with Section 3.03; or

(b) To have Buyer purchase GHG Emissions Allowances on behalf of Seller upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033). Until such time, Seller shall manage its own GHG Emissions Allowances and request reimbursement from Buyer for such GHG Emissions Allowances in accordance with and subject to the requirements of Sections 3.03(b) and (c).

1.10 Decertification from AB 1613 Program. In the event of Seller's default pursuant to Section 6.01(b)(vi) due to CEC decertification under the Public Utilities Code 2843, so long as at the time of default, Seller demonstrates qualifying facility status under PURPA and notwithstanding Section 2.02(b), upon termination of this Agreement, Seller's continued conveyance of Power Product and acceptance of payment shall constitute Seller's acceptance of any applicable mandatory must-purchase contract available to qualifying facilities under PURPA. Seller shall be paid the short run avoided cost rate for energy and as-available capacity applicable under such contract at the time of decertification.

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Before the Term Start Date, Seller must demonstrate to Buyer that Seller has satisfied all of the requirements necessary for Seller to Operate the Generating Facility in accordance with the terms of this Agreement (including Section 7.10), Applicable Law, the CAISO Tariff (to the extent applicable), and any other applicable tariff, legal, and regulatory requirements.

2.02 Termination Rights of the Parties.

(a) Termination Rights of Seller. Seller has the right to terminate this Agreement on Notice if Seller's Site Host relocates its business outside the State of California or terminates its business operations in California; *provided, however*, that if Seller terminates this Agreement in accordance with this Section 2.02(a), Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year from the effective date of such termination. The

termination of this Agreement becomes effective five Business Days after Seller delivers such Notice.

(b) Event of Default. Except as provided in Section 1.10, in the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.03 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year following the date of such termination.

(c) End of Term. This Agreement terminates at midnight of (i) the Term End Date, or (ii) a termination date agreed to in writing by the Parties.

(d) Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement.

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for Buyer's benefit throughout the Term.

3.02 Resource Adequacy. In accordance with Public Utilities Code section 2841(f), Seller grants, pledges, assigns and otherwise commits to Buyer the generating capacity of the Generating Facility to the extent necessary in order for Buyer to count such generating capacity to meet its Resource Adequacy obligations under any Resource Adequacy Ruling. Seller shall comply with CPUC and CAISO requirements to provide Resource Adequacy Benefits; provided however,

(i) If such requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge.

(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.

(iii) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder

process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.

3.03 GHG Emissions Compliance Costs.

(a) Direct GHG Compliance Costs.

(i) During the Term, Buyer shall reimburse Seller for any Direct GHG Compliance Costs, other than GHG Emissions Allowances, which are separately addressed in the sections below, attributable to the Generating Facility for GHG emissions associated with the Power Product, within forty-five (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, establishing that:

(1) Seller is actually liable for the Direct GHG Compliance Costs for GHG emissions attributed to the Power Product; and

(2) Direct GHG Compliance Costs were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose Direct GHG Compliance Costs where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility.

(ii) Buyer is not liable for reimbursement to Seller for Direct GHG Compliance Costs for GHG emissions associated with the Power Product if the GHG emissions for which Seller seeks reimbursement exceed the GHG Emissions Cap and based on the actual delivered Power Product.

(iii) The Generating Facility's GHG emissions shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended.

(b) GHG Allowance Costs. Buyer shall bear the cost of GHG Emissions Allowances for GHG emissions attributable to the Generating Facility and associated with the Power Product through either reimbursement, or direct procurement, as indicated at Section 1.08, provided that:

(i) Seller is actually required to procure such GHG Emissions Allowances for GHG emissions attributed to the Power Product;

(ii) Such GHG Emissions Allowances compliance requirements were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose GHG Emissions Allowances requirements where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility;

(iii) The Generating Facility's GHG emissions, less any Free Allowance for which the Generating Facility is eligible, shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended;

(iv) Buyer's responsibility for GHG Emissions Allowances is limited to GHG emissions associated with the Power Product for which the Seller or the Generating Facility was not eligible to receive Free Allowances; and

(v) Buyer's responsibility for GHG Emissions Allowances will not exceed the GHG Emissions Cap based on the actual delivered Power Product.

(c) Reimbursement of Seller for GHG Emissions Allowances. If Seller has elected to manage its own GHG Emissions Allowances in Section 1.09, then, during the Term, Buyer shall reimburse Seller to the extent of Buyer's responsibility for GHG Emissions Allowances in accordance with Section 3.03(b) ("applicable quantity") within forty-fine (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, requesting reimbursement. If the CPUC has specified an index for use in determining the price to be paid for GHG Emissions Allowances, in no event shall Buyer's total payment to Seller for the applicable quantity exceed the total payment that would be due to Seller if the applicable quantity were purchased at the index price at the relevant time period.

(d) Buyer's Purchase of GHG Emissions Allowances. If Seller has elected to have Buyer purchase GHG Emissions Allowances for the Generating Facility in Section 1.09, then, during the Term and upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to the AB 1613 Decisions, Buyer shall purchase GHG Emissions Allowances for Seller for the applicable quantity for the remainder of the Term in accordance with and subject to such guidelines, as may be revised from time to time.

(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

3.04 Exclusive Rights. Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Product to any Person other than Buyer.

3.05 Site Control. Within 60 days of the Effective Date and until the Term End Date, Seller shall have Site Control.

3.06 Permits. Seller shall obtain and maintain all Permits necessary for the Seller to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.07 Interconnection. Seller shall, at its own cost, obtain and maintain all interconnection rights and an interconnection agreement and any related Governmental Authority approval(s) required to enable interconnection with Buyer's electric system and Parallel Operation of the Generating Facility.

3.08 CAISO Relationship. If Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff, then Seller shall comply with all applicable provisions of the CAISO Tariff, including securing and maintaining in full force all CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

3.09 Generating Facility Modifications. Seller shall provide at least 30 days advance Notice to Buyer before making any material modification to the Generating Facility, which Notice will include a description of any change in actual energy production of the Generating Facility and in the Site Host Load anticipated as a result of the modification. Notwithstanding the foregoing, Seller shall make no modification to the Generating Facility that would prevent Seller from complying with the terms of this Agreement.

3.10 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test the CAISO-Approved Meter pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one or more Check Meters, as applicable, on the high voltage side of the substation associated with the Generating Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. The Check Meter shall be interconnected with Buyer's communication network to permit (i) periodic, remote collection of revenue quality meter data, and (ii) back-up real time transmission of operating-quality meter data through the Telemetry System. Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal may only be broken by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every 36 months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes. Buyer may compare the Check Meter data to the CAISO-Approved Meter data. If the deviation between the CAISO-Approved Meter data (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests. For the avoidance of doubt, the Check Meter is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and Check Meter data shall only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is checked or recertified.

3.11 Provision of Information. Seller shall promptly provide to Buyer all documents reasonably requested by Buyer relating to the Generating Facility (including site plan drawings and single-line diagrams), the administration of this Agreement, or in order for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.12 Operation. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) If Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff, comply with the requirements set forth in Exhibit C and Exhibit D that relate to participating generator obligations under the CAISO tariff;

(c) Use its commercially reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit C;

(d) Pay the CAISO Charges for which it is responsible under Exhibit E;

(e) Use reasonable efforts to respond to any instruction issued by the CAISO or the Transmission Provider or delivered to Seller by Buyer in response to an Emergency;

(f) On an annual basis from the Effective Date, provide electronically or in hard copy to Buyer, within 20 days of a request by Notice from Buyer, the following annualized operating records: total annual electricity generation (MWh/year), total annual useful thermal output (MMBtu/year), total annual fuel use (MMBtu-HHV), and fuel conversion factor (pounds of CO2 per million BTU). Seller shall also maintain and provide electronically or in hard copy to Buyer, within 20 days of a request by Notice from Buyer but not more than once per month, a copy of daily operating records limited to real power production, changes in operating status, and unusual conditions found during inspections.;

(g) Keep all Operating records to the extent required of an Eligible CHP Facility by any applicable CPUC or CEC order;

(h) If Buyer has elected to become Scheduling Coordinator pursuant to Section 1.08, at least 75 days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and

(i) Comply with all NERC reliability standards and requirements applicable to the generator owner and generator operator of the Generating Facility, if any.

3.13 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.14 Power Product Curtailments at Request of Scheduling Coordinator, Transmission Provider, or CAISO. Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from Seller's Scheduling Coordinator, the Transmission Provider, or the CAISO; *provided, however*, that if Buyer has elected to become Scheduling Coordinator pursuant to Section 1.08, Buyer, in its role as Scheduling Coordinator, shall issue such an instruction only when Buyer is expressly directed to curtail production of the Power Product by the CAISO or where Buyer reasonably believes that curtailment of the Power Product is required to comply with (a) its maintenance requirements and operating orders, (b) a CAISO Declared Over-Generation Condition, or (c) an Emergency. Whenever practicable, Buyer will use commercially reasonable efforts to provide Seller reasonable advance notice of the possibility that a reduction or interruption of deliveries may be required.

3.15 Eligible CHP Facility Status.

(a) To the extent required by Applicable Law, administration of this Agreement or program eligibility guidelines established by the CEC within thirty (30) Business Days following the Term Start Date or Notice from Buyer, Seller shall provide to Buyer certification from the CEC that the Generating Facility meets the applicable operating and efficiency standards for Eligible CHP Facilities for the applicable year.

(b) Seller shall take all necessary steps, including making or supporting timely filings with the appropriate Governmental Authority in order to maintain certification of the Eligible CHP Facility status of the Generating Facility throughout the Term.

(c) Seller shall provide to Buyer copies of all documentation, including calculations and verifiable supporting data provided to the appropriate Governmental Authority, which demonstrates the compliance of the Generating Facility with the Eligible CHP Facility operating and efficiency standards for the applicable year. Notwithstanding the foregoing, Seller shall provide Buyer with a copy of its Annual Performance Reporting Forms (CEC Form 2843 or its successor) within 5 days of submission to the CEC.

(d) Seller, unless a public agency, shall take all necessary steps, including making or supporting timely filings with FERC in order to maintain the qualifying facility status of the Generating Facility as required by 18 CFR §292.201, et seq., throughout the Term.

(e) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, each QF Seller shall provide to Buyer a copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.

3.16 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to (a) interconnect with the Transmission Provider's electric system, (b) transmit and deliver electric energy to the Delivery Point, or (c) own and operate any CAISO-Approved Meter.

3.17 Buyer's Access Rights. Buyer has the right to examine the Site, the Generating Facility and the Operating records for any purpose connected with this Agreement upon providing Seller with reasonable advance Notice under the circumstances.

3.18 Planned Outages. Seller shall schedule and utilize all planned outages in accordance with the procedures and subject to the limitations set forth in Exhibit D.

3.19 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

3.20 Allocation of Availability Incentive Payments and Non-Availability Charges. If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as defined and provided for by the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

ARTICLE FOUR. BUYER'S OBLIGATION TO PAY

4.01 Obligation to Pay.

(a) For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit B or Exhibit B (1), as determined pursuant to Section 1.07 *provided, however*, Buyer is not obligated to issue a payment to Seller until the amount due to Seller pursuant to this Agreement exceeds fifty dollars ($50.00)

after set-offs and adjustments in accordance with this Agreement. Buyer shall adjust each Monthly Contract Payment in accordance with the terms of this Agreement, including making adjustment for the fees set forth in Section 1.08 and any CAISO Charges.

(b) Subject to Section 4.01(a), Buyer shall provide a payment statement within 30 days after the last Business Day of each calendar month, which statement shall include Buyer's payment to Seller and a calculation thereof.

(c) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO, Buyer shall recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading. Buyer shall then recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to a subsequent monthly statement that is calculated after Buyer's recomputation using corrected measurements. If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on a subsequent monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's statement until such amount is fully collected by Buyer.

(d) Buyer may deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(e) Except as otherwise provided for in this Agreement, if, within 90 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete. If Seller timely identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to a subsequent monthly statement that is calculated. If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to a subsequent statement that is calculated. If the recomputation results in a net amount still owing to Buyer after applying the overpayment, a subsequent statement shall show a net amount owing to Buyer.

(f) Notwithstanding anything to the contrary in this Agreement, if any payment statement shows amounts owed by Seller to Buyer, Buyer may, at its option, apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

(g) Notwithstanding anything to the contrary in this Agreement, for the entire period during which Seller fails to materially comply with any provision set forth in Exhibit C, Seller shall be responsible for all applicable CAISO Charges; *provided, however*, that if Seller complies fully with Exhibit C, Buyer shall pay all CAISO Charges (except those CAISO Charges for which Seller is responsible under Exhibit E) for up to, but not including, 500 kW of deviation of Seller's Forecast from the Metered Energy, and Seller shall be responsible only for applicable CAISO Charges attributable to such deviations of 500 kW or more.

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement 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 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankrupt~~; provided that, this Section 6.01(a)(iv) shall not apply with respect to Buyer until Buyer's exit from the Chapter 11 Cases has occurred;~~ or

(v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party~~; provided that, this Section 6.01(a)(v) shall not apply with respect to Buyer until Buyer's exit from the Chapter 11 Cases 19-30088 (DM) and 19-30089 (DM) has occurred.~~

(b) With respect to Seller:

(i) The total quantity of Metered Energy in any Term Year is less than 10% of the Expected Term Year Energy Production;

(ii) Seller delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement, electric energy that was not generated by the Generating Facility;

(iii) The Term Start Date does not occur within 18 months of the Effective Date, if Seller is a New Eligible CHP Facility, or within 6 months of the Effective Date, if Seller is an Existing Eligible CHP Facility; *provided, however*, that this 18-month or 6-month period shall be extended on a day-for-day basis for any delay caused solely by Buyer's failure to perform its obligation(s) under this Agreement or excused solely as a result of Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), as to which, in either case, Seller has notified Buyer of the new expected Term Start Date;

(iv) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation;

(v) Seller materially fails to comply with any provision of Exhibit C and such failure is not cured within 30 days after Notice is provided by Buyer to Seller; or

(vi) Subject to Section 3.15, Seller fails to maintain its status as an Eligible CHP Facility during the Term.

6.02 Site Host Changes. Notwithstanding Section 6.01 above, with respect to Seller, an Event of Default shall not include (a) cessation of operation by the Site Host, or (b) the inability of Site Host to use the waste heat from the Generating Facility in a manner that is consistent with the requirements of the Act. If the Site Host ceases operation or is unable to use the waste heat from the Generating Facility in a manner that is consistent with the Act for a period of 365 days or more, either Party may terminate this Agreement. If Seller terminates this Agreement pursuant to this Section 6.02, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one following the effective date of such termination.

6.03 Early Termination. If an Event of Default has occurred, there will be no opportunity for cure except as specified in Section 6.01. The Party not in default (the "Non-Defaulting Party") will have the right to (a) designate by no more than twenty (20) days' Notice to the Defaulting Party a date for the early termination

of this Agreement (an "Early Termination Date"), (b) immediately suspend performance under this Agreement, and (c) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), subject to the terms of this Agreement.

ARTICLE SEVEN. MISCELLANEOUS

7.01 Representations, Warranties and Covenants. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;

(e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement; ~~[*Intentionally omitted*];~~

(f) It is acting for its own account, and its decision to enter into this Agreement is based on its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and

(g) It has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement.

7.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It does not, and will not (i) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (ii) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party, except in order to satisfy the Site Host Load, or as required by other Applicable Laws.

(b) Throughout the Term: (i) it or its subcontractors will own or lease and Operate the Generating Facility; (ii) it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person; (iii) it will hold the rights to all of the Product; (iv) the Generating Facility will maintain its qualification as an Eligible CHP Facility; and (v) the Generating Facility will meet all applicable greenhouse gas emissions standards, as such standards may change from time to time.

(c) As of the Effective Date, there is not pending, or to its knowledge, threatened against it or any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement.

7.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, Claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, Claim, cost, charge, demand or expense to the extent resulting from its own gross negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, Claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 7.01 and Section 7.02. Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 7.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, Claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any Person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 7.10. The inclusion of this Section 7.03(b) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 7.10.

(c) Each Party shall defend, save harmless and indemnify the other Party against any taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility for which such indemnifying Party is responsible.

(d) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02.

(e) All indemnity rights survive the termination of this Agreement for 12 months.

7.04 Assignment. Seller may not assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld; *provided, however*, that Seller may, without the consent of Buyer (and without relieving Seller from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender(s) in connection with any financing if (a) such Lender(s) assumes the payment and performance obligations provided under this Agreement with respect to Seller, (b) such Lender(s) agree in writing to be bound by the

terms and conditions of this Agreement, and (c) Seller delivers such tax and enforceability assurance as Buyer may reasonably request.

7.05 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE 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.

7.06 Arbitration. Except for matters relating to specific performance, injunctive relief or other equitable remedies, the Parties agree to submit to arbitration any and all matters in dispute or controversy among them concerning the terms of this Agreement. Unless the Parties agree to alternative arrangements, the selection of arbitrators and the procedure shall be in accordance with the commercial arbitration rules then in effect of the Judicial Arbitration and Mediation Services, Inc. Any award rendered shall be final and conclusive upon the Parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the Parties; *provided, however*, that each Party shall pay for and bear the costs of its own experts, evidence and counsel's fees. Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Francisco, California.

7.07 Notices. All Notices shall be made in accordance with this Section 7.07 and Exhibit F. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 7.07 are deemed given as follows: (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day; (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out; and (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date. Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

7.08 General.

(a) Except as may otherwise be 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. Unless expressly provided for in this Agreement, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages. This Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof. Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(b) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.

(c) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

(f) The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.

(g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(h) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(i) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties.

(j) Whenever this Agreement refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(k) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

(l) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Sections" and "Exhibits" refer to the corresponding Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Sections" in Exhibits A through G refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

(m) This agreement at all times shall be subject to such modifications as the California Public Utilities Commission may direct from time to time in the exercise of its jurisdiction.

7.09 Confidentiality. Neither Party may disclose any Confidential Information to a third party, other than: (a) to such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential; (b) to potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; (c) to Buyer's Procurement Review Group, as defined in D.02-08-071, subject to any applicable limitations and subject to a protective order applicable to Buyer's Procurement Review Group; (d) with respect to Confidential Information, the CPUC, the CEC or

the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information; (e) in order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party; and (f) in order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC. In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Section 7.09(f), each Party shall use reasonable efforts to (i) notify the other Party before disclosing the Confidential Information, and (ii) prevent or limit such disclosure.

7.10 Insurance.

(a) General Liability Coverage.

(i) Seller shall maintain during the performance hereof, General Liability Insurance of not less than $1,000,000.00 if the Generating Facility's Nameplate is over 100 kW, $500,000.00 if the Generating Facility's Nameplate is over 20 kW to 100kW or $100,000.00 if the Generating Facility's Nameplate is 20 kW or below of combined single limit or equivalent for bodily injury, personal injury, and property damage as the result of any one occurrence.

(ii) 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.

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

(b) Additional Insurance Provisions.

(i) Evidence of coverage described above in Section 7.10(a) shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by Buyer.

(ii) Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

(iii) Seller shall furnish the required certificates and endorsements to Buyer prior to commencing operation.

(iv) 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

7.11 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a

Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

This agreement is effective when accepted and executed by PG&E.

Seller's Name	Buyer's Name **A California Corporation**
Seller's business registration	Buyer's business registration
Authorized by (Print)	Authorized by (Print)
Signature	Signature
Title	Title
Date	Date

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"AB 1613 Decisions" means the decisions issued in R.08-06-024.

"Act" has the meaning set forth in the Recitals.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this definition, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Applicable Law" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to any Party, the Generating Facility or the terms of this Agreement.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.03, as may be adjusted from time to time.

"Availability Incentive Payments" has the meaning set forth in the CAISO Tariff.

"Availability Standards" means the standard set forth in the CAISO Tariff setting forth criteria for determining if a Resource Adequacy Resource is subject to Non-Availability Charges or Availability Incentive Payments (each as defined in the CAISO Tariff), under the CAISO Tariff.

"Average Higher Heating Value MPR Heat Rate" means the heat rate equal to 6,924 Btu/kWh, or 6.924 MMBtu/MWh, per CPUC Resolution E-4298, which heat rate will be modified in this Agreement if there is any modification thereto by the CPUC or other authorized Governmental Authority.

"Bankrupt" means with respect to any Person, such Person:

(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 (which petition is not dismissed within 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.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Tariffs" means the entire body of effective rates, fees, rentals, charges, and rules collectively of PG&E, including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, rules, and sample forms.

"CAISO" means the California Independent System Operator Corporation.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter system(s), including all associated metering transformers and related appurtenances, as required by the CAISO (or, to the extent that the CAISO's metering requirement does not apply, Prudent Electrical Practices) and furnished by Seller, and which (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) is a time-of-use meter capable of measuring the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy the Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO-declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling, Availability Standards or deliveries from the Generating Facility under this Agreement.

"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.

"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

"CARB" means the California Air Resources Board

"CEC" means the California Energy Commission.

~~"Chapter 11 Cases" means Buyer's Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19-30089 (DM).~~

"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may furnish at its discretion, as set forth in Section 3.10(b), and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"Claiming Party" has the meaning set forth in Section 5.02.

"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 before or after the termination of this Agreement.

"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

"Control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power

"CPUC" means the California Public Utilities Commission.

"Decision" means CPUC Decision ("D") 07-09-040.

"Defaulting Party" has the meaning set forth in Section 6.01(a).

"Delivery Point" has the meaning set forth in Section 1.06.

"Direct GHG Compliance Costs" mean any taxes, charges or fees imposed by an authorized Governmental Authority with jurisdiction over the Seller or the Generating Facility, and levied directly on the Generating Facility for GHG emissions attributable to its Operations.

"Early Termination Date" has the meaning set forth in Section 6.03(a).

"Effective Date" has the meaning set forth in the Preamble.

"Eligible CHP Facility" means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, (1) meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code §2843, and (2) meets the requirements of 18 Code of Federal Regulations §292.201, et seq., unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Emergency" means an actual or imminent condition or situation which (a) is defined and declared by the CAISO or Transmission Provider, (b) jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider's electric system, (c) requires automatic or immediate manual action to prevent or limit loss of load or generation supply, or (d) poses a threat to public safety.

"Event of Default" has the meaning set forth in Section 6.01.

"Existing Eligible CHP Facility" means an Eligible CHP Facility that first commenced Operation on or after January 1, 2008 but before the Effective Date.

"Expected Term Year Energy Production" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.05.

"FERC" means the Federal Energy Regulatory Commission.

"Forced Outage" has the meaning set forth in the CAISO Tariff.

"Force Majeure" means any event or circumstance (that is not anticipated as of the Effective Date) to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Force Majeure does not include: (a) a failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure; (b) failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility (*provided, however*, that failure or delay in the granting of permits, to the extent such failure or delay is not caused by action or inaction of Seller, qualifies as a Force Majeure for purposes of this Agreement); (c) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or (d) a lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

"Forecast" means the monthly forecast of the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, net of the Site Host Load and Station Use.

"Free Allowance" means any GHG Emissions Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

"Generating Facility" means the Generating Unit(s) comprising Seller's power plant (as more particularly described in Section 1.02 and Exhibit G), including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

"Generation Operations Center" means the location of Buyer's real-time operations personnel.

"GHG" is an abbreviation for "greenhouse gas" which means emissions released into the atmosphere of carbon dioxide (CO2), nitrous oxide (N2O) and methane (CH4), which are produced as the result of combustion or

transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a metric ton of CO2-equivalent, in order to allow comparison between the different effects of gases on the environment; *provided, however*, that the definition of the term "Greenhouse Gas", as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority

"GHG Emissions Allowance" means a limited tradable authorization (whether in the form of a credit, allowance, or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or an Affiliate of Seller, which respect to the Generating Facility, to emit one metric ton of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

"GHG Emissions Cap" means the product of (a) the rate for tonnes of CO2 per MMBtu of natural gas, 0.0531 tonnes/MMBtu, times (b) the Average Higher Heating Value MPR Heat Rate in MMBtu/MWh.

"Governmental Authority" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

"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;

(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.

"High-Value Area" means a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC, as defined in Exhibit B, Section 6.

"Holidays" means "NERC Holidays" as defined in Exhibit B, Section 5. "Time of Delivery Periods and Allocation Factors."

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; *provided, however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"Lender" means any financial institutions or successors in interest or assignees that provides development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.

"Location Bonus" is described in Section 6 of Exhibit B.

"Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

"Metered Energy" means the total electric energy expressed in kWh, in excess of Station Use and Site Host Load and measured by the CAISO-Approved Meter or Check Meter, after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter or Check Meters, as applicable, at the Generating Facility for the specified Metering Interval.

"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters, as applicable.

"Monthly Contract Payment" has the meaning set forth in Section 4.01(a).

"NERC" means the North American Electric Reliability Corporation.

"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.

"Non-Availability Charges" has the meaning set forth in the CAISO Tariff.

"Non-Defaulting Party" has the meaning set forth in Section 6.03.

"Non-Peak Hours" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in Exhibit B, "5. Time of Delivery Periods and Allocations Factors" or Exhibit B(1), "4. Time of Delivery Periods" as determined pursuant to Section 1.07.

"Notice" means notices, requests, statements or payments provided in accordance with Section 7.07 and Exhibit F.

"OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement-quality meter data or its successor.

"Operate", "Operating" and "Operation" mean to provide all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

"Outage and Maintenance Schedule" has the meaning set forth in Section 2 of Exhibit D.

"Outage and Maintenance Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer in accordance with Exhibit D.

"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Peak Months" means June, July, August and September.

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

"Person" or "Persons" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Physical Trade" has the meaning set forth in the CAISO Tariff.

"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

"Power Product" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

"Power Rating" means the electrical power output value indicated on the generating equipment nameplate.

"Product" means the Power Product, Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

"Project" means the Generating Facility.

"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that: (a) equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs; (b) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site; (c) preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools; (d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (e) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (f) equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, codified at 16 United States Code ("USC") §824a-3, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC decisions, orders, and rules implementing PURPA, as amended from time to time, including 18 Code of Federal Regulations ("CFR") Part 292.201, et seq., unless the Qualifying Facility is a public agency exempt from FERC jurisdiction under 16 USC §824(f).

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(e)(2), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in Resource Adequacy Rulings, 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.

"Resource Adequacy Benefits" means the rights and privileges attached to the generating capacity of the Generating Facility that, in accordance with Public Utilities Code Section 2841(f), count toward satisfying Buyer's Resource Adequacy obligations.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 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 CPUC decisions, rulings, laws, rules or regulations may be Amended or modified from time to time during the Term.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of preparing a schedule based on Seller's forecast and notifying, requesting, and confirming the CAISO-Approved Quantity with the CAISO, the electric energy delivered from the Generating Facility.

"Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

"Scheduling Coordinator" means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.

"SC Set-Up Fee" has the meaning set forth in Section 1.08.

"Seller" has the meaning set forth in the Preamble.

"Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035.

"Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective.

"Simple Interest Payment" means a dollar amount calculated by multiplying the: (a) dollar amount on which the Simple Interest Payment is based; by (b) the Interest Rate; by (c) the result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02 and Exhibit G.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a lease, the term of which begins on or before the Term Start Date and extends at least through the Term End Date, (c) is the holder of a

right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

"Site Host" means any Person purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties pursuant to California Public Utilities Code Section 218(b).

"SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

"Station Use" means the electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, including transformation losses to power such equipment and other necessary loads.

"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility, all in accordance with the CAISO Tariff.

"Term" has the meaning set forth in Section 1.01.

"Term End Date" has the meaning set forth in Section 1.01.

"Term Start Date" has the meaning set forth in Section 1.01.

"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

"TOD Period" means the time of delivery period used to calculate the Monthly Contract Payment set forth in Exhibit B or Exhibit B(1), as determined by Section 1.07.

"Trading Day" means the day in which Day-Ahead (as defined in the CAISO Tariff) trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).

"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Buyer from the Delivery Point to the CAISO-Controlled Grid.

"WECC" means the Western Electricity Coordinating Council.

**** End of Exhibit A ****

EXHIBIT B

This Exhibit B establishes the avoided cost price adopted and implemented by the CPUC in CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033).

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period payment 1st TOD Period +
TOD Period payment 2nd TOD Period +
TOD Period payment 3rd TOD Period +
Location Bonus

All TOD Period Payments shall be calculated as set forth in Section 2 of this Exhibit B.

The "1st TOD Period," "2nd TOD Period," and "3rd TOD Period" subscripts refer to the three TOD Periods that apply for the applicable calculation month, as set forth in Section 5 of this Exhibit B.

The Location Bonus, if applicable, shall be calculated as set forth in Section 6 of this Exhibit B.

2. TOD Period Payment Calculation

Each monthly TOD Period Payment is calculated in dollars, using the terms defined below, as follows:

(Fixed price component + Variable price component) * (TOD Factor) *
metered kWh exported during the TOD Period during the month

The Metered Energy per hour used for payments shall be limited to 500 kW times 1 hour. Additionally, once the Metered Energy delivered during any Term Year equals the As-Available Contract Capacity at 100% capacity factor applied over 8,760 hours, no further payments will be calculated or paid for the remaining TOD Periods within any remaining months of the current Term Year.

3. Fixed Price Component

The Fixed Price Component for all TOD Periods shall be the amount in the following table for the year of the Term Start Date. The fixed price component does not escalate during the term of the Agreement.

Year	$/kwh
2012	0.02000
2013	0.02033
2014	0.02068
2015	0.02104
2016	0.02140
2017	0.02142
2018	0.02145

Year	$/kwh
2019	0.02147
2020	0.02149
2021	0.02151
2022	0.02153
2023	0.02155

4. Variable Price Component Calculation

The Variable Price Component is calculated in dollars as follows:

[(Monthly bidweek gas price + Intrastate gas transportation rate)/1,000,000* Heat Rate] + Variable O&M

(a) Monthly bidweek gas price shall be calculated as the average of monthly bidweek gas price indices at PG&E Citygate as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly

(b) Intrastate gas transportation rate shall be the tariffed intrastate gas transportation rate for large electric generators as published in the PG&E Gas Tariffs G-EG and G-SUR.

(c) Heat Rate, pursuant to the AB 1613 Decisions, shall be equal to:

6,924 Btu/kWh

(d) Variable O&M shall be the amount in the following table for the year in which the payment is being calculated. For years after 2023, Variable O&M shall be the 2023 payment multiplied by 1.02, compounded for each year beyond 2023.

Variable O&M	
Year	**$/kwh**
2012	0.00311
2013	0.00316
2014	0.00322
2015	0.00329
2016	0.00335
2017	0.00342
2018	0.00349
2019	0.00356
2020	0.00364
2021	0.00371
2022	0.00377
2023	0.00384

5. Time of Delivery Periods and Allocation Factors.

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

	TOD PERIOD		
Monthly 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 paragraph, 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. In accordance with all other terms of this Exhibit B, the following Time of Delivery Factors ("TOD Factors") shall be used in the TOD Period Payment Calculation for each of the specified TOD Periods in which Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	2.38	1.12	0.59
B. Oct. – Dec.; Jan. & Feb.	1.10	0.94	0.66
C. Mar. – May	1.22	0.90	0.61

6. <u>Location Bonus</u>.

If the Generating Facility is located in a "High-Value Area" as set forth below, each Monthly Contract Payment for the entire Term shall receive a Location Bonus calculated as follows:

Location Bonus = Sum of monthly TOD Periodn Payments * 0.10

The Generating Facility shall be deemed to be located in a High-Value Area if it is interconnected to Buyer's electric system at a location which, in the year of the Effective Date, is identified pursuant to CPUC D. 09-12-042 (as modified by other AB 1613 Decisions) as a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC.

**** End of Exhibit B****

EXHIBIT B (1)
Monthly Contract Payment Calculation

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period Energy Payment $_{\text{1st TOD Period}}$ +
TOD Period Energy Payment $_{\text{2nd TOD Period}}$ +
TOD Period Energy Payment $_{\text{3rd TOD Period}}$ +
TOD Period Energy Payment $_{\text{4th TOD Period}}$ +
TOD Period Capacity Payment $_{\text{1st TOD Period}}$ +
TOD Period Capacity Payment $_{\text{2nd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{3rd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{4th TOD Period}}$

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit B (1).

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit B (1).

The "1st TOD Period," "2nd TOD Period," "3rd TOD Period" and "4th TOD Period" subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit B (1).

2. TOD Period Energy Payment Calculation.

(a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{FirstHour}^{LastHour} [(EP-LA) \times APE + LA \times MA]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit B (1), in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit B (1).

LA = Hourly Location Adjustment price, as set forth in SRAC.

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no additional hourly energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

(b) Factor "EP" in Section 2(a) of this Exhibit B (1). The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in SRAC.

(c) Factor "APE" in Section 2(a) of this Exhibit B (1). The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = ACP x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit B (1), in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision:

Capacity Payment Allocation Factors		
Season	*TOD Period*	*Factor*
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

(b) Factor "ACP" in Section 3(a) of this Exhibit B (1). The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars

= AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit B (1), in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	*Price $/kW-yr*
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

(c) Factor "AAC" in Section 3(b) of this Exhibit B (1). The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit B (1), in kWh per hour.

(d) Factor "MAC" in Section 3(c) of this Exhibit B (1). The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:
MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit B (1), in kWh.

PH = The total number of hours in the TOD Period (period hours).

(e) Factor "LE" in Section 3(d) of this Exhibit B (1). The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{FirstHour}^{LastHour} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit B (1), in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor "E" in Section 3(e) of this Exhibit B (1). The Allowed Hourly Energy is calculated as follows:
ALLOWED HOURLY ENERGY in kWh = 1 hour x CC

Where:

CC = The As-Available Contract Capacity, as set forth in Section 1.03, in kW.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	**Period A – Summer May 1 - October 31**	**Period B - Winter November 1 - April 30**	**Applicable Days**
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

**** End of Exhibit B(1) ****

EXHIBIT C
Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff, as applicable, if Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the operating and scheduling procedures of Seller, Buyer, and if Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff, CAISO, including automated Forecast and outage submissions.

2. Forecast of Monthly Energy Deliveries.

   (a) Using the following table, Seller shall provide Buyer a forecast of monthly Metered Energy and explain the basis of Seller's Forecast, no later than Seller's execution of this Agreement.

Monthly Metered Energy Delivery Forecast	
Month	**Average Metered Energy (kWh)**
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

   (b) If Buyer finds that Seller's actual annual metered output a differs by at least twenty percent (20%) from Seller's annual generation forecast, then Buyer may request, on an annual basis, that Seller provide an updated generation forecast schedule.

**** End of Exhibit C ****

EXHIBIT D
Outage and Maintenance Schedule Submittal Requirements

1. General Requirements. The Parties shall abide by the Outage and Maintenance Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to (a) comply with the CAISO Tariff if Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff, (b) accommodate changes to their respective generation technology and organizational structure, and (c) address changes in the operating and scheduling procedures, including automated forecast and outage submissions, of Seller, Buyer and the CAISO, if Seller is interconnected pursuant to a FERC-jurisdictional interconnection tariff.

2. Outage and Maintenance Scheduling.

   (a) Seller shall provide Buyer with its Outage and Maintenance Schedule, using the following table, and explain the basis for Seller's schedule, no later than Seller's execution of this Agreement.

Monthly Outage and Maintenance Schedule	
Month	**kWh Unavailable due to Outage or Maintenance**
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

   (b) In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Power Rating (other than curtailments due to lack of motive force), Seller shall immediately notify Buyer of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur, and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Non-Peak hours.

3. Restriction on Planned Outages. During the Peak Months, Seller may schedule and utilize no more than 12 hours of outages per Peak Month, and only during the non-peak hours of the Peak Months.

**** End of Exhibit D ***

EXHIBIT E
CAISO Charges

Subject to Section 4.01(g), Buyer shall pay all applicable CAISO Charges and receive all applicable CAISO Revenues; *provided, however*, if, on or after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller in violation of this Agreement, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site Host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or,

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to curtail output, or reschedule a planned outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

5. Buyer as Seller's Scheduling Coordinator is subject to either Non-Availability Charges or Availability Incentive Payments, or both, during a month within the Resource Adequacy Compliance Year, as defined by CAISO Tariff, then any such Non-Availability Charges or Availability Incentive Payments shall be offset and the net value shall be entered into Seller's account for the applicable month pursuant to Section 3.20.

**** End of Exhibit E ****

EXHIBIT F
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	

Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit F ****

EXHIBIT G
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

**** End of Exhibit G ****

(End of Simplified Contract for Less than 500 kW Eligible CHP Facility)

[This contract has been approved by the California Public Utilities Commission in Decision 15-09-004. Modification of the terms and conditions of this contract will result in the need to obtain additional Commission approval of the contract.]

[The contract approved by Decision 15-09-004 includes terms and conditions that "may not be modified" pursuant to prior Commission decisions, including Decision 07-11-025, Decision 08-08-028 and Decision 10-03-021, as modified by Decision 11-01-025, and these terms and conditions are shown in shaded text.]

[Modifications to this contract pursuant to D.16-10-025 were filed on November 28, 2016, December 22, 2017 and May 2, 2018, (Advice Letters 4965-E, 5144-E-A, 5285-E).]

~~**[Note: Modifications to this agreement have been made to address United States Bankruptcy Court Northern District Chapter 11 cases 19-30088 (DM) and 19-30089 (DM) in accordance with CPUC Resolution E-4995, issued March 18, 2019.]**~~

AMENDED BIOENERGY MARKET ADJUSTING TARIFF
POWER PURCHASE AGREEMENT
BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY

AND

[Name of Seller]

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COVER SHEET

Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E"), and _____ ("Seller"), a _____ ***[Seller's form of business entity and state of organization]***, hereby enter into this Power Purchase Agreement ("Agreement") made and effective as of the Execution Date. Seller and Buyer 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:

A. Fuel Resource Category and Transaction Type

(i) Project's Fuel Resource Category:

(ii) Seller elects the following transaction type pursuant to Section 2.3 of the Agreement: ***[Choose one]***

☐ Full Buy/Sell

☐ Excess Sale

(i) Seller elects the following Delivery Term pursuant to Section 2.5 of the Agreement: ***[Choose one]***

☐ ten (10) Contract Years

☐ fifteen (15) Contract Years

☐ twenty (20) Contract Years

B. Facility and Site Description

(i) Facility name:

(ii) Facility physical address (or nearest intersection and direction):

(iii) Latitude and longitude of the centroid of the Site:

(iv) Parcel numbers that are part of the Site:

(v) Existing land use:

(vi) Interconnection Point (and Service Voltage):

(vii) Delivery Point (the point of interconnection with the CAISO grid):

(viii) Contract Capacity (in MW):

(ix) Nameplate Capacity (in MW):

(x) The Project is committed to, and shall satisfy, the High Hazard Fuel Requirement throughout the Delivery Term:

☐ Yes

☐ No

(xi) Fuel Use Description (brief explanation of any Fuel Use from Fuel Resource Categories per the Fuel Resource Requirements):

(xii) Facility type:

☐ "small power production facility," as described in 18 CFR §292.203(a), 292.203(c) and 292.204

☐ "topping-cycle cogeneration facility," as defined in 18 CFR §292.202(d)

☐ "bottoming-cycle cogeneration facility," as defined in 18 CFR §292.202(e)

(xiii) The date on which the Commercial Operation Date of the Project is expected under this Agreement (must be no later than the Guaranteed Commercial Operation Date):

(xiv) The Project is an:

☐ existing Project

☐ new Project

(xv) The Interconnection Queue Position number is: ***[#]*** ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date:*** the number provided to the Project upon submission of a new Interconnection Study application pursuant to Section 4.3.15***]***

(xvi) Table of major components with technical descriptions:

Biogas	
Equipment	Description
Digester Lagoon	Size (gallons or acres)
Engine	Number, type, manufacturer, model
Generators	Type, manufacturer, capacity
Transformer	Capacity, voltage levels
(other)	

Biomass	
Equipment	Description
Boiler	Type, manufacturer, model, capacity
Turbine	Type, manufacturer, model, capacity
Generator	Type, manufacturer, capacity
Transformer	Capacity, voltage levels
(other)	

(xvii) ***[Insert Facility or Equipment Layout Drawing]*** (may overlay Site Map) illustrating the general layout of the facility:

☐ A clearly labeled perimeter of the Project Site (i.e. site control boundary).

