

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

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

***STANDARD FORM CONTRACT FOR COMBINED HEAT AND POWER
REQUEST FOR OFFERS***

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.

TABLE OF CONTENTS

LIST OF EXHIBITS..... v

PREAMBLE..... 12

RECITALS..... 12

ARTICLE ONE: SPECIAL CONDITIONS..... 2

1.01 TERM..... 2

1.02 GENERATING FACILITY..... 2

1.03 DELIVERY POINT..... 4

1.04 CAPACITY PERFORMANCE REQUIREMENTS..... 4

1.05 MAINTENANCE OUTAGES; MAJOR OVERHAUL..... 4

1.06 POWER PRODUCT PRICES..... 5

1.07 REQUIREMENTS APPLICABLE SOLELY TO NEW QUALIFYING FACILITIES..... 5

1.08 SCHEDULING COORDINATOR ELECTION..... 6

ARTICLE TWO: SELLER'S SATISFACTION OF OBLIGATIONS BEFORE THE TERM START DATE; TERMINATION..... 7

2.01 SELLER'S SATISFACTION OF OBLIGATIONS BEFORE THE TERM START DATE..... 7

2.02 TERMINATION RIGHTS OF THE PARTIES..... 8

2.03 RIGHTS AND OBLIGATIONS SURVIVING TERMINATION..... 8

ARTICLE THREE: SELLER'S OBLIGATIONS..... 10

3.01 CONVEYANCE OF THE POWER PRODUCT AND RELATED PRODUCTS; RETAINED BENEFITS..... 10

3.02 RESOURCE ADEQUACY RULINGS..... 11

3.03 SITE CONTROL..... 11

3.04	<u>PERMITS</u>	11
3.05	<u>TRANSMISSION</u>	12
3.06	<u>CAISO RELATIONSHIP</u>	12
3.07	<u>GENERATING FACILITY MODIFICATIONS</u>	13
3.08	<u>METERING</u>	14
3.09	<u>TELEMETRY SYSTEM</u>	15
3.10	<u>PROVISION OF INFORMATION</u>	15
3.11	<u>PROGRESS REPORTING</u>	16
3.12	<u>FUEL SUPPLY</u>	<u>1716</u>
3.13	<u>DEMONSTRATIONS</u>	<u>1716</u>
3.14	<u>OPERATION AND RECORD KEEPING</u>	17
3.15	<u>POWER PRODUCT CURTAILMENTS AT TRANSMISSION PROVIDER'S OR CAISO'S REQUEST</u>	19
3.16	<u>REPORT OF LOST OUTPUT</u>	<u>2019</u>
3.17	<u>FERC QUALIFYING FACILITY STATUS</u>	20
3.18	<u>NOTICE OF CESSATION OR TERMINATION OF SERVICE AGREEMENTS</u>	21
3.19	<u>BUYER'S ACCESS RIGHTS</u>	21
3.20	<u>SELLER FINANCIAL INFORMATION</u>	<u>2221</u>
3.21	<u>NERC ELECTRIC SYSTEM RELIABILITY STANDARDS</u>	<u>2423</u>
<u>ARTICLE FOUR: BUYER'S OBLIGATIONS</u>		<u>2625</u>
4.01	<u>OBLIGATION TO PAY</u>	<u>2625</u>
4.02	<u>PAYMENT ADJUSTMENTS</u>	<u>2625</u>
4.03	<u>PAYMENT STATEMENT AND PAYMENT</u>	<u>2726</u>
4.04	<u>NO REPRESENTATION BY BUYER</u>	<u>2928</u>

4.05	<u>BUYER'S RESPONSIBILITY</u>	<u>2928</u>
ARTICLE FIVE:	<u>FORCE MAJEURE</u>	<u>3029</u>
5.01	<u>NO DEFAULT FOR FORCE MAJEURE</u>	<u>3029</u>
5.02	<u>REQUIREMENTS APPLICABLE TO THE CLAIMING PARTY</u>	<u>3029</u>
5.03	<u>TERMINATION</u>	<u>3029</u>
ARTICLE SIX:	<u>EVENTS OF DEFAULT; REMEDIES</u>	<u>3130</u>
6.01	<u>EVENTS OF DEFAULT</u>	<u>3130</u>
6.02	<u>EARLY TERMINATION</u>	<u>3534</u>
6.03	<u>TERMINATION PAYMENT</u>	<u>3534</u>
ARTICLE SEVEN:	<u>LIMITATIONS OF LIABILITIES</u>	<u>3635</u>
ARTICLE EIGHT:	<u>GOVERNMENTAL CHARGES</u>	<u>3837</u>
8.01	<u>COOPERATION TO MINIMIZE TAX LIABILITIES</u>	<u>3837</u>
8.02	<u>GOVERNMENTAL CHARGES</u>	<u>3837</u>
8.03	<u>PROVIDING INFORMATION TO TAXING GOVERNMENTAL AUTHORITIES</u>	<u>3837</u>
ARTICLE NINE:	<u>MISCELLANEOUS</u>	<u>3938</u>
9.01	<u>REPRESENTATIONS AND WARRANTIES</u>	<u>3938</u>
9.02	<u>ADDITIONAL REPRESENTATIONS, WARRANTIES, AND COVENANTS BY SELLER</u>	<u>3938</u>
9.03	<u>INDEMNITY</u>	<u>4039</u>
9.04	<u>ASSIGNMENT</u>	<u>4241</u>
9.05	<u>CONSENT TO COLLATERAL ASSIGNMENT</u>	<u>4241</u>
9.06	<u>GOVERNING LAW AND JURY TRIAL WAIVER</u>	<u>4544</u>
9.07	<u>NOTICES</u>	<u>4544</u>
9.08	<u>GENERAL</u>	<u>4645</u>

9.09	<u>CONFIDENTIALITY</u>	<u>4846</u>
9.10	<u>INSURANCE</u>	<u>4948</u>
9.11	<u>NONDEDICATION</u>	<u>5049</u>
9.12	<u>MOBILE SIERRA</u>	<u>5049</u>
9.13	<u>SELLER OWNERSHIP AND CONTROL OF GENERATING FACILITY</u>	<u>5049</u>
9.14	<u>SIMPLE INTEREST PAYMENTS</u>	<u>5049</u>
9.15	<u>PAYMENTS</u>	<u>5150</u>
9.16	<u>PROVISIONAL RELIEF</u>	<u>5150</u>
<u>ARTICLE TEN: DISPUTE RESOLUTION</u>		<u>5251</u>
10.01	<u>DISPUTE RESOLUTION</u>	<u>5251</u>
10.02	<u>MEDIATION</u>	<u>5251</u>
10.03	<u>ARBITRATION</u>	<u>5251</u>
<u>SIGNATURES</u>		<u>5554</u>

LIST OF EXHIBITS

- A. Definitions
- B. Generating Facility and Site Description
- C. Demonstration for Firm Contract Capacity
- D. Monthly Contract Payment Calculation
- D-1. Force Majeure Credit Value
- D-2. Transmission Curtailment Credit Value
- E. Scheduling and Calculation of Maintenance Outage and Major Overhaul Credits
- F. New Qualifying Facility Requirements
- G. Scheduling Coordinator Services
- H. Milestone Progress Reporting Form
- I. Seller's Forecasting Submittal and Accuracy Requirements
- J. CAISO Charges
- K. Scheduling and Delivery Deviation Charges
- L. Physical Trade Settlement Amount
- M. SC Trade Settlement Amount
- N. Notice List
- O. Form of Guaranty Agreement
- P. Form of Letter of Credit
- Q. Seller's Milestone Schedule
- R. Outage Schedule Submittal Requirements
- S-1. QF Efficiency Monitoring Program - Cogeneration Data Reporting Form
- S-2. Fuel Use Standards - Small Power Producer 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 or similar arrangement 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 or about September 20, 2007, the CPUC issued Decision (“D.”) 07-09-040 (the “Decision”) which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to Qualifying Facilities meeting the eligibility criteria set forth in the Decision.
- B. Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company, on the one hand, and California Cogeneration Council, the Cogeneration Association of California and Energy Producers and Users Coalition, and the Independent Energy Producers Association, on the other hand (the “Settling Parties”), entered into CPUC-facilitated settlement negotiations in order to resolve certain outstanding issues among such parties, including the implementation of the Decision.
- C. As part of the settlement negotiations, the Settling Parties, pursuant to that certain Settlement Agreement, dated [], among the Settling Parties (the “Settlement Agreement”), among other things, developed a form Power Purchase and Sales Agreement to be used in Requests for Offers (“RFOs”) for Combined Heat and Power (“CHP”).

List of Exhibits

D. This Agreement is based upon the form Power Purchase and Sale Agreement for CHP RFOs developed by the Settling Parties in accordance with the Settlement Agreement.

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

[NOTE: GHG issue is open for consideration. Also, the parties are in the process of reviewing for accuracy provisions related to when Buyer is not the SC.]

ARTICLE 1. 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 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.}

- 1.1 **Term.** The term of this Agreement (the “Term”) commences [Number of months] after CPUC Approval (the “Term Start Date”) and ends [Number of months] months after the Term Start Date (the “Term End Date”). The Term Start Date must be either on the first day of a calendar month or, if the Generating Facility is an Existing CHP Facility, on the first day following the expiration of an existing power purchase agreement of Seller. 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:
- (a) A New CHP Facility, the Term Start Date must occur within 60 months of CPUC Approval, 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 F; and
 - (b) An Existing CHP Facility, the Term Start Date must occur within 24 months of CPUC Approval, 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).

[PG&E Note: 24 month and 60 month term start dates subject to further discussion]

{Buyer Comment: Seller designates the Term Start Date and the Term End Date. The Term must be no more than seven years if the Generating Facility is an Existing CHP Facility and no more than 12 years if the Generating Facility is a New CHP Facility.}

1.2 Generating Facility.

- (c) **Name; Designation.** The name of the Generating Facility is [Generating Facility name], which is [a New CHP Facility] [an Existing CHP Facility].
- (d) **Location; Site.** The Generating Facility is located at [Generating Facility address], and is further described in Exhibit B.
- (e) **Contract Capacity.** As set forth in the following table, Seller may elect (i) only Firm Contract Capacity, (ii) only As-Available Contract Capacity, or (iii) both Firm Contract Capacity and As-Available Contract Capacity:

Month	Monthly Firm Contract Capacity	As-Available Contract Capacity	Net Contract Capacity (kW)
-------	--------------------------------	--------------------------------	----------------------------

	(kW)	(kW/)	
January	[]	[]	[]
February	[]	[]	[]
March	[]	[]	[]
April	[]	[]	[]
May	[]	[]	[]
June	[]	[]	[]
July	[]	[]	[]
August	[]	[]	[]
September	[]	[]	[]
October	[]	[]	[]
November	[]	[]	[]
December	[]	[]	[]

Firm Contract Capacity, As-Available Contract Capacity and Net Contract Capacity are subject to adjustment in accordance Section 3.07(c) and, if the Generating Facility is a New CHP Facility providing Firm Contract Capacity, Exhibit C.

{Buyer Comment: The Net Contract Capacity must equal the sum of Firm Contract Capacity and As-Available Contract Capacity, and cannot exceed PMax.}

- (f) 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 in accordance with and subject to Section 3.07(c), or based on changes in the Site Host Load or the Site Host thermal requirements; *provided, however*, that such revision 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 (i) actual modifications to the Generating Facility performed or to be performed by Seller in accordance with and subject to Section 3.07(c), or (ii) 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 Net Contract Capacity at 100% capacity factor applied over the Term Year.}

- (g) 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. The Parties acknowledge that the Site Host Load may vary from time to time from the expected amounts set forth in this Section 1.02(e), and that such expected amounts are only Seller's good faith estimate of the Site Host Load and the amount of energy used to serve the Site Host Load, and are not binding upon Seller, the Generating Facility or the Site Host.

- 1.3 Delivery Point. The delivery point is the point of delivery of the Power Product to the CAISO Controlled Grid (the "Delivery Point"). Seller shall provide and convey to Buyer

all the electric energy and electric capacity, net of Station Use and, if applicable, the Site Host Load, from the Generating Facility at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point.

1.4 Capacity Performance Requirements. As further described in Exhibit D, if the Generating Facility elects to provide Firm Contract Capacity, then the Generating Facility must have a minimum Firm Contract Capacity performance requirement of 95% to earn the Maximum Firm Capacity Payment and a minimum Capacity Performance Requirement of 60% to earn any portion of the Maximum Firm Capacity Payment.

1.5 Maintenance Outages; Major Overhaul.

(h) The total Maintenance Debit Value for Maintenance Outages, as determined in accordance with Exhibit E, may not exceed 550 hours in the first Term Year. At the end of each Term Year following the first Term Year, up to a maximum of 50 unused hours may be carried over to the following Term Year. For each of the Term Years after the first Term Year, the total Maintenance Debit Value for Maintenance Outages may not exceed 550 hours plus hours carried over from prior Term Years; *provided, however*, that such Maintenance Debit Value may not exceed 600 hours in any Term Year.

(i) If the Term is greater than or equal to five years, Seller may (i) request up to two Major Overhaul Allowances (in accordance with Exhibit E) of up to 750 total hours for each Major Overhaul, and (ii) schedule up to two Major Overhauls; *provided, however*, that the second Major Overhaul may not occur within 48 months after the completion of the first Major Overhaul and the Maintenance Debit Value for each Major Overhaul may not exceed 750 hours.

(j) If Seller utilizes all of its Major Overhaul Allowance during a Major Overhaul, the remaining portion of the Major Overhaul may be converted to a Maintenance Outage as far as Maintenance Credit Value and Maintenance Debit Value are concerned; *provided, however*, that Seller submits a Notice to Buyer of such conversion within 60 days of the end of such Major Overhaul.

(k) During the Peak Months, Seller may only schedule Maintenance Outages during the non-peak hours of such Peak Months, and the monthly Maintenance Debit Value for Maintenance Outages during the Peak Months may not exceed 12 non-peak hours per Peak Month. Such limitation is part of, and not in addition to, the annual limits as set forth in Section 1.05(a).

1.6 Power Product Prices.

(a) Firm Capacity Price. The Firm Capacity Price is the firm capacity price set forth in Section 3(h) of Exhibit D.

(b) As-Available Capacity Price. The As-Available Capacity Price is set forth in Section 3(b) of Exhibit D.

(c) TOD Period Energy Price. The TOD Period Energy Price is set forth in Section 2 of Exhibit D.

1.7 Requirements Applicable Solely to New CHP Facilities. If the Generating Facility is a New CHP Facility, the provisions of this Section 1.07 also apply to Seller.

(l) Credit and Collateral Requirements.

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

(ii) Seller shall post and thereafter maintain the Performance Assurance Amount in the amount of any positive Current Mark-to-Market Value as calculated in accordance with Section 6 of Exhibit F; provided, however, that in no event shall the Performance Assurance Amount exceed \$[____]; and,

(iii) Seller shall comply with all of the provisions of Exhibit F.