☐ The relative positions of the project's major components.

☐ The voltage related to interconnection and the point of the interconnection.

(xviii) Legal description of the site (including APNs) and ***[Insert Site Map]*** (may overlay with Facility Drawing), illustrating the following:

☐ A clearly labeled perimeter of the Project Site (i.e. site control boundary).

☐ A parcel map including an outline of the Project Site.

☐ Clearly labeled nearby roads, including the nearest intersection.

☐ If the primary site map is too close to display the nearest intersection, a supplementary map at a larger scale so that nearby roads and landmarks can be seen.

(xix) ***[Insert Single Line Diagram]*** illustrating internal equipment and connections as well as the components for interconnection of the Facility to PG&E's electric system via Distribution Line or Existing PG&E Transmission Line. At minimum, please include information for the following components:

☐ Name and address of the facility.

☐ Electrical system components, cabling and connections with associated labeling (voltage levels, overhead or underground, etc.).

☐ Generators and/or inverters (including capacity and voltage designations).

☐ Transformers – for generation system and/or interconnection and station power (A station service transformer is for the generating facility's station use and must be on the project's side of the meter).

☐ Metering (e.g., CAISO revenue meters and/or Utility meters).

☐ Fuses and Breaker.

☐ Disconnects and/or switches.

☐ All other switchgear.

(xx) ***[For cogeneration Facilities]***:

☐ Forecast of useful thermal energy output (MMBtu/month).

☐ Dedicated Use(s) of the Facility's Useful Thermal Energy Output.

C. Contract Price

The price for Delivered Energy (the "Contract Price") is ***[Dollar amount in words]*** dollars ($ _____***[Number]***) per MWh. ***[Contract Price determined by BioMAT Tariff pricing methodology.]***

D. Delivery Term Contract Quantity Schedule

Contract Year	Contract Quantity (MWh/year)
1	
2	

Contract Year	Contract Quantity (MWh/year)
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

E. Collateral Requirement

[The Collateral Requirement is equal to twenty thousand dollars ($20,000.00) for each megawatt of the Contract Capacity for a total of ***[Dollar amount in words]*** ($ _____.00)***.] [For all Projects except Projects with a High Hazard Fuel Requirement]***

OR

[The Collateral Requirement is equal to the greater of (i) an amount equal to (a) the Contract Price minus $199.72/MWh, multiplied by (b) 1.5, multiplied by (c) the highest annual Contract Quantity(MWh/yr) committed in the Delivery Term Contract Quantity Schedule set forth in the Cover Sheet Section D, for a total of ***[Dollar amount in words]*** ($ _____.00)***]***; or (ii) twenty thousand dollars ($20,000) for each megawatt of the Contract Capacity for a total of ***[Dollar amount in words]*** ($ _____.00)***.] [For all Projects with a High Hazard Fuel Requirement]***

F. Curtailment Orders

Operational characteristics of the Project for Curtailment Orders pursuant to Section 5.8(c) are listed below. Buyer, as Scheduling Coordinator, may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project. In addition, Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are based on the true physical characteristics of the resource.

(i) Minimum operating capacity: ____MW

(ii) Ramp Rate: ____MW/Minute

(iii) Maximum number of Curtailment Orders per calendar day (if any such operational limitations exist): ____

(iv) Maximum number of Start-ups per calendar day (if any such operational limitations exist): ____

(v) Advance notification required for a Curtailment Order: ____ Minutes

Other Requirements:

- Start-Up Time (if applicable): _____Minutes
- Minimum Run Time after Start-Up (if applicable): _____Minutes
- Minimum Down Time after Shut-Down (if applicable): _____Minutes
- Other-Specify: _____

Note: Sellers should enter the maximum flexibility the Project can offer given the operational constraints of the technology.

G. Seller Milestone Schedule

No.	*Date*	*Milestones*
1		Submits interconnection application. ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date: The anticipated date for submitting a new Interconnection Study application]***.
2		Files any land applications.
3		Files construction permit application(s).
4		Files a CEC Pre-Certification application.
5		Files material permit applications.
6		Receives a completed PG&E Initial or Supplemental Review, System Impact Study or Phase I Interconnection Study, or a CAISO Cluster Study, Independent Study or Fast Track Study.
7		Obtains control of all lands and rights-of-way comprising the Site.
8		Receives a completed interconnection PG&E Facility Study or Phase II Interconnection Study (if applicable).
9		Executes an interconnection agreement and transmission/distribution service agreement, as applicable.
10		Receives FERC acceptance of interconnection and transmission agreements.
11		Receives construction permit.
12		Receives material permits.
13		Receives CEC Pre-Certification.
14		Receives FERC docket number assigned to Seller's filing of FERC Form 556.
15		Executes an Engineering, Procurement and Construction ("EPC") contract.
16		Procures the _____ ***[applicable electrical generating equipment]*** for the Facility.
17		Completes financing, including construction financing.
18		Begins construction of the Facility.
19		Begins startup activities.
20		Initial Synchronization Date.
21		Demonstrates the Contract Capacity ***[***and the Nameplate Capacity***]***. ***[Bracketed language only for Facilities with a Nameplate Capacity greater than three megawatts]***
22		Commercial Operation Date.
23		Receives Final CEC Certification.

H. Notices List

Name: ***[Seller's Name]***, a ***[include place of formation and business type]*** ("Seller")

All Notices: ***[Seller to complete]***
Delivery Address:

Street:
City: State: Zip:

Mail Address: (if different from above)

Attn:

Phone:
Email:

DUNS:
Federal Tax ID Number:

Invoices:
Attn:

Phone:
Email:

Scheduling:
Attn:
Phone:
Email:

Payments:
Attn:

Phone:
Email:

Wire Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn:
Phone:
Email:

Name: **Pacific Gas and Electric Company**, a California corporation ("Buyer" or "PG&E")

All Notices:
Delivery Address:

77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Mail Address:
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177
Attn: Candice Chan
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780
Email: CWW9@pge.com

DUNS:
Federal Tax ID Number:

Invoices:
Attn: Amol Patel
Senior Manager, Electric Settlements
Phone: (415) 973-6510
Email: AXPX@pge.com

Scheduling:
Attn: Day-Ahead Operations
Phone: (415) 973-1971
Email: DAEnergy@pge.com

Payments:
Attn: Amol Patel
Senior Manager, Electric Settlements
Phone: (415) 973-6510
Email: AXPX@pge.com

Wire Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn: Credit Risk Management
Phone: (415) 972-5188
Email: MCRM-Credit@pge.com

With additional Notices of an Event of Default to Contract Manager:

Attn:

Phone:
Email:

Contract Manager:

Attn: Ted Yura
Sr. Manager, Contract Management
Phone: (415) 973-8660
Email: THY1q@pge.com

With additional Notices of an Event of Default to:
PG&E Law Department
Attn: Renewables Portfolio Standard attorney
Phone: (415) 973-4377

PREAMBLE

This Agreement, together with the Cover Sheet and the Appendices attached hereto, is made and entered into between PG&E and Seller as of the Execution Date. This Agreement governs Buyer's purchase of the Product from the electrical generating facility (hereinafter referred to as the "Facility" or "Project") as described in the Cover Sheet. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

1. COMMERCIAL OPERATION DATE

1.1. Expected Commercial Operation Date; Guaranteed Commercial Operation Date.

1.1.1. If not already capable of delivering Product on the Execution Date, the Facility's expected Commercial Operation Date is the date specified in the Cover Sheet, which may, subject to the terms of the Agreement, be modified by Seller from time to time after the Execution Date. Seller shall provide Notice to Buyer of the latest expected Commercial Operation Date of the Facility no later than sixty (60) days before such date.

1.1.2. Seller shall have demonstrated Commercial Operation by the "Guaranteed Commercial Operation Date," which date shall be no later than the date that is twenty-four (24) months after the ***[***Execution Date***]*** ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date: Interconnection Study Completion Date]***; provided that the Guaranteed Commercial Operation Date may be extended to no later than the date that is thirty (30) months after the ***[***Execution Date***]*** ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date: Interconnection Study Completion Date]*** for the following reasons ("Permitted Extensions"):

1.1.2.1. Subject to Section 1.1.4, if Seller has taken all commercially reasonable actions (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"), then the Guaranteed Commercial Operation Date shall be extended six (6) months;

1.1.2.2. Subject to Section 1.1.4, if Seller has taken all commercially reasonable actions (including but not limited to Seller's timely filing of required documents and payment of all applicable fees, and completion of all Electric System Upgrades needed, if any) to have the Project physically interconnected to the Transmission/Distribution Owner's electric system via Distribution Line or Existing PG&E Transmission Line, but fails to secure any necessary commitments from CAISO or the Transmission/Distribution Owner for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"), then the Guaranteed Commercial Operation Date shall be extended six (6) months;

1.1.2.3. In the event of Force Majeure without regard to Transmission Delay or Permitting Delay ("Force Majeure Delay"), the Guaranteed Commercial Operation Date shall be extended on a day-to-day basis for a cumulative period of not more than six (6) months; provided that Seller complies with Section 10; or

1.1.2.4. If Seller pays to Buyer damages in an amount equal to two percent (2%) of the Collateral Requirement per day for each day (or portion thereof) the Guaranteed Commercial Operation Date is extended ("Daily Delay Liquidated Damages"), then the Guaranteed Commercial Operation Date shall be extended on a day-to-day basis corresponding to the number of days for which Seller has paid Daily Delay Liquidated Damages for a cumulative period of not more than six (6) months. Daily Delay Liquidated Damages payments applicable to days included in any Guaranteed Commercial Operation Date extension are nonrefundable and are in addition to, and not a part of, the Collateral Requirement; provided that Seller will be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller to Buyer which exceed the amount required to cover the number of days by which the Guaranteed Commercial Operation Date was actually extended.

1.1.3. All Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

1.1.4. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the Permitted Extensions described in Section 1.1.2.1 or 1.1.2.2 (as applicable), did not result from Seller's action or failure to take action as described in Section 1.1.2.1 or 1.1.2.2 (as applicable).

1.2. Notice of Permitted Extension.

1.2.1. In order to request a Permitting Delay or Transmission Delay (individually and collectively, "Delay"), Seller shall provide Buyer with Notice of the requested Delay by the earlier of (a) the date that is twenty-two (22) months after the Execution Date and (b) within three (3) Business Days of the date that Seller becomes aware of, or reasonably should have become aware of, the circumstances giving rise for the applicable Delay, which Notice must clearly identify the Delay being requested and include information necessary for Buyer to verify the qualification of the Delay, including any information requested pursuant to Section 1.1.4 Buyer shall use reasonable discretion to grant or deny the requested extension, and shall provide Seller Notice of its decision within ten (10) Business Days of Notice from Seller.

1.2.2. In the case of a Force Majeure Delay, Seller shall provide Notice as specified in Section 10.2.

1.2.3. In the case of an extension of the Guaranteed Commercial Operation Date by the payment of Daily Delay Liquidated Damages, Seller must, at the earliest possible time, but no later than five (5) Business Days before the commencement of the proposed Guaranteed Commercial Operation Date extension, provide Buyer with Notice of its election to extend the Guaranteed Commercial Operation Date along with Seller's estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Guaranteed Commercial Operation Date extension period.

1.2.4. Notwithstanding anything to the contrary herein, Seller shall provide Notice to Buyer of the latest expected Commercial Operation Date of the Facility no later than sixty (60) days before the Commercial Operation Date.

2. CONTRACT CAPACITY AND QUANTITY; TERM; CONTRACT PRICE; BILLING

2.1. Contract Capacity and Nameplate Capacity. The Contract Capacity is specified in the Cover Sheet. The Contract Capacity shall not exceed 3,000 kW. The Contract Capacity is subject to

adjustment based on the Demonstrated Contract Capacity. The Nameplate Capacity is specified in the Cover Sheet. The Nameplate Capacity shall not exceed 5,000 kW.

2.2. 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", set forth in the Cover Sheet, which amount is net of Station Use, and, for Excess Sale arrangements, Site Host Load. Seller shall have the option to decrease the Contract Quantity for any or all Contract Years of the Delivery Term Contract Quantity Schedule one (1) time if the Contract Capacity is adjusted based on the Demonstrated Contract Capacity within ten (10) Business Days of Buyer's Notice of such adjustment to the Contract Capacity or the date of the Engineer Report, as applicable. Additionally, Seller may provide Notice to Buyer during Contract Year 1 or Contract Year 2 of the Delivery Term to request a one (1) time decrease to the Contract Quantity for any or all Contract Years in the Delivery Term Contract Quantity Schedule. Upon Buyer's approval, the adjusted amounts shall thereafter be the applicable Delivery Term Contract Quantity Schedule.

2.3. Transaction. During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase, the Product from the Facility at the Delivery Point, pursuant to Seller's election in the Cover Sheet of a Full Buy/Sell or Excess Sale arrangement as described in paragraphs 2.3.1 and 2.3.2 below.:

2.3.1. Full Buy/Sell. If "Full Buy/Sell" is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product, net of station use and transformer and transmission losses, at the Delivery Point. Seller shall purchase all Energy required to serve the Project's Site Host Load, net of Station Use, from Buyer or applicable retail service provider pursuant to its applicable retail rate schedule. Seller agrees to convey to Buyer all attributes and benefits associated with or attributable to the Product sold to Buyer.

2.3.2. Excess Sale. If "Excess Sale" is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product, net of Station Use, Site Host Load and transformer and transmission losses, at the Delivery Point. Seller agrees to convey to Buyer all attributes and benefits associated with or attributable to the Product sold to Buyer.

In no event shall Seller have the right to procure the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement or substitute such Product. Buyer shall have no obligation to receive or purchase the Product from Seller prior to the Commercial Operation Date or after the end of the Delivery Term.

2.4. Term of Agreement; Survival of Rights and Obligations.

2.4.1. The term shall commence upon the Execution Date of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Sections 10.4 or 13 of this Agreement (the "Term").

2.4.2. Notwithstanding anything to the contrary in this Agreement, the rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides survive any such termination and those that arise from Seller's or Buyer's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time before or as a result of the termination of this Agreement, including: (a) all obligations to pay in full amounts due, including under Sections 2.6, 11, 12.3, 13 and 14, (b) all obligations to post, maintain, return and release the Collateral Requirement under Section 12, (c) Seller's obligations under Sections 3.1, 3.2, 3.3 and 5.11, (d) all rights and obligations under Sections 5.4, 6, 9.2.7,

and 13.8.4, and any other indemnity rights, (e) the limitations on liability set forth in Section 7, (f) all rights and obligations under Section 15, (g) all rights and obligations under Section 13.8, (h) the governing law set forth in Section 17, and (i) the dispute resolution provisions set forth in Section 18.

2.5. Delivery Term. The Seller shall deliver the Product from the Facility to Buyer for the period of Contract Years specified in the Cover Sheet ("Delivery Term"), which shall commence on the Commercial Operation Date under this Agreement and continue until the end of the last Contract Year unless terminated by the terms of this Agreement. The Commercial Operation Date shall occur only when all of the following conditions precedent have been satisfied:

2.5.1. the Facility's status as an Eligible Renewable Energy Resource is demonstrated by Seller's receipt of pre-certification from the CEC;

2.5.2. if required pursuant to Section 3.7, the Facility's status as a Qualifying Facility is demonstrated by Seller's receipt of a docket number assigned to Seller's filing of FERC Form 556;

2.5.3. as evidence of the Commercial Operation Date, the Parties shall execute and exchange the "Commercial Operation Date Confirmation Letter" attached as Appendix B;

2.5.4. Seller has provided to Buyer the Collateral Requirement specified in Section 12;

2.5.5. Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the CAISO agreement, interconnection agreement, and metering requirements in Sections 5.1 and 5.2 and has enabled Buyer to schedule the Facility with the CAISO for the Facility's full unrestricted output;

2.5.6. Seller has furnished to Buyer all insurance documents required under Section 9;

2.5.7. Seller has delivered to Buyer the first report required under Section 5.12.4;

2.5.8. Seller has satisfied all of the telemetry requirements required to be satisfied by the Commercial Operation Date under Section 5.10 and Appendix E;

2.5.9. the Demonstrated Contract Capacity has been determined in accordance with Appendix J;

2.5.10. ***[***the Demonstrated Nameplate Capacity has been determined in accordance with Appendix J; ***] [Only for Facilities with a Nameplate Capacity greater than three megawatts]***

2.5.11. Seller has provided sixty (60) days Notice prior to the Commercial Operation Date as required under Section 1.1.1;

2.5.12. Seller has delivered to Buyer any currently operative filings at FERC, including any rulings, orders or other pleadings or papers filed by FERC, concerning the qualification of the Facility as a Qualifying Facility.

2.6. Contract Price.

2.6.1. The price for Delivered Energy (the "Contract Price") is specified in the Cover Sheet.

2.6.2. *[*In no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds one hundred ten percent (110%) of the Contract Capacity and the Contract Price for such Delivered Energy in excess of such one hundred ten percent (110%) of the Contract Capacity ("Surplus Delivered Energy") shall be adjusted to be zero dollars ($0) per kWh.*] [For all Facilities except those with a Nameplate Capacity greater than three megawatts]*

*[*In no event shall Buyer have any liability for, or be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds the lesser of (a) one hundred ten percent (110%) of the Contract Capacity or (b) 3 MW (the "Payment Limit"). If during any Settlement Interval, Delivered Energy exceeds the Payment Limit for that Settlement Interval ("Surplus Delivered Energy"), then the Contract Price for any Surplus Delivered Energy in excess of the Payment Limit shall be adjusted to be zero dollars ($0) per kWh for that Settlement Interval, and if there ia Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Surplus Delivered Energy ("Negative LMP Costs"). *] [Only for Facilities with a Nameplate Capacity greater than three megawatts]*

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

2.7. Billing.

2.7.1. The amount of Product purchased by Buyer from Seller under this Agreement at the Delivery Point is determined by the meter specified in Section 5.2.1 or Check Meter, as applicable. Throughout the Delivery Term and subject to and in accordance with the terms of this Agreement, Buyer shall pay the Contract Price to Seller for the Product; provided that Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including: (a) an outage of the Facility; (b) a Force Majeure under Section 10; or (c) a reduction or curtailment of deliveries in accordance with Sections 5.8.1(a) or (b). Buyer will not be obligated to pay Seller for any Product that Seller delivers in violation of Section 5.8, including any Product Seller delivers in excess of the amount specified in any Curtailment Order.

2.7.2. For the purpose of calculating monthly payments under this Agreement, the amount recorded by the meter specified in Section 5.2.1 or Check Meter, as applicable, will be time-differentiated according to the time period and season of the receipt of the Product by Buyer from Seller, as set forth in Appendix C, and the pricing will be weighted by the Payment Allocation Factors.

2.7.3. The monthly payment will equal the sum of the sum of the monthly TOD Period payments for all TOD Periods in the month, *[*minus (b) the Negative LMP Costs*] [Only for Facilities with a Nameplate Capacity greater than three megawatts]* ("Monthly TOD Payment"). Each Monthly TOD Payment will be calculated pursuant to the following formula, where "n" is the TOD Period being calculated:

TOD PERIOD$_n$ PAYMENT = A × B × (C + D - E)

Where:

A = The then applicable Contract Price, in $/MWh.
B = The Payment Allocation Factor for the TOD Period being calculated.
C = The sum of Energy recorded by the meter specified in Section 5.2.1 or Check Meter, as applicable, in all hours for the TOD Period being calculated, in MWh.
D = Paid Curtailed Product
E = Any Energy produced by the Facility for which Buyer is not obligated to pay Seller as set forth in Section 2.7.1.

2.7.4. On or before the last Business Day of the calendar month immediately following each calendar month of the Delivery Term, Seller shall determine the amount of Product received by Buyer pursuant to this Agreement for each monthly period and issue an invoice showing the calculation of the payment due. Seller shall also 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. ***[***The invoices for the calendar months of March, June, September, and December of each Calendar Year shall include the Quarterly Fuel Attestation. Failure to include the applicable Quarterly Fuel Attestation with the respective monthly invoice shall render the invoice incomplete and not payable by Buyer.***] [For all Projects with a High Hazard Fuel Requirement]***

2.7.5. Buyer shall make payment of each invoice, adjusted by any amounts owed by or to Seller under this Agreement, on or before the later of the last Business Day of the month in which Buyer receives an invoice from Seller, or the tenth (10th) Business Day after receipt of the invoice; provided that Buyer shall have the right, but is not obligated, to apply any amounts due to Buyer from Seller for any charges incurred under this Agreement, for past due bills for electric service or for Buyer services, towards any amount owed to Seller under this Agreement. In the event Buyer applies any amounts due to Buyer from Seller towards an invoice issued by Seller, Buyer shall provide an explanation of the amounts Buyer has applied towards Seller's invoice.

2.7.6. 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. In the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall determine the correct amount of Product received under this Agreement during any period of inaccuracy and recompute the amount due from Buyer to Seller for the Product delivered 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 thirty (30) days of such resolution along with simple 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 simple 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 2.7.6 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made ***[***,except for invoice disputes under Section 3.3 which are waived unless the other Party is notified in accordance with this Section 2.7.6 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made***]*** ***[bracketed provision for Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]*** If an invoice is not rendered by Seller within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

2.7.7. Notwithstanding anything to the contrary in Section 2.7.5, Buyer may issue an invoice to Seller for any amount due under this Agreement. Unless explicitly stated otherwise, payment of such invoice shall be made within thirty (30) days of receipt of such invoice.

2.7.8. Unless otherwise agreed to in writing by the Parties, any payment due under this Agreement will be satisfied by issuance of a check, via Automated Clearing House transfer or via wire transfer. Notwithstanding anything to the contrary set forth in this Agreement, neither Party is obligated to make payment on any invoice until the cumulative amount due exceeds fifty dollars ($50.00), except that both Parties shall pay all amounts due pursuant to this Agreement at least once per calendar year no later than thirty (30) days after the end of the calendar year.

2.7.9. All interest paid or payable under this Agreement shall be computed as simple interest using the Interest Rate and, unless specified otherwise in this Agreement, shall be paid concurrently with the payment or refund of the underlying amount on which such interest is payable.

2.8. Title and Risk of Loss. Title to and risk of loss related to the Product from the Facility shall transfer from Seller to Buyer from the Delivery Point. Seller warrants that it will deliver to Buyer the 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.

3. BIOMETHANE TRANSACTIONS; RESOURCE ADEQUACY BENEFITS; ERR REQUIREMENTS; QUALIFYING FACILITY STATUS

3.1. Biomethane Transactions

3.1.1. For all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient renewable and environmental attributes of biomethane production and capture to ensure that there are zero (0) net emissions associated with the production of electricity from the generating facility using the biomethane.

3.1.2. For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by Law. If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes

associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.

3.2. Conveyance of Product. Throughout the Delivery Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Renewable Energy Credits, Resource Adequacy Benefits, if any, and Capacity Attributes, if any, for Buyer's benefit throughout the Delivery Term.

3.3. WREGIS. ***[WREGIS Requirements for Facilities (1) 0.5 MW or greater; and (2) eligible for a CAISO revenue meter]*** Seller shall, at its sole expense 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 Energy produced by the Facility 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 3.3.9; provided that Seller fulfills its obligations under Sections 3.3.1 through 3.3.7 below.

3.3.1. Within thirty (30) days of the Commercial Operation 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.

3.3.2. 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.

3.3.3. 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.

3.3.4. Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 2.7, Buyer shall pay an invoice payment for a given month in accordance with Section 2.7 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.3. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 2.7.

3.3.5. 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 Section 2.7 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 invoice to Buyer in accordance with Section 2.7, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller.

3.3.6. Without limiting Seller's obligations under this Section 3.3, 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.

3.3.7. If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.3 after the Execution Date, the Parties promptly shall modify this Section 3.3 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.

3.3.8. Buyer, at its sole discretion, shall have the right to direct Seller to cause and allow Buyer to be the "Qualified Reporting Entity" and "Account Holder" (as such terms are defined by WREGIS) for the Facility.

3.3.9. 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. *[Standard term and condition that "may not be modified" pursuant to prior Commission decisions, including Decision 07-11-025, Decision 08-08-028 and Decision 10-03-021, as modified by Decision 11-01-025]*

3.3 WREGIS. ***[WREGIS Requirements for Facilities that are (1) less than 1 MW and (2) ineligible for a CAISO revenue meter.]*** With respect to WREGIS, Seller shall cause and allow Buyer to be the "Qualified Reporting Entity" and "Account Holder" (as such terms are defined by WREGIS) for the Facility within thirty (30) days after the Commercial Operation Date. ***[PG&E to use either this version of Section 3.3 or the longer version of 3.3, depending on the facility]***

3.4. Resource Adequacy Benefits.

3.4.1. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Contract Capacity, including Capacity Attributes, if any, 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").

3.4.2. If providing any Resource Adequacy, Seller shall comply with the Resource Adequacy requirements set forth in the CAISO Tariff, including Section 40 thereof, as may be changed from time to time.

3.4.3. Notwithstanding Section 3.4.4, Seller shall have the option but not the obligation to obtain Full Capacity Deliverability Status for the Project. If the Project achieves Full Capacity Deliverability Status, Seller, at its option, may make a one-time, irrevocable election to utilize the full capacity deliverability payment allocation factors set forth in Appendix C by providing Notice to Buyer of such election within sixty (60) days of achieving Full Capacity Deliverability Status (the "Full Capacity Option Notice"), which election shall be effective as

specified in the definition of "Payment Allocation Factors." For avoidance of doubt, Interim Deliverability Status and Partial Capacity Deliverability Status do not qualify for Full Capacity Deliverability Status.

3.4.4. Seller shall cooperate in good faith with, and comply with unburdensome requests of, Buyer and the CAISO to enable Buyer and/or the CAISO to obtain Resource Adequacy and assign Capacity Attributes and Resource Adequacy Benefits to the Facility.

3.5. Eligible Renewable Resource. Seller shall take all actions necessary to achieve and maintain status as an Eligible Renewable Energy Resource or ERR. Within thirty (30) days after the Commercial Operation Date, Seller shall file an application or other appropriate request with the CEC for CEC Certification for the Facility. Seller shall expeditiously seek CEC Certification, including promptly responding to any requests for information from the requesting authority.

3.6. Compliance Expenditure Cap. If Seller establishes to Buyer's reasonable satisfaction that a change in Laws occurring after the Execution Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Execution Date to take all actions to comply with Seller's obligations under the Agreement with respect to obtaining and maintaining CEC Pre-Certification, CEC Certification or CEC Verification, then Seller's required out-of-pocket expenses are limited to Twenty-Five Thousand dollars ($25,000.00) in the aggregate each year of the Term ("Compliance Expenditure Cap") between the Execution Date and the last day of the Term.

3.6.1. Any actions required for Seller to comply with its obligations set forth in Section 3.6, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "Compliance Actions."

3.6.2. If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall promptly provide Notice to Buyer and documentation to demonstrate the expenses incurred up to the Compliance Expenditure Cap and such anticipated out-of-pocket expenses.

3.6.3. Buyer will have ninety (90) days to evaluate such Notice and documentation (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (a) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance Costs"), or (b) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. Notwithstanding the foregoing, if Buyer, in its sole discretion, elects to seek CPUC approval before Buyer agrees to reimburse anticipated out-of-pocket expenses that exceed the Compliance Expenditure Cap or waive Seller's obligation to take such Compliance Actions, Buyer may seek CPUC approval, during which time period Seller is not obligated to take any Compliance Actions described in the Notice.

3.6.4. If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs.

3.7. FERC Qualifying Facility Status. Seller shall take all actions, including making or supporting timely filings with the FERC necessary to obtain or maintain the Qualifying Facility status of the Facility throughout the Term; provided, however, that this obligation does not apply to the extent Seller is unable to maintain Qualifying Facility status using commercially reasonable efforts

because of (a) a change in PURPA or in regulations of the FERC implementing PURPA occurring after the Execution Date, or (b) a change in Laws directly impacting the Qualifying Facility status of the Facility occurring after the Execution Date; and provided further that Seller shall not be obligated under this Section 3.7 to take any actions or make any filings to the extent that no action or filing is required by FERC to obtain, or maintain the Qualifying Facility status of the Facility.

4. REPRESENTATION AND WARRANTIES; COVENANTS

~~4.1.~~ Representations and Warranties.

~~4.2.~~4.1. On the Execution Date, each Party~~Seller~~ represents and warrants to the other Party~~Buyer~~ that:

~~4.2.1.~~4.1.1. it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

~~4.2.2.~~4.1.2. the execution, delivery and performance of this Agreement are 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, or any contracts to which it is a party;

~~4.2.3.~~4.1.3. 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;

~~4.2.4.~~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;

~~4.2.5.~~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

~~4.2.6.~~4.1.6. it is a "forward contract merchant" within the meaning of Title 11 of the United States Code (as in effect as of the Execution Date of this Agreement).

~~4.2.7. On the Execution Date, Buyer represents and warrants to Seller that:~~

~~4.2.7.1. it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;~~

~~4.2.7.2. the execution, delivery and performance of this Agreement are 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, or any contracts to which it is a party;~~

~~4.2.7.3. this Agreement and each other document executed and delivered in accordance with this Aggreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms; and~~

~~4.2.7.4. it is a "forward contract merchant" within the meaning of Title 11 of the United States Code (as in effect as of the Execution Date of this Agreement).~~

~~4.3.~~4.2. General Covenants. Each Party covenants that throughout the Term of this Agreement ~~as follows; provided that, any breach of any such covenant by Buyer that is caused by or the result of an order or directive of a court of competent jurisdiction relating to the Chapter 11 Cases shall not constitute an Event of Default with respect to Buyer under this Agreement and shall not entitle Seller to terminate this Agreement solely because of such breach by Buyer~~:

~~4.3.1.~~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;

~~4.3.2.~~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

~~4.3.3.~~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, or any contracts to which it is a party.

~~4.4.~~4.3. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants specified in Sections 4.1 and 4.2, Seller makes the following additional representations, warranties and covenants to Buyer, as of the Execution Date:

~~4.4.1.~~4.3.1. Seller has not participated in the Self-Generation Incentive Program (as defined in CPUC Decision 01-03-073) and/or other similar California ratepayer subsidized program relating to energy production (other than grants from the Electric Program Investment Charge) or rebated capacity costs with respect to the Facility and Seller does not maintain a Program Participation Request for the Project in the Renewable Market Adjusting Tariff program (as established by CPUC Decision 13-05-034).;

~~4.4.2.~~4.3.2. 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; *[Standard term and condition that "may not be modified" pursuant to prior Commission decisions, including Decision 07-11-025, Decision 08-08-028 and Decision 10-03-021, as modified by Decision 11-01-025]*

~~4.4.3.~~4.3.3. 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; *[Standard term and condition that "may not be modified" pursuant to prior Commission decisions, including Decision 07-11-025, Decision 08-08-028 and Decision 10-03-021, as modified by Decision 11-01-025]*

~~4.4.4.~~4.3.4. The term "commercially reasonable efforts" as used in Section 4.3.2 and 4.3.3 means efforts consistent with and subject to Section 3.6;

~~4.4.5.~~4.3.5. Subject to Section 3.7, throughout the Term of this Agreement, the Facility shall qualify as a Qualifying Facility.

~~4.4.6.~~4.3.6. Throughout the Term, Seller shall: (a) own and operate the Facility; (b) deliver the Product to Buyer to the Delivery Point free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any individual or entity; and (c) hold the rights to all of the Product;

~~4.4.7.~~4.3.7. Seller 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 Buyer in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement;

~~4.4.8.~~4.3.8. Throughout the Delivery Term: (a) Seller will not convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer; and (b) Seller will not start-up or operate the Facility per instruction of or for the benefit of any third party, except as required by other Laws or, in the case of Excess Sale arrangements, to serve any Site Host Load;

~~4.4.9.~~4.3.9. Seller has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement;

~~4.4.10.~~4.3.10. The construction of the Facility shall comply with all Laws, including applicable state and local laws, building standards, and interconnection requirements;

~~4.4.11.~~4.3.11. No other person or entity, including any other generating facility has any rights in connection with Seller's interconnection agreement or Seller's Interconnection Facilities and no other persons or entities shall have any such rights during the Term;

~~4.4.12.~~4.3.12. During the Term, Seller shall not allow any other person or entity, including any other generating facility, to use Seller's Interconnection Facilities; and

~~4.4.13.~~4.3.13. ***[For Pipeline Biomethane Facilities] [***The Biogas purchased for use at Seller's Facility complies with all applicable pipeline tariff rules, including, if any, quality specifications.***]***

~~4.4.14.~~4.3.14. ***[For Category 3 Projects that have a completed but not effective Active Interconnection Study by the Execution Date] [***An Interconnection Study has been completed for the Project prior to the Execution Date, but such Interconnection Study is not effective as of the Execution Date, and such Interconnection Study resulted in a determination that, with the identified interconnection upgrades: (a) the transmission or distribution grid that would serve as the Interconnection Point is adequate; (b) the Project meets all applicable state and local laws, building standards, and Transmission/Distribution Owner's interconnection requirements; and (c) the aggregate of all electric generating facilities on the distribution circuit would not adversely impact Transmission/Distribution Owner's operation and load restoration efforts of the electric system.***]***

[For Category 3 Projects that do not have an Active Interconnection Study by the Execution Date] [Seller shall submit a new Interconnection Study application for the Project no later than thirty (30) days from the Execution Date and Seller shall Notify PG&E of: (a) the interconnection queue position number within five (5) Business Days from receipt of such number, and (b) the Interconnection Study Completion Date no later than five (5) Business Days from the Interconnection Study Completion Date.***]***

~~4.5.~~4.4. Seller's Fuel Resource Category Representations, Warranties and Covenants.

~~4.5.1.~~4.4.1. Seller hereby represents, warrants and covenants to Buyer that the fuel used to generate electricity and if applicable, Useful Thermal Energy Output from the Facility to serve Site Host Load, Station Use and generate Energy for sale to Buyer ("Fuel Use") conforms and, throughout the Delivery Term, will conform to the definition of the Fuel Resource Category selected in Section A(i) of the Cover Sheet, subject to the Fuel Resource Requirements ***[Add the following bracketed language for Projects with a High Hazard Fuel Requirement: [***and the High Hazard Fuel Requirement***]]*** outlined in Section 4.4.2.

~~4.5.2.~~4.4.2. ***[For all Projects except Projects with a High Hazard Fuel Requirement] [***Seller hereby represents, warrants, and covenants to Buyer that, throughout the Delivery Term, at least eighty percent (80%) of Fuel Use, measured in mmBTU, during each Contract Year shall be from the Fuel Resource Category identified in Section A(i) of the Cover Sheet, and no more than twenty percent (20%) of such Fuel Use shall be from one of the other Fuel Resource Categories; provided, that if Seller has elected to use Category 2 (Dairy) as the Facility's fuel resource, Seller shall not use any other Fuel Resource Category at the Facility; provided further that all fuel used by the Facility shall meet the definition of a Fuel Resource Category as defined in this Agreement (the "Fuel Resource Requirements"). Seller shall operate the Facility in compliance with the Fuel Source Requirements during each Contract Year.***]***

[For all Projects with a High Hazard Fuel Requirement] [Seller hereby represents, warrants, and covenants to Buyer that, throughout the Delivery Term, at least eighty percent (80%) of Fuel Use, measured in Bone Dry Tons, that is delivered to the Facility and used by the Facility during each Calendar Year shall be from Fuel Resource Category 3 as identified in Section A(i) of the Cover Sheet, and no more than twenty percent (20%) of the remaining Fuel Use shall be from one of the other Fuel Resource Categories ("Fuel Resource Requirements"), as measured pursuant to Appendix L.

Sixty percent (60%) of of Fuel Use, measured in Bone Dry Tons, that is delivered to the Facility and used by the Facility during each Calendar Year, shall be from High Hazard Fuel, as measured pursuant to Appendix L ("High Hazard Fuel Requirement"). Seller shall operate the Facility in compliance with both the Fuel Resource Requirements and the High Hazard Fuel Requirement during each Calendar Year.***]***

~~4.5.3.~~4.4.3. ***[For all Projects except Projects with a High Hazard Fuel Requirement] [***Seller hereby represents, warrants, and covenants that no later than thirty (30) days after the last day of each Contract Year ("Annual Fuel Attestation Due Date"), Seller shall provide an attestation of the Project's compliance with the Fuel Resource Requirements for such Contract Year in the form of Appendix L ("Fuel Attestation"). For each two week period (or portion thereof) after the Annual Fuel Attestation Due Date that Seller fails to deliver to Buyer the Annual Fuel Attestation, Seller shall pay to Buyer, as liquidated damages and not as a penalty, one thousand dollars ($1,000); provided that Seller shall pay such liquidated damages for a period not to exceed one-hundred twenty (120) days after the Annual Fuel

Attestation Due Date ("Annual Fuel Attestation Deadline"). The Parties acknowledge that the damages sustained by Buyer associated with Seller's failure to deliver the Annual Fuel Attestation by the Annual Fuel Attestation Due Date 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 Buyer as liquidated damages the bi-weekly amount specified in the preceding sentence which is intended to compensate Buyer for Seller's failure to perform.***]***

[For all Projects with a High Hazard Fuel Requirement] [Seller shall prove to Buyer that the Project has satisfied the Fuel Resource Requirements and High Hazard Fuel Requirement for each Calendar Year. Seller shall submit to Buyer an Annual Fuel Attestation for each Calendar Year no later than January 31st of the next Calendar Year ("Annual High Hazard Fuel Attestation Deadline") in the form of Appendix L, including the Annual Fuel Usage Log in the format provided by the Buyer (collectively, "Annual Fuel Attestation"), setting forth, among other things, the specific designated High Hazard Zones(s) from which its High Hazard Fuel was harvested and the percentage of total High Hazard Fuel delivered to the Project that came from each referenced High Hazard Zone(s). Seller shall submit to Buyer's designated recipient its Annual Fuel Attestation no later than the Annual High Hazard Fuel Attestation Deadline. Each Annual Fuel Attestation must be complete, not materially modified, and signed by an officer of the Seller. No later than the Annual High Hazard Fuel Attestation Deadline, Seller shall also obtain and provide, at Seller's sole expense, a verification from a Registered Professional Forester who shall, by his or her signature, attest to the accuracy of the source and volume of High Hazard Fuel delivered as set forth in Seller's Annual Fuel Attestation in the form of Appendix L-1 ("Verification of Fuel Source and Delivery").

~~4.5.3.1.~~4.4.3.1. Failure to Submit

~~4.5.3.1.1.~~4.4.3.1.1. If Seller has not submitted the Annual Fuel Attestation and Verification of Fuel Source and Delivery by the Annual High Hazard Fuel Attestation Deadline, Seller shall be deemed to have failed the Fuel Resource Requirement and the High Hazard Fuel Requirement during such Calendar Year and Seller shall be subject to an Event of Default pursuant to Section 13.2.2.15.

~~4.5.3.2.~~4.4.3.2. Buyer's Audit Rights. Buyer may reasonably rely on Seller's properly completed and timely submitted Annual Fuel Attestations as evidence of Seller's compliance with the applicable High Hazard Fuel Requirement and Fuel Resource Requirements. However, Buyer shall have the right to audit Seller's records and conduct any on-site visit to confirm Seller's compliance. Seller shall pay all reasonable expenses of Buyer in conducting such audit. Buyer shall have the right to deduct and offset the costs of conducting such audit from Seller's monthly invoices. Buyer's audit shall include, but not be limited to, Buyer's receipt and review of electronic copies of Seller's invoices for purchased fuel, including the location from which the fuel was harvested, and the records of the Registered Professional Forester who signed the Verification of Fuel Source and Delivery.***]***

~~4.5.4.~~4.4.4. ***[For Category 3 Projects that utilize High Hazard Fuel to meet the Fuel Resource Requirements except Projects with a High Hazard Fuel Requirement] [***Seller hereby represents, warrants, and covenants that no later than thirty (30) days after the last day of each Contract Quarter ("Quarterly Fuel Attestation Deadline"), Seller shall provide a Fuel Attestation for such Contract Quarter***]***.