(m) Seller's Guarantor; Guaranty Amount; Cross Default Amount.

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

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

(iii) The Cross Default Amount, if any, equals \$[____].

[PG&E Note: Credit and Collateral requirements need to be discussed with regard to whether they apply only to New CHP Facilities or to New and Existing CHP Facilities]

1.8 Scheduling Coordinator Election. [Buyer][Seller][_____, an agent of Seller] is the Scheduling Coordinator under this Agreement.

1.9 Condition Precedent. The commencement of the Term is conditioned on CPUC Approval of the Agreement as a condition precedent. If CPUC Approval is not obtained within two hundred and forty (240) days from the date on which the Buyer files this Agreement for CPUC Approval, 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.

*** End of Article One ***

ARTICLE 2. SELLER'S SATISFACTION OF OBLIGATIONS BEFORE THE TERM START DATE; TERMINATION

- 2.1 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 a 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) Schedule, or arrange for a third party or Buyer to Schedule, the electric energy produced by the Generating Facility with the CAISO;
 - (c) Seller's Scheduling Coordinator, as set forth in Section 1.08, is authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO;
 - (d) Seller satisfies its obligation to install the CAISO-Approved Meters, as set forth in Section 3.08(a);
 - (e) Seller furnishes to Buyer the insurance documents required under Section 9.10(b);
 - (f) Seller is in compliance with the CAISO Tariff and has secured and is 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;
 - (g) 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;
 - (h) Seller furnishes to Buyer the documents required under Section 3.05; and,
 - (i) If the Generating Facility is a New CHP Facility, Seller has posted with Buyer the Performance Assurance Amount in accordance with Exhibit F.
- 2.2 Termination Rights of the Parties.

- (a) Event of Default. 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.
- (b) End of Term. This Agreement automatically terminates at midnight of the Term End Date.

2.3 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 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) *If the Generating Facility is a New CHP Facility, the obligation of Seller to post Performance Assurance in accordance with Exhibit F.*

*** End of Article Two ***

ARTICLE 3. SELLER'S OBLIGATIONS

3.1 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. Select one of the following:

- Seller hereby provides and conveys 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.

{Buyer Comment: This option should be selected if Buyer assumes all GHG compliance costs.}

- Seller hereby retains all Green Attributes associated with the Related Products during the Term.

{Buyer Comment: This option should be selected if Seller assumes all GHG compliance costs.}

- [Seller proposed hybrid approach].

{Buyer Comment: As a part of Seller's bid, Seller can insert proposal for hybrid approach for GHG compliance costs.}

(c) 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;

- (iii) Committing to Buyer the Net Contract Capacity; and
 - (iv) 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.
- (d) 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. Subject to Seller's compliance with the applicable FERC rules and regulations, Seller may 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 Start Date.

3.2 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 actions (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.

3.3 Site Control.

- (a) Seller shall 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 obligations under this Agreement. Seller 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 CHP Facility, Seller shall provide Buyer with Notice of the status of its Site Control before commencing construction of the Generating Facility.

3.4 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.

3.5 Transmission.

- (a) Interconnection Studies. Seller has provided Buyer with true and complete copies of all Interconnection Studies received by Seller for the Generating Facility after the date that is 24 months before the Effective Date.
- (b) Seller's Responsibility. Seller shall 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 agreements, 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.

3.6 CAISO Relationship. Throughout the Term, Seller shall comply with 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.

3.7 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 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 of Expected Term Year Energy Production; or
 - (ii) The type of Primary Fuel consumed by the Generating Facility.

[PG&E Note: Section 3.07(c) is subject to further discussion]

- (c) Modifications, repairs or repowering is permitted under this Agreement without further consideration, other than Notices required under Section 3.07(b), if:
 - (i) Capacity added as a result of such modification, repair or repower (including the addition of a steam turbine) over the Term is within the applicable MW limits set forth in the following table (for a Generating Facility with multiple turbines, the limits below are limits per turbine):

Current Turbine Name Plate on the Effective Date	Increase to Turbine Name Plate Over the Term
10MW or Less	5 MW
Greater than 10MW but less than 20MW	10 MW
Greater than or equal to 20MW but less than 25MW	15 MW
Greater than or equal to 25MW but less than 50MW	20 MW
Greater than or equal to 50MW but less than 100MW	25 MW
Greater than or equal to 100 but less than 200MW	35 MW
Greater than or equal to 200 but less than 350MW	45 MW
Greater than or equal 350MW	50 MW

Or,

- (ii) Such modification, repair or repower is reasonably necessary to respond to

a Force Majeure or a change in law or regulation, and a qualified California-licensed professional engineer verifies that such modification, repair, or repower is not oversized relative to other equipment on the market. Buyer shall bear the cost of such professional engineer and Seller shall secure all studies and upgrades necessitated by or associated with such modification, repair, or repower.

- (d) Seller acknowledges that nothing in this Section 3.07 excuses Seller from any requirements of the CAISO's interconnection process or any other applicable interconnection process.
- (e) If Seller modifies, repairs or repowers the Generating Facility, the modified, repaired or repowered Generating Facility must continue to qualify as a CHP Facility.

3.8 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.
- (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 set forth in Section 3.09.

If the Generating Facility is a New CHP Facility providing Firm Contract Capacity, before commencement of the Demonstration, Buyer shall provide a Notice to Seller providing Seller with access to all Check Meters for all meter data through a secure internet website.

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 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 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.

(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 Control 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.

3.9 Telemetry System. Seller is responsible for designing, furnishing, installing, maintaining and testing a real time Telemetry System in accordance with the CAISO Tariff provisions applicable to CHP Facilities.

3.10 Provision of Information.

- (a) Within 30 days of the Effective Date, Seller shall provide to Buyer (to the extent not already in Buyer's possession), 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 currently operative filings, including any rulings, orders or other pleadings or papers filed with a Governmental Authority, concerning the qualification of the Generating Facility as a CHP Facility;*
 - (iii) *Any Permits reasonably requested by Buyer concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;*
 - (iv) *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; and
- (v) *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.*
- (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, which commercially reasonable efforts shall, at a minimum, include providing Buyer with all documentation regarding the operational characteristics or past performance of the Generating Facility if such documentation is requested by the CPUC.

3.11 *Progress Reporting.* *If the Generating Facility is a New 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 while Seller has not yet met one or more milestones set forth in the Milestone Schedule, and within five days of Buyer's request, Seller shall, in accordance with Exhibit H, 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.

- 3.12 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing or Demonstration of the Generating Facility.
- 3.13 Demonstrations. Seller shall:
- (a) *If the Generating Facility is a New CHP Facility providing Firm Contract Capacity, complete any Demonstration in accordance with Exhibit C; and*
 - (b) *Comply with any demonstration required for Resource Adequacy Rulings; provided, however, if such demonstrations 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, compliance shall be required pending resolution of the challenge.*
- 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 I;*
 - (c) *Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit I;*
 - (d) *Pay all CAISO Charges, as set forth in Exhibit J;*
 - (e) *Pay all SDD Adjustments for which Seller is responsible, as set forth in Exhibit K;*
 - (f) *Comply with the Maintenance Outage scheduling procedures, as set forth in Exhibit E;*
 - (g) *Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit R;*
 - (h) *Use reasonable efforts to deliver the maximum possible quantity of As-Available Contract Capacity and associated electric energy during an Emergency;*
 - (i) *Use reasonable efforts to reschedule any outage that occurs during an Emergency;*
 - (j) *Keep a daily Operating log for the Generating Facility that includes information on availability, outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility, including:*
 - (i) *Real and reactive power production;*
 - (ii) *Changes in Operating status;*

- (iii) *Protective apparatus operations; and*
- (iv) *Any unusual conditions found during inspections;*
- (k) *Keep all Operating records required of a CHP Facility by any applicable CPUC order as well as any additional information that may be required of a CHP Facility in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the CPUC;*
- (l) *Provide copies of all daily Operating logs and Operating records to Buyer within 20 days of a Notice from Buyer;*
- (m) *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;*
- (n) *Pay all Scheduling Fees, as set forth in Exhibit G;*
- (o) *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) *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;*
- (q) *If Buyer is Scheduling Coordinator, then at least 30 days before the Term End Date, or in accordance with Section 7(a) of Exhibit G, 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*
- (r) *If Buyer is not Scheduling Coordinator:*
 - (i) Cause its Scheduling Coordinator to submit a Self-Schedule of Seller's Day-Ahead Forecast associated with the Generating Facility through the IFM; Seller shall then submit the quantity associated with the Self-Schedule of Seller's Day-Ahead Forecast as a Physical Trade to Buyer in the IFM, specifying the generating resource identifier and all other CAISO-required Inter-SC Trade attributes;
 - (ii) Cause its Scheduling Coordinator to submit the IFM Day-Ahead Schedule

quantity associated with the Generating Facility as an Inter-SC Trade of IFM Load Uplift Obligation to Buyer to be cleared through the Real-Time Market, specifying all CAISO-required Inter-SC Trade attributes; and

- (iii) Make available to Buyer all CAISO settlement data with respect to the Generating Facility required to validate payments made under this Agreement.

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 notice or instruction from the Transmission Provider or the CAISO (which may be communicated by Buyer if Buyer is Scheduling Coordinator), 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, or (ii) an Emergency.
- (b) Notwithstanding Section 3.15(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]".}

[PG&E Note: This provision is subject to further negotiation]

3.16 Report of Lost Output. To the extent the conditions set forth in Sections 3.16(a) through (e) occur, Seller shall prepare and provide to Buyer, by the fifth 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 Energy Forecast due to:

- (a) Maintenance Outages;
- (b) Major Overhauls;
- (c) CAISO or Transmission Provider-ordered curtailments;
- (d) Force Majeure; or
- (e) Forced Outages.

3.17 FERC Qualifying Facility Status.

- (a) If the Generating Facility is a "qualifying cogeneration facility" as contemplated

in 18 CFR Section 292.205, then within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, Seller shall provide to Buyer:

- (i) A copy of a FERC order waiving for the Generating Facility, the applicable operating and efficiency standards for qualifying cogeneration facilities for the applicable year; or
- (ii) A completed copy of Buyer's "QF Efficiency Monitoring Program - Cogeneration Data Reporting Form", substantially in the form of Exhibit S, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with cogeneration Qualifying Facility operating and efficiency standards set forth in 18 CFR Section 292.205 "Criteria for Qualifying Cogeneration Facilities."

3.18 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.

3.19 Buyer's Access Rights. Upon providing at least one 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.

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.

- (b) *Within 30 days following the end of each year, Seller shall deliver to Buyer in a format mutually agreeable to the Parties: (i) unaudited financial statements together with related footnotes as necessary to comply with GAAP, and (ii) 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.*
- (c) *Within 20 days following the end of each calendar quarter, Seller shall deliver to Buyer in a format mutually agreeable to the Parties: (i) an unaudited condensed statement of income for the calendar quarter and year-to-date, (ii) an unaudited condensed statement of cash flows for the calendar quarter and year-to-date, (iii) an unaudited condensed balance sheet at the end of such calendar quarter, and (iv) 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.*
- (d) *Seller shall prepare its financial statements to be delivered in accordance with this Section 3.20 in accordance with GAAP.*
- (e) *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 (i) treat as confidential any information disclosed to them by Buyer pursuant to this Section 3.20(e), (ii) such information is used solely for purposes of conducting the audits described in this Section 3.20(e), (iii) 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(e), 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.

- (f) Within two 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:*
 - (i) Acquisition or disposition of a material amount of assets outside of the ordinary course of Seller's business;*
 - (ii) 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;*
 - (iii) Existence of "material legal proceedings", as defined in Item 103 of Regulation S-K, as amended from time to time; and*
 - (iv) 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.*

- (g) 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. 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 (if Seller has elected to have Buyer serve as its Scheduling Coordinator), is required to perform under this Agreement or under the CAISO Tariff.

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.

If Buyer is Seller's Scheduling Coordinator, 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 GHG Reporting Requirements. The Parties acknowledge that Governmental Authorities have, currently are, or during the Term may consider rules, regulations, statutes or other requirements related to GHG emissions (“GHG Requirements”). The Parties further acknowledge that under these GHG Requirements, the Buyer may be required to provide information, data, or reports to Governmental Authorities related to GHG Requirements (“GHG Reporting Requirements”). Seller agrees that during the Term of this Agreement, upon Notice from Buyer, Seller shall provide to Buyer all information, data or reports that are reasonably necessary for Buyer to comply with the GHG Reporting Requirements and that Seller shall provide such information, data and reports within a commercially reasonable amount of time as requested by Buyer in Buyer's Notice.

*** End of Article Three ***

ARTICLE 4. BUYER'S OBLIGATIONS

4.1 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 D.

4.2 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 G;
 - (ii) Any SDD Adjustment, as set forth in Exhibit K;
 - (iii) Any Forecast penalties owed by Seller to Buyer, as set forth in Exhibit I;
 - (iv) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit J;
 - (v) Any Physical Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit L;
 - (vi) Any SC Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit M;
 - (vii) Any payment adjustments (including adjustments to CAISO Charges) provided for under this Agreement;
 - (viii) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02; and
 - (ix) The agreement of the Parties that Buyer shall have no liability to make any energy payments to Seller for any electricity deliveries from the Generating Facility in a Term Year that exceed 120% of Expected Term Year Energy Production.
- (b) During the Term, any payment adjustments will be added to or deducted from the next 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 60 days of Buyer's receipt of all of the information required in order to calculate the payment adjustment.

4.3 Payment Statement and Payment.

- (a) *No later than 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 D;
 - 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 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 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 45 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 45-day period, Seller shall have an additional 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 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.

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

4.4 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.

4.5 Buyer's Responsibility. Buyer shall 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.

*** End of Article Four ***

ARTICLE 5. FORCE MAJEURE

- 5.1 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.
- 5.2 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.

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.

- 5.3 Termination. Either Party may terminate this Agreement on Notice, which Notice will be effective five Business Days after such Notice is provided, 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.