[For all Projects with a High Hazard Fuel Requirement] [Seller hereby represents, warrants, and covenants that, no later than three (3) Business Days before the twenty-fifth (25th) day of the month following the last month of each Calendar Quarter ("Quarterly High Hazard Fuel Attestation Deadline"), Seller shall provide a Quarterly Fuel Attestation in the Form of Appendix L, including the Quarterly Fuel Usage Log in the format provided by the Buyer (collectively, "Quarterly Fuel Attestation") for each such Calendar Quarter.

~~4.5.4.1.~~4.4.4.1. Failure to Submit

~~4.5.4.1.1.~~4.4.4.1.1. If Buyer does not receive Seller's Quarterly Fuel Attestation with the applicable monthly invoice for March, June, September and/or December of each the Calendar Year, such month's invoice shall be deemed incomplete and Buyer shall not be required to pay that invoice until the Quarterly Fuel Attestation is received. Upon receipt, Seller's invoice shall be paid in the following monthly invoice cycle subject to Section 2.7.***]***

~~4.5.5.~~4.4.5. Seller hereby covenants that the information contained in its Annual Fuel Attestation shall be true, complete and correct. Buyer shall have the right to request and review documentation upon which Seller's Annual Fuel Attestation is based.

5. GENERAL CONDITIONS

5.1. CAISO Agreements; Interconnection Agreements; Scheduling. During the Delivery Term, Seller shall operate the Facility in compliance with the Transmission/Distribution Owner tariffs, the CAISO Tariff, and all Laws. Seller shall secure and maintain in full force all of the CAISO agreements, certifications and approvals required in order for the Facility to comply with the CAISO Tariff, including executing and maintaining, as applicable, a Participating Generator Agreement, Meter Service Agreement, interconnection agreement, and/or any other agreement necessary to deliver the Product to Buyer. Seller shall also comply with any modifications, amendments or additions to the applicable tariffs, protocols and Laws; provided that Seller shall be required to enter into a Participating Generator Agreement with the CAISO only if the Facility's net capacity is 0.5 MW or greater or if the CAISO Tariff requires or provides Seller the option to enter into such an agreement. Seller shall arrange and pay independently for any and all necessary costs under a Participating Generator Agreement, Meter Service Agreement, interconnection agreement, and/or any other agreement necessary to deliver the Product to Buyer. Ninety (90) days prior to the Commercial Operation Date, Seller must provide Buyer with all operating information, consistent with manufacturers specifications, needed for the Buyer to register the Facility with the CAISO and for Buyer to serve as Scheduling Coordinator.

5.2. Metering Requirements.

5.2.1. All output from the Project must be delivered through a single CAISO revenue meter located on the high-voltage side of the Project's final step-up transformer nearest to the Interconnection Point, and that meter must be dedicated exclusively to the Project; provided that if the CAISO does not permit a revenue meter for the Facility, the Buyer shall specify a revenue quality meter for the Facility. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter(s), or the revenue quality meter specified by Buyer, to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project.

5.2.2. Buyer may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Facility at a location provided by Seller that is compliant with Buyer's electric service requirements. The Check Meter must be interconnected with Buyer's

communication network to permit (a) periodic, remote collection of revenue quality meter data, and (b) back-up real time transmission of operating-quality meter data through the Telemetering System. In the event that Buyer elects to install a Check Meter, Buyer may compare the Check Meter data to the CAISO meter data. If the deviation between the CAISO meter data and the Check Meter data for any comparison is greater than 0.3%, Buyer may provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests. The Check Meter, if Buyer elects to install a Check Meter, is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO meter, and Check Meter data shall only be used to validate the CAISO meter data and, in the event of a failure or other malfunction of the CAISO meter, in place of the CAISO meter until such time that the CAISO meter is recertified.

5.2.3. In the case of Excess Sale arrangements, Buyer may, at its sole cost, furnish and install a net generation output meter at a location provided by Seller that is compliant with Buyer's electric service requirements. Such meter must be interconnected with Buyer's communication network to permit (a) periodic, remote collection of revenue quality meter data, and (b) back-up real time transmission of operating-quality meter data through the Telemetering System.

5.3. Meter Data. 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 readings from the CAISO Operational Meter Analysis and Reporting website and directly from the meter(s) at the Site.

5.4. Standard of Care. Seller shall: (a) maintain and operate the Facility and Interconnection Facilities, except facilities installed by Buyer, in conformance with all Laws and in accordance with Prudent Electrical Practices; (b) obtain any governmental authorizations and permits required for the construction and operation thereof; and (c) generate, schedule and perform transmission services in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs and Prudent Electrical Practices. Seller shall reimburse Buyer for any and all losses, damages, claims, penalties, or liability Buyer 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.

5.5. Access Rights.

5.5.1. 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, fuel consumption, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment, protective devices, information and documentation related to Fuel Use and the Fuel Resource Requirements, and any other pertinent information that affects plant operations. Seller shall provide this information electronically to Buyer within twenty (20) days of Buyer's request. With respect to Fuel Use and the Fuel Resource Requirements, Buyer shall have the right to request all supporting documentation reasonably necessary to determine the accuracy and completeness of any Fuel Attestation submitted by Seller to Buyer.

5.5.2. Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice under the circumstances, 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, its tariff schedules, and rules on file with the CPUC. Buyer, its authorized agents, employees and inspectors must (a) at all times adhere to all safety and security procedures as may be required by Seller; and (b) not interfere with the operation of the Project. 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.

5.6. 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; provided that nothing in this Section 5.6 shall modify any other agreement between the Parties or applicable Law.

5.7. Performance Excuses.

5.7.1. Seller Excuses. Seller shall be excused from achieving the Guaranteed Energy Production during Seller Excuse Hours, as provided in Section 11.1.

5.7.2. Buyer Excuses. The obligation of Buyer to receive and/or pay for the Product shall be excused only (a) during periods of Force Majeure, (b) by Seller's failure to perform, or (c) as provided with respect to curtailment in Section 5.8.

5.8. Seller Curtailment.

5.8.1. Seller shall curtail the production of the Facility after receipt of: (a) direction from the CAISO directly, or from Buyer that Buyer has been instructed by the CAISO or the Transmission/Distribution Owner, to curtail Energy deliveries; (b) direction that Seller has been given a curtailment order or similar instruction in order to respond to an Emergency; (c) a Curtailment Order issued by Buyer.

5.8.2. Buyer shall have no obligation to pay Seller for any Product delivered in violation of Section 5.8 or for any Product that Seller would have been able to deliver but for the fact of a curtailment pursuant to Section 5.8.1(a) or (b). Seller shall assume all liability and reimburse Buyer for any and all costs and charges incurred by Buyer, including but not limited to CAISO Penalties, as a result of Seller delivering Energy in violation of Section 5.8.

5.8.3. Buyer shall have the right, but not the obligation, to issue to Seller a Curtailment Order. Buyer shall pay Seller the Contract Price for the Product Seller would have been able to deliver but for the fact that Buyer issued a Curtailment Order ("Paid Curtailed Product"); provided, Buyer shall have no obligation to pay Seller the Contract Price for any Product that, if delivered would have been Surplus Delivered Energy, and any such Product shall not be Paid Curtailed Product.

5.8.4. Buyer shall estimate the amount of Product the Facility would have been able to deliver under Section 5.8.3 by reference to the most recent Notice of forecasted Expected Generation Output Buyer has received from Seller at the time of the Curtailment Order. In the event this forecast is not representative of past performance of the Facility, Buyer shall apply accepted industry standards in making such an estimate and take into consideration

past performance of the Facility and any other relevant information. Seller shall cooperate with Buyer's requests for information associated with any estimate made hereunder.

5.9. Forecasting and Outage Notifications. Seller shall comply with the forecasting and outage notifications in Appendix D.

5.10. Telemetry Requirements. Seller shall comply with the telemetry requirements in Appendix E.

5.11. Greenhouse Gas Emissions. 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.

5.12. Reporting and Record Retention.

5.12.1. Seller shall use commercially reasonable efforts to meet the Seller Milestone Schedule set forth in the Cover Sheet and avoid or minimize any delays in meeting such schedule. Seller shall provide Project development status reports in a format and a frequency, which shall not exceed one (1) report per month, specified by the Buyer. The report shall describe Seller's progress relative to the development, construction, and startup of the Facility, as well as a Notice of any anticipated change to the Commercial Operation Date and whether Seller is on schedule to meet the Guaranteed Commercial Operation Date.

5.12.2. Seller shall within ten (10) Business Days of receipt thereof provide to Buyer copies of any Interconnection Study or the interconnection agreement tendered to Seller by the CAISO or the Transmission/Distribution Owner and all other material reports, studies and analyses furnished by the CAISO or any Transmission/Distribution Owner, and any correspondence with the CAISO or Transmission/Distribution Owner related thereto, concerning the interconnection of the Facility to the Transmission/Distribution Owner's electric system or the transmission of Energy on the Transmission/Distribution Owners' electric system. Concurrently with the provision of any Interconnection Study or the interconnection agreement tendered to Seller by the CAISO or the Transmission/Distribution Owner that may give rise to a termination right of Buyer under Section 13.9.1, Seller shall provide Buyer a Notice of its irrevocable election to exercise or not exercise its rights under Section 13.9.2, with a failure to provide such an election deemed to be an election not to exercise such rights.

5.12.3. No later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, Seller shall provide a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other documentation of such WMDVBEs' status as such and the aggregate amount paid to WMDVBEs during such period.

5.12.4. Seller shall provide to Buyer on the Commercial Operation Date, and within thirty (30) days after the completion of each Contract Year thereafter during the Delivery Term, an inspection and maintenance report regarding the Facility. Buyer shall provide to the Seller a form inspection and maintenance report before the Commercial Operation Date and Seller shall complete the form inspection and maintenance report. Buyer, at its sole

discretion, may modify the form inspection and maintenance report to be used in subsequent Contract Years during the Delivery Term.

5.12.5. Seller shall keep all operating records required of a Qualifying Facility by any applicable CPUC order as well as any additional information that may be required of a Qualifying Facility in order to demonstrate compliance with all applicable standards which have been adopted by the CPUC.

5.12.6. If the Facility is a "qualifying cogeneration facility" as contemplated in 18 CFR Section 292.205, then within thirty (30) days following the end of each calendar year, and within thirty (30) days following the end of the Delivery Term, Seller shall provide to Buyer:

5.12.6.1. A copy of a FERC order waiving for the Facility, the applicable operating and efficiency standards for qualifying cogeneration facilities for the applicable year; or

5.12.6.2. A completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form," substantially in the form of Appendix K-1, with calculations and verifiable supporting data, which demonstrates the compliance of the Facility with cogeneration Qualifying Facility operating and efficiency standards set forth in 18 CFR Section 292.205 "Criteria for Qualifying Cogeneration Facilities," for the applicable year.

5.12.7. If the Facility is a "qualifying small power production facility" as contemplated in 18 CFR Sections 292.203(a), 292.203(c) and 292.204, then within thirty (30) days following the end of each year, and within thirty (30) days following the end of the Delivery Term, Seller shall provide to Buyer:

5.12.7.1. A copy of a FERC order waiving for the Facility, the applicable operating and fuel use standards for qualifying small power production facilities for the applicable year; or

5.12.7.2. A completed copy of Buyer's "Fuel Use Standards – Small Power Producer Data Reporting Form," substantially in the form of Appendix K-2, with calculations and verifiable supporting data, which demonstrates the compliance of the Facility with small power producer Qualifying Facility fuel use standards set forth in 18 CFR Section 292.204 "Criteria for Qualifying Small Power Production Facilities," for the applicable year.

5.13. Tax Withholding Documentation. Upon Buyer's request, Seller shall promptly provide to Buyer Internal Revenue Service tax Form W-9 and California tax Form 590 (or their equivalent), completed with Seller's information, and any other documentation necessary for Buyer to comply with its tax reporting or withholding obligations with respect to Seller.

5.14. Modifications to Facility. From the Execution Date and throughout the Delivery Term, Seller shall not repower or materially modify or alter the Facility without the written consent of Buyer, which written consent is at Buyer's sole discretion. Material modifications or alterations include, but are not limited to, (a) movement of the Site, (b) changes that may increase or decrease the expected output of the Facility (other than a one (1) time decrease based upon any adjustment to the Contract Capacity based on the Demonstrated Contract Capacity), (c) changes that may affect the generation profile of the Facility, (d) changes that may affect the ability to accurately measure the output of Product from the Facility and (e) changes that conflict with elections, information or requirements specified elsewhere in this Agreement (other than, to the extent not covered by clauses (a) through (d), as specified in the Cover Sheet). Material

modifications or alterations do not include maintenance and repairs performed in accordance with Prudent Electrical Practices. Seller shall provide to Buyer Notice not less than ninety (90) days before any proposed repowering, modification or alteration occurs describing the repowering, modification or alteration to Buyer's reasonable satisfaction and, if subject to Buyer's consent pursuant to this Section 5.14, seeking Buyer's written consent.

5.15. No Additional Incentives. Seller agrees that during the Term of this Agreement it shall not seek additional compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, Buyer's net energy metering tariff, or other similar California ratepayer subsidized program relating to energy production with respect to the Facility (other than grants from the Electric Program Investment Charge).

5.16. Site Control. Seller shall have Site Control as of the earlier of: (a) the Commercial Operation Date; or (b) any date before the Commercial Operation Date to the extent necessary for the Seller to perform its obligations under this Agreement and, in each case, Seller shall maintain Site Control throughout the Term. Seller shall promptly provide Buyer with Notice if there is any change in the status of Seller's Site Control.

5.17. Safety Plan. Seller shall provide to Buyer, prior to commencement of any construction activities on the Site, a report from an independent engineer (acceptable to both Buyer and Seller) certifying that Seller has a written plan for the safe construction and operation of the Facility in accordance with Prudent Electrical Practices.

6. INDEMNITY

6.1. Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, and employees of such other Party against and from any and all loss and liability (including reasonable attorneys' fees) for injuries to persons, including employees of either Party, and physical damage to property, including property of either Party, resulting from or arising out of: (a) the engineering, design, construction, maintenance, or operation of the indemnitor's facilities; (b) the installation of replacements, additions, or betterments to the indemnitor's facilities; or (c) the negligence or willful misconduct of the indemnitor relating to its obligation under this Agreement. 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 attorneys' fees that may be incurred by the other Party in enforcing this indemnity.

6.2. Each Party shall defend, save harmless and indemnify the other Party, its directors, officers, employees, and agents, assigns, and successors in interest, for and against any penalty imposed upon the Party to the extent caused by the other Party's failure to fulfill its obligations under this Agreement.

6.3. Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss and liability (including reasonable attorneys' fees) in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in this Agreement.

7. 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 6 (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.

8. NOTICES

Notices (other than forecasts, scheduling requests and curtailment (or equivalent) instructions) 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). Notices of curtailment (or equivalent orders) may be oral, written or electronic and must be made in accordance with accepted industry practices for such notices. 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 on the next Business Day after such Notice is 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 Notices, requests, invoices, statements or payments for this Facility must reference this Agreements identification number. Notices shall be provided as indicated in the Cover Sheet.

9. INSURANCE

9.1. Insurance Coverage. Seller shall, at its own expense, starting on the Execution Date and until the end of the Term, and for such additional periods as may be specified below, provide and maintain in effect the following insurance policies and minimum limits of coverage as specified below, and such additional coverage as may be required by Law, with insurance companies authorized to do business in the state in which the services are to be performed, with an A.M. Best's Insurance Rating of not less than A-:VII.

9.1.1. Commercial general liability insurance, written on an occurrence, not claims-made basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, contractual liability, premises-operations, owners and contractors protective, hazard, explosion, collapse and underground. Such insurance must bear a combined single limit per occurrence and annual aggregate of not less than one million dollars ($1,000,000.00), exclusive of defense costs, for all coverages. Such insurance must contain standard cross-liability and severability of interest provisions.

If Seller elects, with Buyer's written concurrence, to use a "claims made" form of commercial general liability insurance, then the following additional requirements apply: (a) the retroactive date of the policy must be prior to the Execution Date; and (b) either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates. Governmental agencies which have an established record of self-insurance may provide the required coverage through self-insurance.

9.1.2. Workers' compensation insurance with statutory limits, as required by the state having jurisdiction over Seller's employees, and employer's liability insurance with limits of not less than: (a) bodily injury by accident - one million dollars ($1,000,000.00) each accident; (b) bodily injury by disease - one million dollars ($1,000,000.00) policy limit; and (c) bodily injury by disease - one million dollars ($1,000,000.00) each employee.

9.1.3. Commercial automobile liability insurance covering bodily injury and property damage with a combined single limit of not less than one million dollars ($1,000,000.00) per occurrence. Such insurance must cover liability arising out of Seller's use of all owned, non-owned and hired automobiles in the performance of the Agreement.

9.1.4. Umbrella/excess liability insurance, written on an occurrence, not claims-made basis, providing coverage excess of the underlying employer's liability, commercial general liability, and commercial automobile liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than four million dollars ($4,000,000.00) per occurrence and in the annual aggregate.

9.2. Additional Insurance Provisions.

9.2.1. On or before the later of (a) sixty (60) days after the Execution Date and (b) the date immediately preceding commencement of construction of the Facility, and again within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to Buyer. Notwithstanding the foregoing sentence, Seller shall in no event furnish Buyer certificates of insurance evidencing required coverage later than the Commercial Operation Date. All deductibles, co-insurance and self-insured retentions applicable to the insurance above must be paid by Seller. All certificates of insurance must note that the insurers issuing coverage must endeavor to provide Buyer with at least thirty (30) days' prior written notice in the event of cancellation of coverage. Buyer's receipt of certificates that do not comply with the requirements stated in this Section 9.2.1, or Seller's failure to provide such certificates, do not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 9 and do not constitute a waiver of any of the requirements of Section 9.

9.2.2. Insurance coverage described above in Section 9.1 shall provide for thirty (30) days written Notice to Buyer prior to cancellation, termination, alteration, or material change of such insurance.

9.2.3. Evidence of coverage described above in Section 9.1 shall state that coverage provided in primary and is not excess to or contributing with any insurance or self-insurance maintained by Buyer.

9.2.4. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

9.2.5. All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance must be issued, clearly labeled with this Agreement's identification number and submitted in accordance with Section 8 and the Cover Sheet.

9.2.6. The insurance requirements set forth in Section 9.1 will apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The commercial general liability insurance required in Section 9.1.1 and the umbrella/excess liability insurance required in Section 9.1.4 must name Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, use or ownership of the Facility.

9.2.7. Seller shall remain liable for all acts, omissions or default of any subcontractor or subsupplier and shall indemnify, defend and hold harmless Buyer for any and all loss or damages, as well as all costs, charges and expenses which Buyer may suffer, incur, or bear as a result of any acts, omissions or default by or on behalf of any subcontractor or subsupplier.

9.2.8. If Seller fails to comply with any of the provisions of this Section 9, Seller, among other things and without restricting Buyer's remedies under Law or otherwise, shall, at its own cost, act as an insurer and provide insurance in accordance with the terms and conditions of this Section 9. With respect to the required commercial general liability insurance set forth in Section 9.1.1, umbrella/excess liability insurance set forth in Section 9.1.4, and commercial automobile liability insurance set forth in Section 9.1.3, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer with an A.M. Best's Insurance Rating of A-:VII would have, had the insurance been maintained in accordance with the terms and conditions set forth in this Section 9 and given the required additional insured wording in the commercial general liability insurance and umbrella/excess liability insurance, and standard "Who is an Insured" provision in commercial automobile liability form.

10. FORCE MAJEURE

10.1. No Default for Force Majeure. Neither Party shall be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure. Nothing in this Section 10 shall relieve the Seller of the obligation to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as may be extended pursuant to Section 1.1.

10.2. Requirements Applicable to Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

10.2.1. The Claiming Party, on or before the fourteenth (14th) day after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

10.2.2. The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

10.3. Limitations. The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

10.4. Termination. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with the Claiming Party's ability to perform its obligations under this Agreement and which (a) extends for more than 365 consecutive days, (b) extends for more than a total of 365 days in any consecutive 540-day period, or (c) causes the Commercial Operation Date to fail to be demonstrated by the Guaranteed Commercial Operation Date.

11. GUARANTEED ENERGY PRODUCTION

11.1. General. 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 (including, for purposes of this Section 11, Paid Curtailed Product), as measured in MWh, equal to the product of (x) and (y), where (x) is one hundred eighty percent (180%) of the average of the Contract Quantity over the Performance Measurement Period and (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 = 180% × average of the Contract Quantity over the Performance Measurement Period in MWh) × [(Hrs in Performance Measurement Period - Seller Excuse Hrs) / Hrs in Performance Measurement Period]

11.2. GEP Failures. If Seller has a GEP Failure, then within ninety (90) days after the last day of the last month of such Performance Measurement Period, Buyer shall notify Seller of such failure. Seller shall cure the GEP Failure by delivering to Buyer GEP Damages, calculated pursuant to Appendix F, within thirty (30) days of receipt of the Notice.

11.3. GEP Damages. 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.

12. CREDIT AND COLLATERAL REQUIREMENTS

12.1. Collateral Requirement. On or before the thirtieth (30th) day following the Execution Date, Seller shall post and thereafter maintain a collateral requirement (the "Collateral Requirement") as designated in the Cover Sheet. The Collateral Requirement will be held by Buyer and must be in the form of either a cash deposit or Letter of Credit.

12.2. Maintenance of Collateral Requirement. The Collateral Requirement shall be posted to Buyer and maintained at all times from the thirtieth (30th) day following the Execution Date through the end of the Term and thereafter until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed one year following the end of the Term. In the event that Buyer draws on the Collateral Requirement pursuant to this Agreement, Seller shall promptly replenish such Collateral Requirement to the amount specified in Section 12.1, as may be adjusted pursuant to Section 12.3.

12.3. Forfeiture Based on Capacity. If, on the earlier of the Commercial Operation Date or the Guaranteed Commercial Operation Date, Seller:

12.3.1. is not capable of delivering any of the Contract Capacity to the Delivery Point, as determined by Buyer in its reasonable discretion, Seller shall forfeit, and Buyer shall be entitled to, the entire Collateral Requirement and Buyer may terminate this Agreement; or

12.3.2. is only capable of delivering a portion of the Contract Capacity to the Delivery Point, based on the Demonstrated Contract Capacity, Seller shall forfeit, and Buyer shall have the right to retain, a portion of the Collateral Requirement equal to the product of (a) twenty thousand dollars ($20,000.00), multiplied by (b) the Contract Capacity set forth in Section 2.1 less the Demonstrated Contract Capacity.

12.4. Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Collateral Requirement, 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 Collateral Requirement posted with Buyer in the form of cash or Letter of Credit 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 (30) days of the delivery of the Collateral Requirement, 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 Collateral Requirement and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of an Event of Default, an Early Termination Date or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Collateral Requirement, Buyer may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to the Collateral Requirement, as applicable, including any such rights and remedies under Law then in effect; (b) exercise its rights of setoff against any and all property of Seller in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit or retain any cash deposit; and (d) liquidate the Collateral Requirement 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.

12.5. Use of Collateral Requirement. Buyer shall be entitled to draw upon the Collateral Requirement for any damages arising upon Buyer's declaration of an Early Termination Date or as set forth in Sections 12.3.1 and 12.3.2. If Buyer terminates this Agreement and is entitled to draw upon the Collateral Requirement, any amount of Collateral Requirement that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer.

12.5.1. Return of Collateral Requirement. Buyer shall return the unused portion of the Collateral Requirement, including the payment of any interest due thereon to Seller promptly after the following has occurred: (a) the Term of the Agreement has ended, or an Early Termination Date has occurred, as applicable; and (b) all payment obligations of the Seller arising under this Agreement, including but not limited to payments pursuant to the Settlement Amount, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

12.5.2. Full Return of Collateral Requirement. Notwithstanding the foregoing, the full Collateral Requirement will be returned to Seller if this Agreement is terminated in accordance with Section 10.4 or 13.10; provided that a termination under Section 10.4 only entitles Seller to a return of the full Collateral Requirement if the termination is based on a Force Majeure that prevents the Commercial Operation Date from occurring on or before the Guaranteed Commercial Operation Date or prevents Seller from demonstrating full Contract Capacity in accordance with Appendix J.

12.5.3. Payment of Interest. Buyer shall pay simple interest on cash held to satisfy the Collateral Requirements at the rate and in the manner set forth in Section 2.7.9.

12.6. Letter of Credit.

12.6.1. If Seller has provided a Letter of Credit to satisfy the Collateral Requirement, 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 (a) fails to maintain a Credit Rating of at least (i) an A3 by Moody's with a stable designation and at least an A- by S&P with a stable designation, if the issuer is rated by both Moody's and S&P, or (ii) an A3 by Moody's with a stable designation or an A- by S&P with a stable designation, if the issuer is rated by either Moody's or S&P but not both, (b) indicates its intent not to renew such Letter of Credit or has not renewed such Letter of Credit at least twenty-five (25) Business Days prior to its expiration, or (c) 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 Section 12.6.1.1 or 12.6.1.2 below in an amount equal to the Collateral Requirement, and by completing the action within three (3) Business Days of the applicable event (all of which is considered the "Cure"):

12.6.1.1. 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

12.6.1.2. 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 Collateral Requirements of Section 12. If a Letter of Credit has not been renewed at least twenty (20) Business Days prior to

its scheduled expiration, Buyer may draw on the Letter of Credit for the full amount of the Collateral Requirement.

12.6.2. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

13. EVENTS OF DEFAULT AND TERMINATION

13.1. Termination. Unless terminated earlier pursuant to Section 10.4 or this Section 13, this Agreement automatically terminates immediately following the last day of the Delivery Term.

13.2. Events of Default. An "Event of Default" means, with respect to a Party, the occurrence of any of the following:

13.2.1. With respect to either Party:

13.2.1.1. A Party becomes Bankrupt; ~~provided that, this Section 13.2.1.1. shall not apply with respect to Buyer until Buyer's exit from the Chapter 11 Cases has occurred;~~

13.2.1.2. Except for an obligation to make payment when due, if there is a failure of a Party 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 thirty (30) days after Notice thereof from the non-breaching Party to the breaching Party;

13.2.1.3. A 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 from the non-breaching Party to the breaching Party; or

13.2.1.4. Any representation or warranty made by a Party (a) is false or misleading in any material respect when made or (b) becomes false or misleading in any material respect during the Term; provided that the representations and warranties made by Seller in Sections 4.3.2 or 4.3.3 shall be subject to Section 4.3.4.

13.2.2. With respect to Seller:

13.2.2.1. Seller fails to take all corrective actions specified in any Buyer Notice, within the time frame set forth in such Notice, that the Facility is out of compliance with any term of this Agreement; provided that if such corrective action falls under a specific termination right under Section 13.2.2, then the time frame, if any, set forth for such right shall apply;

13.2.2.2. The Facility has not achieved Commercial Operation by the Guaranteed Commercial Operation Date;

13.2.2.3. Subject to Section 10, Seller has not sold or delivered Product greater than 10% of the applicable Contract Quantity from the Facility to Buyer for a period of twelve (12) consecutive months;

13.2.2.4. Subject to Section 3.6, Seller fails to maintain its status as an ERR as set forth in Section 3.5 of the Agreement;

13.2.2.5. Subject to Section 3.7, the Facility fails to maintain its status as a Qualifying Facility;

13.2.2.6. Seller fails to post and maintain the Collateral Requirements pursuant to Section 12 and such failure is not cured within any applicable cure period;

13.2.2.7. Seller abandons the Facility;

13.2.2.8. Seller installs generating equipment at the Facility that exceeds the Contract Capacity and such excess generating capacity is not removed within five (5) Business Days after Notice from Buyer;

13.2.2.9. Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Product that was not generated by the Facility;

13.2.2.10. Seller fails to install any of the equipment or devices necessary for the Facility to satisfy the Contract Capacity of the Facility, as set forth in Section 12.3.1;

13.2.2.11. An unauthorized assignment of the Agreement, as set forth in Section 16;

13.2.2.12. Seller fails to reimburse Buyer any amounts due under this Agreement;

13.2.2.13. Seller breaches the requirements in Section 5.15 regarding incentives.

13.2.2.14. ***[For all Projects except Projects with a High Hazard Fuel Requirement]*** ***[***Seller breaches any of the representations, warranties and/or covenants contained in Section 4.4 or otherwise fails to comply with the Fuel Resource Requirements ("Fuel Resource Failure") in any Contract Year as determined by Buyer, based on: (a) the Annual Fuel Attestation and supporting documentation therefor, requested and received by Buyer, if any, (b) Buyer's inspection of the Facility, or (c) Buyer's reasonable determination that the information contained in any Annual Fuel Attestation does not reflect the actual Fuel Use at the Facility for the prior Contract Year; provided, that Seller may cure such Event of Default according to the requirements set forth in Appendix M of this Agreement; provided, further, that if such Event of Default occurs three times during the Delivery Term, Buyer shall have the right to declare an Event of Default and terminate this Agreement upon the third occurrence of such Event of Default, and Seller shall not have the ability to cure as described in Appendix M. For the avoidance of doubt, Category 2 (Dairy) Facilities do not have an opportunity to cure Fuel Resource Failures;***]***

[For all Projects with a High Hazard Fuel Requirement] [Seller breaches any of the representations, warranties and/or covenants contained in Section 4.4 or otherwise fails to comply with the Fuel Resource Requirements or High Hazard Fuel Requirement ("Fuel Resource Failure") in any Calendar Year, as determined by Buyer, based on (a) the Annual Fuel Attestation, the Verification of Fuel Source and Delivery and supporting documentation therefor, requested and received by Buyer, (b) Buyer's inspection or audit of the Facility, or (c) Buyer's reasonable determination that the information contained in any Annual Fuel Attestation does not reflect the actual Fuel Use at the Facility for the applicable Calendar Year pursuant to Section

4.4.2. In the event of such a breach, Seller shall be subject to a Termination Payment pursuant to Sections 13.3 and 13.5.***]***

13.2.2.15. ***[For all Projects except Projects with a High Hazard Fuel Requirement]*** ***[***Seller fails to submit to Buyer the Annual Fuel Attestation on or before the Annual Fuel Attestation Deadline;***] [For all Projects with a High Hazard Fuel Requirement]*** Seller fails to submit to Buyer the Annual Fuel Attestation and the Verification of Fuel Source and Delivery on or before the Annual High Hazard Fuel Attestation Deadline. In the event of such a breach, Seller shall be subject to a Termination Payment pursuant to Sections 13.3 and 13.5.***]***

13.2.2.16. Seller uses a fuel resource to generate electricity and if applicable, Useful Thermal Energy Output from the Facility that is not one of the Fuel Resource Categories.

13.2.2.17. ***[For Category 3 Projects that do not have an effective Active Interconnection Study prior to the Execution Date] [***Seller fails to submit a new Interconnection Study application for the Project pursuant to Section 4.3.15.***]***

13.2.2.18. ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date] [***Seller's Interconnection Study for the Project has determined that, with the identified interconnection upgrades: (a) the transmission or distribution grid that would serve as the Interconnection Point is inadequate; (b) the Project does not meet all applicable state and local laws, building standards, and Transmission/Distribution Owner's interconnection requirements; or (c) the aggregate of all electric generating facilities on the distribution circuit would adversely impact Transmission/Distribution Owner's operation and load restoration efforts of the electric system.***]***

13.2.2.19. ***[For Projects with a Nameplate Capacity greater than three megawatts][***The Facility's Demonstrated Nameplate Capacity is greater than the lesser of (a) the Nameplate Capacity and (b) five thousand (5,000) kW.***]***

13.3. Declaration of an Event of Default. ***[For all Projects except Projects with a High Hazard Fuel Requirement] [***Except as otherwise set forth in Section 13.2.2.14 above, if an Event of Default has occurred, the non-defaulting Party shall have the right to: (a) send Notice, designating a day, no earlier than five (5) days after such Notice and no later than twenty (20) days after such Notice, 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) collect any Settlement Amount under Section 13.5; and (e) if the defaulting party is the Seller and Buyer terminates the Agreement prior to the start of the Commercial Operation Date, Buyer shall have the right to retain (or if the Collateral Requirement has not been provided, collect) the entire Collateral Requirement.***]***

[For all Projects with a High Hazard Fuel Requirement] [If an Event of Default has occurred, the non-defaulting Party shall have the right to: (a) send Notice, designating a day, no earlier than five (5) days after such Notice and no later than twenty (20) days after such Notice, 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) collect any Termination Payment under Section 13.5; and (e) if the defaulting party is the Seller and Buyer terminates the Agreement prior to the start of the

Commercial Operation Date, Buyer shall have the right to retain (or if the Collateral Requirement has not been provided, collect) the entire Collateral Requirement.***]***

13.4. Release of Liability for Termination.

13.4.1. Upon termination of this Agreement, neither Party shall be under any further obligation or subject to liability hereunder, except as provided in Section 2.4.2.

13.4.2. If an Event of Default shall have occurred, the non-defaulting Party has the right to immediately suspend performance under this Agreement and pursue all remedies available at Law or in equity against the defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

13.5. Calculation of Settlement Amount ***[***and Termination Payment***] [For all Projects with a High Hazard Fuel Requirement]***.

13.5.1. ***[For all Projects except Projects with a High Hazard Fuel Requirement] [***If either Party exercises a termination right under Section 13 after the Commercial Operation Date, the non-defaulting Party shall calculate a Settlement Amount determined as of the Early Termination Date. Prior to the Commercial Operation Date, the Settlement Amount shall be Zero dollars ($0).***]***

[For all Projects with a High Hazard Fuel Requirement] [If either Party exercises a termination right under Section 13 after the Commercial Operation Date, the non-defaulting Party shall calculate a termination payment in US dollars equal to the sum of (a) and (b), and, if Seller is the defaulting party, (c) ("Termination Payment"), where (a) equals the Settlement Amount, (b) equals 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, and (c) equals the Fuel Use Default Payment as described in Section 13.5.1.1, determined as of the Early Termination Date. Prior to the Commercial Operation Date, the Termination Payment shall be zero dollars ($0).

13.5.1.1. Fuel Use Default Payment. If Seller is the defaulting Party, then Seller shall pay Buyer an amount that compensates Buyer for Buyer's overpayment for Product resulting from the Seller's failure to meet the High Hazard Fuel Requirement or Fuel Resource Requirements during the applicable Calendar Year(s) ("Fuel Use Default Payment"). The Fuel Use Default Payment is calculated by the number of MWhs of Delivered Energy and Paid Curtailed Product provided by the Seller to Buyer from January 1 of the applicable Calendar Year(s) to the Early Termination Date multiplied by the difference between (a) $199.72/MWh adjusted for TOD Factors and (b) the Contract Price adjusted for TOD Factors. In the event Seller fails to pay the Fuel Use Default Payment when due, Buyer may deduct and offset the Fuel Use Default Payment from the posted Collateral Requirement.***]***

13.5.2. If the non-defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, determined as of the Early Termination Date, the Settlement Amount shall be Zero dollars ($0).

13.5.3. The Buyer shall not have to enter into replacement transactions to establish a Settlement Amount.

13.6. Rights and Remedies Are Cumulative. The rights and remedies of the Parties pursuant to this Section 13 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

13.7. 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.

13.8. Right of First Refusal.

13.8.1. If Seller terminates this Agreement, as provided in Sections 13.10 or 10.4 (based on a Force Majeure as to which Seller is the Claiming Party), or if Buyer terminates this Agreement as provided in Sections 13.2.2.2 and 12.3.1, or due to an Event of Default of Seller prior to the Guaranteed Commercial Operation Date, neither Seller nor Seller's Affiliates may sell, or enter into a contract to sell, Energy, Renewable Energy Credits, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to a party other than Buyer for a period of two (2) years following the effective date of such termination ("Restricted Period").

13.8.2. This prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than Buyer, Seller or Seller's Affiliate provides Buyer with a written offer to sell the Energy, Renewable Energy Credits, Capacity Attributes and Resource Adequacy Benefits to Buyer at the Contract Price and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and Buyer fails to accept such offer within forty-five (45) days after Buyer's receipt thereof.

13.8.3. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site of the proposed Facility (including the interconnection queue position identified in the Cover Sheet) during the Restricted Period so long as the limitations contained in this Section 13.8 apply, unless the transferee agrees to be bound by the terms set forth in this Section 13.8 pursuant to a written agreement reasonably approved by Buyer.

13.8.4. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach of the covenants contained within this Section 13.8.

13.9. Transmission Costs Termination Right.

13.9.1. Subject to Section 13.9.2, Buyer has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on or before the date that is sixty (60) days after Seller provides to Buyer the results of any Interconnection Study or the interconnection agreement tendered to Seller by the CAISO or the Transmission/Distribution Owner if:

13.9.1.1. Such study or agreement as of the date of the termination Notice estimates, includes, indicates, specifies or reflects that the maximum total cost of transmission upgrades or new transmission facilities to any Transmission/Distribution Owner, including costs reimbursed by any Transmission/Distribution Owner to Seller ("Aggregate Network Upgrade Costs"), may in the aggregate exceed Three Hundred Thousand dollars ($300,000.00) ("Network Upgrades Cap"), irrespective of any

subsequent amendment of such study or agreement or any contingencies or assumptions upon which such study or agreement is based; or

13.9.1.2. Buyer must procure transmission service from any other Transmission/Distribution Owner to allow Buyer to Schedule Energy from the Facility and the cost of such transmission service is not reimbursed or paid by Seller.

13.9.2. Notwithstanding Section 13.9.1.1, Buyer shall have no right to terminate this Agreement under Section 13.9.1, if Seller (a) concurrently with its provision of the relevant Interconnection Study or interconnection agreement pursuant to Section 5.12.2, irrevocably agrees, as applicable, to pay to Buyer for (i) the amount which Aggregate Network Upgrade Costs exceed the Network Upgrades Cap ("Excess Network Upgrade Costs"), such payment to be made, at Buyer's election, either directly to the Transmission/Distribution Owner on behalf of Seller or to Buyer for transfer to the Transmission/Distribution Owner at the time due, and (ii) any costs for transmission services specified in Section 13.9.1.2, and (b) enters into an interconnection agreement agreed to by PG&E that contains language requiring Seller to pay, without reimbursement from Buyer or any other Transmission/Distribution Owner, all Excess Network Upgrade Costs; provided that Buyer shall have a separate right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on or before the date that is ninety (90) days after FERC, CAISO, or any Transmission/Distribution Owner, as applicable, rejects Seller's interconnection agreement, in whole or in part, or modifies Seller's interconnection agreement, in any such case, in a manner that would make Seller unable to comply with the terms of Section 13.9.2(b). If Seller elects to pay, without reimbursement, for any Excess Network Upgrade Costs pursuant to this Section 13.9.2, in no event shall Seller have any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights (as defined in the CAISO Tariff) in connection with the development of the Facility or the delivery of Product to Buyer pursuant to this Agreement.

13.10. Permit Termination Right. Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if Seller has not obtained permits necessary for the construction and operation of the Project within twenty-two (22) months after the Execution Date ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date*:** Interconnection Study Completion Date***]*** and a Notice of termination is given on or before the end of the twenty-third (23rd) month after the Execution Date ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date*:** Interconnection Study Completion Date***]***; provided that prior to any termination by Seller under this Section 13.10, Seller must have taken all commercially reasonable actions (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to obtain such permits.