*** End of Article Five ***

ARTICLE 3. EVENTS OF DEFAULT; REMEDIES

3.1 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:*
 - 1) *Remedied within 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 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 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 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 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 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 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 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 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 3.03, and Seller has not cured a failure with respect to Section 3.03(a) within 30 days after providing Notice to Buyer in accordance with Section 3.03(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 10 Business Days

after Notice from Buyer;

- (iii) Except as provided for in Section 3.01(d), 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 Net Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair, repowering or maintenance, and such equipment is not returned within five Business Days after Notice from Buyer to Seller;
- (vi) Subject to Section 3.17(c), the Generating Facility fails to maintain its status as a CHP Facility;
- (vii) 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 120 days after such termination or cessation;
- (viii) Seller fails to make all reasonable efforts to increase the Power Output from the Generating Facility to the Firm Contract Capacity during an Emergency;
- (ix) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Section 3.20(b), (c) and (d), and such failure is not remedied within 10 days after Notice from Buyer to Seller;
- (x) Seller fails to remediate any material deficiency in internal controls over financial reporting in accordance with Section 3.20(e);
- (xi) 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 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;

- (xii) 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 30 days after Notice from Buyer to Seller;
- (xiii) If Seller materially modifies the Generating Facility (except as provided in Section 3.07(c)) without Buyer's prior written consent.
- (xiv) 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;
- (xv) If the Generating Facility is a New CHP Facility:
 - 1) Seller fails to satisfy the creditworthiness and collateral requirements in Sections 2 and 3 of Exhibit F and such failure is not cured within five Business Days after Notice is provided by Buyer to Seller of such failure;
 - 2) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender without Buyer's consent, which consent may not be unreasonably withheld, delayed or conditioned; or
 - 3) Seller fails to post and maintain the Development Security pursuant to Section 4(b) of Exhibit F and such failure is not cured within five Business Days after Notice of such failure;
- (xvi) Seller fails to maintain the efficiency specified in Section 9.02(i) on an annual basis. [PG&E Note: Efficiency requirements need to be reviewed]

3.2 Early Termination. If an Event of Default has occurred, there will be no opportunity for cure except as specified in Section 6.01 or pursuant to a Collateral Assignment

Agreement agreed upon by Buyer, Seller and Lender in accordance with Section 9.05.

The Party taking the default (the “Non-Defaulting Party”) will have the right to:

- (a) *Designate by Notice to the Defaulting Party a date, no later than 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.

3.3 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 less any amounts owed by the Non-Defaulting Party to the Defaulting Party under this Agreement, including any Forward Settlement Amount (the “Termination Payment”). The Notice shall include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, including the Forward Settlement Amount, together with appropriate supporting documentation. If the Generating Facility is a New 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 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 and Forward Settlement Amount. 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 7. 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

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

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 8. GOVERNMENTAL CHARGES

- 8.1 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.
- 8.2 Governmental Charges. **[Note: This section will need to be conformed to the final settlement agreement re GHG compliance costs and options available in RFO for bidders].**
- 8.3 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 9. MISCELLANEOUS

9.1 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.

9.2 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, the Generating Facility remains a CHP Facility;*
- (f) *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 (except, if Buyer is not Scheduling Coordinator, as may relate to transactions in the Real-Time Market arising from ordinary course deviations between Metered Energy and energy Scheduled to 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);*
- (g) *If the Term is equal to or greater than five years, the Generating Facility meets the GHG EPS;*
- (h) *~~Upon~~ Buyer's request, Seller shall provide to the CPUC documentation evidencing Seller's compliance with the GHG EPS; and,*
- (i) *During the Term, the efficiency of the Generating Facility shall be [Seller to insert efficiency included in bid documents]. **PG&E Note: Efficiency requirements need to be reviewed***

9.3 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 Section 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 Section 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 12 months.

9.4 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 or delayed. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent will not be unreasonably withheld. For purposes of this Section 9.04, Buyer will not withhold its consent to an indirect change of control of Seller if Seller demonstrates to Buyer's reasonable satisfaction that Seller shall continue to perform its obligations under this Agreement as if no such indirect change of control had occurred.

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

Notwithstanding anything to the contrary in this Section 9.04, Seller does not need to obtain Buyer's consent to any change of control described in this Section 9.04 if such change of control results from a purchase of the outstanding shares of a publicly traded company.

9.5 Consent to Collateral Assignment. Subject to the provisions of this Section 9.05, Seller may (but is not obligated 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 VI, 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 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 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 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 with Buyer having substantially the same terms as 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.

9.6 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.

9.7 Notices. All notices, requests, statements or payments shall be made as specified in Exhibit N. 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 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.

9.8 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 S-2 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.

9.9 Confidentiality.

- (a) Neither Party may 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) (“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.

9.10 Insurance.

- (a) *During the Term, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with a combined single limit of not less than \$5,000,000 for each occurrence and a combined aggregate limit of not less than \$10,000,000. Alternatively, Seller has the right to self-insure to comply with Seller's obligations under this Section 9.10.* The insurance carrier or carriers and form of policy (including any deductible amount), or any plan for self-insurance shall be subject to review and approval by Buyer which approval may not be unreasonably withheld, conditioned or delayed.
- (b) Before the Term Start Date, Seller shall:
 - (i) Furnish a certificate of insurance to Buyer, which certificate shall provide that such insurance may not be terminated nor expire except on 30 days prior Notice to Buyer; and
 - (ii) Furnish to Buyer an additional insured endorsement with respect to such insurance in substantially the following form:

“In consideration of the premium charged, Buyer is named as additional insured with respect to all liabilities arising out of Seller's use and ownership of Seller's Generating Facility.

The inclusion of more than one insured under this policy may not operate to impair the rights of one insured against another insured and the coverage afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than

one insured will not, however, operate to increase the limit of the carrier's liability. Buyer will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

Any other insurance carried by Buyer which may be applicable shall be deemed excess insurance and Seller's insurance primary for all purposes despite any conflicting provisions in Seller's policy to the contrary.”

- 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, 3.03, or 9.09 (and, if applicable, Section 4(e) of Exhibit F) 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 10. DISPUTE RESOLUTION

10.1 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.

10.2 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 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 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.

10.3 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 60 days after Notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than 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 [____], California, and discovery will be limited as follows:

{Buyer Comment: For PG&E, insert San Francisco; for SDG&E, insert San Diego; and for SCE, insert Los Angeles.}

- (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 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 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 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 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, 3.03 or 9.09 (and, if applicable, Section 4(e) of Exhibit F).

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],

[BUYER'S NAME],

a [Seller's business registration]

a California corporation

By: _____
Name: _____
Title: _____

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:

“20-Day Demonstration” has the meaning set forth in Section 2 of Exhibit C.

“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.

“Allowed Firm Energy” is determined in Section 3(l) of Exhibit D.

“Allowed Hourly Energy”, or “E”, is determined in Section 3(f) of Exhibit D.

“Allowed Payment Energy”, or “APE”, is determined in Section 2(c) of Exhibit D.

“Ambient Factors” mean those particular corrections for actual ambient conditions being different from specified ambient conditions that are to be applied to the Demonstrated Rate of Metered Energy or Power Output during a Demonstration as defined in a written agreement between the Parties, as further explained in Section 9 of Exhibit C.

“Ambient Outage” 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 Capacity”, or “AAC”, is determined in Section 3(c) of Exhibit D.

“As-Available Capacity Payment”, or “ACP”, is determined in Section 3(b) of Exhibit D.

“As-Available Capacity Price” is set forth in Section 3(b) of Exhibit D, in dollars per kW-year.

“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(d), as may be adjusted from time to time.

“Availability Credit Factor”, or “ACF”, is determined in Section 3(i) of Exhibit D.

“Availability Penalty Factor”, or “APF”, is determined in Section 3(n) of Exhibit D.

“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.

“Benchmark Capacity” is determined, as applicable, in Section 3(a) of Exhibit D-1, Section 3(a) of Exhibit D-2, and Section 9(a) of Exhibit E.

“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 end 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 Energy Schedule” means the schedule of electric energy that Buyer establishes with the CAISO for electric energy produced by the Generating Facility.

“Buyer Parent Energy Schedule” means the schedule of electric energy that Buyer establishes with 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 G.

“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 or deliveries from the Generating Facility under this Agreement.

“CAISO Charges Invoice” means an invoice rendered by Buyer to Seller for all CAISO Charges for which Seller is responsible under this Agreement.

“CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

“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 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.

“Calculation Date” means any Business Day on which Buyer chooses to make the determinations referred to in Section 6 of Exhibit F.

“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.

“Capacity Credit Hours”, or “CCH”, is determined in Section 3(m) of Exhibit D.

“Capacity Credit Period” is determined in Section 3(b)(iv) of Exhibit E.

“Capacity Demonstration Factor” is determined in Section 3 of Exhibit C.

“Capacity Measurement Interval” means each 15-minute time period, beginning on the hour (e.g. 12:00 to 12:15, 12:30, 12:45, etc.), for which the Power Output is measured.

“Capacity Payment Allocation Factors”, or “CAF”, means the TOD Period factors which are used to calculate the Maximum TOD Period Capacity Payment, as set forth in the table in Section 3(a) of Exhibit D.

“Capacity Performance Requirement”, or “CR”, means the values set forth in Section 1.04.

“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 require at its discretion, as set forth in Section 3.08(b) and will include those devices normally supplied by Buyer or Seller under the applicable utility Electric Service Requirements.

“CHP Facility” means a Generating Facility that produces electric energy and useful thermal energy that is used for an industrial, commercial, heating, or cooling purposes.

“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.

“Commissioning Test” means tests applied to the Generating Facility, after completion of the construction of the Generating Facility, in order to verify that the Generating Facility may be released for Operation.

“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 applicable operating and efficiency standards. 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.

“Converted Physical Trade”, or “CPT”, means the quantity from Physical Trades, in MWh, that did not pass CAISO's physical validation of the IFM.

“Converted Physical Trade Price” means the price, in dollars per MWh, used by the CAISO to settle the quantity, in MWh, associated with the Converted Physical Trade.

“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.

“CPUC Approval” means a final, non-appealable decision of the CPUC approving the Agreement in its entirety, without conditions or modifications that are unacceptable to either Party, and stating that the Buyer is entitled to recover in rates all payments and costs associated with the Agreement, subject to CPUC review of the Buyer's administration of the Agreement. CPUC Approval shall be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

“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 dollar amount set forth in Section 1.07(b)(iii).

“Current Mark-to-Market Value” has the meaning described in Section 6 of Exhibit F.

“Curtailment Period” means a time period for which Seller is requested by CAISO or a Transmission Provider to curtail its Power Product for Force Majeure or otherwise.

“D.” has the meaning set forth in the Recitals.

“Daily Delay Liquidated Damages” has the meaning set forth in Section 4(c)(ii) of Exhibit F.

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

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Price” means the CAISO Day-Ahead Market Locational Marginal Price (as defined in the CAISO Tariff) for electric energy at the Generating Facility's PNode as published by the CAISO. 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.

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

“Decision” has the meaning set forth in the Recitals.

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

“Delivery Point” has the meaning set forth in Section 1.03.

“Demonstrated Firm Contract Capacity” means the rate of electric energy delivery that the Generating Facility is able to demonstrate as a result of the Demonstration set forth in Exhibit C.

“Demonstration” means the testing procedures for the Power Product set forth in Exhibit C.

“Demonstration Rate of Metered Energy” means the quantity, in kWh per hour, calculated by multiplying the Metered Energy amount, within a Metering Interval in kWh per interval, times the number of Metering Intervals in a one-hour period.

“Development Security” has the meaning set forth in Section 4(b)(i) of Exhibit F.

“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).

“Earned Capacity Hours”, or “ECH”, means the number of firm capacity equivalent available hours determined by dividing the Firm TOD Energy by the Firm Contract Capacity, as set forth in Section 3(j) of Exhibit D.

“Effective Date” has the meaning set forth in the Preamble.

“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 of 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 CHP Facility” means a CHP Facility that is not a New CHP Facility.

“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(e).

“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 Capacity Payment”, or “FCP”, has the meaning set forth in Section 3(g) of Exhibit D.

“Firm Capacity Price” or “CP” is set forth in Section 1.06(a).

“Firm Contract Capacity”, or “FCC”, means the monthly generating capacity that Seller commits to have available at the Site for the Power Product, as set forth in Section 1.02(d), as may be adjusted from time to time in accordance with Section 3.07(c) and, if the Generating Facility is a New CHP Facility, Exhibit C.

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

“Firm TOD Energy”, or “FE”, has the meaning set forth in Section 3(k) of Exhibit D.

“First Penalty Month” has the meaning set forth in Section 3(b) of Exhibit I.

“Forced Outage” has the meaning set forth in the CAISO Tariff.

“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.

“Force Majeure Credit Value”, or “FCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Force Majeure curtailment requested by Buyer, determined in accordance with Section 3 of Exhibit D-1.

“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 or Buyer is not Scheduling Coordinator 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 and Buyer is Scheduling Coordinator net of the Site Host Load and Station Use.

“Forward Price Assessment” means quotations solicited or obtained in good faith from regularly published and widely-distributed forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant products.

“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.

“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. Factors used in determining the gain of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Market Price Referents;
- (c) Comparable transactions;
- (d) Forward price curves based on economic analysis of the relevant markets; and
- (e) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remaining Term and shall include the value of Related Products.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“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” means greenhouse gas.

“GHG EPS” means the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and any subsequent CPUC-established precondition to the execution of this Agreement, in each case as in effect as of the Effective Date.

“GHG Requirements” has the meaning set forth in Section 3.22.

“GHG Reporting Requirements” has the meaning set forth in Section 3.22.

“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:

- 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 (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;
- 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.

“Guarantor” is that certain guarantor of Seller set forth in Section 1.07.

“Guaranty Agreement” means a guaranty agreement substantially in the form of Exhibit O.

“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.

“Hourly Credit Value” is determined, as applicable, in Section 3(b) of Exhibit D-1, Section 3(b) of Exhibit D-2 and Section 9(b)(i) of Exhibit E.

“Hourly Debit Value” is determined in Section 9(b)(ii) of Exhibit E.

“Hourly Power Output” means an hourly rate of electric energy delivery, in kWh per hour, that is equal to the Metered Energy for one hour, in kWh, divided by one hour.

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

“IFM Load Uplift Obligation” means the obligation of a Scheduling Coordinator to pay its share of unrecovered IFM Bid Costs (as defined in the CAISO Tariff) paid to resources through Bid Cost Recovery (as defined in the CAISO Tariff).

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

“Interconnection Study” means a study 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.

“Inter-SC Trade” means a trade between Scheduling Coordinators of energy, Ancillary Service (as defined in the CAISO Tariff), or IFM Load Uplift Obligation in accordance with the CAISO Tariff.

“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 1.01 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 assignees 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 P. 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.

“Limited TOD Energy”, or “LE”, has the meaning set forth in Section 3(e) of Exhibit D.

“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. Factors used in determining the loss of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Market Price Referents;
- (c) Comparable transactions;
- (d) Forward price curves based on economic analysis of the relevant markets; and
- (e) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remainder of the Term and must include the value of Related Products. Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“MAE_m” has the meaning set forth in Section 3(a) of Exhibit I.

“MAE Failure” has the meaning set forth in Section 3(b) of Exhibit I.

“Maintenance Credit Value”, or “MCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Maintenance Outage or a Major Overhaul which has been properly scheduled in accordance with Exhibit E.

“Maintenance Debit Value” is a value indicating how much allowance is used when Seller requests credit for a Maintenance Outage or a Major Overhaul in accordance with Exhibit E.

“Maintenance Outage” means a time period during which Seller plans to reduce the Power Output of the Power Product, in full or in part, in order to facilitate maintenance work on the Generating Facility, other than a Major Overhaul.