14. SCHEDULING COORDINATOR; FORECASTING PENALTIES; CAISO CHARGES; GOVERNMENTAL CHARGES

14.1. Scheduling Coordinator. Buyer shall be Seller's designated Scheduling Coordinator (as defined by CAISO Tariff). Seller shall comply with all forecasting and outage notification requirements in Appendix D. Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling and imbalances except as provided in Sections 5.8.2, 14.2 and 14.3. Throughout the Delivery Term, Buyer shall be entitled to all CAISO revenues and credits associated with the Project.

14.2. Forecasting Penalties and CAISO Penalties. Seller is liable for Forecasting Penalties and CAISO Penalties under the following circumstances:

14.2.1. Determining Seller's Liability for Forecasting Penalties. If in any hour of any month in the Delivery Term Seller fails to comply with the requirements in Appendix D of this Agreement with respect to Seller's Expected Generation Output forecasting, and the sum of Energy Deviations for each of the Settlement Intervals in that hour exceed the Performance Tolerance Band described in Section 14.2.2, then Seller is liable for a forecasting penalty ("Forecasting Penalty") equal to one hundred fifty percent (150%) of the Contract Price for each MWh of electric Energy Deviation, or any portion thereof, in that hour.

14.2.2. Performance Tolerance Band. The "Performance Tolerance Band," in MWh, is equal to: (a) three percent (3%) times; (b) Contract Capacity times; (c) one (1) hour.

14.2.3. Seller's Liability for CAISO Penalties. Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller's failure to adhere to its obligations under the CAISO Tariff or any CAISO directive or to perform any covenant or obligation set forth in this Agreement.

14.2.4. Availability Charges. If the Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

14.2.5. 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 reimburse Seller for such Governmental Charges within thirty (30) days of Notice by Seller. 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 reimburse Buyer for such amounts within thirty (30) days of Notice from Buyer. 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.

15. RELEASE OF INFORMATION AND RECORDING CONVERSATION

15.1. Release of Information. Seller authorizes Buyer to release to the FERC, CEC, the CPUC and/or other Governmental Authority information regarding the Facility, including the Seller's name and location, and the size, location and operational characteristics of the Facility, the Term, the ERR type, the Commercial Operation Date, greenhouse gas emissions data and the net power rating of the Facility, as requested from time to time pursuant to the CEC's, CPUC's or applicable Governmental Authority's rules and regulations.

15.2. 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 14.1 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.

16. ASSIGNMENT

16.1. General Assignment. Except as provided in Sections 16.2 and 16.3, 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 (a) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to meet or exceed such characteristics in the assigning Party's obligations hereunder and (d) 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 16.2, 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 with at least thirty (30) days' prior written Notice of the assignment. Appendix H is the General Consent to Assignment form that shall be used for this Section 16.1.

16.2. 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) with the prior written consent of the Buyer, which consent shall not be unreasonably withheld or delayed. The Parties agree that, the consent provided to Buyer in accordance with this Section 16.2 shall be in a form substantially similar to the Form of Financing Consent attached hereto as Appendix I; provided that (a) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix I, including extension of any cure periods or additional remedies for financing providers, and (b) Seller shall be responsible at Buyer's request for Buyer's reasonable costs and attorneys' fees associated with the review, negotiation, execution and delivery of documents in connection with such assignment.

16.3. 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).

17. 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. *[Standard term and condition that "may not be modified" pursuant to prior Commission decisions, including Decision 07-11-025, Decision 08-08-028 and Decision 10-03-021, as modified by Decision 11-01-025]*

18. DISPUTE RESOLUTION

18.1. Intent of the Parties. The sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Section 18, except that either Party may seek an injunction in Superior Court in [utility specific location], 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.

18.2. Management Negotiations.

18.2.1. 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.

18.2.2. All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent judicial or arbitration process between the Parties, whether with respect to this dispute or any other.

18.2.3. If the matter is not resolved within forty-five (45) days of commencement of negotiations under Section 18.2.1, or if the Party receiving the written request to meet refuses or does not meet within the ten (10) Business Day period specified in Section 18.2.1, either Party may initiate arbitration of the controversy or claim according to the terms of Section 18.3.

18.3. Arbitration Initiation. If the dispute cannot be resolved by negotiation as set forth in Section 18.2 above, then the Parties shall resolve such controversy through arbitration ("Arbitration"). The Arbitration shall be adjudicated by one retired judge or justice from the JAMS panel. The Arbitration shall take place in [utility specific location], California, and shall be administered by and in accordance with JAMS' Commercial Arbitration Rules. 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 at any time following the unsuccessful conclusion of the management negotiations provided for in Section 18.2.

18.4. Arbitration Process. 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 for depositions. 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.

18.4.1. 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.

18.4.2. 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.

18.4.3. The arbitrator's award shall be made within nine (9) months of the notice of intention to arbitrate 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. At the conclusion of the Arbitration, the arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the arbitrator's decision is based.

18.4.4. The arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The arbitrator's decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error.

18.4.5. 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.

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

18.4.7. 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.

18.4.8. Unless otherwise agreed to by the Parties, all proceedings before the arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter's fees.

18.4.9. 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.

19. MISCELLANEOUS

19.1. 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. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

19.2. 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 may 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.

19.3. General. This Agreement has been approved by the CPUC and modification of the terms and conditions of this Agreement, other than administrative amendments that do not impact the CPUC approved standard terms and conditions of this Agreement, will result in the need to obtain additional CPUC approval of the amended Agreement. In addition to the foregoing, 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.

19.4. Interpretation. Whenever this Agreement specifically refers to any Law, tariff, Governmental Authority, regional reliability council, Transmission/Distribution Owner, or credit rating agency, the Parties hereby agree that the references also refers to any successor to such Law, tariff or organization.

19.5. Construction. The Parties acknowledge and agree that this Agreement has been approved by the CPUC and that the Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof.

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.

	PACIFIC GAS AND ELECTRIC COMPANY
(Seller)	(Buyer)
(Signature)	(Signature)
(Type/Print Name)	(Type/Print Name)
(Title)	(Title)
(Date)	(Date)

APPENDIX A – DEFINITIONS

"Accepted Compliance Costs" has the meaning set forth in Section 3.6.3.

"Active Interconnection Study" has the meaning set forth in Section 4.6(a) of the BioMAT Tariff.

"Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party.

"Aggregate Network Upgrade Costs" has the meaning set forth in Section 13.9.1.1.

"Aggregated Telemetering Cost Cap" has the meaning set forth in Appendix E. ***[Only applicable if Facility is less than 0.5 MW]***

"Aggregated Telemetering System" has the meaning set forth in Appendix E. ***[Only applicable if Facility is less than 0.5 MW]***

"Aggregated Telemetering System Installation Costs" means initial costs to Seller for the purchase and installation of the Aggregated Telemetering System. In no event shall "Aggregated Telemetering System Installation Costs" include ongoing operating expenses of the Aggregated Telemetering System following its initial installation, including but not limited to communication costs and costs associated with maintaining a T-1 line. ***[Only applicable if Facility is less than 0.5 MW]***

"Agreement" means this Power Purchase Agreement between Buyer and Seller, including the Cover Sheet and all appendices, schedules and exhibits attached hereto. For purposes of Section 17, the word "agreement" shall have the meaning set forth in this definition. For purposes of Section 3.3.9, the word "contract" shall have the meaning set forth in this definition.

"Annual Fuel Attestation" means the yearly attestation of the Project's compliance with the Fuel Resource Requirements for the applicable Contract Year in the form of Appendix L. ***[For all Projects except Projects with a High Hazard Fuel Requirement]***

"Annual Fuel Attestation" has the meaning set forth in Section 4.4.3. ***[For all Projects with a High Hazard Fuel Requirement]***

"Annual Fuel Attestation Deadline" has the meaning set forth in Section 4.4.3. ***[For all Projects except Projects with a High Hazard Fuel Requirement]***

"Annual High Hazard Fuel Attestation Deadline" has the meaning set forth in Section 4.4.3. ***[For all Projects with a High Hazard Fuel Requirement]***

"Annual Fuel Attestation Due Date" has the meaning set forth in Section 4.4.3. ***[For all Projects except Projects with a High Hazard Fuel Requirement]***

"Arbitration" has the meaning set forth in Section 18.3.

"Availability Standards" means the program set forth in Section 40.9 of the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible charges and incentive payments for performance thereunder.

"Bankrupt" means with respect to any entity, such entity:

(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;

(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 such entity or any substantial portion of its property or assets; or

(e) Is generally unable to pay its debts as they fall due.

"Biogas" includes digester gas, landfill gas, and any gas derived from a feedstock eligible under the CEC's Renewables Portfolio Standard.

"BioMAT Program" means Buyer's bioenergy market adjusting tariff program described in Buyer's Schedule BioMAT, implemented by Buyer in accordance with CPUC Decisions 14-12-081 and 15-09-004.

"BioMAT Tariff" means Buyer's Schedule BioMAT implemented by Buyer in accordance with CPUC Decisions 14-12-081, 15-09-004, and 16-10-025.

"Bone Dry Ton" or "BDT" means a unit of weight equal to 2,000 pounds of woody material at zero percent (0%) moisture content.

"Business Day" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving 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.

"Buyer" has the meaning set forth in the Cover Sheet.

"Buyer's WREGIS Account" has the meaning set forth in Section 3.3.1. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

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

"CAISO Grid" means the system of transmission lines and associated facilities that have been placed under the CAISO's operational control.

"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 Seller's failure to follow Prudent Electrical Practices. "CAISO Penalties" do not include the costs and charges related to Scheduling and imbalances as addressed in Section 14.1 of this Agreement.

"CAISO Tariff" means the CAISO FERC Electric Tariff, Fifth Replacement Volume No. 1, as amended from time to time.

"California Renewables Portfolio Standard" means the renewable energy program and policies codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions may be amended or supplemented from time to time.

"Calendar Quarter" referes to one of the following time periods, as applicable: January 1 through March 31; April 1 through June 30; July 1 through September 30; or October 1 through December 31. ***[For all Projects with a High Hazard Fuel Requirement]***

"Calendar Year" means the time period January 1 through December 31 for the applicable year.

"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.

"Category 1" has the meaning set forth in Section 14 of the BioMAT Tariff.

"Category 2 (Dairy)" has the meaning set forth in Section 14 of the BioMAT Tariff.

"Category 2 (Other Agriculture)" has the meaning set forth in Section 14 of the BioMAT Tariff.

"Category 3" has the meaning set forth in Section 14 of the BioMAT Tariff.

"CEC" means the California Energy Commission or its successor agency.

"CEC Certification" means certification by the CEC that the Facility is an ERR and that all Energy produced by the Facility qualifies as generation from an ERR.

"CEC Pre Certification" means provisional certification of the proposed Facility as an ERR by the CEC upon submission by a facility of a complete CEC-RPS-1B application and required supplemental information.

"CEC Verification" means verification by the CEC based on ongoing reporting by Seller that the Facility is an ERR and that all Energy produced by the Facility qualifies as generation from an ERR.

~~"Chapter 11 Cases" means Buyer's Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19-30089 (DM).~~

"Check Meter" means the Buyer revenue-quality meter section(s) or meter(s), which Buyer may require at its discretion, and which will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"Claiming Party" has the meaning set forth in Section 10.2.

"Collateral Requirement" has the meaning set forth in Section 12.1.

"Commercial Operation" means the Facility is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

"Commercial Operation Date" means the date on which the Facility achieves Commercial Operation pursuant to the terms of this Agreement.

"Compliance Action" has the meaning set forth in Section 3.6.1.

"Compliance Expenditure Cap" has the meaning set forth in Section 3.6.

"Contract Capacity" means the lesser of: (a) ***[***the of Nameplate Capacity ***[For all Facilities except those with a Nameplate Capacity greater than three megawatts] [***that portion of the Nameplate Capacity which is specified as the Contract Capacity in the Cover Sheet***] [Only for Facilities with a Nameplate Capacity greater than three megawatts]*** and (b) the Demonstrated Contract Capacity.

"Contract Price" has the meaning set forth in Section 2.6.

"Contract Quantity" has the meaning set forth in Section 2.2.

"Contract Quarter" means a period of three (3) consecutive months with the first Contract Quarter commencing on the Commercial Operation Date and each subsequent Contract Quarter commencing on the date that is every three months thereafter. ***[For Category 3 Projects utilizing High Hazard Fuel except Projects with a High Hazard Fuel Requirement]***

"Contract Year" means a period of twelve (12) consecutive months with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the Commercial Operation Date.

"Costs" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace the Transaction; and (b) all reasonable attorneys' fees and expenses incurred in connection with the termination of the Transaction.

"Cover Sheet" means the cover sheet to this Agreement.

"CPUC" means the California Public Utilities Commission, or successor entity.

"Credit Rating" means, with respect to any entity, (a) the rating then assigned to such entity's unsecured senior long-term debt obligations (not supported by third party credit enhancements), or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. If the entity is rated by both S&P and Moody's and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

"Cure" has the meaning set forth in Section 12.6.

"Curtailment Order" means any instruction from Buyer to Seller to reduce the delivery of Energy from the Facility for any reason other than as set forth in Sections 5.8.1(a) or (b).

"Daily Delay Liquidated Damages" has the meaning set forth in Section 1.1.2.4.

"Day-Ahead" has the meaning set forth in the CAISO Tariff.

"Deficient Month" has the meaning set forth in Section 3.3.5. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

"Delay" has the meaning set forth in Section 1.2.1.

"Deliverability Upgrades" means all Network Upgrades necessary for the Facility to receive Full Capacity Deliverability Status.

"Delivered Energy" means all Energy produced from the Project, expressed in MWh, as recorded by the meter specified in Section 5.2.1 or the Check Meter, as applicable.

"Delivery Point" means the point of interconnection to the CAISO Grid and, for payment purposes, the corresponding PNode.

"Delivery Term" has the meaning set forth in Section 2.5.

"Delivery Term Contract Quantity Schedule" has the meaning set forth in the Cover Sheet.

"Demonstrated Contract Capacity" means the Facility's total rated electric alternating current energy generating capacity which will equal the sum of the metered amounts for the Demonstration Hour, as determined in accordance with Appendix J.

"Demonstrated Nameplate Capacity" means the Facility's total rated electric alternating current generating capacity, which will equal the lesser of (a) the sum of the manufacturer's nameplate rating of all installed generators (kW), and (b) the sum of the manufacturer's nameplate power rating of all installed primer movers (kW), as determined in accordance with Appendix J. ***[For Facilities with a Nameplate Capacity greater than three megawatts]***

"Demonstrated Date" has the meaning set forth in Appendix J. ***[For Facilities with a Nameplate Capacity greater than three megawatts]***

"Demonstration Hour" has the meaning set forth in Appendix J

"Distribution Line" has the meaning set forth in Section 14 of the BioMAT Tariff.

"Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

"Early Termination Date" has the meaning set forth in Section 13.3.

"Electric System Upgrades" means any Network Upgrades, Distribution Upgrades, Deliverability Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Transmission/Distribution Owner, as applicable, to physically and electrically interconnect the Project to the Transmission/Distribution 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 Transmission/Distribution Owner's electric system is not part of the CAISO Grid.

"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.

"Eligibility Guidebook" means the CEC's Renewables Portfolio Standard – Eligibility Guidebook (Seventh Edition, California Energy Commission, Efficiency and Renewable Energy Division, Publication Number: CEC-300-2013-005-EDF-CMF-REV), as amended from time to time, or its successor publication.

"Emergency" means (a) an actual or imminent condition or situation which jeopardizes the integrity of the electric system or the integrity of any other systems to which the electric system is connected or any condition so defined and declared by the CAISO; or (b) an emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

"Energy" means three-phase, 60-cycle alternating current electric energy measured in MWh, net of Station Use and, in the case of Excess Sales arrangements, any Site Host Load.

"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.

"Engineer Report" has the meaning set forth in Appendix J.

"Event of Default" has the meaning set forth in Section 13.2.

"Excess Network Upgrade Costs" has the meaning set forth in Section 13.9.2.

"Excess Sale" means the type of transaction described in Section 2.3.2.

"Execution Date" means the latest signature date found at the end of the Agreement.

"Existing PG&E Transmission Line" has the meaning set forth in Section 14 of the BioMAT Tariff.

"Expected Generation Output" means the amount of power output from the Facility, expressed in megawatts, that is expected to generate Product in a given time period.

"Facility" has the meaning set forth in the Preamble. The terms "Facility" or "Project" as used in this Agreement are interchangeable.

"FERC" means the Federal Energy Regulatory Commission or any successor government agency.

"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.

"Force Majeure" means any occurrence that was not anticipated as of the Execution Date that:

(a) In whole or in part:

(i) Delays a Party's performance under this Agreement;

(ii) Causes a Party to be unable to perform its obligations; or

(iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;

(b) Is not within the control of that Party; and

(c) The Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute

Force Majeure does not include:

(d) 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 of the specific type described in (a) through (c) above

(e) Reductions in generation from the Facility resulting from ordinary wear and tear, deferred maintenance or operator error;

(f) Any delay in providing, or cancellation of, interconnection service by a Transmission/Distribution Owner or the CAISO, except to the extent such delay or cancellation is the result of a force majeure claimed by the Transmission/Distribution Owner or the CAISO.

"Force Majeure Delay" has the meaning set forth in Section 1.1.2.3

"Forecasting Penalty" has the meaning set forth in Section 14.2.1.

"Fuel Attestation" has the meaning set forth in Section 4.4.3.

"Fuel Performance Measurement Period" has the meaning set forth in Appendix M.

"Fuel Resource Category" means any of Category 1, Category 2 (Dairy), Category 2 (Other Agriculture) or Category 3 fuel resources as defined in the BioMAT Tariff.

"Fuel Resource Cure Period" has the meaning set forth in Appendix M.

"Fuel Resource Failure" has the meaning set forth in 13.2.2.14.

"Fuel Resource Requirements" has the meaning set forth in Section 4.4.2.

"Fuel Use" has the meaning set forth in Section 4.4.1.

"Fuel Use Default Payment" has the meaning set forth in Section 13.5.1.1

"Full Buy/Sell" is the type of transaction described in Section 2.3.1.

"Full Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff.

"Full Capacity Option Notice" has the meaning set forth in Section 3.4.3.

"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 13.5. 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 comp arable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

"GEP Damages" has the meaning set forth in Appendix F.

"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.

"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.

"Governmental Charges" has the meaning set forth in Section 14.4.

"Guaranteed Commercial Operation Date" has the meaning set forth in Section 1.1.2.

"Guaranteed Energy Production" or "GEP" has the meaning set forth in Section 11.1.

"High Hazard Fuel Requirement" has the meaning set forth in Section 4.4.2. ***[For all Projects with a High Hazard Fuel Requirement]***

"High Hazard Fuel Use" means High Hazard Fuel that is delivered to the Project for Fuel Use. ***[For all Projects with a High Hazard Fuel Requirement]***

"High Hazard Fuel" has the meaning set forth in Section 14 of the BioMAT Tariff.

"IFM" has the meaning set forth in the CAISO Tariff.

"Interconnection Facilities" has the meaning set forth in the tariff applicable to the Seller's interconnection agreement.

"Interconnection Point" means the location where the Facility first interconnects with the existing electrical system via Distribution Line or Existing PG&E Transmission Line as identified in the Cover Sheet.

"Interconnection Study" means any of the studies defined in the CAISO Tariff or any Transmission/Distribution Owner's tariff that reflect methodology and costs to interconnect the Facility to the Transmission/Distribution Owner's electric grid, by which either CAISO or the Transmission/Distribution Owner evaluates the impacts of a proposed interconnection to the electric grid, and assigns mitigations to offset the identified impacts. Types of study processes include the PG&E System Impact Study in the Independent Study Process, a completed PG&E Distribution Group Study

Phase 1 Interconnection Study in the Distribution Group Study Process, a completed PG&E Phase 1 Study in the Cluster Study Process or a completed CAISO Cluster Study, Independent Study or Fast Track Study, or make use of an existing interconnection agreement to the extent permitted by PG&E's or CAISO's tariff.

"Interconnection Study Completion Date" means the date Seller receives an Active Interconnection Study, which shall be the date Seller receives a tendered interconnection agreement from Transmission/Distribution Owner. ***[For Category 3 Projects that do not have an Active Interconnection Study prior to the Execution Date]***

"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.

"Interim Deliverability Status" has the meaning set forth in the CAISO Tariff.

"JAMS" means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

"kW" means kilowatt.

"kWh" means kilowatt-hour.

"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 during the Delivery Term; or any binding interpretation of the foregoing.

"Letter(s) of Credit" means an irrevocable, non-transferable standby letter of credit issued either by (a) a U.S. commercial bank, or (b) a U.S. branch of a foreign commercial bank, acceptable to Buyer, with either such bank having a Credit Rating of at least: (i) an A- from S&P with a stable designation and an A3 from Moody's with a stable designation, if such bank is rated by both S&P and Moody's; or (ii) an A- from S&P with a stable designation or an A3 from Moody's with a stable designation, if such bank is rated by either S&P or Moody's, but not both, even if such bank was rated by both S&P and Moody's as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies. The Letter of Credit must be substantially in the form as contained in Appendix G to this Agreement; provided that if the Letter of Credit is issued by a branch of a foreign bank, Buyer may require changes to such form.

"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.

"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 13.5. 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 platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

"Manager" has the meaning set forth in Section 18.2.1.

"mmBTU" means one million British thermal units

"Meter Service Agreement" has the meaning set forth in the CAISO Tariff.

"Monthly Period" has the meaning set forth in Appendix C.

"Monthly TOD Payment" has the meaning set forth in 2.7.3."MW" means megawatt.

"MWh" means megawatt-hour.

"Nameplate Capacity" means the lesser of the total alternating current real power rating of the generator nameplate(s) (kW) and the nameplate power rating of the prime movers (kW), as set forth in Section 2.1

"Negative LMP" means in any Settlement Interval, the locational marginal price, as defined in the CAISO Tariff, at the PNode associated with the Facility's Delivery Point that is less than zero dollars ($0). ***[Only for Facilities with a Nameplate Capacity greater than three megawatts]***

"Negative LMP Costs" has the meaning set forth in Section 2.6.2. ***[Only for Facilities with a Nameplate Capacity greater than three megawatts]***

"Network Upgrades" has the meaning set forth in the CAISO Tariff.

"Network Upgrades Cap" has the meaning set forth in Section 13.9.1.1.

"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).

"Paid Curtailed Product" has the meaning set forth in Section 5.8.3. The amount of "Paid Curtailed Product" shall be determined as set forth in Section 5.8.4.

"Partial Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff.

"Participating Generator Agreement" has the meaning set forth in the CAISO Tariff.

"Party" means the Buyer or Seller individually, and "Parties" means both collectively. For purposes of Section 17 (Governing Law) the word "party" or "parties" shall have the meaning set forth in this definition.

"Payment Allocation Factors" shall initially mean the energy-only payment allocation factors set forth in Appendix C. Effective with respect to payments for periods beginning on or after the first day of the calendar month following receipt of a valid Full Capacity Option Notice, "Payment Allocation Factors"

shall mean, with respect to such periods, the full capacity deliverability payment allocation factors set forth in Appendix C.

"Payment Limit" has the meaning set forth in Section 2.6.2.***[Only for Facilities with a Nameplate Capacity greater than three megawatts]***

"Performance Measurement Period" has the meaning set forth in Section 11.1.

"Performance Tolerance Band" shall be calculated as set forth in Section 14.2.2.

"Permitting Delay" has the meaning set forth in Section 1.1.2.1.

"Permitted Extensions" has the meaning set forth in Section 1.1.2.

"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.

"PNode" has the meaning set forth in the CAISO Tariff.

"Product" means all electric energy produced by the Facility throughout the Delivery Term, net of Station Use, electrical losses from the Facility to the Delivery Point, and, in the case of Excess Sale arrangements, any Site Host Load; all Renewable Energy Credits; all Capacity Attributes, if any; and all Resource Adequacy Benefits, if any; generated by, associated with or attributable to the Facility throughout the Delivery Term.

"Program Participation Request" or "PPR" means that certain Program Participation Request submitted by Seller to Buyer as part of Seller's application to participate in the BioMAT Program.

"Project" has the meaning set forth in the Preamble. The terms "Facility" and "Project" as used in this Agreement are interchangeable.

"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Laws. Prudent Electrical Practices also includes taking reasonable steps to ensure that:

(a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility's needs;

(b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly and

efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Facility and Emergencies whether caused by events on or off the Site;

(c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission/Distribution Owner's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95 617, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC rules as amended from time to time (18 Code of Federal Regulations Part 292, Section 292.203 et seq.) implementing PURPA and, to the extent required to obtain or maintain Qualifying Facility status, is self-certified as a Qualifying Facility or is certified as a Qualified Facility by the FERC.

"Quarterly Fuel Attestation" has the meaning set forth in Section 4.4.4. ***[For all Projects with a High Hazard Fuel Requirement]***

"Quarterly Fuel Attestation Deadline" has the meaning set forth in Section 4.4.4. ***[For all Projects with a High Hazard Fuel Requirement]***

"Quarterly High Hazard Fuel Attestation Deadline" has the meaning set forth in Section 4.4.4.***[For all Projects with a High Hazard Fuel Requirement]***

"Registered Professional Forester" means a professional forester registered as such through the State of California's Office of Professional Foresters Registration at the time of the Annual Fuel Attestation and the Verification of Fuel Source and Delivery submittal. ***[For all Projects with a High Hazard Fuel Requirement]***

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"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.

"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.

"Resource Adequacy Requirements" has the meaning set forth in Section 3.4.1.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-018, 10-06-036, 10-12-038, 11-06-022, 12-06-025, 13-06-024, 14-06-050 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.

"Restricted Period" has the meaning set forth in Section 13.8.1.

"Schedule," "Scheduled" or "Scheduling" means the action of Buyer in submitting bids to the CAISO and receiving all CAISO markets results from the CAISO; provided that a CAISO market result where the Facility is instructed to deliver zero (0) MWhs is not considered a "Schedule" for purposes of this Agreement.

"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.

"Seller" has the meaning set forth in the Cover Sheet.

"Seller Excuse Hours" means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer's failure to perform, or (c) curtailment under Section 5.8.

"Seller's WREGIS Account" has the meaning set forth in Section 3.3.1. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

"Settlement Amount" is the amount in U.S. dollars equal to the non-defaulting Party's aggregate Losses and Costs less any Gains determined as of the Early Termination Date.

"Settlement Interval" has the meaning set forth in the CAISO Tariff.

"Site" means the real property on which the Facility is, or will be, located, as further described in the Cover Sheet.

"Site Control" means the Seller: (a) owns the Site, (b) leases the Site, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) prior to the Commercial Operation Date,

has the unilaterally exercisable contractual right to acquire or cause to be acquired on its behalf any of (a), (b), or (c).

"Site Host Load" means the electric energy produced by or associated with the Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code Section 218(b).

"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.

"Surplus Delivered Energy" has the meaning set forth in Section 2.6.2.

"Telemetering System" means a system of electronic components that collects all required telemetry in accordance with the CAISO's Business Practice Manual for direct telemetry and Buyer operational requirements and communicates this telemetry to the CAISO and Buyer as required by applicable tariff or this Agreement. The Telemetering System does not include other components of the Facility that do not collect or communicate such required telemetry, including but not limited to, Seller's system control and data acquisition systems.

"Term" has the meaning set forth in Section 2.4.1.

"Termination Payment" has the meaning set forth in section 13.5.1. ***[For all Projects with a High Hazard Fuel Requirement]***

"TOD Periods" means the time of delivery periods set forth in Appendix C.

"Total Fuel Use" means Fuel Use that is delivered to the Project. ***[For all Projects with a High Hazard Fuel Requirement]***

"Transaction" means the particular transaction described in Section 2.3.

"Transmission Delay" has the meaning set forth in Section 1.1.2.2.

"Transmission/Distribution Owner" means any entity or entities responsible for the interconnection of the Facility or transmitting the Delivered Energy on behalf of Seller from the Facility to the Delivery Point.

"Useful Thermal Energy Output" has the meaning set forth in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto. ***[For cogeneration Facilities]***

"Verification of Fuel Source and Delivery" has the meaning set forth in Section 4.4.3. ***[For all Projects with a High Hazard Fuel Requirement]***

"WECC" means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.

"WMDVBE" means women, minority and disabled veteran-owned business enterprise as contemplated by CPUC General Order 156.

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

"WREGIS Certificate Deficit" has the meaning set forth in Section 3.3.5. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

"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. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

"WREGIS Operating Rules" means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time. ***[For Facilities (1) 0.5 MW or greater and (2) eligible for a CAISO revenue meter.]***

**** End of Appendix A ****

APPENDIX B – COMMERCIAL OPERATION DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase Agreement dated _____("Agreement") for the Facility named _____ by and between Pacific Gas and Electric Company ("Buyer") and _____ ("Seller"), this letter serves to document the Parties further agreement that (i) the conditions precedent to the occurrence of the Commercial Operation Date as required under Section 2.5 have been satisfied, and (ii) Seller has scheduled and Buyer has received the Energy, as specified in the Agreement, as of this _____ day of _____, _____. This letter shall confirm the Commercial Operation 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:

By:	By: **PACIFIC GAS AND ELECTRIC COMPANY**
(Seller)	(Buyer)
(Signature)	(Signature)
(Type/Print Name)	(Type/Print Name)
(Title)	(Title)
(Date)	(Date)

**** End of Appendix B ****

APPENDIX C – TIME OF DELIVERY PERIODS AND PAYMENT ALLOCATION FACTORS

Energy-Only Payment Allocation Factors

Monthly Period	1. Peak	2. Mid-Day	3. Night
July – September	1.000	1.000	1.000
October- February	1.000	1.000	1.000
March – June	1.000	1.000	1.000

Full Capacity Deliverability Payment Allocation Factors

Monthly Period	1. Peak	2. Mid-Day	3. Night
July – September	1.000	1.000	1.000
October- February	1.000	1.000	1.000
March – June	1.000	1.000	1.000

Definitions:

1. **Peak** = hours ending 18 - 22 (Pacific Prevailing Time (PPT)) for all days in the applicable Monthly Period.

2. **Mid-Day** = hours ending 09 - 17 PPT for all days in the applicable Monthly Period.

3. **Night** = hours ending 23 - 08 PPT for all days in the applicable Monthly Period.

**** End of Appendix C ****

APPENDIX D – FORECASTING AND OUTAGE NOTIFICATION REQUIREMENTS

The Parties shall abide by the forecasting and outage requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time-to-time as necessary to (i) comply with Buyer's instructions or the CAISO Tariff, as applicable; (ii) accommodate changes to their respective generation technology and organizational structure; and (iii) address changes in the operating and Scheduling procedures of both Buyer.

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 applicable Transmission/Distribution Owner local switching center and notify Buyer's Real Time Desk by telephone as follows:

- Contact the applicable Transmission/Distribution Owner local switching center and Buyer's Real Time Desk to parallel before any start-up
- Contact the applicable Transmission/Distribution Owner local switching center and Buyer's Real Time Desk again with parallel time after start-up.
- Contact the applicable Transmission/Distribution Owner local switching center and Buyer's Real Time Desk after any separation and report the separation time as well as the date and time estimate for return to service.

Buyer's Real Time Desk Primary Telephone: (415) 973-4500 or (415) 973-7900.

If the primary telephone is unavailable, attempt to make contact using the following numbers in the order listed: (707) 449-6795, (415) 420-6412, (480) 263-6489, (415) 972-5138, (707) 450-3203, (707) 450-3204, (707) 449-6763 or (707) 449-6764.

B. SUBMISSION OF EXPECTED GENERATION OUTPUT AND PROJECT OUTAGES

1. Submit information by posting to PG&E's approved web-based system.
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: Contract Name, Email Purpose, Delivery Date Range, (For example: "XYZ Company Project #2 Daily Forecast of Expected Generation Output for dd/mm/yyyy through dd/mm/yyyy")
   b. For Annual Forecasts of Expected Generation Output, email to DAenergy@pge.com and BilatSettlements@pge.com.
   c. For Monthly and Day-Ahead Forecasts of Expected Generation Output, email to DAenergy@pge.com.
   d. For Day-Ahead Forecasts of Expected Generation Output after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting

Day-Ahead Schedules, call primary phone (415) 973-1971 or backup phone (415) 973-4500. Also send email to DAenergy@pge.com.

e. For Hourly Forecasts of Expected Generation Output, call PG&E's Real Time Desk at (415) 973-4500 and email to RealTime@pge.com. If this phone number is unavailable, see secondary contacts in A of this Appendix.

f. For Planned Outages and prolonged outages, complete the specifics below and submit by email to DAenergy@pge.com and Bilat_Settlements@pge.com.

g. For Forced Outages, complete the specifics below and submit by email to RealTime@pge.com and Bilat_Settlements@pge.com.

i. Email subject Field: XYZ Company Project #2 Outage Notification for dd/mm/yyyy through dd/mm/yyyy

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, Prolonged Outage or Forced Outage.

C. <u>EXPECTED GENERATION OUTPUT FORECASTING</u>.

Seller shall provide the Expected Generation Output forecasts described below.

1. <u>Annual Forecast of Expected Generation Output</u>. No later than (I) the earlier of July 1 of the first calendar year following the Execution Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term ("First Annual Forecast Date"), and (II) on or before July 1 for each calendar year from the First Annual Forecast Date for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Expected Generation Output for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

2. <u>Monthly Forecast of Expected Generation Output</u>. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Expected Generation Output for each day of the following month in a form reasonably acceptable to Buyer.

3. <u>Day-Ahead Forecast of Expected Generation Output</u>. During each month of the Delivery Term, Seller or Seller's agent shall provide a binding Day-Ahead forecast of Expected Generation Output to Buyer via Buyer's internet website 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, "Preschedule Calendar." Each Day-Ahead Expected Generation Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Expected Generation Output pursuant to this Agreement. If the Expected Generation Output changes 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 through the method preferred by Buyer. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Expected Generation Output, the expected end date and time of such event, the Expected Generation Output in MW (AC), and any other necessary information.

Day-Ahead Desk
Primary Telephone: (415) 973-1971
Backup Telephone: (415) 973-4500

If Seller fails to provide Buyer with a Day-Ahead Forecast of Expected Generation Output as required herein, then, (I) until Seller provides a Day-Ahead Forecast of Expected Generation Output, Buyer may rely on the most recent Day-Ahead Forecast of Expected Generation Output submitted by Seller to Buyer and Seller and (II) Seller may be subject to penalties and charges as provided in this Agreement.

4. Hourly Forecast of Expected Generation Output. During the Delivery Term, Seller shall notify Buyer of any changes in Expected Generation Output of one (1) MW (AC) or more through the method preferred by Buyer, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer is required to submit Hour-Ahead schedules to the CAISO. Expected Generation Output 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 Expected Generation Output, the expected end date and time of such event, the Expected Generation Output in MW (AC), 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 within ten (10) minutes of the commencement of the Forced Outage. 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 Expected Generation Output shall be communicated by telephone to Buyer's Hour-Ahead Trading Desk and shall be sent to Buyer's internet website:

Hour-Ahead Desk
Primary Telephone: (415) 973-4500
If this phone number is unavailable, see secondary contacts in A of this Appendix.

5. Buyer Provision of Forecasting Services. Seller may request that Buyer perform forecasting services required by this Appendix D if it is reasonably practicable for such forecasting services to be performed by a person or entity other than Seller. Buyer may perform such services directly or retain a third-party to perform such services. Buyer may charge a reasonable fee for any such services, which, in the case Buyer retains a third-party, may include a reasonable administration fee in addition to the fee any such third-party charges Buyer.

*** End of Appendix D ***

APPENDIX E – TELEMETRY REQUIREMENTS

Telemetering System.

Seller shall install and maintain a Telemetering System at the Facility. ***[Applicable to all Facilities]***

Notwithstanding the foregoing, Seller shall not be required to install a data processing gateway and, if directed by Buyer, Seller shall participate in Buyer's aggregated Telemetering System ("Aggregated Telemetering System"). In no event shall the Aggregated Telemetering System Installation Costs exceed Twenty Thousand dollars ($20,000.00) (the "Aggregated Telemetering Cost Cap"); provided that if the Aggregated Telemetering System Installation Costs exceed the Aggregated Telemetering Cost Cap then Buyer shall have the right, but not the obligation, in its sole discretion, to agree to pay for such costs in excess of the Aggregated Telemetering Cost Cap. To the extent requested by Buyer, Seller shall provide evidence of the Aggregated Telemetering System Installation Costs satisfactory to Buyer. ***[Only applicable if Facility is less than 0.5 MW]***

The above-mentioned connections and data transfer must be included in the systems engineering tasks as a part of the construction of the Facility, and must be fully functional before Commercial Operation Date.

**** End of Appendix E ****

APPENDIX F – GUARANTEED ENERGY PRODUCTION DAMAGES

In accordance with the provisions in Section 11.2, GEP Damages means the liquidated damages payment due by Seller to Buyer, calculated on an annual basis for the applicable Performance Measurement Period as follows:

[(A-B) × (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 IFM 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 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). Once GEP Damages have been paid with respect to a particular Performance Measurement Period, neither Contract Year in such Performance Measurement Period will be included in another Performance Measurement Period.

**** End of Appendix F ****

APPENDIX G – FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. _____

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: _____

[Each page of the Letter of Credit shall contain a header or footer showing the Letter of Credit number and page number]

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: _____

_____

**** End of Appendix G ****

APPENDIX H – FORM OF GENERAL CONSENT TO ASSIGNMENT

CONSENT TO ASSIGNMENT AND AGREEMENT

This Consent to Assignment and Agreement ("CTA") is by and between Pacific Gas and Electric Company ("Buyer"), a California corporation, _____ ***[Counterparty]*** ("Assignor"), _____ ***[Enter type of company]*** and _____ ***[Enter Assignee Name]*** ("Assignee'), _____ ***[Enter type of company]***. Buyer, Assignor and Assignee are sometimes referred to herein individually as "Party" and collectively as the "Parties".

Buyer hereby consents to the assignment by Assignor to Assignee of the entirety of the rights, title and interest Assignor may have in and to the agreements described on Exhibit A attached hereto and incorporated herein by this reference the "Assigned Agreement(s)", for the _____ ***[Capacity_kW] [Fuel]*** project named _____ ***[Facility_description] ([Buyer Identification or Log No.] [Buyer_Lognum]***), located at _____ _____ ***[Facility_Street_Address] [Facility_City], [Facility_State] [Plant_Zip_code]***, as of the date of last signature hereunder (the "Effective Date") under the following terms and conditions:

1. Assignor and Assignee recognize and acknowledge that Buyer makes no representation or warranty, expressed or implied, that Assignor has any right, title, or interest in the Assigned Agreement(s). Assignee is responsible for satisfying itself as to the existence and extent of Assignor's right, title, and interest in the Assigned Agreement(s) and Assignor and Assignee expressly release Buyer from any liability resulting from or related to this CTA, including assignment for security if any, to which Buyer is consenting herein. Assignee and Assignor further release Buyer from any liability for consenting to any future assignments of the Agreement(s) by Assignee or Assignor.

2. Assignee hereby agrees that Assignee shall be jointly and severally liable to Buyer for each and every duty and obligation in the Assigned Agreement(s) now the sole responsibility of Assignor. To this end, Assignee hereby agrees to assume each and every such duty and obligation, including, but not limited to, satisfying the Collateral Requirements in the Assigned Agreements.

3. Assignor and Assignee hereby agree that they shall hold Buyer harmless from, and be jointly and severally liable to Buyer for, any third-party claims, losses, liabilities, damages, costs or expenses (including, without limitation, any direct, indirect or consequential claims, losses, liabilities, damages, costs or expenses, including legal fees) in connection with or arising out of any of the transactions contemplated by the assignment or this CTA.

4. Assignee acknowledges that the assignment of rights to it may be subject to previous assignments, liens or claims executed or arising prior to the Effective Date. Assignee agrees that it takes this assignment subject to any defenses or causes of action Buyer may have against Assignor.

5. Assignee hereby agrees that it will not assign any of the rights, title or interest in, or the duties and obligations under the Assigned Agreement(s) without the prior written consent of Buyer, unless otherwise specifically provided under the Assigned Agreement(s).