“Major Overhaul” means a time period during which Seller plans to remove the Generating

Facility from Operation in order to dismantle the Generating Facility's equipment for inspections, repairs or replacement, with the goal that such equipment will be reassembled and made available for Operation.

“Major Overhaul Allowance” is a value indicating a Term-Year maximum allowance with which Seller can request credit for a Major Overhaul in accordance with Exhibit E.

“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.

“Market Price Referent” means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).

“Maximum Allowable Capacity”, or “MAC”, is determined in Section 3(d) of Exhibit D.

“Maximum Firm Capacity Payment”, or “MFCP”, means the maximum payment that Seller can earn during a year for the delivery of Firm Contract Capacity that is calculated in accordance with the procedure set forth in Section 3(h) of Exhibit D.

“Mediator” has the meaning set forth in Section 10.02.

“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.

“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 Q.

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

“Monthly Scheduling Fee” is described in Section 4(b) of Exhibit G.

“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 Holidays” means “Additional Off-peak Days”, as defined by NERC on the NERC website at <http://www.nerc.com>, or any successor thereto.

“NERC Registration Criteria” means the NERC Statement of Compliance Registry Criteria (Revision 4.0), which is available at [http://www.nerc.com/files/Statement Compliance Registry Criteria-V5-0.pdf](http://www.nerc.com/files/Statement_Compliance_Registry_Criteria-V5-0.pdf), or any successor thereto.

“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 at [http://www.nerc.com/files/Reliability Standards Complete Set 2009Nov2.pdf](http://www.nerc.com/files/Reliability_Standards_Complete_Set_2009Nov2.pdf), or any successor thereto.”

“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.

“Net Contract Capacity”, or “NCC”, means the sum of Firm Contract Capacity and As-Available Contract Capacity, as set forth in Section 1.02(d) and as may be adjusted from time to time in accordance with Section 3.07(c). Net Contract Capacity may not exceed PMax.

“New CHP Facility” means a CHP Facility that was: (i) not Operating on September 20, 2007, (ii) not a CHP Facility between September 20, 2007 and the Effective Date, or (iii) materially modified or repowered after September 20, 2007 in a manner other than as provided in Sections 3.07(c).

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

“Notice” means notices, requests, statements or payments provided in accordance with Section 9.07 and Exhibit N.

“Operate” means 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 R.

“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 R.

“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” has the meaning set forth in the Preamble.

“Peak Months” means [].

{Buyer Comment: For SCE and PG&E, the Peak Months are June, July, August and September. For SDG&E, the Peak Months are May, June, July, August and September.}

“Penalized As-Available Contract Capacity” has the meaning set forth in Section 3(b)(ii) of Exhibit I.

“Penalized Firm Contract Capacity” has the meaning set forth in Section 3(b)(i) of Exhibit I.

“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 is only required to be posted by Seller if the Generating Facility is a New CHP Facility.

“Performance Assurance Amount” means the amount of any positive Current Mark-to-Market Value as calculated in accordance with Section 6 of Exhibit F.

“Performance Tolerance Band Lower Limit” is determined in Section 1 of Exhibit K.

“Performance Tolerance Band Upper Limit” is determined in Section 1 of Exhibit K.

“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” 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.

“Physical Trade Settlement Amount” means the dollar amount calculated in accordance with Exhibit L.

“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.

“PMax” has the meaning set forth in the CAISO Tariff.

“PNode” has the meaning set forth in the CAISO Tariff.

“Power Output” means the average rate of electric energy delivery during one Metering Interval, converted to an hourly rate of electric energy delivery, in kWh per hour, that is equal to the product of Metered Energy for one Metering Interval, in kWh per Metering Interval, times the number of Metering Intervals in a one-hour period.

“Power Product” means (a) the Net 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.

“Present Value” means the value on a given date of a future payment or series of future payments, discounted using the appropriate yield curve based on the U.S. Treasury constant maturities securities as posted by the Federal Reserve in its H.15 daily update at the following address: <http://www.ustreas.gov/offices/domestic-finance/debt-management/interest-rate/yield.html>, or any successor thereto.

“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 Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“PTSA_i” has the meaning set forth in Section 2 of Exhibit L.

“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 is certified as a Qualifying Facility by the FERC.

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

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Reference Market-Maker” means a leading dealer in the relevant market that is not an Affiliate of either Party and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.

“Related Products” means (i) with respect to Resource Adequacy Benefits (a) that portion of the Resource Adequacy Benefits that are associated with the Firm Contract Capacity, and (b) to the extent that there are Resource Adequacy Benefits associated with the generating capacity of the Generating Facility other than the Firm Contract Capacity, that portion of the Resource Adequacy Benefits that are not associated with the Firm Contract Capacity and 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(g), as may be amended from time to time or as further defined or supplemented by Applicable Law.

“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.

“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 (ii) leases the Generating Facility from Lender under an agreement authorizing Seller 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 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.

“Scheduled Power Offline” is described in Section 3(b)(v) of Exhibit E.

“Scheduling Coordinator” means a Person certified by the CAISO for the purposes of undertaking the functions specified in Exhibit G.

“Scheduling Fee” means the Monthly Scheduling Fee and the SC Set-Up Fee.

“SC Replacement Date” has the meaning set forth in Section 7 of Exhibit G.

“SC Set-Up Fee” is described in Section 4(a) of Exhibit G.

“SC Trade Settlement Amount” means the amount(s) determined in accordance with Exhibit M.

“SC Trade Tolerance Band” means the greater of (a) three percent of the Scheduled Amount or (b) one MW.

“SDD Administrative Charge” has the meaning set forth in Section 2 of Exhibit K.

“SDD Adjustment” means the adjustment, if any, to the Monthly Contract Payment, as determined in accordance with Exhibit K.

“SDD Energy Adjustment” has the meaning set forth in Section 1 of Exhibit K.

“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 F.

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

“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 I.

“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 Outages.

“Settlement Interval” has meaning set forth in the CAISO Tariff.

“Shaped Price” means the price of power as determined in accordance with Section 7 of Exhibit F.

“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).

“Six-Hour Demonstration” has the meaning set forth in Section 4 of Exhibit C.

“SLIC” means Scheduling and Logging system for the CAISO.

“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:
- (c) The low voltage, electrical distribution system of the Generating Facility;
 - 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 3.09.

“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 Section 4 of Exhibit D.

“TOD Period Capacity Payment” means the monthly payment to be calculated and made by Buyer to Seller for Power Product capacity during each TOD Period for the month for which a calculation is being performed, as set forth in Section 3 of Exhibit D, in dollars.

“TOD Period Energy Payment” means the monthly payment to be calculated and made by Buyer to Seller for the Metered Energy during each TOD Period for the month for which a calculation is being performed, as set forth in Section 2 of Exhibit D, in dollars.

“TOD Period Energy Price” means the price used to calculate the TOD Period Energy Payment, as set forth in Section 2(b) of Exhibit D, in dollars per kWh.

“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 Curtailment Credit Value” or “TCV” is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, as determined in accordance with Section 3 of Exhibit D-2.

“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 Seller from the Generating Facility to the Delivery Point.

“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 R.

“Web Scheduler” has the meaning set forth in Section 2 of Exhibit E.