6. Assignor hereby requests that Buyer (i) henceforth make any payments which shall become due under the Assigned Agreement(s) to Assignee and (ii) substitute Assignee for Assignor as the notice addressee under the Assigned Agreement(s). Assignor releases Buyer from all liability for

making payment to Assignee, and Assignee releases Buyer from all liability for failure to direct such payments to Assignee rather than Assignor.

7. All notices hereunder shall be in writing and shall be effective when received; for purposes of this CTA, notices shall be deemed received (i) at the close of business on the date of receipt, if delivered by hand, or (ii) at the time and on the date of receipt of a facsimile, or (iii) when signed for by recipient, if sent via registered or certified mail, postage prepaid, or via courier; provided that, 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.

8. Assignee and Assignor each agree that Buyer shall have (and Buyer hereby expressly reserves) the right to set off or deduct from payments due to Assignor, each and every amount due Buyer from Assignor arising out of or in connection with the Assigned Agreements in accordance with the terms of such Assigned Agreements or in accordance with applicable law. Assignee further agrees that it takes this assignment subject to any defenses or causes of action Buyer may have against Assignor.

9. Assignee and Assignor agree that any change in payment notification will become effective within 30 days receipt of written notice.

10. Other than as explicitly provided herein, this CTA is neither a modification of nor an amendment to the Assigned Agreement(s).

11. The Parties hereto agree that this CTA 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.

12. 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.

Pacific Gas and Electric Company,
a California corporation
[Buyer address]

_____

_____

_____

Pacific Gas and Electric Company,
a California corporation

By: _____

Name: _____

Title: _____

Dated: _____

APPENDIX H – FORM OF GENERAL CONSENT TO ASSIGNMENT

Assignor:

[Mailing_Street_Address]
[Mailing_City], [Mailing_State]
[Mailing_Zip_code]

_____

_____

_____

Attn: ***[Enter title]*** _____

[Counterparty], [Enter type of company]

By: _____

Name: _____

Title: _____

Dated: _____

Assignee:
[Enter Assignee Address]

_____

_____

_____

Attn: [Enter title]_____

[Enter Assignee company name], [Enter type of company]

By:_____
Name:_____
Title:_____
Dated:_____

Exhibit A
Description of Assigned Agreement(s)

1. **(List all relevant agreements between Buyer and Counterparty)**

Exhibit B
Notices List for Assignee

Name: ***[Seller's Name]***, a ***[include place of formation and business type]*** ("Seller")
All Notices: ***[Seller to complete]***
Delivery Address:

Street:
City: State: Zip:

Mail Address: (if different from above)

Attn:
Phone:
Facsimile:
Email:

DUNS:
Federal Tax ID Number:

Invoices:
Attn:

Phone:
Facsimile:
Email:

Scheduling:
Attn:
Phone:
Facsimile:
Email:

Payments:
Attn:

Phone:
Facsimile:
Email:

Wire Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn:
Phone:
Facsimile:
Email:

With additional Notices of an Event of Default to Contract Manager:
Attn:
Phone:
Facsimile:
Email:

*** End of Appendix H ***

APPENDIX I – FORM OF FINANCING CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT ("Consent and Agreement") is entered into as of [_____ __, 2___], between Pacific Gas and Electric Company ("Buyer"), and [_____], as collateral agent (in such capacity, "Financing Provider") providing financing to [_____] ("Seller"). Buyer, 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" and identified in Exhibit A) between Buyer and Seller, Buyer has agreed to purchase energy from Seller.

B. The Financing Provider has 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, Buyer has agreed to enter into this Consent and Agreement for the benefit of Seller and Financing Provider.

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, Buyer consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Financing Documents 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 Buyer a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to Buyer, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as Buyer 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 Buyer. Financing Provider may from time to time, following the occurrence of a Financing Default, notify Buyer 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 Buyer 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 Buyer 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 Buyer. Buyer 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 Buyer, independent of any agreement of Buyer to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by Buyer. 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, Buyer 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 Buyer to Deliver Default Notice. If neither Buyer 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 Buyer or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in Buyer's ability to terminate the Assigned Agreement (in each case only if both Buyer and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of Buyer to deliver any Default Notice shall not waive Buyer's right to take any action under the Assigned Agreement and will not subject Buyer 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 Buyer 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 Buyer 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 Buyer 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 Buyer shall have the right to set off or deduct from payments due to Seller each and every amount due Buyer 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 Buyer may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that Buyer 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 Buyer 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 Buyer may agree with Seller to modify or amend the Assigned Agreement, and that Buyer is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases Buyer 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. Buyer 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, Buyer and Financing Provider agrees that each such payment by Buyer to such depositary agent of amounts due to Seller from Buyer under the Assigned Agreement shall satisfy Buyer'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 Buyer:	
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 Buyer, and shall be binding on and inure to the benefit of the Financing Provider and its respective successors and permitted transferees and assigns under the Financing Documents.

(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 Buyer and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

	PACIFIC GAS AND ELECTRIC COMPANY
(Financing Provider), as collateral agent	(Buyer)
(Signature)	(Signature)
(Type/Print Name)	(Type/Print Name)
(Title)	(Title)
(Date)	(Date)

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 Buyer 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)

_____
(Signature)

_____
(Type/Print Name)

_____
(Title)

_____
(Date)

Exhibit A
Description of Assigned Agreement(s)

1. **(List all relevant agreements between Buyer and Counterparty)**

**** End of Appendix I ****

[The following Appendix J applies to all Facilities except for Facilities with a Nameplate Capacity greater than three megawatts]

APPENDIX J – PROCEDURE FOR DEMONSTRATION OF CONTRACT CAPACITY

1. Seller's Notice of Demonstration Hour.

   Seller shall provide Notice to Buyer of the date and hour selected by Seller during which Seller claims it has demonstrated the applicable Contract Capacity ("Demonstration Hour").

2. Demonstration of Contract Capacity.

   a) Unless Buyer provides timely Notice to Seller that additional days are required to substantiate data, Buyer shall, within thirty (30) days after Seller's Notice of the Demonstration Hour, retrieve interval data downloaded from the meter specified in Section 5.2.1 or Check Meter, as applicable, for the twelve (12) hour periods before and after the Demonstration Hour; and

   b) Buyer may, at its sole discretion, complete a Site visit within thirty (30) days after Buyer's receipt of Seller's Notice of the Demonstration Hour to verify that the Facility was developed in accordance with the Facility and Site description set forth in the Cover Sheet.

3. Demonstrated Contract Capacity.

   Unless Buyer provides timely Notice to Seller that additional days are required to substantiate data, Buyer shall within ten (10) Business Days after Buyer's Site visit pursuant to Section 2 of this Appendix J provide Notice to Seller of the amount of the Demonstrated Contract Capacity.

4. Buyer's Election of Demonstration Method.

   Notwithstanding the foregoing, Buyer may, in its sole discretion, (a) require that Seller, at its own cost, provide a certified statement from a Licensed Professional Engineer verifying that the Facility was developed in accordance with the Facility and Site description set forth in the Cover Sheet and setting forth the Demonstrated Contract Capacity determined in accordance with this Appendix J as of the date of the certification (an "Engineer Report") or (b) waive the requirement to demonstrate the Contract Capacity.

   In the event that the Buyer waives demonstration of the Contract Capacity, the Demonstrated Contract Capacity will be deemed to be equal to the Contract Capacity specified in Section 2.1 of the Agreement.

**** End of Appendix J ****

[The following Appendix J applies ONLY to Facilitieswith a Nameplate Capacity greater than three megawatts]

APPENDIX J – PROCEDURE FOR DEMONSTRATION OF CONTRACT CAPACITY AND NAMEPLATE CAPACITY

1. Seller's Notice of Demonstration Hour.

   Seller shall provide Notice to Buyer of the date and hour selected by Seller during which Seller claims it has demonstrated the applicable Contract Capacity ("Demonstration Hour").

   Seller's Notice of Demonstration Date.

   Seller shall provide at least thirty (30) days prior Notice to Buyer of the date selected by Seller ("Demonstration Date") during which Seller intends to demonstrate the Nameplate Capacity. Upon Buyer's request, Seller shall make reasonable efforts to reschedule the Demonstration Date.

2. Demonstration of Contract Capacity.

   a) Unless Buyer provides timely Notice to Seller that additional days are required to substantiate data, Buyer shall, within thirty (30) days after Seller's Notice of the Demonstration Hour, retrieve interval data downloaded from the meter specified in Section 5.2.1 or Check Meter, as applicable, for the twelve (12) hour periods before and after the Demonstration Hour; and

   b) Subject to Section 4 of this Appendix J, Buyer may, at its sole discretion, complete a Site visit on the Demonstration Date to verify that the Facility was developed in accordance with the Facility and Site description set forth in Appendix E and to determine the Demonstrated Nameplate Capacity.

3. Demonstrated Contract Capacity and Demonstration of Nameplate Capacity

   Unless Buyer provides timely Notice to Seller that additional days are required to substantiate data, Buyer shall within ten (10) Business Days after Buyer's Site visit pursuant to Section 2 of this Appendix J provide Notice to Seller of the amount of the Demonstrated Contract Capacity and the amount of Demonstrated Nameplate Capacity.

4. Buyer's Election of Demonstration Method.

   Notwithstanding the foregoing, Buyer may, in its sole discretion, (a) require that Seller, at its own cost, provide a certified statement from a Licensed Professional Engineer verifying that the Facility was developed in accordance with the Facility and Site description set forth in the Cover Sheet and setting forth the Demonstrated Contract Capacity and the Demonstrated Nameplate Capacity determined in accordance with this Appendix J as of the date of the certification (an "Engineer Report") or (b) waive the requirement to demonstrate the Contract Capacity or the requirement to demonstrate the Nameplate Capacity.

In the event that the Buyer waives demonstration of the Contract Capacity, the Demonstrated Contract Capacity will be deemed to be equal to the Contract Capacity specified in Section 2.1 of the Agreement.

In the event that the Buyer waives demonstration of the Nameplate Capacity, the Demonstrated Nameplate Capacity will be deemed to be equal to the Nameplate Capacity specified in Section 2.1 of the Agreement.

*** *End of Appendix J* ***

APPENDIX K-1 – QF EFFICIENCY MONITORING PROGRAM – COGENERATION DATA REPORTING FORM

[PrevYear]

I. Name and Address of Project
Name: _____
Street: _____
City: _____ State:_____ Zip Code:_____

ID No.:_____ Generation Nameplate (kW): _____

II. In Operation: ☐ Yes ☐ No

III. Can your facility dump your thermal output directly to the environment? ☐ Yes ☐ No

IV. Ownership

	Name	Address	Ownership (%)	Utility
1				Y N
2				Y N
3				Y N
4				Y N
5				Y N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your Useful Thermal Energy Output if other than mBTUs:
  BTUs _____ Therms _____ mmBTUs_____

If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (1) (kWh)	Energy Input (Therms) (mmBTU)	Useful Thermal Energy Output (mmBTU)
Jan			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

(1) Useful Power Output is the electric or mechanical energy made available for use from the facility.

**** End of Appendix K-1 ****

APPENDIX K-2 – FUEL USE STANDARDS – SMALL POWER PRODUCER DATA REPORTING FORM

[PrevYear]

ID No._____

I. **Name and Address of Facility ("Project")**

Name: _____
Street: _____
City: _____ State:_____ Zip Code:_____

Generation Nameplate (kW): _____

II. **Primary Energy:** ☐ **Biomass** ☐ **Biogas**

III. **Ownership**

	Name	Address	Ownership (%)	Utility	
1				Y	N
2				Y	N
3				Y	N
4				Y	N
5				Y	N

IV. **[PrevYear] Monthly Operating Data**

	Useful Power Output (1) (kWh)	Primary Energy Source (2) (mmBTU)	Supplementary Energy Source (3) (mmBTU)	Total Energy Input (4) (mmBTU)
Jan				
Feb				
Mar				
Apr				
May				
Jun				
Jul				
Aug				
Sep				
Oct				
Nov				
Dec				
Total				

(1) Useful Power Output is the electric or mechanical energy made available for use from the facility.
(2) The Primary Energy Source must correspond to the Fuel Resource Category identified in Section A(i) of the Cover Sheet. Use Lower Heating Value (LHV)
(3) Please use Total Energy Input to include all energy sources: primary, supplementary, and auxiliary power from outside the facility.

**** End of Appendix K-2 ****

APPENDIX L – FORM OF FUEL ATTESTATION

[The following Appendix L applies to all Projects EXCEPT Projects with a High Hazard Fuel Requirement. References to Section 4.4.4, Contract Quarter, and the Quarterly Fuel Attestation Deadline are only applicable to HHZ Category 3 Projects]

[Sellers Letterhead]

[Date]

PG&E
Attn:
Street Address
City, State Zip

Subject: Bioenergy Market Adjusting Tariff Power Purchase Agreement ("BioMAT PPA") by and between PG&E and ***[Insert Seller's full legal name]***, a ***[Insert Seller's form of entity and state of registration]*** ("Seller") – Fuel Attestation

Dear Sir or Madam:

Pursuant to Section ***[***4.4.3***][***4.4.4***]*** of the BioMAT PPA, Seller submits to PG&E this Fuel Attestation for the Contract ***[***Year***] [***Quarter***]*** that ended on ***[Date]*** ***[***("Contract Year")***] [***("Contract Quarter")***]***). Seller hereby represents and warrants that:

1. This Fuel Attestation ***[is] [is not]*** submitted on or prior to the ***[Annual Fuel Attestation Due Date] [Quarterly Fuel Attestation Deadline]***.

2. The fuel resource(s) Seller used or caused to be used to operate the Facility during the Contract Year (Fuel Use) ***[met] [did not meet]*** the Fuel Resource Requirements. ***[For Annual Fuel Attestation Only]***

3. Fuel Use during the Contract ***[***Year***] [***Quarter***]*** was as follows:

Fuel Resource Category	**Fuel Volume (1)**	**Fuel Consumption (mmBTU)**	**Total Generation (MWh)**	***[***Annual***] [***Quarter***]*** **Fuel Use Percentage**
Category 1 (wastewater treatment)				
Category 1 (municipal organic waste diversion)				
Category 1 (food processing)				
Category 1 (codigestion)				
Category 2 (Dairy)				
Category 2 (Other Agricultural)				
Category 3 (fire threat reduction)				
Category 3 (fire safe clearance activities)				
Category 3 (infrastructure clearance projects)				

Fuel Resource Category	**Fuel Volume (1)**	**Fuel Consumption (mmBTU)**	**Total Generation (MWh)**	***[Annual]*** ***[Quarter]*** **Fuel Use Percentage**
Category 3 (other sustainable forest management)				
Category 3 (High Hazard Fuel)				
Total				

(1) For Fuel Volume, use Bone Dry Ton for solid fuel and cubic feet (ft^3) for gaseous fuel.

4. The calculation used by the Seller to calculate Fuel Use through the delivery term is as follows:

$$\text{Fuel Use Percentage: } \frac{A}{B}$$

A = Fuel Use during the ***[***("Contract Year")***]*** ***[***("Contract Quarter")***]***

B = Total Fuel Use in the ***[***("Contract Year")***]*** ***[***("Contract Quarter")***]***

Capitalized terms used but not otherwise defined in this letter have the meanings set forth in the BioMAT PPA.

Very truly yours,

[Insert Seller's full legal name, form of entity and state of registration]

By: _____
Name: _____
Title: _____

*** *End of Appendix L* ***

APPENDIX L – FORM OF FUEL ATTESTATION

[The following Appendix L applies ONLY to Projects with a High Hazard Fuel Requirement.]

[Sellers Letterhead]

[Date]

PG&E
Attn:
Street Address
City, State Zip

Subject: Bioenergy Market Adjusting Tariff Power Purchase Agreement ("BioMAT PPA") by and between PG&E and ***[Insert Seller's full legal name]***, a ***[Insert Seller's form of entity and state of registration]*** ("Seller") – Fuel Attestation

Dear Sir or Madam:

Pursuant to Section ***[***4.4.3***][***4.4.4***]*** of the BioMAT PPA, Seller submits to PG&E this ***[Annual] [Quarterly]*** Fuel Attestation for the Calendar ***[***Year***] [***Quarter***]*** that ended on ***[Date] [***("Calendar Year")***] [***("Calendar Quarter")***]***). Seller hereby represents and warrants that:

1. This ***[Annual] [Quarterly]*** Fuel Attestation ***[is] [is not]*** submitted on or prior to the ***[Annual High Hazard Fuel Attestation Deadline] [Quarterly High Hazard Fuel Attestation Deadline]***.

2. The fuel resource(s) Seller used or caused to be used to operate the Facility during the Calendar Year (Fuel Use) ***[met] [did not meet]*** the Fuel Resource Requirements and High Hazard Fuel Requirement. ***[For Annual Fuel Attestation Only]***

3. Fuel Use during the Calendar ***[Year] [Quarter]*** was as follows:

Fuel Resource Category	**Volume of Fuel Delivered (BDT)**	**Fuel Use (BDT)(1)**	**Total Metered Generation (MWh)**	***[Annual] [Quarterly]* Fuel Use Percentage**
Category 1 (wastewater treatment)				
Category 1 (municipal organic waste diversion)				
Category 1 (food processing)				
Category 1 (codigestion)				
Category 2 (Dairy)				
Category 2 (Other Agricultural)				
Category 3 (fire threat reduction)				
Category 3 (fire safe clearance activities)				
Category 3 (infrastructure clearance projects)				

Fuel Resource Category	**Volume of Fuel Delivered (BDT)**	**Fuel Use (BDT)[1]**	**Total Metered Generation (MWh)**	***[Annual] [Quarterly]* Fuel Use Percentage**
Category 3 (other sustainable forest management)				
Category 3 (High Hazard Fuel)				
Total				

[1] If Fuel Use is eligible for more than one subcategory within a Fuel Resource Category, choose the most relevant subcategory to prevent double counting.

4. The calculation used by the Seller to calculate Fuel Use Percentage for each applicable Fuel Resource Category throughout the Delivery Term is as follows:

$$\underline{\text{Fuel Use Percentage:}}\ \frac{A}{B}\ x\ 100$$

A = Fuel Use during the ***[("Calendar Year")] [("Calendar Quarter)]*** from the applicable Fuel Resource Category

B = Total Fuel Use during the ***[("Calendar Year")] [("Calendar Quarter)]***

5. ***[Annual Fuel Attestation Only]*** Fuel Use during the Calendar Year is documented in the attached Microsoft Excel Spreadsheet ("Annual Fuel Usage Log"), using the template provided by Buyer after execution of this Agreement. Buyer may make reasonable changes to the template to accommodate additional information on High Hazard Fuel and Fuel Use during the Calendar Year. Seller and Buyer will use the Fuel Use Log to calculate the Category 3 Fuel Use Percentage and High Hazard Fuel Use Percentage to determine compliance with the Fuel Resource Requirements and High Hazard Fuel Requirement, respectively, using the formulas below:

$$\underline{\text{Category 3 Fuel Use Percentage:}}\ \frac{A}{B}\ x\ 100$$

A = Category 3 Fuel Use delivered to and used by the Project during the ***[("Calendar Year")]***

B = Total Fuel Use delivered to and used by the Project during the ***[("Calendar Year")]***

$$\underline{\text{High Hazard Fuel Use Percentage:}}\ \frac{A}{B}\ x\ 100$$

A = High Hazard Fuel Use delivered to and used by the Project during the ***[("Calendar Year")]***

B = Total Fuel Use delivered to and used by the Project during the ***[("Calendar Year")]***

6. ***[Quarterly Fuel Attestation Only]*** Fuel volume delivered during the Calendar Quarter, and progress toward meeting the Fuel Resource Requirements and High Hazard Fuel Requirement, is documented in the attached Microsoft Excel Spreadsheet ("Quarterly Fuel Usage Log"), using the template provided by Buyer after execution of this Agreement. Buyer may make reasonable changes to the

template to accommodate additional information on High Hazard Fuel and Fuel Use during the Calendar Year. Seller and Buyer will use the Quarterly Fuel Usage Log and the data provided in Section 3 of this Appendix L to monitor progress with the Fuel Resource Requirements and High Hazard Fuel Requirement. Data from the Quarterly Fuel Usage Log is accurately summarized in Section 3 of this Quarterly Fuel Attestation.

Capitalized terms used but not otherwise defined in this letter have the meanings set forth in the BioMAT PPA.

Very truly yours,

[Insert Seller's full legal name, form of entity and state of registration]

By: _____
Name: _____
Title: _____

*** *End of Appendix L* ***

APPENDIX L-1 – Verification of Fuel Source and Delivery

[The following Appendix L-1 applies ONLY to Projects with a High Hazard Fuel Requirement. This Appendix L-1 must be submitted with the Annual Fuel Attestation only]

I, _____, am a Registered Professional Forester. I have reviewed the Seller's ***[date]*** Annual Fuel Attestation, including the Annual Fuel Usage Log, and I have verified (1) that the High Hazard Fuel was harvested from the specific designated High Hazard Zone(s) as provided in the Seller's ***[date]*** Annual Fuel Attestation; and (2) the volume of High Hazard Fuel from each referenced High Hazard Zone was delivered to the Project.

Capitalized terms used but not otherwise defined in this verification have the meanings set forth in the BioMAT PPA.

[Registered Professional Forester]

By:_____

Name: _____

Title: _____

**** End of Appendix L-1 ****

APPENDIX M – FUEL RESOURCE FAILURE CURE REQUIREMENTS

[The following Appendix M applies to all Projects except Projects with a High Hazard Fuel Requirement]

1. Seller may cure a Fuel Resource Failure as identified in Seller's Annual Fuel Attestation if a), b) and c) are met:

   a) Within five (5) Business Days of Buyer's Notice of an Event of Default pursuant to Section 13.2.2.14, Seller notifies Buyer of Seller's intent to utilize sufficient fuel eligible for the Facility's Fuel Resource Category such that the Fuel Resource Requirements are met over the Fuel Performance Measurement Period as outlined in Section 1(b) herein;

   b) For a period not to exceed six (6) months immediately following Seller's Notice above ("Fuel Resource Cure Period"), Seller submits to Buyer a monthly report within 10 days of the end of calendar month and in a form to be specified by Buyer that demonstrates compliance with the Fuel Resource Requirements; and

   c) At the end of the Fuel Resource Cure Period Seller demonstrates Fuel Use measured over the period that commences at the beginning of the previous Contract Year to the end of the Fuel Resource Cure Period ("Fuel Performance Measurement Period") such that A ≥ 80%, where:

      A = B/C;

      B = Fuel Use from the Fuel Resource Category identified in Section A(i) of the Cover Sheet over the Fuel Performance Measurement Period (as provided in the monthly report); and

      C = Total Fuel Use from all Fuel Resource Categories over the Fuel Performance Measurement Period (as provided in the monthly report)

2. At Buyer's request Seller shall provide supporting documentation sufficient to verify that Seller's claims in any attestations or reports are complete and accurate.

3. If in any Seller monthly compliance report, as referenced in Section 1.b of this Appendix M, Buyer determines, in its reasonable discretion, that it would be impossible for Seller to cure the Fuel Resource Failure during the remainder of the Fuel Resource Cure Period, Buyer shall have the right to terminate this Agreement.

If Seller demonstrates to Buyer's reasonable satisfaction that Seller has cured the Fuel Resource Failure at the end of the Fuel Resource Cure Period, Buyer will provide Notice within thirty (30) days of receipt of the applicable report.

**** End of Appendix M ****

Appendix B: RAM PROGRAM: Form of Power Purchase Agreement

Standard contract terms and conditions shown in shaded text are those that "may not be modified" per CPUC Decisions ("D.") 07-11-025; D.10-03-021, as modified by D.11-01-025; and D.13-11-024.

~~**[Note: Modifications to this agreement have been made to address United States Bankruptcy Court Northern District Chapter 11 cases 19-30088 (DM) and 19-30089 (DM) in accordance with CPUC Resolution E-4995, issued March 18, 2019.]**~~

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

_____
(as "Seller")

POWER PURCHASE AGREEMENT

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Attachment A Form of Actual Availability Report

Appendix X Telemetry Parameters for Wind or Solar Facility

Appendix XI Form of Letter of Concurrence

Appendix XII Supplier Diversity Program

Appendix XIII Project Specifications and Contract Capacity Calculation

Appendix XIV Section 3.3(e) Liquidated Damages Calculation

POWER PURCHASE AGREEMENT

COVER SHEET

This Power Purchase Agreement ("Agreement") is entered into between Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E"), and _____ ***[insert name of Seller]***, a _____ ***[include place of formation and business type]*** ("Seller"), as of the Execution Date. The information contained in this Cover Sheet shall be completed by Seller and incorporated into the Agreement.

A. Transaction Type

Seller may not modify the Transaction Type designated in this Part A of the Cover Sheet at any time after the Execution Date.

Program: ☐ GTSR Program

Product: ☐ As-Available Non-Peaking
☐ As-Available Peaking
☐ Baseload

Deliverability:

☐ Energy Only Status

☐ Partial Capacity Deliverability Status ("PCDS")

a) If PCDS is selected, provide the Expected PCDS Date, or the date the Project received a PCDS finding if already received: _____ (mm/dd/yyyy);

b) The Partial Capacity Deliverability Status Amount the Project will obtain is _____MW.

☐ Full Capacity Deliverability Status ("FCDS")

a) If FCDS is selected, provide the Expected FCDS Date, or the date the Project received a FCDS finding if already received: _____ (mm/dd/yyyy).

Seller shall elect one of the following types of transactions pursuant to Section 3.1(b) of the Agreement:

☐ Full Buy/Sell
☐ Excess Sale

Seller shall elect one of the following Delivery Terms:

☐ ten (10) Contract Years
☐ fifteen (15) Contract Years

☐ twenty (20) Contract Years

B. Project Description Including Description of Site

Contract Capacity: [_____] MW ***[Provide the maximum capacity to be made available to PG&E pursuant to the transaction, which in the case of an Excess Sale transaction, may be less than the maximum capacity of the Project]***

(i) Project Development:

(a) The Project is an:

[An existing or repowered Project with substantial changes, including but not limited to, new major permits, a new interconnection study, or the construction of new generators, should check "New Project" instead of "Existing Project."]

☐ Existing Project

☐ New Project ***[GTSR Projects must be New Projects]***

(1) If the Project is a New Project:

(A) The date on which the Commercial Operation Date of the Project is expected (must be no later than the Guaranteed Commercial Operation Date):

(B) The Expected Construction Start Date of the Project:

(2) If the Project is an Existing Project:

(A) The Expected Initial Energy Delivery Date (which shall be no later than the Guaranteed Commercial Operation Date) is:

(b) Project development Milestone schedule ***[to be completed by Buyer and Seller. Insert additional rows if necessary]:***

Identify Milestone	Date for Completion

(ii) Supplier Diversity. For the purpose of Section 4 of the Supplier Diversity Program obligation set forth in Appendix XII of this Agreement, Seller's supplier diversity spend target for work supporting the Project is ___%.

C. Contract Price

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

Contract Year	Contract Price ($/MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

D. Delivery Term Contract Quantity Schedule

Length of Delivery Term (in Contract Years):

Contract Year	Contract Quantity (MWh)[1]
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	

Contract Year	Contract Quantity (MWh)[1]
17	
18	
19	
20	

[1]For a Baseload Product, the minimum qualifying Contract Quantity should be equivalent to at least an eighty percent (80%) Capacity Factor.

E. **Collateral** (as described in the RAM Protocol Agreement, under Section V.C. RAM PPA Terms and Conditions)

- Project Development Security (provide dollar amount)

  Dollar Amount: $ _____

  - Cash, or
  - Letter of Credit

- Delivery Term Security (provide dollar amount)

  Dollar Amount: $ _____

  - Cash, or
  - Letter of Credit

- Term Security (provide dollar amount) *[Applies to GTSR Projects 3MW or less]*

  Dollar Amount: $ _____

  - Cash, or
  - Letter of Credit

F. **Buyer Bid Curtailment and Buyer Curtailment Orders.**

Operational characteristics of the Project for Buyer Bid Curtailment and Buyer Curtailment Orders are listed below. Buyer, as the Scheduling Coordinator, may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project. In addition, Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are based on the true physical characteristics of the resource.

- PMax of the Project: ____MW
- Minimum operating capacity: ____MW
- Ramp Rate: ____MW/Minute

[For As-Available Products]

- Advance notification required for Buyer Bid Curtailment and Buyer Curtailment Order: Not greater than the shortest Dispatch Interval in the Real-Time Market (as defined in the CAISO Tariff).
- Maximum number of Start-ups per calendar day (if any such operational limitations exist): _____

[For Baseload Products]

- Maximum number of Start-ups per calendar day, month, year (if any such operational limitations exist): ____
- Advance notification required for Buyer Bid Curtailment and Buyer Curtailment Order: Not greater than the shortest Dispatch Interval in the Real-Time Market (as defined in the CAISO Tariff).

Other Requirements:

- Maximum number of hours annually for Buyer Curtailment Periods: unlimited hours
- The Project will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 3.1(q).
- Start-Up Time (if applicable): _____Minutes
- Minimum Run Time after Start-Up (if applicable): _____Minutes
- Minimum Down Time after Shut-Down (if applicable):_____Minutes

Note: Sellers should enter the maximum flexibility the Project can offer given the operational constraints of the technology.

G. Damage Payment (as described under Damage Payment definition in Section 1.61)

☐ Ten (10) year Delivery Term. Dollar amount: $_____

☐ Fifteen (15) year Delivery Term. Dollar amount: $_____

☐ Twenty (20) year Delivery Term. Dollar amount: $_____

H. 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: City: State: Zip:	77 Beale Street, Mail Code N12E 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: Candice Chan (CWW9@pge.com) Director, Contract Mgmt & Settlements

Phone:
Facsimile:
Email:

DUNS:
Federal Tax ID Number:

Invoices:
Attn:

Phone:
Facsimile:
Email:

Scheduling:
Attn:
Phone:
Facsimile:
Email:

Payments:
Attn:

Phone:
Facsimile:
Email:

Wire Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn:

Phone:
Facsimile:
Email:

With additional Notices of an Event of Default to Contract Manager:
Attn: _____

Phone: _____
Facsimile: _____
Email: _____

Phone: (415) 973-7780
Facsimile: (415) 972-5507

DUNS:
Federal Tax ID Number:

Invoices:
Attn: Azmat Mukhtar (ASM3@pge.com)
Manager, Electric Settlements
Phone: (415) 973-4277
Facsimile: (415) 973-2151

Scheduling:
Attn: Christopher McNeece (CMM4@pge.com)
Phone: (415) 973-4072
Facsimile: (415) 973-0400

Payments:
Attn: Azmat Mukhtar (ASM3@pge.com)
Manager, Electric Settlements
Phone: (415) 973-4277
Facsimile: (415) 973-2151

Wire Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn: Justice Awuku (J2AT@pge.com)
Manager, Credit Risk Management
Phone: (415) 973-4144
Facsimile: (415) 973-4071

Contract Manager:

Attn: Ted Yura (THY1@pge.com)
Senior Manager, Contract Management
Phone: (415) 973-8660
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

PREAMBLE

This Power Purchase Agreement, together with the Cover Sheet, appendices and any other attachments referenced herein, is made and entered into between PG&E and Seller, as of the Execution Date set forth in the Cover Sheet. 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)(G). ***[For As-Available Product only]***

1.2 "Additional Extension" has the meaning set forth in Section 3.1(c)(ii).

1.3 "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.

1.4 "Agreement" means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Cover Sheet, 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.

1.5 "Ancillary Services" has the meaning set forth in the CAISO Tariff.

1.6 "Arbitration" has the meaning set forth in Section 12.3.

1.7 "As-Available Non-Peaking" Product is As-Available Product with a Capacity Factor of eighty percent (80%) or less averaged over all TOD Periods and less than ninety-five percent (95%) of expected output is in the Peak and Shoulder periods, as defined in Section 4.2.

1.8 "As-Available Peaking" Product is As-Available Product with a Capacity Factor of eighty percent (80%) or less averaged over all TOD Periods and ninety-five percent (95%) or more of expected output is in the Peak and Shoulder periods, as defined in Section 4.2.

1.9 "As-Available Product" means an As-Available Non-Peaking Product or an As-Available Peaking Product that is powered by one of the following sources, except for a *de minimis* amount of Energy from other sources: (a) wind, (b) solar energy, (c) hydroelectric potential derived from small conduit water distribution facilities that do not have storage capability, or (d) other variable sources of energy that are contingent upon natural forces other than geothermal. Subject to the terms of this Agreement, (i) Seller is obligated to sell and deliver and (ii) Buyer is obligated to purchase and receive, the Energy component of As-Available Product from the Project whenever such Energy is capable of being generated from the Project. In contrast to Baseload Product, the Seller does not control the

availability of fuel supply to the Project producing As-Available Product and lacks the ability to store energy and control the rate of output.

1.10 "Availability Workbook" has the meaning set forth in Appendix IX.

1.11 "Available Capacity" means the capacity from the Project, expressed in whole megawatts, that is available to generate Product. ***[For As-Available Product facilities only]***

1.12 "Available Capacity" means the expected amount of Energy to be produced from the Project, expressed in megawatts. ***[For Baseload Product facilities and small hydro facilities]***

1.13 "Balancing Authority" has the meaning set forth in the CAISO Tariff.

1.14 "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.

1.15 "Baseload" means a Product for which the Energy delivery levels are uniform twenty-four (24) hours per day, seven (7) days per week and has a Capacity Factor (averaged over all TOD Periods) greater than or equal to eighty percent (80%).

1.16 "Bid" has the meaning set forth in the CAISO Tariff.

1.17 "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.

1.18 "Buyer" has the meaning set forth in the Cover Sheet.

1.19 "Buyer Bid Curtailment" means Buyer as SC communicates a curtailment instruction to the Seller, requiring Seller to produce less Energy from the Project than the CAISO final market forecast amount to be produced from the Project for a period of time, and Buyer as the SC either (a) submitted a CAISO final market Energy Supply Bid and such curtailment is solely a result of the CAISO implementing the Energy Supply Bid; or (b) submitted a CAISO final market Self-Schedule for less than the amount of the final-market Energy forecasted to be produced from the Project. However, if the Project is subject to a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same period of time, then Buyer Bid Curtailment shall not include any Energy that is subject to such Planned Outage, Forced Outage, Force Majeure or Curtailment Period.

1.20 "Buyer Curtailment Order" means the instruction from Buyer to Seller to reduce generation from the Project by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Order.

1.21 "Buyer Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Project pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order. The Buyer Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.22 "Buyer's Notice of First Offer Acceptance" has the meaning set forth in Section 3.9(e)(ii) or Section 11.1(b)(ii), as applicable.

1.23 "Buyer's WREGIS Account" has the meaning set forth in Section 3.1(k)(i).

1.24 "CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.

1.25 "CAISO Global Resource ID" means the number or name assigned by the CAISO to the Project.

1.26 "CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

1.27 "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 Imbalance Energy as addressed in Section 4.6(b) of this Agreement.

1.28 "CAISO Revenues" means the net amount resulting from (a) the credits and other payments received by Buyer, as Seller's Scheduling Coordinator, as a result of test energy from the Project delivered 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, which amount may result in a negative or positive value.

1.29 "CAISO Tariff" means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.30 "California Renewables Portfolio Standard" means the renewable energy program and policies established by California State Senate Bills 1038 and 1078 as amended by Senate Bill SB1X, and codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.31 "Capacity Attributes" means any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, or dispatchability 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 any and all Product, including any accounting construct so that the maximum amount of 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.

1.32 "Capacity Factor" has the meaning set forth in Section 4.3. ***[For Baseload Product only]***

1.33 "Capacity Test" has the meaning set forth in Appendix IV-3 attached hereto. ***[For Baseload Product only]***

1.34 "CEC" means the California Energy Commission or its successor agency.

1.35 "CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Project has commenced commercial operation (as such term is defined by and according to the CEC), 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.

~~1.36 "Chapter 11 Cases" means Buyer's Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19-30089 (DM).~~

~~1.37~~1.36 "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.

~~1.38~~1.37 "Commercial Operation" means the Project is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement and in the case of Baseload Product, as further provided in Appendix IV-3.

~~1.39~~1.38 "Commercial Operation Date" means **[*For As-Available Products use the following language*]**the date on which Seller (a) notifies Buyer that Commercial Operation has commenced, (b) notifies Buyer that all Reliability Network Upgrades identified in the Project's Generator Interconnection Agreement have been completed, and (c) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix IV-2, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix IV-2 hereto. **[*For Baseload Products use the following language*]** the date on which (a) Seller notifies Buyer that Commercial Operation has commenced, (b) Seller notifies Buyer that all Reliability Network Upgrades identified in the Project's Generator Interconnection Agreement have been completed, (c) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix IV-2, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix IV-2 hereto, and (d) Buyer accepts in writing the results of Seller's initial Capacity Test report in compliance with the Capacity Test Procedure as provided in Appendix IV-3 hereto.

~~1.40~~1.39 "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), including 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. Compliance Costs do not include any amounts designated in the Project's full capacity deliverability study to obtain FCDS nor any costs and expenses incurred by Seller for FCDS studies.

~~1.41~~1.40 "Compliance Cost Cap" has the meaning set forth in Section 3.1(o).

~~1.42~~1.41 "Condition Precedent" means each of, or one of, the conditions set forth in Section 2.5(a)(i) through (iv) and "Conditions Precedent" shall refer to all of the conditions set forth in Section 2.5(a)(i) through (iv).

~~1.43~~1.42 "Confidential Information" has the meaning set forth in Section 10.7(a)

~~1.44~~1.43 "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 Appendix IV-1.

~~1.45~~1.44 "Contract Capacity" has the meaning set forth in Section 3.1(f).

~~1.46~~1.45 "Contract Capacity Commitment" means the amount of the Contract Capacity that may be constructed pursuant to the Governmental Approvals received or obtained by Seller as of, for a New Project, the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 3.9(c)), and for an Existing Project, the Expected Initial Energy Delivery Date specified on the Cover Sheet.

~~1.47~~1.46 "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 the Cover Sheet.

~~1.48~~1.47 "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) and Cover Sheet Section D .

~~1.49~~1.48 "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.

~~1.50~~1.49 "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.

~~1.51~~1.50 "Cover Sheet" means the cover sheet to this Agreement, completed by Seller and incorporated into the Agreement.

~~1.52~~1.51 "CPUC" or "Commission" means the California Public Utilities Commission, or successor entity.

~~1.53~~1.52 "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.

~~1.54~~1.53 "CRS" means the Center for Resource Solutions or any successor entity performing similar functions.

~~1.55~~1.54 "Credit Rating" means, with respect to any entity, (a) the rating then assigned to such entity's unsecured senior long-term debt obligations (not supported by third party credit enhancements) or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. If the entity is rated by both S&P and Moody's and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

~~1.56~~1.55 "Cure" has the meaning set forth in Section 8.5(b).

~~1.57~~1.56 "Cured Performance Measurement Period" has the meaning set forth in Section 3.1(e)(ii)(C).

~~1.58~~1.57 "Cure Payment Period" has the meaning set forth in Section 3.1(e)(ii)(C)(III).

~~1.59~~1.58 "Curtailment Order" means any of the following:

(a) the CAISO, Reliability Coordinator, Balancing Authority or any other entity having similar authority or performing similar functions during the Delivery Term, orders, directs, alerts, or communicates via any means, to a Party to curtail Energy deliveries, which may come in the form of a request to return to Schedule consistent with the CAISO Tariff, for reasons including, (i) any 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, or (iii) any warning, forecast, or anticipated over-generation conditions, including a request from CAISO to manage over-generation conditions, provided that this subsection (a) (iii) shall not include Buyer Bid Curtailment;

(b) a curtailment ordered by the Participating Transmission Owner, distribution operator (if interconnected to distribution or sub-transmission system), or any other entity having similar authority or performing similar functions during the Delivery Term, for reasons including (i) any situation that affects normal function of the electric system including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (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;

(c) scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's or distribution operator's transmission or distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Generator Interconnection Agreement with the Participating Transmission Owner or distribution operator.

For the avoidance of doubt, if Buyer or Third-Party SC submitted a Self-Schedule and/or an Energy Supply Bid that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced from the Project for any time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

~~1.60~~1.59 "Curtailment Period" means the period of time during which Seller reduces generation from the Project, pursuant to a Curtailment Order. The Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

~~1.61~~1.60 "Damage Payment" means ***[***for a ten year Delivery Term the dollar amount that equals six (6) months minimum expected revenue of the Project based on Guaranteed Energy Production and the estimated average TOD-adjusted Contract Price, which will be calculated prior to the Execution Date***] [***for a fifteen year Delivery Term the dollar amount that equals nine (9) months minimum expected revenue of the Project based on Guaranteed Energy Production and the estimated average TOD-adjusted Contract Price, which will be calculated prior to the Execution Date***] [***for a twenty year or greater Delivery Term the dollar amount that equals twelve (12) months minimum expected revenue of the Project based on Guaranteed Energy Production and the estimated average TOD-adjusted Contract Price, which will be calculated prior to the Execution Date***]. [Select bracketed language appropriate for the length of the Delivery Term]***

~~1.62~~1.61 "DA Price" means the resource specific locational marginal price ("LMP") applied to the PNode applicable to the Project in the CAISO Day-Ahead Market.

~~1.63~~1.62 "DA Scheduled Energy" means the Day-Ahead Scheduled Energy as defined in the CAISO Tariff.

~~1.64~~1.63 "Day-Ahead Availability Notice" has the meaning set forth in Section 3.4**[**(b)**][**(c)**]**(iii)(C).

~~1.65~~1.64 "Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

~~1.66~~1.65 "Deemed Delivered Energy" means ***[For As-Available Products use the following language]*** the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, the result of the equation provided pursuant to Section 3.1(l)(i)(G) and using relevant Project availability, weather and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO revenue meter for the Project, the Deemed Delivered Energy shall be zero (0). ***[For Baseload Products use the following language]*** the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be determined by reference to the most recent Day-Ahead Availability Notice Buyer has received from Seller at the time Buyer issues a Buyer Curtailment Order.

~~1.67~~1.66 "Defaulting Party" means the Party that is subject to an Event of Default.

~~1.68~~1.67 "Deficient Month" has the meaning set forth in Section 3.1(k)(v).

~~1.69~~1.68 "Deliverability Assessment" has the meaning set forth in the CAISO Tariff.

~~1.70~~1.69 "Deliverability Finding Deadline" shall be two (2) calendar years after the RA Start Date. The Deliverability Finding Deadline shall be no later than December 31, 2024.

~~1.71~~1.70 "Delivered Energy" means all Energy produced from the Project as measured in MWh at the CAISO revenue meter of the Project and in accordance with the CAISO Tariff, which shall include any applicable adjustments for power factor and Electrical Losses.

~~1.72~~1.71 "Delivery Network Upgrade" has the meaning set forth in the CAISO Tariff.

~~1.73~~1.72 "Delivery Point" means the point at which Buyer receives Seller's Product, as identified in Section 3.1(d).

~~1.74~~1.73 "Delivery Term" has the meaning set forth in Section 3.1(c)(i) and shall be of the length specified in the Cover Sheet.

~~1.75~~1.74 "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.

~~1.76~~1.75 "Disclosing Party" has the meaning set forth in Section 10.7.

1.771.76 "Dispatch Instruction" has the meaning set forth in the CAISO Tariff.

1.781.77 "Dispatch Interval" has the meaning set forth in the CAISO Tariff.

1.791.78 "Distribution Loss Factor" is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of interconnection, where the Participating Transmission Owner's meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

1.801.79 "Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

1.811.80 "DUNS" means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun & Bradstreet, Inc.

1.821.81 "Early Termination Date" has the meaning set forth in Section 5.2.

1.831.82 "Effective Date" means the date on which all of the Conditions Precedent set forth in Section 2.5(a) have been satisfied or waived in writing by both Parties.

1.841.83 "Effective FCDS Date" means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Full Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Full Capacity Deliverability Status.

1.851.84 "Effective PCDS Date" means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Partial Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Partial Capacity Deliverability Status.

1.861.85 "EIRP Forecast" means the final forecast of the Energy to be produced by the Project prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol and communicated to Buyer or Third-Party SC for use in submitting a Schedule for the output of the Project in the Real-Time Market.

1.871.86 "Electrical Losses" means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter(s) and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

1.881.87 "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 connecting to a part of the Participating TO's electric system that is not part of the CAISO Grid.

1.891.88 "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.

~~1.90~~1.89 "Eligible Intermittent Resources Protocol" or "EIRP" means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

~~1.91~~1.90 "Eligible LC Bank" means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must have a Credit Rating of at least: (a) "A-, with a stable designation" from S&P and "A3, with a stable designation" from Moody's, if such bank is rated by both S&P and Moody's; or (b) "A-, with a stable designation" from S&P or "A3, with a stable designation" from Moody's, if such bank is rated by either S&P or Moody's, but not both, even if such bank was rated by both S&P and Moody's as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

~~1.92~~1.91 "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.

~~1.93~~1.92 "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).

~~1.94~~1.93 "Energy Deviation(s)" means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid submitted for the Project; and (b) Delivered Energy.

~~1.95~~1.94 "Energy Only Status Seller" or "EOS Seller" means a Seller that has selected Energy Only Status in the Cover Sheet. For avoidance of doubt, an EOS Seller does not have an obligation to have or obtain a Full Capacity Deliverability Status Finding.

~~1.96~~1.95 "Energy Supply Bid" has the meaning set forth in the CAISO Tariff.

~~1.97~~1.96 "EPC Contract" means the Seller's engineering, procurement and construction contract with the EPC Contractor.

~~1.98~~1.97 "EPC Contractor" means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, 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.

~~1.99~~1.98 "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.

~~1.100~~1.99 "Event of Default" has the meaning set forth in Section 5.1.

~~1.101~~1.100 "Excess Deemed Delivered Energy" has the meaning set forth in Section 4.5(a)(i). ***[For As-Available Product only]***

~~1.102~~1.101 "Excess Deemed Delivered Energy Price" has the meaning set forth in Section 4.5(a)(ii)(B). ***[For As-Available Product only]***

~~1.103~~1.102 "Excess Delivered Energy" has the meaning set forth in Section 4.5(a)(i). ***[For As-Available Product only]***

~~1.104~~1.103 "Excess Delivered Energy Price" has the meaning set forth in Section 4.5(a)(ii)(A). ***[For As-Available Product only]***

~~1.105~~1.104 "Excess Energy" has the meaning set forth in Section 4.5(a)(i). ***[For As-Available Product only]***

~~1.106~~1.105 "Excess Network Upgrade Costs" has the meaning set forth in Section 3.9(f)(ii).

~~1.107~~1.106 "Excess Sale" means the type of transaction described in Section 3.1(b)(ii).

~~1.108~~1.107 "Exclusivity Period" has the meaning set forth in Section 3.9(e)(i) or Section 11.1(b)(i), as applicable.

~~1.109~~1.108 "Execution Date" means the latest signature date found on the signature page of this Agreement.

~~1.110~~1.109 "Executive(s)" has the meaning set forth in Section 12.2(a).

~~1.111~~1.110 "Exempt Wholesale Generator" has the meaning provided in 18 C.F.R. Section 366.1.

~~1.112~~1.111 "Existing Project" is a Project that has achieved Commercial Operation on or prior to the Execution Date.

~~1.113~~1.112 "Expected Construction Start Date" has the meaning set forth in the Cover Sheet.

~~1.114~~1.113 "Expected FCDS Date" means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Full Capacity Deliverability Status.

~~1.115~~1.114 "Expected PCDS Date" means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Partial Capacity Deliverability Status.

~~1.116~~1.115 "Expected Initial Energy Delivery Date" is the date specified on the Cover Sheet for an Existing Project.

~~1.117~~1.116 "Expected Net Qualifying Capacity" means an estimate of the amount of Net Qualifying Capacity the Project would have received had it obtained deliverability according to the deliverability type selected in Section A of the Cover Sheet, as determined in accordance with Appendix XIV.

~~1.118~~1.117 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

~~1.119~~1.118 "Final True-Up" means the final payment made pursuant to this Agreement settling all invoices by the Party with an outstanding net amount due to the other Party for Product delivered prior to the end of the Delivery Term or other amounts due pursuant to this Agreement incurred prior to the end of the Delivery Term.

~~1.120~~1.119 "First Offer" has the meaning set forth in Section 3.9(e)(1) or Section 11.1(b)(i), as applicable.

~~1.121~~1.120 "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 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)(viii) 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(p).

(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, including a delay that could constitute a Permitting Delay unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(iv) Seller's inability to complete interconnection or Electric System Upgrades by the Guaranteed Commercial Operation Date, including a delay that could constitute a Transmission Delay, unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(v) 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 of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vi) 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;

(vii) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) 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;

(ix) 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

(x) 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.

~~1.122~~1.121 "Force Majeure Extension" has the meaning set forth in Section 3.9(c)(ii)(C).

~~1.123~~1.122 "Force Majeure Failure" has the meaning set forth in Section 11.1(a).

~~1.124~~1.123 "Forced Outage" means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Product in whole or in part from a Unit in response to any control system trip or operator-initiated trip in response to an alarm or equipment malfunction; or any other unavailability of the Project or 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.

~~1.125~~1.124 "Forecasting Penalty" has the meaning set forth in Section 4.6(c)(iii), and "Forecasting Penalties" means more than one Forecasting Penalty. ***[For As-Available Product only]***

~~1.126~~1.125 "Full Buy/Sell" is the type of transaction described in Section 3.1(b)(i).

~~1.127~~1.126 "Full Capacity Deliverability Status" or "FCDS" has the meaning set forth in the CAISO Tariff except that it applies to any Generating Facility (as defined in the CAISO Tariff).

~~1.128~~1.127 "Full Capacity Deliverability Status Finding" or "FCDS Finding" means a written confirmation from the CAISO that the Project is eligible for FCDS.

~~1.129~~1.128 "Full Capacity Deliverability Status Seller" or "FCDS Seller" means a Seller that selected Full Capacity Deliverability Status in the Cover Sheet and either has previously obtained, or is obligated to obtain per the terms of the Agreement, a Full Capacity Deliverability Status Finding.

~~1.130~~1.129 "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 5.3 hereof. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including 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 platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

~~1.131~~1.130 "Generally Accepted Accounting Principles" means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

~~1.132~~1.131 "Generator Interconnection Agreement" or "GIA" means, for Projects interconnecting at the transmission level, the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and the CAISO governing the terms and conditions of Seller's interconnection with the CAISO Grid, including any description of the plan for interconnecting to the CAISO Grid. For Projects interconnecting at the distribution level, it means the agreement and associated documents (or any successor agreement and associated documentation) by and between Seller and the Participating Transmission Owner governing the terms and conditions of Seller's interconnection with the Participating TO's distribution system, including any description of the plan for interconnecting to Participating TO's distribution system.

~~1.133~~1.132 "Generator Interconnection Process" or "GIP" means the Generator Interconnection Procedures set forth in the CAISO Tariff or Participating TO's tariff, as applicable, and associated documents; provided that if the GIP is replaced by such other successor procedures governing interconnection (a) to the CAISO Grid or Participating TO's distribution system, as applicable, or (b) of generating facilities with an expected net capacity equal to or greater than the Project's Contract Capacity, the term "GIP" shall then apply to such successor procedure.

~~1.134~~1.133 "Geothermal Reservoir Report" means a report obtained by Seller from an expert independent consulting firm qualified in geothermal reservoir assessment which assesses the geothermal potential at the Site. ***[For Geothermal Projects only]***

~~1.135~~1.134 "GEP Cure" has the meaning set forth in Section 3.1(e)(ii)(C).

~~1.136~~1.135 "GEP Damages" has the meaning set forth in Appendix V.

~~1.137~~1.136 "GEP Failure" means Seller's failure to produce Delivered Energy plus Deemed Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

~~1.138~~1.137 "GEP Shortfall" means the amount in MWh by which Seller failed to achieve the Guaranteed Energy Production in the applicable Performance Measurement Period.

~~1.139~~1.138 "Good Utility Practice" has the meaning provided in the CAISO Tariff.

~~1.140~~1.139 "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.

~~1.141~~1.140 "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.

~~1.142~~1.141 "Governmental Charges" has the meaning set forth in Section 9.2.

~~1.143~~1.142 "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: (a) 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; (b) any avoided emissions of carbon dioxide (CO_2), methane (CH_4), 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] (c) 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

[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.

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.

~~1.144~~1.143 "Green-e® Energy Certification" means the independent certification and verification program for renewable energy and greenhouse gas emission reductions as administered by CRS.

~~1.145~~1.144 "GTSR Program" means the Green Tariff Shared Renewables program implemented per Senate Bill (SB) 43 (Stats. 2013, ch. 413 (Wolk)) and CPUC Decision 15-01-051.

~~1.146~~1.145 "GTSR Project" means a Project procured for the GTSR Program in accordance with Green-e® Energy Certification.

~~1.147~~1.146 "Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(i).

~~1.148~~1.147 "Guaranteed Energy Production" or "GEP" has the meaning set forth in Section 3.1(e)(ii).

~~1.149~~1.148 "Guaranty" means a guaranty issued by an entity and in a form acceptable to Buyer in Buyer's sole discretion.

~~1.150~~1.149 "Imbalance Energy" has the meaning set forth in the CAISO Tariff.

~~1.151~~1.150 "Initial Energy Delivery Date" has the meaning set forth in Section 3.1(c)(i).

~~1.152~~1.151 "Initial Extension" has the meaning set forth in Section 3.1(c)(ii).

~~1.153~~1.152 "Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

~~1.154~~1.153 "Interconnection Customer's Interconnection Facilities" has the meaning set forth in the CAISO Tariff or Participating TO's tariff, as applicable.

~~1.155~~1.154 "Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

~~1.156~~1.155 "Interconnection Point" means the physical interconnection point of the Project as identified by Seller in the Cover Sheet.

~~1.157~~1.156 "Interconnection Study" means any of the studies defined in the CAISO Tariff or, if applicable, any distribution provider's tariff that reflect the methodology and costs to interconnect the Project to the Participating Transmission Owner's electric grid.

~~1.158~~1.157 "Integrated Forward Market" has the meaning set forth in the CAISO Tariff.

~~1.159~~1.158 "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.

~~1.160~~1.159 "Interest Payment Date" means the date of returning unused Performance Assurance held in the form of cash.

~~1.161~~1.160 "Interest Period" means the monthly period beginning on the first day of each month and ending on the last day of each month.

~~1.162~~1.161 "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.

~~1.163~~1.162 "JAMS" means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

~~1.164~~1.163 "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 1.52~~3~~ "CPUC Approval," 10.2(b), "Seller Representations and Warranties" and 10.12 "Governing Law", the term "law" shall have the meaning set forth in this definition.

~~1.165~~1.164 "Letter of Credit" means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix I to this Agreement; provided, that, if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of Credit amount may not be greater than the Maximum Issuing Amount if the total amount of collateral posted by the Seller in the form of Letter of Credit exceeds ten million dollars ($10,000,000.00) on the date of Transfer.

~~1.166~~1.165 "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.

~~1.167~~1.166 "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 5.3 hereof. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including 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 platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

~~1.168~~1.167 "Manager" has the meaning set forth in Section 12.2(a).

~~1.169~~1.168 "Master File" has the meaning set forth in the CAISO Tariff.

~~1.170~~1.169 "Maximum Issuing Amount" means the amount of a Letter of Credit to be issued by an Eligible LC Bank, which cannot exceed the lesser of (a) sixty percent (60%) of the total collateral posted by Seller in the form of Letter of Credit including the Letter of Credit to be issued or (b) twenty-five million dollars ($25,000,000.00), without Buyer's prior written consent.

~~1.171~~1.170 "Milestone(s)" means the key development activities required for the construction and operation of the Project, as set forth in Section B(i)(b) of the Cover Sheet.

~~1.172~~1.171 "Minimum Load" has the meaning set forth in the CAISO Tariff.

~~1.173~~1.172 "Minimum Down Time" has the meaning set forth in the CAISO Tariff.

~~1.174~~1.173 "Monthly Payment for Excess Energy" has the meaning set forth in Section 4.5(b). ***[For As-Available Product only]***

~~1.175~~1.174 "Monthly Period" has the meaning set forth in Section 4.2.

~~1.176~~1.175 "Monthly TOD Payment" has the meaning set forth in Section 4.4.

~~1.177~~1.176 "Moody's" means Moody's Investors Service, Inc., or its successor.

~~1.178~~1.177 "MW" means megawatt in alternating current or AC.

~~1.179~~1.178 "MWh" means megawatt-hour.

~~1.180~~1.179 "NERC" means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

~~1.181~~1.180 "Net Rated Output Capacity" means the Project's Energy production capability as measured at the CAISO revenue meter in any Capacity Test inclusive of deductions for all applicable Electrical Losses. ***[Applies to Baseload Product only]***

~~1.182~~1.181 "Net Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

~~1.183~~1.182 "Network Upgrades" has the meaning set forth in the CAISO Tariff or the Participating TO's tariff, as applicable.

~~1.184~~1.183 "New Project" is a Project that has not achieved Commercial Operation on or prior to the Execution Date.

~~1.185~~1.184 "NOAA" means National Oceanic and Atmospheric Administration or successor thereto.

~~1.186~~1.185 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

~~1.187~~1.186 "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). The Cover Sheet contains the names and addresses to be used for Notices.

~~1.188~~1.187 "Notice to Proceed" means the full notice to proceed, 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 mobilization and construction of the Project without any delay or waiting periods.

~~1.189~~1.188 "Operational Deliverability Assessment" has the meaning set forth in the CAISO Tariff.

~~1.190~~1.189 "Outage Notification Procedures" means the procedures specified in Appendix VI, attached hereto. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.

~~1.191~~1.190 "Partial Capacity Deliverability Status" or "PCDS" has the meaning set forth in the CAISO Tariff.

~~1.192~~1.191 "Partial Capacity Deliverability Status Amount" means the number of MW that the Project will obtain, as stated in the Deliverability type selected in Section Aof the Cover Sheet.

~~1.193~~1.192 "Partial Capacity Deliverability Status Finding" or "PCDS Finding" means a written confirmation from the CAISO that the Project is eligible for PCDS.

~~1.194~~1.193 "Participating Intermittent Resource" or "PIRP" has the meaning set forth in the CAISO Tariff. ***[For As-Available Product only]***

~~1.195~~1.194 "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.

~~1.196~~1.195 "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.

~~1.197~~1.196 "Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations hereunder and includes Project Development Security, Delivery Term Security, and Term Security, as applicable. Acceptable forms of collateral are cash or a Letter of Credit as designated in Section E of the Cover Sheet. The required form of Letter of Credit is attached hereto in Appendix I. ***[Existing ERRs to replace Project Development Security with Pre-Delivery Term Security]***

~~1.198~~1.197 "Performance Measurement Period" has the meaning set forth in Section 3.1(e)(ii).

~~1.199~~1.198 "Performance Tolerance Band" shall be calculated as set forth in Section 4.5(c)(ii).

~~1.200~~1.199 "Permit Failure" has the meaning set forth in Section 3.9(d). ***[For New Projects only]***

~~1.201~~1.200 "Permitting Delay" has the meaning set forth in Section 3.9(c)(ii)(A).

~~1.202~~1.201 "Permitted Extensions" means extensions to the Guaranteed Commercial Operation Date due to Permitting Delay, Transmission Delay, or Force Majeure Extension, as applicable, pursuant to Section 3.9(c).

~~1.203~~1.202 "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.

~~1.204~~1.203 "PMax" has the meaning set forth in the CAISO Tariff.

~~1.205~~1.204 "PNode" has the meaning set forth in the CAISO Tariff.

~~1.206~~1.205 "Preamble" means the paragraph that precedes Article One: General Definitions to this Agreement.

~~1.207~~1.206 "Preschedule Day" has the meaning set forth in Section 3.4[(b)][(c)](iii).

~~1.208~~1.207 "Product" means the Energy, capacity, Ancillary Services, and all products, services and/or attributes similar to the foregoing which are or can be produced by or associated with the Project, including renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

~~1.209~~1.208 "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.

~~1.210~~1.209 "Progress Report" means the report similar in form and content to that attached hereto as Appendix III.

~~1.211~~1.210 "Project" means all of the Unit(s) and the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described in the Cover Sheet.

~~1.212~~1.211 "Project Development Security" is the collateral required of Seller, as specified and referred to in Section 8.4(a). ***[Existing ERRs to replace Project Development Security with Pre-Delivery Term Security]***

~~1.213~~1.212 "Project Specifications" has the meaning set forth in Appendix XIII.

~~1.214~~1.213 "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.

~~1.215~~1.214 "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.

~~1.216~~1.215 "RA Deficiency Amount" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.3(e)(ii).

~~1.217~~1.216 "RA Shortfall Period" means the period of consecutive calendar months that starts with the calendar month in which the RA Start Date occurs and concludes with the second calendar month following the calendar month in which the Effective FCDS Date or Effective PCDS Date occurs. The RA Shortfall Period shall not exceed twenty-six (26) months.

~~1.218~~1.217 "RA Shortfall Month" means the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.3(e)(ii).

~~1.219~~1.218 "RA Start Date" shall be the later of the Initial Energy Delivery Date or the Expected PCDS Date or FCDS Date according to the deliverability type selected in Section A of the Cover Sheet.

~~1.220~~1.219 "RA Value" means the value in U.S. dollars per MW of Expected Net Qualifying Capacity for each RA Shortfall Month, as set forth in Appendix XIV.

~~1.221~~1.220 "Ramp Rate" has the meaning set forth in the CAISO Tariff.

~~1.222~~1.221 "Real-Time Market" means any existing or future intra-day market conducted by the CAISO occurring after the Day-Ahead Market.

~~1.223~~1.222 "Real-Time Price" means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

~~1.224~~1.223 "Reductions" has the meaning set forth in Section 4.7(b).

~~1.225~~1.224 "Referral Date" has the meaning set forth in Section 12.2(a).

~~1.226~~1.225 "Reliability Coordinator" has the meaning set forth in the CAISO Tariff.

~~1.227~~1.226 "Reliability Must-Run Contract" has the meaning set forth in the CAISO Tariff. ***[For Baseload Product only]***

~~1.228~~1.227 "Reliability Network Upgrade" has the meaning set forth in the CAISO Tariff.

~~1.229~~1.228 "Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

~~1.230~~1.229 "Replacement Capacity Rules" means the replacement requirement for Resource Adequacy Capacity (as defined in the CAISO Tariff) associated with a Planned Outage as set forth in the CAISO Tariff or successor replacement requirements as prescribed by the CPUC, CAISO and/or other regional entity.

~~1.231~~1.230 "Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-01-050, 04-10-035 and 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, and any other existing or subsequent decisions, resolutions or rulings 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.

~~1.232~~1.231 "Resource Adequacy Plan" has the meaning set forth in the CAISO Tariff.

~~1.233~~1.232 "Resource Adequacy Requirements" has the meaning set forth in Section 3.3.

~~1.234~~1.233 "Resource Adequacy Standards" means (a) the Program set forth in Section 40.9 of the CAISO Tariff and (b) any future program or provision under the CAISO Tariff providing for availability standards or similar standards with respect to any flexible Resource Adequacy resource, product, or procurement obligation; in the case of (a) or (b), as any such program or provision may be amended, supplemented, or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible changes and incentive payments for performance thereunder.

~~1.235~~1.234 "Resource-Specific Settlement Interval LMP" has the meaning set forth in the CAISO Tariff.

~~1.236~~1.235 "Retained Revenues" has the meaning set forth in Section 4.7(c).

~~1.237~~1.236 "Revised Offer" has the meaning set forth in Section 3.9(e)(iii) or Section 11.1(b)(iii), as applicable.

~~1.238~~1.237 "S&P" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

~~1.239~~1.238 "Satisfaction Date" has the meaning set forth in Section 2.6.

~~1.240~~1.239 "Schedule" has the meaning set forth in the CAISO Tariff.

~~1.241~~1.240 "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.

~~1.242~~1.241 "SEC" means the U.S. Securities and Exchange Commission.

~~1.243~~1.242 "Self-Schedule" has the meaning set forth in the CAISO Tariff.

~~1.244~~1.243 "Seller" has the meaning set forth in the Cover Sheet.

~~1.245~~1.244 "Seller Excuse Hours" means those hours during which Seller is unable to deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer's failure to perform, or (c) Curtailment Period.

~~1.246~~1.245 "Seller's WREGIS Account" has the meaning set forth in Section 3.1(k)(i).

~~1.247~~1.246 "Settlement Amount" means the amount in US dollars equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.

~~1.248~~1.247 "Settlement Interval" has the meaning set forth in the CAISO Tariff.

~~1.249~~1.248 "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. ***[For As-Available Product only]***

~~1.250~~1.249 "Shared Contract Year" has the meaning set forth in section 3.1(e)(ii)(C)(I).

~~1.251~~1.250 "Site" means the location of the Project as described in the Cover Sheet.

~~1.252~~1.251 "Start-up" means the action of bringing a Unit from non-operation to operation at or above the Unit's Minimum Load, or with positive generation output if Minimum Load is zero.

~~1.253~~1.252 "Surplus Delivered Energy" means, in any Settlement Interval, the Delivered Energy that exceeds the product of one hundred percent (100%) of Contract Capacity multiplied by a Settlement Interval.

~~1.254~~1.253 "Supply Plan" has the meaning set forth in the CAISO Tariff.

~~1.255~~1.254 "System Emergency" has the meaning set forth in the CAISO Tariff.

~~1.256~~1.255 "Term" has the meaning provided in Section 2.6.

~~1.257~~1.256 "Term Security" means for GTSR Projects with Contract Capacities 3MW or less, the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.

~~1.258~~1.257 "Terminated Transaction" means the Transaction terminated in accordance with Section 5.2 of this Agreement.

~~1.259~~1.258 "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.

~~1.260~~1.259 "Test Period" means the period of not more than ninety (90) consecutive days, as extended by the Initial Extension and Additional Extension according to Section 3.1(c)(ii), as applicable, which period shall commence upon the first date that the following have occurred (a) the CAISO informs Seller in writing that Seller may deliver Energy from the Project to the CAISO Grid, and (b) the items in Section 3.4(a)(i)(E) have been fulfilled and implemented, and shall end upon the Initial Energy Delivery Date.

~~1.261~~1.260 "Third-Party SC" means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement.

~~1.262~~1.261 "TOD" means time of delivery of Delivered Energy from Seller to Buyer.

~~1.263~~1.262 "TOD Factors" has the meaning set forth in Section 4.4(a).

~~1.264~~1.263 "TOD Periods" has the meaning set forth in Section 4.2.

~~1.265~~1.264 "Transaction" means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.

~~1.266~~1.265 "Transfer" with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder, if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.

~~1.267~~1.266 "Transmission Delay" has the meaning set forth in Section 3.9(c)(ii)(B).

~~1.268~~1.267 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

~~1.269~~1.268 "Uninstructed Imbalance Energy" shall have the meaning set forth in the CAISO Tariff.

~~1.270~~1.269 "Unit" means the technology used to produce the Products, which are identified in the Cover Sheet for the Transaction entered into under this Agreement.

~~1.271~~1.270 "Variation(s)" means the absolute value of the difference, in MWh, in any Settlement Interval between (a) DA Scheduled Energy; and (b) Delivered Energy for the Settlement Interval. ***[For Baseload Product only]***

~~1.272~~1.271 "WECC" means the Western Electricity Coordinating Council or successor agency.

~~1.273~~1.272 "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.

~~1.274~~1.273 "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

~~1.275~~1.274 "WREGIS Certificate Deficit" has the meaning set forth in Section 3.1(k)(v).

~~1.276~~1.275 "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.

~~1.277~~1.276 "WREGIS Operating Rules" means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Cover Sheet, 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" or "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 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.

(h) 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.

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 Separation of Functions. The Parties acknowledge that this Agreement is between (a) Seller and (b) Buyer acting solely in its merchant function. The Parties further acknowledge that they have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as Participating Transmission Owner, including orders or instructions relating to Electric System Upgrades and/or Curtailment Periods.

2.5 Conditions Precedent.

(a) Conditions Precedent. Subject to Section 2.7 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 VIII (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.

2.6 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.5(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 2.5(b), Section 5.2 or Section 11.1 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 pursuant to the Final True-Up, 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,Delivery Term Security or 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 three (3) years.

2.7 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 3.9(a)(vii), 5.1(a)(iv)-(v), and 5.1(b)(iv);

(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 2.7;

(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 10.16; 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 set forth in the Cover Sheet. Buyer shall have exclusive rights to all Product during the Delivery Term.

(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, pursuant to Seller's election in the Cover Sheet of a Full Buy/Sell or Excess Sale arrangement as described in paragraphs 3.1(b)(i) and 3.1(b)(ii) below. Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right (1) 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 Variations, as applicable, or (2) sell Product from the Project to a third party other than in connection with Energy Deviations or Variations, as applicable. 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. Seller shall comply with Buyer's Supplier Diversity Program in accordance with Appendix XII. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(i) Full Buy/Sell. If "Full Buy/Sell" is elected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product measured in kilowatt-hours, net of station use and transformation and transmission losses to and at the Delivery Point. Seller shall purchase all Energy required to serve the Project's on-site load, net of station use, from Buyer or applicable retail service provider pursuant to its applicable retail rate schedule.

(ii) Excess Sale. If "Excess Sale" is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product as measured in kilowatt-hours, net of station Use, any on-site load and transformation and transmission losses to the Delivery Point. Seller agrees to convey to Buyer all elements of Product associated with the Energy sold to Buyer.

(c) Delivery Term.

(i) Delivery Term and Initial Energy Delivery Date. As used herein, "Delivery Term" shall mean the period of Contract Years specified on the Cover Sheet, beginning on the first date that Buyer accepts delivery of the Product from the Project in connection with this Agreement following Seller's demonstration of satisfaction of the items listed below in this Section 3.1(c)(i) ("Initial Energy Delivery Date") and continuing until the end of the tenth, fifteenth, or twentieth Contract Year (as applicable, based on the Cover Sheet election) unless terminated pursuant to the terms of this Agreement; provided that the Expected Initial Energy Delivery Date may be extended pursuant to Section 3.1(c)(ii). The Initial Energy Delivery Date shall be the later of the (A) date that the Buyer receives the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix II and (B) the date listed as the Initial Energy Delivery Date on the Initial Energy Delivery Date Confirmation Letter. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (I) Seller notifies Buyer that Commercial Operation has occurred; (II) Buyer shall have received and accepted the Delivery Term Security or Term Security, as applicable, in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; (III) Seller shall have obtained the requisite CEC Certification and Verification for the Project **/**and Seller shall have demonstrated submission and approval of documents and information to CRS necessary for the GTSR Project to receive an eligibility designation for Buyer's Green-e® Energy Certification***[[Bracketed language only applies to GTSR Projects]*** (IV) all of the applicable Conditions Precedent in Section 2.5(a) have been satisfied or waived in writing; (V) for resources that are already under a contract as of the Execution Date, that existing contract must have expired by its own terms before the Initial Energy Delivery Date; (VI) Seller shall have demonstrated satisfaction of Seller's other obligations in this Agreement that commence prior to or as of the Delivery

Term; and (VII) unless Seller has been directed by Buyer to not participate in the Participating Intermittent Resource Program, Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource to the extent the Participating Intermittent Resource Program exists for the Project's technology type at such time as the conditions in subsections (I) through (VI) of this Section 3.1(c)(i) are satisfied. ***[Subsection (VII) applicable to solar, wind, or hydro Projects only]***

(ii) Extensions of Test Period and Initial Energy Delivery Date. In the event that Seller cannot satisfy the requirements for the Initial Energy Delivery Date by the Expected Initial Energy Delivery Date, as set forth in Section 3.1(c)(i), then Seller may provide Buyer with a one-time Notice of a thirty (30) day extension of the Test Period and Expected Initial Energy Delivery Date ("Initial Extension") along with a written explanation of the basis for the extension, no later than five (5) Business Days prior to the Expected Initial Energy Delivery Date. In the event that Seller requires an additional extension of the Test Period and Expected Initial Energy Delivery Date beyond the Initial Extension, Seller may request a further extension of the Test Period and Expected Initial Energy Delivery Date from Buyer no later than ten (10) days prior to the expiration of the Initial Extension of up to sixty (60) days by providing Notice to Buyer along with a detailed written explanation of the basis for such request ("Additional Extension"). Buyer shall provide Seller with Notice of Buyer's acceptance or rejection, in its sole discretion, of such Notice of Additional Extension within ten (10) days of receipt of Seller's Notice of Additional Extension. If Buyer fails to provide a Notice of Buyer's acceptance or rejection, then Seller's Notice of Additional Extension shall be deemed accepted. If Buyer provides Seller with Notice of Buyer's rejection of the Additional Extension, then Seller may be subject to an Event of Default. 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.

(d) Delivery Point. The Delivery Point shall be the PNode designated by the CAISO for the Project.

(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 Section D of the Cover Sheet ("Delivery Term Contract Quantity Schedule")**,** which amount is inclusive of outages**.**

[Use the following bracketed language for As-Available Product delivered by all facilities]

[(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to provide to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" is equal to the product of (x) and (y), where (x) is one hundred sixty percent (160%) of the average of the Contract Quantities applicable to the two (2) Contract Years comprising the Performance Measurement Period ***[Photovoltaic facilities only to use the then-applicable Contract Quantities for the Performance Measurement Period]***, and (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% × average of the Contract Quantities in MWh in Performance Measurement Period) × [(Hrs in Performance Measurement Period – Seller Excuse Hrs in Performance Measurement Period) / Hrs in Performance Measurement Period] ***]***

[Use the following bracketed language for Baseload Product only]

[(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to provide to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, no less than the Guaranteed Energy Production in each Contract Year during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" is equal to the product of (x) and (y), where (x) is ninety percent (90%) of the Contract Quantity, and (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 = (90% × Contract Quantity in MWh) × [(Hrs in Performance Measurement Period – Seller Excuse Hrs in Performance Measurement Period) / Hrs in Performance Measurement Period] ***]***

[Use the following subparts (B) and (C) to Section 3.1(e)(ii) for both As-Available and Baseload Products and all technologies]

(B) In no event shall any amount of Delivered Energy plus Deemed Delivered Energy in any Settlement Interval that exceeds the Contract Capacity be credited toward or added to Seller's Guaranteed Energy Production requirement.

(C) GEP Failure, Cure, Damages.

(I) 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 provide Notice to Seller of such failure, provided that Buyer's failure to provide Notice shall not constitute as a waiver of Buyer's rights to collect GEP damages. Seller may cure the GEP Failure by providing to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, that is no less than ninety percent (90%) of the Contract Quantity, subject to adjustment for Seller Excuse Hours over the next following Contract Year, as set forth in the formula below ("GEP Cure").

GEP Cure = (90% × Contract Quantity in MWh) × [(Hrs in next following Contract Year – Seller Excuse Hrs in next following Contract Year) / Hrs in next following Contract Year]

If Seller fails to provide sufficient Delivered Energy plus Deemed Delivered Energy, if any, as adjusted by Seller Excuse Hours, to qualify for the GEP Cure for a given Performance Measurement Period, Seller shall pay GEP Damages, calculated pursuant to Appendix V ("GEP Damages Calculation"). ***[***If Seller provides a GEP Cure or pays GEP Damages for the Contract Years in a particular Performance Measurement Period ("Cured Performance Measurement Period"), then for purposes of calculating the Guaranteed Energy Production in the following Performance Measurement Period, the amount of Delivered Energy plus Deemed Delivered Energy in the second Contract Year of

the Cured Performance Measurement Period, which is also the first Contract Year of the following Performance Measurement Period ("Shared Contract Year"), shall be deemed equal to the greater of (X) the Delivered Energy plus Deemed Delivered Energy, if any, for the Shared Contract Year, subject to adjustment for Seller Excuse Hours, or (Y) eighty percent (80%) of Contract Quantity in the Shared Contract Year, where X and Y are calculated as follows:

X = (Delivered Energy + Deemed Delivered Energy in Shared Contract Year) × [Hrs in Shared Contract Year / (Hrs in Shared Contract Year– Seller Excuse Hours in Shared Contract Year)] or;

Y = 80% × Contract Quantity in Shared Contract Year

For the avoidance of doubt, the calculation set forth above for the amount of Delivered Energy plus Deemed Delivered Energy for the Shared Contract Year shall not apply to the cumulative GEP Shortfall under Section 5.1(b)(vi)(B).***]***

[Bracketed text above applies to As-Available Product only.]

(II) 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.

(III) 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 (the "Cure Payment Period"). If Seller does not pay the GEP Damages within the Cure Payment Period, then Buyer may, at its option, declare an Event of Default pursuant to Section 5.1(b)(vi)(A) within ninety (90) days following the Cure Payment Period. If Seller has failed to pay the GEP Damages, and Buyer does not (1) notify Seller of the GEP Failure or (2) declare an Event of Default pursuant to Section 5.1(b)(vi) within the ninety (90) day period, 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).

[The following bracketed version of Section 3.1(f) "Contract Capacity" applies to Full Buy/Sell transactions of As-Available Product only]

[(f) Contract Capacity. The generation capability designated for the Project shall be the contract capacity in MW designated in the Cover Sheet, (the "Contract Capacity"), which shall be equal to the result of the Contract Capacity calculation performed in accordance with Section II of Appendix XIII. Throughout the Delivery Term, Seller shall sell and deliver all Product produced by the Project solely to Buyer. In no event shall Buyer be obligated to receive, in any Settlement Interval, any Surplus Delivered Energy. Seller shall not receive payment for any Surplus Delivered Energy. To the extent Seller delivers Surplus Delivered Energy to the Delivery Point in a Settlement Interval in which the Real-Time Price for the applicable PNode is negative, Seller shall pay Buyer an amount equal to the Surplus Delivered Energy (in MWh) during such Settlement Interval, multiplied by the absolute value of the Real-Time Price per MWh for such Settlement Interval.***]***

[The following bracketed version of Section 3.1(f) "Contract Capacity" applies to all Baseload Products and Excess Sale transactions of As-Available Products.]

[(f) Contract Capacity.

(i) Contract Capacity. The capacity of the Project at any time shall be the lower of the following: (A) the contract capacity in MW designated in the Cover Sheet or (B) the Net Rated Output Capacity of the Project (the "Contract Capacity"), which shall be equal to the result of the Contract Capacity calculation performed in accordance with Section II of Appendix XIII. Throughout the Delivery Term, Seller shall sell all Product produced by the Project solely to Buyer. In no event shall Buyer be obligated to receive, in any Settlement Interval, any Surplus Delivered Energy. Seller shall not receive payment for any Surplus Delivered Energy. To the extent Seller delivers Surplus Delivered Energy to the Delivery Point in a Settlement Interval in which the Real-Time Price for the applicable PNode is negative, Seller shall pay Buyer an amount equal to the Surplus Delivered Energy (in MWh) during such Settlement Interval, multiplied by the absolute value of the Real-Time Price per MWh for such Settlement Interval.

(ii) Net Rated Output Capacity Testing. Buyer shall have the right to request a Capacity Test as set forth in Appendix IV-3, to determine the Net Rated Output Capacity no more than one time per Contract Year. The resulting Net Rated Output Capacity shall be used to determine the Contract Capacity, in accordance with Section 3.1(f)(i) above, and shall remain in effect until the next Capacity Test requested by Buyer. Appendix IV-3 sets forth the agreements of Buyer and Seller with respect to the performance of Capacity Tests.***]***

(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 XIII.

(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.

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 Generator 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 GIP and applicable agreements or procedures provided under the GIP in order to obtain the applicable Electric System Upgrades and (D) obtain Electric System Upgrades, as needed, in order to ensure the safe and

reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project.

(ii) Coordination with Buyer.

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

(B) Excess Network Upgrade Costs. Seller shall provide Buyer within ten (10) Business Days of receipt thereof, copies of any Interconnection Study or the interconnection agreement tendered to Seller by the Participating Transmission Owner that may give rise to a termination right of Buyer under Section 3.9(f)(i). Within that same period Seller shall also provide Buyer a Notice of its irrevocable election to exercise or not exercise its right to assume financial responsibility for any Excess Network Upgrade Cost pursuant to Section 3.9(f)(i), with a failure to provide such an election deemed to be an election not to exercise such rights for purposes of administration and enforcement of the terms of this Agreement.

(i) Performance Excuses.

(i) Seller Excuse. For Seller selling As-Available Product, Seller shall be excused from achieving the Guaranteed Energy Production only for the applicable time period during Seller Excuse Hours. For Seller selling Baseload Product, Seller shall be excused from achieving the Guaranteed Energy Production and the Capacity Factor only for the applicable time period during Seller Excuse Hours.

(ii) Buyer Excuses. Buyer shall be excused from (A) receiving and paying for the Product only (I) during periods of Force Majeure, (II) by Seller's failure to perform, (III) during Curtailment Periods and (B) receiving Product during Buyer Curtailment Periods.

(iii) Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project during any Curtailment Period or Buyer Curtailment Period.

(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 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. Nothing in this Section 3.1(j) shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

(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 transfer the

Renewable Energy Credits to Buyer even if Buyer does not accept and/or pay for the underlying energy per Section 3.1(f) or for Baseload Product only, pays something other than the Contract Price. Seller shall comply with all Laws, including 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 with 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 data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Term, which changes Buyer determines are necessary to forecast output from the Project, and/or comply with Law:

(A) read-only access to meteorological measurements, ***[***inverter***]*** ***[bracketed language applies to solar photovoltaic Projects only]*** and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (G) of this list;

(B) read-only access to energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project; provided that if Buyer is unable to access the Project's SCADA system, then upon written request from Buyer, Seller shall provide energy output information and meteorological measurements to Buyer in 1-minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

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

(D) full, real-time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application, or its successor system;

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

[Subparts (F) through (G) below shall only apply to wind and solar facilities]

(F) instantaneous data measurements at sixty (60) second or increased frequency for the parameters set forth in Appendix X ("Telemetry Parameters for Wind or Solar Facilities"), which measurements shall be provided by Seller to Buyer in consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup; and

(G) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of ***[the following bracketed language applies to solar facilities***

only] [solar insolation, temperature, wind speed, and, if applicable, wind direction***] [the following bracketed language applies to wind facilities only] [***wind speed, wind direction , ambient temperature, atmospheric pressure***]***. Such equation shall take into account the expected availability of the facility.

[The following bracketed language applies to As-Available Product only]

[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 IX ("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 scheduling 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.

[The following Sections 3.1(l)(iv) – (vi) apply to As-Available Product only]

[(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, and for wind Projects, each wind turbine must be equipped with meteorological measurement equipment (e.g. anemometers) which are individually linked to Seller's plant information system. 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) to enable Buyer or the Third-Party SC to meet current CAISO scheduling requirements. 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 verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, 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 ninety (90) 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) ***[Include the following bracketed language for solar Projects only] [***total global horizontal irradiance, plane of array or direct normal insolation as is applicable for project type, air temperature, wind speed and direction, precipitation, barometric pressure, visibility in fog areas (forward scatter sensor) and humidity at the Site***] [Include the following bracketed language for wind Projects only] [***wind speed and direction (as close to hub height as possible), standard deviation of wind direction, peak instantaneous values, air temperature, barometric pressure, 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 ***[Include the following bracketed language only if winter season output of solar Project is an issue] [***and visibility in fog areas***]*** All data, except peak values, should be 1-second samples averaged into 10-minute periods; (B) elevation, latitude and longitude of the weather station; and (C) any other data reasonably requested by Buyer.**]**

(m) Prevailing Wage. Seller shall use reasonable efforts to ensure that all Electricians hired by Seller, Seller's 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 Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code.

(n) Obtaining and Maintaining CEC Certification and Verification. Subject to the Compliance Cost Cap, Seller shall take all necessary steps including 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 definition of "Compliance Costs" and are new costs associated with a change in Law occurring after the Execution Date. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term shall be capped annually at ten thousand dollars ($10,000.00) per MW of Contract Capacity and in the aggregate throughout the Delivery Term at twenty thousand dollars ($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 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-referenced CPUC approval until such time as the CPUC issued its approval of the reimbursement payment in final and non-appealable form.

(p) Curtailment Requirements.

(i) Order. Seller shall reduce generation from the Project as required pursuant to a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, provided that (A) a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order shall be consistent with the operational characteristics set forth in Section F of the Cover Sheet; (B) the Buyer Curtailment Period shall be for unlimited hours cumulatively per Contract Year (which may or may not be consecutive); and (C) Buyer shall pay Seller for Deemed Delivered Energy associated with a Buyer Curtailment Period pursuant to Article 4. Seller agrees to reduce the Project's generation by the amount and for the period set forth in the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(ii) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order provided in compliance with Section 3.1(p)(i), then, for each MWh of Delivered Energy that the Project generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh (for example, the Contract Price adjusted by TOD Factors) and, (B) is the absolute value of the Real-Time Price for the applicable PNode, if such price is negative, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(q) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Units as directed by the Buyer and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 3.1(p)(ii) for failure to

comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

[The following bracketed section only applies to GTSR Projects]

[(r) Green-e® Energy Certification.

(i) As of the Effective Date, Seller represents and warrants that (A) the Project is eligible for Green-e® Energy Certification and (B) the WREGIS Certificates associated with the Renewable Energy Credits corresponding to Delivered Energy have not been separately sold, separately marketed or otherwise separately represented by Seller or its Affiliates as renewable energy attributable to the Project other than to Buyer.

(ii) From the Execution Date, and for the duration of the Delivery Term, Seller covenants that it shall, at its sole expense, but subject to the Compliance Cost Cap, take all actions, including complying with all applicable registration, attestation, eligibility, auditing, and reporting requirements, and execute all documents or instruments necessary (A) to be eligible for and maintain the Green-e® Energy Certification during the Delivery Term, and (B) to enable Buyer to meet its obligation for a GTSR Program with Green-e® Energy Certification during the Delivery Term.***]***

3.2 Green Attributes.

(a) 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.

(b) Biomethane Transactions.

(i) For all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient renewable and environmental attributes of biomethane production and capture to ensure that there are zero net emissions associated with the production of electricity from the generating facility using the biomethane.

(ii) For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by Law. If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the

source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.

3.3 Resource Adequacy.

(a) 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 and/or other regional entity may prescribe, including submission of a Supply Plan or Resource Adequacy Plan ("Resource Adequacy Requirements"). From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the capacity of the Project, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements during the Delivery Term.

(b) Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Resource Adequacy Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Resource Adequacy Standards, if applicable.

(c) Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules, if applicable, provided that Seller has given Buyer Notice of the outages subject to the Replacement Capacity Rules by the earlier of ninety (90) days before the first day of the month for which the outage will occur or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC. If Seller fails to provide such Notice, then Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules for such outage.

(d) To the extent Seller has an exemption from the Resource Adequacy Standards or the Replacement Capacity Rules under the CAISO Tariff, Sections 3.3(b) and 3.3(c) above shall not apply. If Seller would like to request an exemption for this Agreement from the CAISO, Seller shall provide to Buyer, as Seller's Scheduling Coordinator, Notice specifically requesting that Buyer seek certification or approval of this Agreement as an exempt contract pursuant to the CAISO Tariff; provided that Buyer's failure to obtain such exemption shall not be an Event of Default and Buyer shall not have any liability to Seller for such failure.

(e) Resource Adequacy Failure.

(i) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 3.4(a)(i)(A) or anything to the contrary herein, the Parties acknowledge and agree that:

(A) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the RA Start Date, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer; and

(B) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the Deliverability Finding Deadline, then Seller shall be in breach of this

Agreement and subject to an Event of Default under Sections 5.1(b)(vii) - (viii), regardless of Seller's payment of any RA Deficiency Amount hereunder.

(ii) RA Deficiency Amount Calculation.

(A) Buyer shall calculate the RA Deficiency Amount for each RA Shortfall Month using the formula set forth in Section 3.3(e)(ii)(B). Buyer shall notify Seller of the RA Deficiency Amount for a given RA Shortfall Month no later than the last day of that RA Shortfall Month. The Parties agree that these liquidated damages shall be paid to Buyer for each RA Shortfall Month and constitute a reasonable approximation of the harm or loss suffered by Buyer. The Parties further agree that Buyer may use such liquidated damages for any purpose in its sole discretion. Seller shall pay the RA Deficiency Amount for a given RA Shortfall Month in the form of a deduction from the amount invoiced by Seller in such month pursuant to Section 6.1. In the event that the RA Deficiency Amount for a given RA Shortfall Month exceeds the amount invoiced pursuant to Section 6.1, Buyer shall make no payment to Seller for that month, and the difference between the invoiced amount and the RA Deficiency Amount shall be deducted from the amount(s) invoiced in the succeeding month(s) until all of the RA Deficiency Amount for such RA Shortfall Month has been deducted. Any dispute regarding Buyer's calculation of any RA Deficiency Amount shall be resolved in accordance with Article Twelve.

(B) The RA Deficiency Amount for a given RA Shortfall Month shall be equal to the product of the RA Value and the Expected Net Qualifying Capacity, as calculated in accordance with Appendix XIV. The RA Deficiency Amount is represented by the following equation:

RA Deficiency Amount ($/Month) = RA Value ($/MW/Month) × Expected Net Qualifying Capacity (MW)

To the extent the Project obtains Net Qualifying Capacity that Seller applies towards its obligations under Section 3.3(a) before the Project obtains the deliverability type selected in Section A of the Cover Page (e.g., through the CAISO's Operational Deliverability Assessment), then the RA Deficiency Amount calculated above for a given RA Shortfall Month shall be reduced accordingly (e.g. the RA Deficiency Amount would equal the product of (x) the RA Value and (y) the difference between the Expected Net Qualifying Capacity and the actual Net Qualifying Capacity):

RA Deficiency Amount ($/Month) = RA Value ($/MW/Month) × [Expected Net Qualifying Capacity (MW) – actual Net Qualifying Capacity (MW)].

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller's Transmission Service Obligations. Throughout the Term, and consistent with the terms of this Agreement, Seller shall:

(A) 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. Seller's interconnection, distribution and/or transmission arrangements shall provide for the deliverability type selected in Section A of the Cover Sheet as of the RA Start Date and throughout the Delivery Term.

(B) If Seller has elected Energy Only Status on the Cover Sheet, this Section 3.4(a)(i)(B) is not applicable. An FCDS or PCDS Seller shall have either previously obtained, or is obligated to obtain per the terms of the Agreement, a FCDS or PCDS Finding. If Seller's Project has not attained Full Capacity Deliverability Status or Partial Capacity Deliverability Status prior to the Execution Date, Seller shall take all actions necessary or appropriate to cause the Delivery Network Upgrades necessary for it to obtain Full Capacity Deliverability Status or Partial Capacity Deliverability Status to be constructed and placed into service. The cost of each Deliverability Assessment and any necessary Delivery Network Upgrades to ensure Full Capacity Deliverability Status or Partial Capacity Deliverability Status shall be borne solely by Seller and shall not be subject to the Compliance Cost Cap. When the CAISO advises Seller that the Project has Full Capacity Deliverability Status or Partial Capacity Deliverability Status, Seller shall Notify Buyer of such status within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO. The Effective FCDS Date or Effective PCDS Date must occur on or before the Deliverability Finding Deadline; a failure to do so shall constitute an Event of Default under Section 5.1(a)(iii). The Termination Payment for an Event of Default caused by Seller's failure to achieve the Effective FCDS Date or Effective PCDS Date on or before the Deliverability Finding Deadline shall be capped at the amount of Seller's Delivery Term Security or Term Security obligation under Section 8.4(a)(ii) or (iii), as applicable.

(C) if the Project has or obtains FCDS, Seller shall Notify Buyer of such status as of the Execution Date, if applicable, or within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO. If Seller has elected Energy Only Status or Partial Capacity Deliverability Status on the Cover Sheet, Seller shall continue to receive payment based on the Energy Only Status TOD Factors set forth in Section 4.4 regardless of whether or not Seller obtains FCDS.

(D) bear all risks and costs associated with such transmission service, including any transmission outages or curtailment to the Delivery Point.

(E) 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 from the Project according to the terms of this Agreement.

(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 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.

[The following Section (b) "EIRP Requirements" applies to EIRP-eligible facilities only]

[(b) EIRP Requirements. 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. As of the first date of the Test Period and until the Project receives certification as a Participating Intermittent Resource, Seller, at its sole cost, shall comply with EIRP and additional protocols issued by the CAISO for Eligible Intermittent Resources. Throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with EIRP and all additional protocols issued by the CAISO for a Participating Intermittent Resource. Throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with all other protocols issued by the CAISO for generating facilities providing energy on an intermittent basis; provided that, if multiple options exist, then Seller shall comply with any such protocols, rules or regulations as directed by Buyer. Throughout the Delivery Term, Buyer in its limited capacity as Seller's Scheduling Coordinator shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to satisfy Seller's obligations as Seller's Scheduling Coordinator and to the extent such actions are at *de minimis* cost to Buyer.***]***

[(b)**][**(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 CAISO Tariff, and all requirements of EIRP (if applicable).

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. ***[The following bracketed language applies to As-Available solar or wind Projects only] [***Seller's availability forecasts below shall include Project availability and updated status of ***[The following bracketed language applies to solar Projects only] [***photovoltaic panels, inverters, transformers, and any other equipment that may impact availability***]*** or ***[The following bracketed language applies to wind Projects only] [***transformers, wind turbine unit status, and any other equipment that may impact availability***].] [The following bracketed language applies to As-Available***

Product only] [To avoid Forecasting Penalties set forth in Section 4.6(c)(iii),***]*** 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 automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of July 1 of the first calendar year following the Execution Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term ("First Annual Forecast Date"), and (II) on or before July 1 for each calendar year from the First Annual Forecast Date 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 each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Available Capacity. Seller shall provide to Buyer and Third-Party SC (if applicable), pursuant to subsections (I) and (II) below, a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer:

(I) by the earlier of ninety (90) days before the beginning of the Test Period or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC, and

(II) throughout the Delivery Term, by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC.

(C) Daily Forecast of Available Capacity. During the Test Period and thereafter during 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 VI, 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, "Preschedule 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 less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO

deadline for submittal of Schedules into the Day-Ahead Market 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 VI. 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.

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, 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 to the extent Seller's failure contributes to Imbalance Energy, Seller shall be subject to the Forecasting Penalties set forth in Section 4.6(c).

(D) Real-Time Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the CAISO rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must likewise notify Buyer. 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 within ten (10) minutes of the commencement of the Forced Outage. Seller shall inform Buyer of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. These notices and changes to Available Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than 60 days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 3.4[(b)][(c)](iii)(D), then Seller shall send such communications by telephone to Buyer's Real-Time Desk and shall be sent to Buyer's internet site as set forth in Appendix VI.

(E) To the extent that Seller obtains, in the normal course of business, other forecasts of energy production at the Project not otherwise specified in this Section 3.4, then Seller shall grant Buyer read-only access to such forecasts.

(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, safety, ownership and/or operation of the Project). In the event Seller requires any data or information from Buyer in order to comply with any applicable requirements of Law, including the requirements of CAISO, NERC and WECC, relating to the Project (including those related to construction, safety, ownership and/or operation of the Project), then Seller shall request in writing such data from Buyer no less than forty-five (45) calendar days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.

(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 Electric 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 must be delivered through a single CAISO revenue meter located on the high-voltage side of the Project's final step-up transformer (which must be dedicated solely to the Project) nearest to the Interconnection Point that exclusively measures output for the Project described herein. All Delivered Energy 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). Buyer, in its capacity as Scheduling Coordinator, is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Buyer's schedules or cancels previously approved outages and for entering Project outages in the Scheduling and Logging system for the CAISO ("SLIC") or successor system. As Scheduling Coordinator, Buyer shall put forth commercially reasonable efforts to secure and communicate CAISO approvals for Project outages in a timely manner to Seller.

(b) Planned Outages. During the Delivery Term, Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with ***[***Section 3.4[(b)][(c)](iii)(A), ("Annual Forecast of Available Capacity") and Section 3.4[(b)][(c)](iii)(B), (Monthly Forecast of Available Capacity")***] [Applies to intermittent facilities only] [***3.4[(b)][(c)](iii)(A), ("Annual Forecast of Available Capacity") and Section 3.4[(b)][(c)](iii)(B), (Monthly Forecast of Available Capacity")***] [Applies to all facilities other than intermittent facilities]*** and implementing the notification procedures set forth in Appendix VI no later than July 1st of each year during the Delivery Term. Seller shall also notify Buyer of the proposed Planned Outage schedule for the Project by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC. 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 by the earlier of fourteen (14) days prior to each Planned Outage or two (2) Business Days prior to the CAISO deadline for submitting Planned Outages. Seller shall not conduct Planned Outages during the months of January, May 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. Subject to Section 3.7(a), after any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may direct that Seller change its outage schedule as ordered by CAISO. For non-CAISO ordered changes to a Planned Outage schedule requested by Buyer, 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) Forced Outages. Seller shall notify Buyer of a Forced Outage as promptly as possible, but no later than ten (10) minutes after the commencement of the Forced Outage and in accordance with the notification procedures set forth in Appendix VI. Buyer shall put forth commercially reasonable efforts to submit such outages to CAISO.

(d) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the notification provisions in Appendix VI. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis also in accordance with the notification provisions in Appendix VI.

(e) 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. 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.

(f) Communications with CAISO. Buyer 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.

(g) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7, 3.8, or 10.13, or Appendix VI, and consistent with Section 3.5, Seller understands and acknowledges that the specified access to data and installation and maintenance of weather stations, transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and scheduling, forecast, bidding, notification and operating procedures described in the above-referenced sections are subject to change. If such changes are provided by (i) Notice from Buyer, then Seller shall implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increased cost of performance to Seller hereunder other than *de minimis* amounts, or (ii) Law, then the Parties shall implement such changes as necessary for Seller and Buyer to perform their respective rights and obligations in accordance with the Law.

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 information on power production, ***[***fuel consumption***,][Bracketed language for applicable Baseload Product only]*** 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, the Participating Transmission Owner, and the applicable distribution provider 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 the 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) Seller shall Notify Buyer of the Construction Start Date by sending to Buyer a written Certification substantially in the form provided in Appendix IV-1 as soon as practical upon issuance of Notice to Proceed.

(vii) Within fifteen (15) days after the close of each quarter from the first quarter following the Execution Date, until the month in which the Construction Start Date has occurred, provide to Buyer a quarterly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such quarterly reports and discuss Seller's construction progress. The quarterly Progress Report shall indicate whether Seller is on target to meet the Guaranteed Commercial Operation Date.

(viii) Within fifteen (15) days after the close of each month following the Construction Start 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 is on target to meet the Guaranteed Commercial Operation Date.

[The following Section 3.9(a)(ix) applies to geothermal Projects only]

[(ix) Provide to Buyer copies of all Geothermal Reservoir Reports and any revisions thereto, 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 performed pursuant to Section 3.9(a)(v) 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) Guaranteed Commercial Operation Date.

(i) The Parties agree time is of the essence in regards to the Agreement. As such, Seller shall have demonstrated Commercial Operation per the terms of Appendix IV-2 by the date that is no later than twenty-four (24) months after the Effective Date of this Agreement, except as such

date may be extended on a day for day basis for not more than a cumulative six (6) month period for a Permitted Extension (the "Guaranteed Commercial Operation Date").

(ii) Permitted Extensions. The Permitted Extensions to the Guaranteed Commercial Operation Date are as follows:

(A) Permitting Delay. The Guaranteed Commercial Operation Date may be extended on a day for day basis for not more than six (6) months if Seller has used commercially reasonable efforts (including 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 and Seller has worked diligently to resolve the delay ("Permitting Delay");

(B) Transmission Delay. The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than six (6) months if Seller has used commercially reasonable efforts (including compliance with all CAISO, PTO, FERC or other requirements, as applicable, and Seller's timely submission of all required documents and applicable fees) to have the Project physically interconnected to the CAISO Grid and to complete all Electric System Upgrades, if any, but such interconnection or Electric System Upgrades cannot be completed by the Guaranteed Commercial Operation Date, and such delay is not caused by Seller, and Seller has worked diligently to resolve the delay ("Transmission Delay");

(C) Force Majeure Extension. The Guaranteed Commercial Operation Date may be extended on a day for day basis in the event of Force Majeure ("Force Majeure Extension"); 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; provided further that Seller may not claim Force Majeure for any reason that was the basis for or would qualify as a Permitting Delay or a Transmission Delay.

(iii) Notwithstanding the foregoing, if Seller claims more than one Permitted Extension under Section 3.9(c)(ii), such extensions cannot cumulatively exceed six (6) months and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(iv) Notice of Permitted Extension.

(A) In order to request a Permitting Delay or Transmission Delay (individually and collectively, "Delay"), Seller shall provide Buyer with Notice of the requested Delay no later than sixty (60) days prior to the Guaranteed Commercial Operation Date, which Notice must clearly identify the Delay being requested, the length of the Delay requested (up to six (6) months), and include information necessary for Buyer to verify the length and qualification of the Delay. Buyer shall use reasonable discretion to grant or deny the requested extension, and shall provide Seller Notice of its decision within a reasonable time.

(B) In the case of a Force Majeure Extension, if sixty (60) days prior Notice is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(v) Failure to Meet Guaranteed Commercial Operation Date. 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 the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions or Force Majeure, then Buyer shall be entitled to declare an Event of Default and collect a Termination Payment pursuant to Article Five.

[The following subsections (d) and (e) shall only apply to a New Project:]

[(d) Resize of Project Due to Permit Failure.

(i) If Seller has not received or obtained by the earlier of the Expected Construction Start Date and the date that is six (6) months after the Effective Date final and non-appealable Governmental Approvals required for the construction of the Project with the Contract Capacity set forth in the Cover Sheet, after using commercially reasonable efforts to do so (including timely filings with all applicable Governmental Authorities and timely payment of any required fees) ("Permit Failure"), Seller may make a Contract Capacity Commitment on the Expected Construction Start Date (as may be extended), equal to, at a minimum, seventy percent (70%) of the Contract Capacity set forth in the Cover Sheet, provided that such amount shall also be the maximum amount of the generation capacity permitted under the final and non-appealable Governmental Approvals that Seller has received as of the Expected Construction Start Date (as may be extended), and may not be under one (1) MW, 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 Contract Capacity set forth in the Cover Sheet 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 Expected Construction Start Date.

(ii) In the event that the Contract Capacity is reduced pursuant to Section 3.9(d)(i) above, the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Schedule in the Cover Sheet 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 the amount of Guaranteed Energy Production under Section 3.1(e) and the amount of Delivery Term Security or 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 Sections 3.1(e)(ii) and 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 three (3) 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 Contract Capacity set forth in the Cover Sheet, 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 of First Offer Acceptance"), 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. 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.***/***

(f) Excess Network Upgrade Cost Termination Right.

(i) Buyer has the right to terminate this Agreement by Notice on or before the date that is sixty (60) days after Seller provides to Buyer the results of any Interconnection Study, or the GIA tendered to Seller by the Participating Transmission Owner, if such Interconnection Study or GIA as of the date of the termination Notice, estimates, includes, specifies or reflects that the maximum total cost of the Network Upgrades to Buyer, or any Participating Transmission Owner under the jurisdiction of the CAISO, including costs reimbursed to Seller by Buyer or any Participating Transmission Owner under the jurisdiction of the CAISO ("Aggregate Network Upgrade Costs"), may in the aggregate exceed one hundred and ten percent (110%) of the amount identified in the Interconnection Studies that were submitted with Seller's original bid offer (package) so long as the exceeded dollar amount is equal to or greater than one hundred thousand dollars ($100,000.00) ("Network Upgrades Cap"), and Seller has not agreed to assume financial responsibility for Excess Network Upgrade Costs. This termination right is irrespective of any subsequent amendments of such Interconnection Study or GIA or any contingencies or assumptions upon which such Interconnection Study or GIA is based. Buyer's Notice to terminate will be effective five (5) Business Days after such Notice is given to Seller.

(ii) Notwithstanding anything to the contrary in this Section 3.9(f)(ii), Buyer shall have no right to terminate this Agreement under Section 3.9(f)(i), if (A) Seller concurrently with its provision of the relevant Interconnection Study or GIA, as applicable, pursuant to Section 3.1(h)(ii)(B), irrevocably agrees to pay to the Participating Transmission Owner the amount by which the Aggregate

Network Upgrade Costs exceed the Network Upgrades Cap ("Excess Network Upgrade Cost") and (B) Seller enters into a GIA that states that Seller must pay all Excess Network Upgrade Costs without reimbursement from the Participating Transmission Owner. For sake of certainty, if Seller agrees to the above-described payment for the Excess Network Upgrade Costs pursuant to this Section 3.9(f)(ii), such agreement shall not independently convey to Seller any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights (as defined in the CAISO Tariff) in connection with the development of the Project or the delivery of Product to Buyer pursuant to this Agreement.

(iii) Buyer shall have the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, (A) if Seller elects to exercise its right to pay for any Excess Network Upgrade Costs, but (B) FERC, CAISO, or any Participating Transmission Owner, as applicable, rejects Seller's interconnection agreement, in whole or in part, or modifies Seller's interconnection agreement in a manner that would make Seller unable to comply with Seller's obligation pursuant to Section 3.9(f)(i). In order to be effective, Buyer's Notice of termination must be given on or before the date that is ninety (90) days after such rejection or modification by FERC, CAISO, or any Participating Transmission Owner.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Price.

(a) Contract Price. The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year is set forth in Section C of the Cover Sheet.

For the avoidance of doubt, Seller shall not be compensated for any Surplus Delivered Energy.

(b) 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 to Seller in accordance with the schedule described in Section 6.1.

4.2 TOD Periods. The time of delivery periods ("TOD Periods") specified below shall be referenced by the following designations:

	TOD PERIOD		
Monthly Period	**1. Peak**	**2. Shoulder**	**3. Night**
A. July – Sept.	A1	A2	A3
B. Oct. – Mar.	B1	B2	B3
C. Apr. – June	C1	C2	C3

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

A. July – September;

B. October – March; and

C. April – June.

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

1. **Peak** = hours ending 16 - 21 (Pacific Prevailing Time (PPT)) all days in the applicable Monthly Period.

2. **Shoulder** = hours ending 7 - 15 PPT all days in the applicable Monthly Period.

3. **Night** = hours ending 1 - 6, 22, 23 and 24 PPT all days in the applicable Monthly Period.

[Section 4.3 "Capacity Factor" below applies to Baseload Product only]

[4.3 Capacity Factor. The Capacity Factor shall be calculated by TOD Period and defined as the percentage amount resulting from Delivered Energy plus Deemed Delivered Energy, if any, in the applicable TOD Period divided by the product resulting from multiplying the Contract Capacity times the number of hours in the applicable TOD Period minus Seller Excuse Hours in the applicable TOD Period ("Capacity Factor"):

*Capacity Factor = (Delivered Energy + Deemed Delivered Energy) / (Contract Capacity × (Hours in TOD Period minus Seller Excuse Hours)).**]***

4.4 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 and Deemed 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 or Deemed Delivered Energy is delivered:

RPS TOD FACTORS – Full Capacity Deliverability Status			
Period	**1. Peak**	**2. Shoulder**	**3. Night**
A. July – Sept.	2.2304	0.8067	0.9569
B. Oct – Mar.	1.1982	0.7741	0.9399
C. Apr. – June	1.1941	0.6585	0.9299

RPS TOD FACTORS – Energy Only Status			
Period	**1. Peak**	**2. Shoulder**	**3. Night**
A. July – Sept.	1.4514	0.8317	1.0144
B. Oct – Mar.	1.2855	0.8312	1.0092
C. Apr. – June	1.1327	0.7036	0.9977

(b) Monthly TOD Payment. ***[The following bracketed clause is applicable to As Available products only] [***(Except as provided in Section 4.5,)***]*** For each month in each Contract Year, Buyer shall pay Seller for Delivered Energy and Deemed Delivered Energy in each TOD Period ("Monthly TOD Payment") the amount resulting from (i) multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the sum of Delivered Energy (exclusive of Surplus Delivered Energy) for such TOD Period plus (ii) for each hour in the TOD Period, the Deemed Delivered Energy Price applicable to that hour times the TOD Factor for the applicable TOD Period, times the amount of Deemed Delivered Energy for such hour:

$$\text{Monthly TOD Payment} = \sum_{hour=1}^{n} ([\text{Contract Price \$}] \times \text{TOD Factor} \times \text{Delivered Energy } MWh_{hour}) + ([\text{Deemed Delivered Energy Price}_{hour} \text{ \$}] \times \text{TOD Factor} \times \text{Deemed Delivered Energy } MWh_{hour})$$

For the avoidance of doubt, ***[The following bracketed clause is applicable to As-Available products only] [***Excess Energy shall be compensated as set forth in Section 4.5 and shall not be included in the determination of payment set forth above; and***]*** "Delivered Energy" as used in the formula above excludes Surplus Delivered Energy, for which Seller will receive no compensation,

(c) Annual TOD Payment Adjustment. ***["Annual TOD Payment Adjustment" below applies to Baseload Products only.]*** In any Contract Year, if the sum of the Monthly TOD Payments ("Annual TOD Payment") exceeds the product of (i) Delivered Energy (exclusive of Surplus Delivered Energy) and Deemed Delivered Energy in such Contract Year multiplied by (ii) one hundred and five percent (105%) of the Contract Price ("Annual Maximum TOD Payment"), Seller shall pay Buyer the Excess Payment Amount, as defined below within fifteen (15) days of receipt of Buyer's invoice for such amounts; provided that if Seller fails to pay such amount Buyer may net the Excess Payment Amount from the next following payment that would be due from Buyer to Seller and all subsequent payments until Buyer has recouped the entire Excess Payment Amount.

If Annual TOD Payment > Annual Maximum TOD Payment, Seller refunds the amount resulting from subtracting the Annual TOD Payment from the Annual Maximum TOD Payment which amount shall be the "Excess Payment Amount."

Where Annual TOD Payment = sum of Monthly TOD Payment for each month of the applicable Contract Year, and

Where Annual Maximum TOD Payment = ([Contract Price \$] × 1.05 × [Delivered Energy MWh_{hour} *+ Deemed Delivered Energy* MWh_{hour}*])*

For the avoidance of doubt, "Delivered Energy" as used in the formula above excludes Surplus Delivered Energy.

(d) Applicability of Full Capacity Deliverability Status TOD Factors. This Section 4.4(d) only applies to Sellers that elected to be FCDS Sellers in the Cover Sheet. The Full Capacity Deliverability Status TOD Factors shall apply as of the first day of the month immediately following the date that is forty-five (45) calendar days from the Effective FCDS Date.

[Section 4.5 Excess Delivered Energy below applies to Full Buy-Sell transactions of As-Available Product only]

[4.5 Excess Delivered and Deemed Delivered Energy.

(a) Excess Energy Price. If, at any point in any Contract Year, the amount of Delivered Energy (exclusive of Surplus Delivered Energy) plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the annual Contract Quantity amount, then:

(i) each MWh of additional Delivered Energy during such Contract Year shall be deemed "Excess Delivered Energy" and each MWh of additional Deemed Delivered Energy

during such Contract Year shall be deemed "Excess Deemed Delivered Energy" (Excess Delivered Energy and Excess Deemed Delivered Energy, cumulatively, "Excess Energy") and

(ii) for the remainder of such Contract Year:

(A) for every MWh of Excess Delivered Energy, the price paid to Seller shall be the lesser of (I) or (II), where (I) is seventy-five percent (75%) of the Contract Price for such Contract Year times the TOD Factor for the applicable TOD Period and (II) is the hourly DA Price at the Delivery Point (the "Excess Delivered Energy Price"); and

(B) for every MWh of Excess Deemed Delivered Energy the price paid to Seller shall be the lesser of (I) and (II) where (I) is seventy-five percent (75%) of the Deemed Delivered Energy Price times the TOD Factor for the applicable TOD Period and (II) is the hourly DA Price at the Delivery Point (the "Excess Deemed Delivered Energy Price").

Excess Delivered Energy $Price_{hour}$ = *the lesser of ([75% × Contract Price x TOD Factor]* ***OR*** *DA* $Price_{hour}$*)*

Excess Deemed Delivered Energy $Price_{hour}$ = *the lesser of ([75% × Deemed Delivered Energy* $Price_{hour}$ *× TOD Factor]* **OR** *DA* $Price_{hour}$ *)*

For the avoidance of doubt, Excess Energy shall not include any Surplus Delivered Energy.

(b) Monthly Payment for Excess Energy. Buyer shall pay Seller for Excess Energy in each hour ("Monthly Payment for Excess Energy") the amount resulting from (i) multiplying the Excess Delivered Energy Price applicable to that hour times the Excess Delivered Energy for such hour plus (ii) the Excess Deemed Delivered Energy Price applicable to that hour times the amount of Excess Deemed Delivered Energy for such hour:

$$\textit{Monthly Payment for Excess Energy} = \sum_{hour=1}^{n} (\textit{Excess Delivered Energy } Price_{hour} \times \textit{Excess Delivered Energy } MWh_{hour}) + (\textit{Excess Deemed Delivered Energy } Price_{hour} \times \textit{Excess Deemed Delivered Energy } MWh_{hour})$$ ***]***

4.6 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 as a result of Buyer's actions, including those resulting in a Buyer Curtailment Period.

(b) Buyer, as Scheduling Coordinator, shall (i) be responsible for all costs and charges assessed by the CAISO with respect to scheduling and Imbalance Energy, subject to Sections 4.6(a) and (c) and (ii) retain the credits and other payments received as a result of Energy from the Project delivered to the Integrated Forward Market or Real-Time Market, including revenues associated with CAISO dispatches. Seller and Buyer shall cooperate to minimize such charges and Uninstructed Imbalance Energy 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 Energy and costs 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[(b)][(c)](iii), and the sum of Energy Deviations for each of the 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 three percent (3%) multiplied by Contract Capacity multiplied by one (1) hour.

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to the greater of (A) one hundred fifty percent (150%) of the Contract Price or (B) the absolute value of the Real-Time Price, in each case 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 4.6(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.

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 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.

[Section 4.7(c) below applies to Baseload Product only]

(c) Reliability Must-Run Contract and Capacity Procurement Mechanism Obligations. Seller with an existing RMR Contract will assign all of the proceeds of any RMR Contract affecting the Project to Buyer, except as provided below. Buyer shall retain all revenues from said RMR Contract, except for Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch ("Retained Revenues"), as each is defined in the applicable RMR Contract,

all of which shall be remitted to Seller. If the CAISO and/or Seller wish to negotiate or renegotiate an RMR Contract or contract related to the Capacity Procurement Mechanism (as defined in the CAISO Tariff) or similar capacity commitment under the CAISO Tariff that pertains to Unit(s) under this Agreement as of the Execution Date of this Agreement, Seller shall include Buyer in any such negotiations. If Seller enters into any new RMR Contract or contract related to the Capacity Procurement Mechanism or similar capacity commitment affecting the Project, Seller shall assign the revenues from such contract, except for Retained Revenues, Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch to Buyer.

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;~~ provided that, this Section 5.1(a)(iv) shall not apply with respect to Buyer until Buyer's exit from the Chapter 11 Cases has occurred;~~ 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~~; provided that, this Section 5.1(a)(v) shall not apply with respect to Buyer until Buyer's exit from the Chapter 11 Cases has occurred~~.

(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 Commercial Operation Date, as extended by any Permitted Extensions due solely to Seller's inability to achieve, after the use of commercially reasonable efforts, by the Guaranteed Commercial Operation Date the permits necessary to construct or operate the Project, the physical interconnection of the Project to the CAISO or any necessary Electric System Upgrades;

(iii) failure by Seller for any reason other than those explicitly provided in Section 5.1(b)(ii) above and Section 11.1(a)(ii) to meet the Guaranteed Commercial Operation Date as may be extended by Permitted Extensions;

(iv) 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;

(v) if Seller has provided and Buyer has accepted, a Guaranty to satisfy the collateral obligations under this Agreement, then with respect to such guarantor or the Guaranty, if Seller had not replaced the Guaranty in accordance with Section 8.6 within five (5) Business Days following Buyer's Notice of a request for replacement;

(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 preceding 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 calculation of the cumulative GEP Shortfall for purposes of this subsection.

(vii) Seller has not obtained the deliverability type selected in Section A (FCDS or PCDS) of the Cover Sheet by the Deliverability Finding Deadline.

(viii) Seller has not obtained the Partial Capacity Deliverability Status Amount identified in Section A of the Cover Sheet by the Deliverability Finding Deadline.

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") on which to (i) collect the Damage Payment (in the case of any Event of Default of Seller that arose at any time prior to the commencement of the Delivery Term, including an Event of Default of Seller pursuant to Section 5.1(b)(ii)), or (ii) collect the Termination Payment (in the case of any Event of Default of Seller that arose during the Delivery Term or in the case of any Event of Default of Buyer at any time);

(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 Section 5.1(b)(ii), 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 (including the collection of monetary damages) 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) In the case where the Non-Defaulting Party is entitled to collect the Termination Payment pursuant to Section 5.2(a)(ii), 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 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 shall be obtained in a commercially reasonable manner and shall be: (i) for a like amount, (ii) of the same Product, (iii) at the same Delivery Point, and (iv) for the remaining Delivery Term. 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) associated with Seller's failure to achieve the 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 the applicable provisions of Article Four. Seller shall continue to provide to Buyer an invoice of CAISO charges, net any sums Buyer owes Seller under this Agreement, on or about the tenth (10th) day of each month until the date of the Final True-Up. Buyer shall pay the undisputed amount of such invoices less the amount of any RA Deficiency Amount and 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. During the Test Period, and for twelve (12) months following the Test Period only, Buyer shall provide to Seller a statement of the CAISO Revenues and any true-ups of CAISO Revenues from prior months and Buyer shall forward to Seller the CAISO Revenues from such statement, according to the invoice and payment schedules described in this Section 6.1. 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; provided that, such waiver shall not apply to any adjustment or dispute related to Seller's performance under any applicable RMR Contract; and provided further that, any disputes with respect to a statement of CAISO Revenues is waived unless Seller notifies Buyer in accordance with this Section 6.2 within one (1) month after the last statement of CAISO Revenues is provided. 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. EXCEPT AS MAY OTHERWISE BE EXPRESSLY 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 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.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

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 Buyer, a copy of Buyers's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of Buyer's first three fiscal quarters of each fiscal year, a copy of Buyers'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 Buyer's website 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 or Seller's guarantor's, if applicable, 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.

[For purposes of Sections 8.3 and 8.4, existing ERRs to replace Project Development Security with Pre-Delivery Term Security]

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security, Delivery Term Security, or 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 (30) days of the delivery of the Project Development Security, Delivery

Term Security, or 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, Delivery Term Security, or 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, Delivery Term Security, or 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) 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 $60/kW for As-Available resources or $90/kW for Baseload resources multiplied by the capacity of the Project as reflected in Section B of the Cover Sheet, within five (5) Business Days following the Effective Date of this Agreement until Seller posts Delivery Term Security pursuant to Section 8.4(a)(ii) below with Buyer.

(ii) Delivery Term Security pursuant to this Section 8.4(a)(ii) in the amount of five percent (5%) of expected total Project revenues from the date required pursuant to Section 3.1(c)(i) as a condition precedent to the Initial Energy Delivery 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)(i) toward the Delivery Term Security posted pursuant to this Section 8.4(a)(ii).

[For purposes of Section 8.4(a), GTSR Projects 3 MWs or less only need to comply with the following bracketed language.]

[(iii) Term Security pursuant to this Section 8.4(a)(iii) in the amount of $20/kW for GTSR Projects with Contract Capacity of three (3) MW and under multiplied by the capacity of the Project as reflected in Section B of the Cover Sheet, within thirty (30) days following the Effective Date of this Agreement until the end of the Term.***]***

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 or Term Security. Buyer shall be entitled to draw upon the Project Development Security or Term Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Initial Energy Delivery 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). 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, as applicable unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Delivery Term Security posted pursuant to Section 8.4(a)(ii), as applicable.***[Section 8.4(c) does not apply to GTSR Projects 3 MWs or less.]***

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security, Delivery Term Security or Term Security, as applicable, at the Interest Rate; provided that, the interest on Project Development Security shall be retained by Buyer until Seller posts the Delivery Term Security pursuant to Section 8.4(a)(ii). Upon Seller's posting of the Delivery Term Security, all accrued interest on the unused portion of Project Development Security shall be transferred from Buyer to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in the Cover Sheet (Notices List). After Seller posts the Delivery Term Security or 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 or Term Security.

(e) Return of Performance Assurance. Buyer shall return the unused portion of Project Development Security, Delivery Term Security or Term Security, as applicable, 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 payments pursuant to Section 4.6 ("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 or Term Security , as applicable, shall be proportionally and automatically adjusted in connection with any resizing of the Project under Section 3.9(d), and Buyer shall promptly return to Seller the unused portion of Delivery Term Security or Term Security in connection with any such adjustment.

8.5 Letter of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(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 in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit,

Seller shall cure such occurrence by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (A) or (B) below is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer's Notice to Seller in Section 8.5(b) above, 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 or collateral requirements of Article Eight.

(c) Notwithstanding the foregoing in Section 8.5(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on "credit watch" negative or developing by S&P, or is on Moody's "watch list" under review for downgrade or uncertain ratings action (either a "Watch"), then Buyer may make a demand to Seller by Notice ("LC Notice") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch ("Substitute Letter of Credit"). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit ("Substitute Bank Period").

(i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period ("Ineligible LC Bank Notice Period") that either:

(A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank ("Ineligible LC Bank") and Buyer will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer's Notice to Cure pursuant to Section 8.5(b) and, if Seller fails to Cure, then the last paragraph in Section 8.5(b) shall apply to Seller.

(ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

(d) 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.

8.6 Guaranty. If at any time Seller's guarantor or Guaranty is no longer acceptable to Buyer in its sole discretion, Seller shall replace the Guaranty with Performance Assurance as provided herein. Within five (5) Business Days following Buyer's written request for replacement of the Guaranty, Seller shall deliver to Buyer replacement Performance Assurance in the form of a replacement Guaranty, Letter

of Credit or cash in an amount equal to the applicable amount of the Guaranty issued pursuant to this Agreement. In the event Seller shall fail to provide replacement Performance Assurance to Buyer as required in the preceding sentence, then Buyer may declare an Event of Default pursuant to Section 5.1(b)(v) by providing Notice thereof to Seller in accordance with Section 5.2.

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 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**[**(b)**][**(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) ~~Seller~~ General Representations and Warranties. On the Execution Date, ~~Seller~~each Party represents and warrants to ~~Buyer~~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) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

(iv) the execution, delivery and performance of this Agreement is~~are~~ 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 Laws applicable to it;

(v) 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;

(vi) 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;

(vii) 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;

(viii) 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;

(ix) 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~~Buyer~~ 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

(x) 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.

~~(d) Buyer General Representations and Warranties. On the Execution Date, Buyer represents and warrants to Seller 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 CPUC Approval;~~

~~(iii) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Agreement);~~

~~(iv) the execution, delivery and performance of this Agreement are 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 Laws applicable to it;~~

~~(v) 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;~~

~~(vi) 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;~~

~~(vii) 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 Seller 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~~

10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term ~~as follows; provided that, any breach of any such covenant by Buyer that is caused by or the result of an order or directive of a court of competent jurisdiction relating to the Chapter 11 Cases shall not constitute an Event of Default with respect to Buyer under this Agreement and shall not entitle Seller to terminate this Agreement solely because of such breach by Buyer~~:

(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 and/or Participating TO tariff requirements, as applicable, that are applicable to an Interconnection Customer (as defined in the CAISO Tariff or Participating TO's tariff, as applicable) and shall take any other necessary action, including payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the RA Start Date.

[The following clause (iii) applies to Existing Projects only:]

(iii) Seller covenants that the Initial Energy Delivery Date shall occur no later than the Expected Initial Energy Delivery Date specified in Section B of the Cover Sheet, except as provided pursuant to Section 11.1(a)(ii).

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 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 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 with the prior written consent of the Buyer, which consent shall not be unreasonably withheld. If Buyer gives its consent, then such consent shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix VII provided that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix VII, including extension of any cure periods or additional remedies for financing providers, and (ii) 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, attorneys' fees.

(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.

(a) Neither Party shall disclose the non-public terms or conditions of this Agreement (the "Confidential Information") 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);

(vi) in order to comply with *any* applicable regulation, rule, or order of the CPUC, CEC, or the FERC;

(vii) to the extent necessary for Buyer to exercise its exclusive rights to the Product during the Delivery Term, including its rights to resell any or all portions of the Product as set forth in Section 3.1(a), other than the Contract Price;

(viii) for disclosure by Buyer to publicly release generation information of GTSR Projects, in the aggregate with three or more GTSR or RPS-eligible Projects on an annual basis; or

(ix) for disclosure by Buyer to CRS in connection with Buyer's Green-e® Energy Certification of the GTSR Program.

(b) 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 non-public information exchanged between the Parties related directly or indirectly to this Agreement 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, the number of bids per company, Project size, resource type, Delivery Term, Project location, Capacity Factor and Contract Capacity, Commercial Operation Date, Expected Initial

Energy Delivery Date, Contract Quantity, Delivery Point, and the achievement of Project development Milestones.

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. The obligations of the Seller in this Section 10.10 constitute material obligations of the Agreement.

(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 one million dollars ($1,000,000.00) 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 three million dollars ($3,000,000.00) 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) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller. 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 (blanket or otherwise) 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 one million dollars ($1,000,000.00) 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) All Risk Property Insurance.

(i) During construction, an All Risk Property insurance policy including earthquake and flood (with sublimits as appropriate) shall be maintained during the course of Work being performed and include Start-up and testing for installed equipment and delayed opening coverage. Such policy shall include coverage for materials and equipment while under the care, custody and control of the Seller during the course of Work, at the Site, offsite or while in transit to the Site.

(e) Additional Insurance Requirements.

(i) Before commencing performance of the Work, Seller shall furnish Buyer 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 Buyer.

(iii) Buyer uses a third party vendor, EXIGIS,LLC to confirm and collect insurance documents. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to issue certificates of insurance and endorsements on its behalf, and submitted via email or fax to:

Certificate Holder:
Pacific Gas &Electric Company
c/o EXIGIS, LLC
support@exigis.com
Fax: 646-755-3327

(iv) Reviews of such insurance may be conducted by Buyer on an annual basis.

(v) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(f) Form And Content.

All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against Buyer, 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.

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. 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. The Parties acknowledge and agree that this Agreement is a "forward contract" (within the meaning of the Bankruptcy Code, as in effect as of the Execution Date). 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 any of the following: (each constituting a "Force Majeure Failure"):

(i) If prior to the Delivery Term, Seller is unable, due solely to a Force Majeure event, to achieve the Commercial Operation Date or place the Project into Commercial Operation by the Guaranteed Commercial Operation Date, after applicable extensions or cure periods have run, as set forth in Section 3.9(c); provided that if a Force Majeure event is caused by a catastrophic natural disaster, then upon Buyer's written request to Seller, Seller shall have not more than ninety (90) days from the date of such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller shall provide Buyer a copy of the engineer's report, at no cost to Buyer; provided further that if such engineer's report concludes that the Project is capable of being repaired or replaced within twenty-four (24) months from the date of the Seller provides the engineer's report to Buyer and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the repair or replacement period deemed necessary by the engineer's report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and Seller has resumed and is satisfying its obligations under this Agreement.

(ii) If during the Delivery Term:

(A) the Project fails to deliver at least forty percent (40%) of the Contract Quantity 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 and Buyer has provided Notice to Seller of such failure; provided that, if Seller within forty-five (45) days of receipt of Notice from Buyer, presents Buyer with a plan for mitigation of the effect of the Force Majeure within a period not to exceed six (6) months from the above-mentioned Notice date, which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer's written acknowledgement of such plan, then Buyer shall

not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the mitigation period deemed necessary by Seller to repair the Project (which shall not exceed six (6) months); provided that Seller diligently pursues such mitigation plan throughout the mitigation period, and after which time Buyer may terminate this Agreement unless the Project has been repaired, and the Seller has resumed and is satisfying all of its obligations under this Agreement; or

(B) the Project is destroyed or rendered inoperable by a Force Majeure event caused by a catastrophic natural disaster; provided that Seller shall have up to ninety (90) days following such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced no later than twenty-four (24) months from the date of the report and Seller shall provide Buyer with a copy of the engineer's report, at no cost to Buyer; provided further that if such engineer's report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the period deemed necessary by the engineer's report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying all of its obligations under this Agreement.

(b) Termination and Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Sections 2.6(a) and (b). The Parties agree that for a period of three (3) years from the date on which Buyer Notifies Seller of termination due to the Force Majeure Failure ("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 of First Offer Acceptance"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice of First Offer Acceptance 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. 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 VI, 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, website, or contact, including such information in Appendix VI and the "Notices List" in the Cover Sheet, 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: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX I

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

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 **[insert name of the agreement]** (the "Agreement"), dated **[insert date of the Agreement]**, between Beneficiary and **[insert name of Seller under the Agreement],** Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the Agreement]** under the Agreement; or

   B. "Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the Agreement]** 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; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

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) Buyer has accepted delivery of 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: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX III

FORM OF PROGRESS REPORT

Progress Report

of

_____
("Seller")

provided to

Pacific Gas and Electric Company
("Buyer")

[Date]

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").

Seller shall review the status of each Milestone of the construction schedule for the Project and Seller shall 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 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 Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

For guidance, each "overview" subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each "recent activities" subsection shall include details of activities during the previous month. Each "expected activities" subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Progress Report to [_____], together with all attachments and exhibits, with copies of this report delivered to GCMTGroup@pge.com and [_____].

1. Executive Summary

Please provide an overview of the Project, including technology, size, location, and ownership.

Please provide a brief chronological cumulative summary of the **major** activities completed for each of the following aspects of the Project. Include the date each item was added to the summary (*e.g., in Milestone section "January 2012 – notice of Construction Start Date milestone achieved was reported to PG&E on January 15, 2012" and in Construction section "January 2012 - Notice to Proceed was issued to EPC contractor on January 10, 2012"*):

1.1 Milestones

1.2 Governmental Approvals

1.3 Financing

1.4 Property Acquisition

1.5 Design and Engineering

1.6 Major Equipment procurement

1.7 Construction

1.8 Interconnection

1.9 Startup

2. Milestones

In this section, please include information on each Milestone listed in the Cover Sheet, plus any additional significant milestones related to the project.

2.1 Milestone schedule

Please state the status and progress of each Milestone. Provide the date of completion of completed Milestone(s) and the expected date of completion of uncompleted Milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

2.2 Remedial Action Plan (applicable if Seller fails to achieve a Milestone by the Milestone Date)

Please describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates. Describe the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor). Describe Seller's Remedial Action Plan which shall include detailed plans to achieve the missed Milestone and subsequent Milestones.

3. Governmental Approvals

In this section, please include information on each of the Governmental Approvals required for the construction of the Units and the status thereof. List the applicable government agency, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes, but is not limited to, application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents and/or approvals, final documents and/or approvals, notice of determination, and/or issuance of permit. If the government agency maintains a website with information on the approval process for the Project, please provide a link.

3.1 Environmental Impact Report/Statement (EIR/EIS)

Please describe the environmental review process and each of the Governmental Approval(s) to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity in the process.

3.2 Other Governmental Approvals

Please describe each of the other Governmental Approvals to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity.

3.3 Recent Governmental Approval activities

Please describe in detail the Governmental Approval activities that occurred during the previous calendar month.

3.4 Expected Governmental Approval activities

Please list all Governmental Approval activities that are expected to be performed during the current calendar month.

3.5 Governmental Approval Notices received

Please attach to this Progress Report copies of any Notices related to Governmental Approval activities received during the previous calendar month.

4. Financing Activities

In this section, please include information on each separate phase of financing for the Project. Include information on debt, equity, and/or federal or state loans or grants.

4.1 Overview of financing activities

Please provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

4.2 Recent financing activities

Please describe in detail the financing activities that occurred during the previous calendar month.

4.3 Expected financing activities

Please list the financing activities that are expected to be performed during the current calendar month.

5. Property Acquisition Activities

In this section, please include information on property acquisition or site control activities for the Project.

5.1 Overview of property acquisition activities

Please provide a summary of the status and progress of each major property acquisition activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

5.2 Recent property acquisition activities

Please describe in detail the property acquisition activities that occurred during the previous calendar month.

5.3 Expected property acquisition activities

Please list the property acquisition activities that are expected to be performed during the current calendar month.

6. Design and Engineering Activities

In this section, please include information on the status of design and engineering for the Project.

6.1 Overview of design activities

Please provide a summary of the status and progress of each major design or engineering activity, including dates of completion of significant activities and expected timing of future activities.

6.2 Recent design activities

Please describe in detail the design activities that occurred during the previous calendar month.

6.3 Expected design activities

Please list the design activities that are expected to be performed during the current calendar month.

7. Major Equipment Procurement

In this section, please include information on all major equipment to be procured for all portions of the Project to be completed by Seller, including switchyards, substations and any other interconnection equipment, in addition to generating and auxiliary equipment.

7.1 Overview of major equipment procurement activities

For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item (to be) procured or delivered in each month.

7.2 Recent major equipment procurement activities

Please describe in detail the major equipment procurement activities that occurred during the previous calendar month.

7.3 Expected major equipment procurement activities

Please list the major equipment procurement activities that are expected to be performed during the current calendar month.

8. Construction Activities

In this section, please include information on the status of any construction-related factors that may affect the ability of the Project to deliver Product to the Buyer. Include information on the Project infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other interconnection facilities that are the direct responsibility of the Project.

8.1 Overview of major construction activities

Please provide a summary of the status and progress of each major construction activity for all portions of the Project, including a schedule showing expected or actual dates as applicable. 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). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each month.

8.2 Recent construction activities

Please describe in detail the construction activities that occurred during the previous calendar month.

8.3 Expected construction activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

8.4 EPC Contractor Progress Report

Please attach a copy of the Progress Reports received during the previous calendar month 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.

8.5 Look-ahead construction schedule

Please provide a look-ahead construction schedule covering at least three months.

8.6 OSHA Recordables

Please list all OSHA recordables from the previous calendar month.

8.7 Work stoppages

Please describe any work stoppage from the previous calendar month and its effect on the construction schedule.

9. Interconnection Activities

In this section, please include information on interconnection-related factors that may affect the ability of the Project to deliver Product to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of Interconnection Facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Project construction information in Section 8), Network Upgrades, and grid outage and/or interconnection schedules.

9.1 Overview of interconnection activities

Please provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.

9.2 Recent interconnection activities

Please describe in detail the interconnection activities that occurred during the previous calendar month.

9.3 Expected interconnection activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

10. Startup

In this section, please include information on the status of activities related to preparation for Commercial Operation, including equipment testing, commissioning, release to operations, requirements of the grid operator, and any other activities that must be conducted before the Project may deliver Energy to the grid and/or declare Commercial Operation.

10.1 Overview of startup activities

Please provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

10.2 Recent startup activities

Please describe in detail the startup activities that occurred during the previous calendar month.

10.3 Expected startup activities

Please list the startup activities that are expected to be performed during the current calendar month.

I, _____, on behalf of and as an authorized representative of _____, do hereby certify that any and all information contained in this Seller's Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By:_____

Name:_____

Title:_____

Date:_____

APPENDIX IV

CONSTRUCTION START AND COMMERCIAL OPERATION CERTIFICATION FORMS AND PROCEDURES

Appendix IV-1: CONSTRUCTION START FORM OF CERTIFICATION

Appendix IV-2: COMMERCIAL OPERATION CERTIFICATION PROCEDURE

Attachment A Commercial Operation Form of Certification

Appendix IV-3: CAPACITY TEST PROCEDURE ***[Use for Baseload Product only]***

[Use this Appendix IV—1 for BOTH As-Available and Baseload Products]

APPENDIX IV–1

CONSTRUCTION START
FORM OF CERTIFICATION

__(Date)___

Director Contract Management and Settlements
Pacific Gas and Electric Company
77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Re: Construction Start Date

This certification ("Certification") of the Construction Start Date 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 all of the following:

a) the EPC Contract related to the Project was executed on _____;
b) [permitting agency name] _ issued grading permits to the Seller on _____; and
c) the Notice to Proceed was issued on _____ (attached), and.
d) mobilization at the Project Site commenced on _____.

IN WITNESS WHEREOF, the undersigned has executed this certificate on behalf of the Seller as of the ___ day of _____.

_____
(Seller)

_____
(Name)

_____
(Position)

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV–2

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

In accordance with the terms of that certain Power Purchase Agreement dated _____, 20__ by and between Pacific Gas and Electric Company ("Buyer") and _____ ("Seller") to declare and recognize the Commercial Operation Date of the Project, Seller shall provide all of the documents set forth herein to Buyer as of the Commercial Operation Date. All terms not defined herein shall have the meaning set forth in the Agreement.

(1) A certification from an authorized officer of Seller, substantially in the form of Attachment A to this Appendix IV-2, dated as of the Commercial Operation Date; and

(2) A certificate or report from a Licensed Professional Engineer containing all of the following:

(a) A statement that the Project has achieved Mechanical Completion and the date on which it was achieved;

(b) A statement that the Project has successfully completed Project Testing and the dates on which Seller has accepted the test results; and

(c) A statement that the Project has achieved Substantial Completion and the date on which it was achieved.

(3) Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the CAISO agreement, interconnection agreement, and metering requirements in Sections 3.4 and 3.6 and has enabled Buyer to schedule the Facility with the CAISO for the Facility's full unrestricted output.

(4) Definitions.

(a) "Mechanical Completion" means that (i) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (ii) the Project is ready for startup testing and commissioning; (iii) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.

(b) "Project Testing Completion" means the written acceptance to the EPC Contractor of the completion of startup testing / commissioning, emissions testing (as applicable), and performance / acceptance / warranty testing (all such testing shall be collectively referred to as "Project Testing") as required under the EPC Contract. The objectives of the tests shall be generally (i) to verify that the Project has been properly designed and constructed to meet the performance and operating requirements of the EPC Contract; (ii) to assure warranty coverage for equipment and systems over their warranty periods.

(c) "Substantial Completion" means when the following has occurred: (i) the Project is sufficiently complete, in accordance with the EPC Contract, that Seller has full and unrestricted use and benefit of the Project in the use for which it is intended; (ii) the Project has achieved Mechanical Completion; (iii) utilities are fully connected and operating normally; (iv) all necessary permits have been issued; (v) the Project is fully and properly interconnected and synchronized with the electrical grid and is capable of producing electricity in accordance with the EPC Contract; (vi) the operating manual has been approved by Seller; (vii) all work other than incidental corrective and incidental punch list work is complete; and (viii) Seller has provided written acceptance to the EPC Contractor of substantial completion as that term is specifically defined in the EPC Contract.

APPENDIX IV–2 –Attachment A

COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation 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:

(1) Mechanical Completion of the Project was achieved on ____[DATE]____.

(2) Project Testing Completion successfully occurred on:

[Seller to indicate each type of Project Testing and date completed]

(a) NAME OF TEST [DATE]
(b) NAME OF TEST [DATE]
(c) NAME OF TEST [DATE]

(3) Substantial Completion of the Project was achieved on ____[DATE]____

(4) Pre-parallel inspection of the Project was successfully completed on __[DATE]__

(5) Authorization to parallel the Project was obtained on ____[DATE]____

(6) Telemetering / SCADA visibility with PTO and CAISO grid control and power dispatch centers was obtained for the Project on ____[DATE]____

(7) Reliability Network Upgrades (as defined in the CAISO Tariff) were completed on the Project on ____[DATE]____

(8) Power system stabilizer testing and calibration was obtained for the Project on _____[DATE]____ or, ☐ was not required

(9) Full Capacity Deliverability Status Finding from CAISO was obtained for the Project on ____[DATE]____ or, ☐ was not required because the Project is Energy Only.

(10) The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____[DATE]_____.

(11) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on _____[DATE]_____.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated herein.

EXECUTED by SELLER this _____ day of _____, 20__.

		[Licensed Professional Engineer]	
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
		Date:	_____
		License Number and LPE Stamp	_____

[Use for Baseload Product only]

APPENDIX IV–3

CAPACITY TEST PROCEDURE

[To be developed by Buyer and Seller by using CAISO test procedures for the applicable technology]

APPENDIX V

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 plus Deemed Delivered Energy, if any, over the Performance Measurement Period, in MWh

C= Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff), in which the PNode resides, plus (b) $50/MWh

D = the unweighted Contract Price specified in the Cover Sheet for the Performance Measurement Period, in $/MWh

The Parties agree that in the above calculation of GEP Damages, the result of "(C-D)" is less than $20/MWh, the "(C-D)" will be replaced with $20/MWh.

APPENDIX VI

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR ROUTINE START-UP AND SHUTDOWNS

Prior to paralleling or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify the applicable Participating Transmission Owner's (PTO) switching center

- Call the applicable Participating Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk to advise of the intent to parallel before any Start-up.

- Call the applicable Participating Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk after the unit has been paralleled and report the parallel time and intended unit output.

- Call the applicable Participant Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk after any routine separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PLANNED OUTAGES

1. Submit information by posting to PG&E's approved web-based system, which is located at www.pge.com under "Business to Business," or alternative website designated by PG&E (both, "PG&E's Website"). Once directed to the appropriate page, enter the username and password assigned by PG&E's Bilateral Settlements Group. If PG&E's 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, Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through 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.

    c. For Monthly and 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 Schedules into the Day-Ahead Market, call primary phone (415) 973-1971 or backup phone (415) 973-4500. Also send email to DAenergy@pge.com.

    e. For Hourly Forecasts of Available Capacity, call PG&E's Real Time Desk at (415) 973-4500 and email to RealTime@pge.com.

f. For Planned Outages and Prolonged Outages, complete the specifics below and submit by email to MerchantOutages@pge.com, DAenergy@pge.com, ESMOutageCoordinator@pge.com, and Bilat_Settlements@pge.com.

i. ***Email subject field*: Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity")**

ii. Email body:

1. ***Type of Outage: Planned Outage or Prolonged Outage***

2. ***Start Date and Start Time***

3. ***Estimated or Actual End Date and End Time for Outage***

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.***

6. ***Contact name: first and last name of the individual at the Unit to contact regarding the outage(s) at issue in the email.***

C. FORCED OUTAGE REPORTING

1. Forced Outages – Seller shall notify PG&E Merchant Generation desk verbally at (415) 973-4500 within ten (10) minutes of event or as soon as reasonably possible, after the safety of all personnel and securing of all facility equipment.

a. Verbal notification shall include time of forced outage, cause, current availability and estimated return date and time.

b. After verbally notifying PG&E Merchant Generation desk of the forced outage, Seller shall also put forth commercially reasonable efforts to notify PG&E Settlements via PG&E's Website, as defined above.

c. If PG&E's Website is unavailable, submit the following information via email to Bilat_Settlements@pge.com.

i. ***Email subject field*: Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity")**

ii. Email body:

1. ***Type of Outage: Forced 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.***

6. ***Primary and secondary causes of Forced Outage, including a detailed description of specific equipment involved and the nature of the problem or condition.***

7. ***Equipment description and nature of work being performed. For generation outages, include NERC Generation Availability Data System (GADS) numbers (as available) that identify the specific equipment and type of work that affect restrictions. Include additional equipment designations as available.***

8. ***Text description of additional information as needed, including, but not limited to, changes to a previously scheduled Outage, links/cross-references to related outage cards and log entries, outage classifications per the CAISO Tariff, etc.***

9. ***Associated events, e.g. operation of Special Protection Schemes.***

10. ***Impact on CAISO-controlled Grid.***

APPENDIX VII

FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

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 as 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 Loan Agreement and/or 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 depositary 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/or 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 VIII

SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer all of the following documentation 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, or anticipated to be in effect, on the Execution Date.

2. A certificate signed by an authorized officer of Seller (who must be a different person than the officers listed in clause (C) below), dated no earlier than ten (10) Business Days prior to 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 no earlier than ten (10) Business Days prior to 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.

7. An executed Letter of Concurrence substantially in the form specified in Appendix XI.

[Appendix IX applies to As-Available Product only]

APPENDIX IX

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(l)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix IX.

(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 IX.

APPENDIX IX

Attachment A

Form of Actual Availability Report

Seller's Actual Availability Report

All amounts are in MWs

Settlement Interval No.	Date	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	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 X

TELEMETRY PARAMETERS FOR WIND OR SOLAR FACILITY

Technology Type	Telemetry Parameters	Units
Solar Photovoltaic	Back Panel Temperature	˚C
	Global Horizontal Irradiance	W/m²
	Plane of Array Irradiance (If PV is fixed) Direct Normal Irradiance (If PV is Tracking)	W/m²
	Wind Speed	m/s
	Peak Wind Speed (Within 1 minute)	m/s
	Wind Direction	Degrees
	Ambient Air Temperature	˚C
	Dewpoint Air Temperature or Relative Humidity	˚C
	Horizontal Visibility	m
	Precipitation (Rain Rate)	mm/hr
	Precipitation (Running 30 day total)	mm
	Barometric Pressure	Millibars or Hecto Pascals (HPa)
Solar Thermal or Solar Trough	Global Horizontal Irradiance	W/m²
	Plane of Array Irradiance (If PV is fixed) Direct Normal Irradiance (If PV is Tracking)	W/m²
	Wind Speed	m/s
	Peak Wind Speed (Within 1 minute)	m/s
	Wind Direction	Degrees
	Ambient Air Temperature	˚C
	Dewpoint Air Temperature or Relative Humidity	˚C
	Horizontal Visibility	m
	Precipitation (Rain Rate)	mm/hr
	Precipitation (Running 30 day total)	mm
	Barometric Pressure	Millibars or Hecto Pascals (HPa)
	Individual Tracking Assembly Angle Set Points (Solar Trackers Only)	Degrees
	Actual Tracking Assembly Angles (Solar Trackers Only)	Degrees
Wind	Wind Speed (measured at hub height)	m/s
	Peak Wind Speed (Within 1 minute, measured at hub height)	m/s
	Wind Direction	Degrees
	Wind Speed Standard Deviation	--
	Wind Direction Standard Deviation	--
	Barometric Pressure (measured at hub height)	Millibars or

		Hecto Pascals (HPa)
	Ambient Temperature (measured at hub height)	˚C

APPENDIX XI

FORM OF LETTER OF CONCURRENCE

[Date]

[Name]
[Position]
[Company]
[Address]

Re: Letter of Concurrence Regarding Control of [Name] Facility

This letter sets forth the understanding of the degree of control exercised by Pacific Gas and Electric Company ("PG&E") and [Company Name] with respect to [Facility Name (the "Facility")] for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission's ("Commission") Order No. 697.[1] Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.[2] The Commission further requires that "a seller making such an affirmative statement seek a 'letter of concurrence' from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing."[3]

PG&E and [Company Name] have executed a [power purchase and sale agreement (the "Agreement")] with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] maintains sole control of the Facility. [Company Name] agrees to provide subsequent Letters of Concurrence as may be necessary should any of the information provided herein change after the execution date of this letter.

If you concur with the statements made in this letter, please countersign the letter and send a copy to me.

Best regards,

_____
[Author]
[Position]
Pacific Gas and Electric Company

---

[1] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 186-187, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

[2] Order No. 697 at P 186.

[3] Order No. 697 at P 187.

Concurring Statement

On behalf of [Company Name], I am authorized to countersign this letter in concurrence with its content.

By: _____
[Name]
[Company Position]
[Company Name]

APPENDIX XII

SUPPLIER DIVERSITY PROGRAM

1. Seller shall provide Women-, Minority-, and service Disabled Veteran-, and Lesbian, Gay, Bisexual and/or Transgender-owned Business Enterprises, as verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156 ("WMDVLBE"), the maximum practicable opportunity to participate in the performance of work supporting Seller's construction, operation, and maintenance of the Project. General Order 156 can be found on http://www.cpuc.ca.gov/puc/documents/go.htm .

2. Upon request from Buyer, Seller shall provide a separate "Supplier Plan" consisting of a specific list of suppliers that may participate in the performance of the work supporting the construction of the Project prior to the Commercial Operation Date and operation and maintenance of the Project after the Initial Energy Delivery Date, and a statement setting forth any additional efforts Seller will employ to increase the participation of WMDVLBE suppliers supporting the construction, operation and maintenance of the Project.

3. Upon request from Buyer, but no less than once per 365 day period of time between the Execution Date and the end of the Delivery Term, Seller shall report its spending with WMDVLBE suppliers per instructions to be provided by PG&E.

4. Targets.

   a) Seller's supplier diversity spending target for Work supporting the construction of the Project prior to the Commercial Operation Date is ____ percent (___%) as measured relative to Seller's total expenditures on construction of the Project prior to the Commercial Operation Date, and;

   b) Seller's annual supplier diversity spending target for Work supporting the operation and maintenance of the Project after the Initial Energy Delivery Date is ____percent (___%) as measured relative to the net payments made by Buyer to Seller in each Contract Year.

5. Seller shall use good faith efforts in meeting the requirements of this Appendix XII which efforts shall be material obligations.

[Bracketed language applicable to WMDVLBE ***Sellers only]***

6. Seller is a WMDVLBE, as certified by _____ **[**please identify the certifying agency**]**.

APPENDIX XIII
PROJECT SPECIFICATIONS AND CONTRACT CAPACITY CALCULATION

I. PROJECT SPECIFICATIONS

"MVA" means megavolt ampere, the unit of apparent power.

"Nameplate Rated Output" means, with respect to an inverter or electric generator, the MVA that the manufacturer of the inverter or generator has designed such equipment to produce under normal operating conditions as specified by such manufacturer.

"Designated Power Factor" means, with respect to an inverter or electric generator, the power factor required to satisfy the portion of the Project's reactive power requirements that are specified in ***[please identify the applicable source, such as the PTO's Interconnection Handbook, the CAISO's Phase II Study, or the Generator Interconnection Agreement for the Project]*** and are not being satisfied by other sources of reactive power within the Project.

"Nameplate Rated Power" means, with respect to an inverter or electric generator, the multiplication product of the Nameplate Rated Output and the Designated Power Factor for such inverter or generator, in MWs.

The project specifications shall consist of the following eleven (11) items (each item of which shall be a "Project Specification"). As provided in Section 3.1(g), Seller shall not make any change or modification to any Project Specification without Buyer's prior written consent.

1. Project name:
2. Project Site name:
3. Project physical address:
4. Total number of Units at the Project:
5. Technology Type:
6. Interconnection Point of Project:
7. Service Territory of Project:
8. Substation:
9. Description of Units: ***[delete inapplicable project types]***

- **For a Solar PV Project**

    a. For each type of inverter in the Project, specify in the table below the type, the number of inverters, the Nameplate Rated Output, the total Nameplate Rated Output, the Designated Power Factor, the Nameplate Rated Power and the total Nameplate Rated Power: ***[add rows as needed]***

Inverter Type	Number of Inverters	Nameplate Rated Output (MVA)		Designated Power Factor	Nameplate Rated Power (MW)	
		Per Inverter	Total		Per Inverter	Total
Total		N/A			N/A	

b. For each type of panel technology (e.g., multi-crystalline silicon, mono-crystalline silicon, thin-film CdTe, multi-junction, bifacial, concentrating, etc.) and each type of panel orientation (e.g., fixed-mount, tilt-angle, azimuth, single-axis tracker, double axis tracker, etc.) specify in the table below the technology, the type of orientation and the total DC rating at Standard Test Conditions: ***[add rows as needed]***

Panel Technology	Orientation	DC Rating at STC (MW_{DC})
Total	N/A	

"Standard Test Conditions" means, with respect to determining the nameplate DC rating of a solar PV panel in a factory flash test, an irradiance of 1,000 W/m2, a panel temperature of 25°C, and an air mass of 1.5.

- **For a Solar Thermal Project**

a. Specify the total area (square meters) of solar mirrors (or of apertures for parabolic mirrors):

b. Specify the technology (e.g., parabolic trough, power tower, parabolic disk) and the storage medium and capacity, etc.:

c. For each steam turbine, specify the rated conditions (MW rating, steam inlet temperature, steam inlet pressure, condensing temperature, mass flow rate):

d. For each electric generator, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power:

- **For a Wind Project**

For each type of turbine, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power and the rated output wind speed (m/s):

- **For a Biomass or Geothermal Steam Project**

a. For each steam turbine, specify the rated conditions (MW rating, steam inlet temperature, steam inlet pressure, condensing temperature, mass flow rate):

b. For each electric generator, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power:

10. Description of Land:

The Site contains the following Assessor Parcel Numbers upon which the Project is located and as identified on the topographical map included in this Appendix XIII: [Insert Map]

11. Description of Interconnection Facilities and metering:

The Project will use the following Interconnection Facilities and metering configuration as identified in this one-line diagram included in this Appendix XIII:

[Insert One-Line Diagram for Interconnection Facilities and Metering]

12. Maps: The Site is identified in the following topographical map:

[INSERT MAP]

II. CONTRACT CAPACITY CALCULATION

The Contract Capacity specified in Section B of the Cover Sheet shall be the factor (A) minus each of the factors (B) through (E) provided below:

A	Sum of the Nameplate Rated Power of all inverters/generators	_____ MW
B	Calculated electrical losses from inverter/generator output terminals to Delivery Point (with all inverters/generators operating at Nameplate Rated Outputs)	_____ MW
C	Electrical Losses	_____ MW
D	Auxiliary and station loads coincident with inverters/generators operating at Nameplate Rated Outputs	_____ MW
E	Other factors (explain below)	_____ MW
F	Contract Capacity at the Delivery Point (F = A – B – C – D – E), which shall be the same as the MW amount specified for the Contract Capacity in Section B of the Cover Sheet	_____ MW

Inputs for the Nameplate Rated Power calculation:

Designated Power Factor:

	Leading	Lagging
Project power factor requirements	_____	_____
Seller's Designated Power Factor for inverters/generators	_____	_____

Power factor requirement is measured at (check one):

☐ inverter/generator terminals; ☐ Point of Interconnection; ☐ Other:_____

APPENDIX XIV

SECTION 3.3(e) LIQUIDATED DAMAGES CALCULATION

I. Equation and Formulas for Calculating RA Deficiency Amount

As provided in Section 3.3(e)(ii)(B), the formula for calculating the RA Deficiency Amount in a given RA Shortfall Month is:

RA Deficiency Amount ($/Month) = RA Value ($/MW/Month) × Expected Net Qualifying Capacity (MW)

Where the:

A. RA Value shall be $4,010/MW/Month in calendar year 2016 and shall escalate at 2.5% per year for each succeeding calendar year; and

B. Expected Net Qualifying Capacity for projects that selected Full Capacity Deliverability Status shall be the product of the Contract Capacity and the applicable monthly Qualifying Capacity factor in the table below; or

C. Expected Net Qualifying Capacity for Projects seeking Partial Capacity Deliverability Status shall be the minimum of (a) the Expected Net Qualifying Capacity values as calculated in Section B above; or, (b) the product of the Contract Capacity and the Partial Capacity Deliverability Status Amount.

Table XIV-1 Monthly Qualifying Capacity Factor

Month	Biomass	Geothermal	Solar	Wind
Jan	70.61%	84.92%	0.79%	4.43%
Feb	72.50%	85.34%	6.62%	8.25%
March	70.79%	82.42%	15.12%	21.36%
April	62.13%	80.44%	60.43%	23.90%
May	65.57%	81.99%	64.13%	31.04%
June	73.55%	78.59%	80.03%	27.31%
July	76.32%	78.74%	80.39%	17.04%
Aug	75.31%	78.37%	74.86%	15.31%
Sept	74.67%	78.78%	73.05%	9.20%
Oct	71.80%	79.05%	48.29%	7.22%
Nov	70.86%	81.08%	2.49%	4.43%
Dec	74.25%	83.15%	1.33%	4.50%

II. Example of Calculation of the RA Deficiency Amount (for illustrative purposes only) if:

- RA Shortfall Month is June 2019
- Project is a solar system
- Contract Capacity is 20 MW
- RA Start Date is based on the Expected FCDS Date, which is January 1, 2019

- FCDS is achieved on August 14, 2019

RA Value ($/MW/Month) = $4,010.00, escalated at 2.5% per year for 3 years, from 2016 to 2019

$4,010 × (1.025)3 = $4,318/MW/Month.

Monthly Qualifying Capacity factor for a solar project in June is 86.74% (from table above).

Expected Net Qualifying Capacity =

Contract Capacity (MW) × monthly Qualifying Capacity factor =

20 MW × 86.74% = 17.35 MW

RA Deficiency Amount ($/Month) =

RA Value ($/MW/Month) × Expected Net Qualifying Capacity (MW) =

$4,318/MW/Month × 17.35 MW = $74,917.30

In this example, the RA Shortfall Period is from January through October 2019. The calculations above would be performed and the result applied for each month in this RA Shortfall Period.

PG&E Gas and Electric
Advice Submittal List
General Order 96-B, Section IV

AT&T
Albion Power Company
Alcantar & Kahl LLP

Alta Power Group, LLC
Anderson & Poole

Atlas ReFuel
BART

Barkovich & Yap, Inc.
California Cotton Ginners & Growers Assn
California Energy Commission
California Public Utilities Commission
California State Association of Counties
Calpine

Cameron-Daniel, P.C.
Casner, Steve
Cenergy Power
Center for Biological Diversity

Chevron Pipeline and Power
City of Palo Alto

City of San Jose
Clean Power Research
Coast Economic Consulting
Commercial Energy
Crossborder Energy
Crown Road Energy, LLC
Davis Wright Tremaine LLP
Day Carter Murphy

Dept of General Services
Don Pickett & Associates, Inc.
Douglass & Liddell

Downey & Brand
East Bay Community Energy
Ellison Schneider & Harris LLP
Energy Management Service
Engineers and Scientists of California

GenOn Energy, Inc.
Goodin, MacBride, Squeri, Schlotz & Ritchie
Green Power Institute
Hanna & Morton
ICF
IGS Energy
International Power Technology
Intestate Gas Services, Inc.
Kelly Group
Ken Bohn Consulting
Keyes & Fox LLP
Leviton Manufacturing Co., Inc.

Los Angeles County Integrated Waste Management Task Force
MRW & Associates
Manatt Phelps Phillips
Marin Energy Authority
McKenzie & Associates

Modesto Irrigation District
NLine Energy, Inc.
NRG Solar

Office of Ratepayer Advocates
OnGrid Solar
Pacific Gas and Electric Company
Peninsula Clean Energy

Pioneer Community Energy

Redwood Coast Energy Authority
Regulatory & Cogeneration Service, Inc.
SCD Energy Solutions

SCE
SDG&E and SoCalGas

SPURR
San Francisco Water Power and Sewer
Seattle City Light
Sempra Utilities
Southern California Edison Company
Southern California Gas Company
Spark Energy
Sun Light & Power
Sunshine Design
Tecogen, Inc.
TerraVerde Renewable Partners
Tiger Natural Gas, Inc.

TransCanada
Troutman Sanders LLP
Utility Cost Management
Utility Power Solutions
Water and Energy Consulting Wellhead Electric Company
Western Manufactured Housing Communities Association (WMA)
Yep Energy