“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* ***

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 *****

EXHIBIT C
Demonstration for Firm Contract Capacity

1. Introduction. This Exhibit C only applies to a New CHP Facility providing Firm Contract Capacity. If Seller elects to provide Firm Contract Capacity and the Generating Facility is a New CHP Facility, Seller shall:
 - (a) Perform the 20-Day and Six Hour Demonstration; or
 - (b) Elect to perform one of the following Demonstrations: (i) the 20-Day Demonstration and Six Hour Demonstration adjusted utilizing the Ambient Factors (1) employed in the Commissioning Test, so long as Buyer is permitted to attend the Commissioning Test and subject to Buyer's reasonable satisfaction that such Ambient Factors are applicable to the Demonstration, or (2) obtained pursuant to the Performance Test Code on Overall Plant Performance (PTC 46-1996) established by the American Society of Mechanical Engineers, or any successor thereto, or (ii) the Commissioning Test, subject to Buyer's reasonable satisfaction that the Commissioning Test accurately demonstrates the Firm Contract Capacity.

2. Demonstration Dates. The 20-Day Demonstration shall commence at noon on a mutually agreed upon date which follows or is coincident with the Term Start Date and shall be completed no later than the Firm Operation Date, and shall extend for a total period of 20 consecutive non-holiday weekdays (the "20-Day Demonstration"). The Six-Hour Demonstration must be scheduled for a non-holiday weekday within the 20-Day Demonstration period.

Concurrently with the selection of the commencement date for the 20-Day Demonstration, Seller shall select which Generating Units will be the Generating Units for the Demonstration, if applicable. This selection may not be changed for any reason during the Demonstration or the Demonstration will be repeated in its entirety.

Buyer and Seller may each, upon three Business Days advance Notice, make up to two requests to reschedule the commencement date for either the 20-Day Demonstration or the Six-Hour Demonstration.

The commencement date for the Six-Hour Demonstration may only be rescheduled to a different date within the 20-Day Demonstration, if applicable.

Neither the 20-Day Demonstration nor a Six-Hour Demonstration may be rescheduled once it has commenced, except as set forth under Section 5 of this Exhibit C.

3. 20-Day Demonstration. In order to pass the 20-Day Demonstration, the Generating Facility must achieve a Capacity Demonstration Factor of *greater than or equal* to 0.95. The Capacity Demonstration Factor is calculated as follows:

CAPACITY DEMONSTRATION FACTOR = $A / (B \times C)$

Where A = The number of Capacity Measurement Intervals during the test period when the Demonstration Rate of Metered Energy equals or exceeds the Firm Contract Capacity specified in Section 1.02(d).

B = The total number of hours during the 20 consecutive non-holiday weekday test period that begin at noon and end at 6:00 p.m. (i.e., 120 hours).

C = The number of Capacity Measurement Intervals within each hour.

4. Six-Hour Demonstration. For the Six-Hour Demonstration, Seller shall demonstrate the ability of the Generating Facility to Operate for a six consecutive hour period, starting at noon and ending at 6:00 p.m. (the "Six-Hour Demonstration"). The Generating Facility shall be deemed to have satisfied the Six-Hour Demonstration if the Power Output in each and every Metering Interval during the six-hour period equals or exceeds the Firm Contract Capacity set forth in Section 1.02(d).
5. Remedial Action for Seller's Failing a Demonstration.
 - (a) If, during the initial Demonstration, the Generating Facility fails to Demonstrate the Firm Contract Capacity during either the 20-Day Demonstration or the Six-Hour Demonstration, Seller may request one additional 20-Day Demonstration or one additional Six-Hour Demonstration within the first 20-Day Demonstration upon providing three Business Days advance Notice sent by facsimile transmission or e-mail.

Any new 20-Day Demonstration must include another Six-Hour Demonstration.
 - (b) If, during the second Demonstration, the Generating Facility fails to Demonstrate the Firm Contract Capacity during either the 20-Day Demonstration or the Six-Hour Demonstration due to an abnormal and unforeseeable operating condition, as verified and determined in Buyer's sole judgment, one additional and final Demonstration may be scheduled.
6. Demonstrated Firm Contract Capacity.
 - (a) If the Generating Facility passes both the 20-Day Demonstration and the Six-Hour Demonstration, the Demonstrated Firm Contract Capacity shall be deemed to be equal to the Firm Contract Capacity in Section 1.02(d).
 - (b) If the Generating Facility fails to meet the minimum requirements of either the 20-Day Demonstration or the Six-Hour Demonstration during the initial Demonstration and, if one or two additional Demonstrations are conducted at Seller's request pursuant to the procedure described above and Seller fails in both of these additional Demonstrations to meet the minimum requirements of either

the 20-Day Demonstration or the Six-Hour Demonstration, *then* the Demonstrated Firm Contract Capacity shall be deemed to be the lowest of:

- (i) The lowest Power Output achieved in 95% of the Capacity Measurement Intervals during the 20-Day Demonstration;
- (ii) The lowest Power Output in any Capacity Measurement Interval during the Six-Hour Demonstration; and
- (iii) A Firm Contract Capacity amount, designated by Seller and approved by Buyer, that represents a Power Output that the Generating Facility can achieve during all hours of the entire Term while conforming with Prudent Electrical Practices.

In all instances, the Firm Contract Capacity for Seller shall either (1) be reduced pursuant to the applicable Demonstration(s), or (2) increased pursuant to the applicable Demonstration(s), provided that such increase may not exceed the limits for Firm Contract Capacity set forth in Section 1.02(d). The Net Contract Capacity and As-Available Contract Capacity, if applicable, may also be adjusted by Buyer based on the results of the Demonstration and the circumstances under which a Demonstration was required.

7. Representation and Access. Buyer representatives may attend the Demonstration and, if Seller relies upon the Commissioning Test for the purposes of this Exhibit C, the Commissioning Test or any portion thereof, including the setup, start-up, ramp-up, ramp-down and shutdown of the Generating Facility related to the Demonstration and, if applicable, the Commissioning Test. Buyer's representatives may, as part of their observation of the Demonstration and the Commissioning Test, conduct a site visual inspection of the Generating Facility and the Site; *provided, however*, that Buyer's representatives follow the requirements set forth in Section 3.19.

Seller shall provide Buyer access to and copies of control room logs, control system display screens, and instrumentation data during and after any Demonstration or, if Seller relies upon the Commissioning Test for the purposes of this Exhibit C, Commissioning Test.

8. Cost of Demonstration. Buyer is responsible for all costs associated with witnessing the Demonstration. Buyer shall pay for the electric energy and electric capacity produced during the Demonstration using the Firm Contract Capacity existing at the time of the Demonstration pursuant to Exhibit D.
9. Ambient Factors. Seller may elect to apply corrections to the Demonstrated Rate of Metered Energy or Power Output to adjust for Ambient Factors. The corrections to be applied shall be agreed upon in writing in advance of any Demonstration during technical discussions between representatives of Buyer and Seller that are Professional Engineers registered in California. Corrections shall be based on Prudent Electrical Practices and

obtained pursuant to the applicable Performance Test Code established by the American Society of Mechanical Engineers, or any successor thereto, for the equipment under Demonstration.

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

EXHIBIT D
Monthly Contract Payment Calculation

1. Introduction. Each Monthly Contract Payment is calculated on a calendar month basis as follows:

MONTHLY CONTRACT PAYMENT, in dollars =

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

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

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit D.

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 D.

2. *TOD Period Energy Payment Calculation.*

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

TOD PERIOD ENERGY PAYMENT, in dollars = EP x APE x LF

Where:

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

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

LF = Any loss or other adjustment factor required by Applicable Law.

Once 120% of the Expected Term Year Net Energy Production is achieved, no further 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 D. For each day during the Term, the TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated as the sum of:
- (i) the Contract Heat Rate divided by the number 1,000 multiplied by the sum of:
 - A. The Gas Index (as defined below) for such day; and
 - B. the transportation service rate (in \$/MMBtu) within the SoCalGas system applicable for delivering natural gas to the Generating Facility;
- and
- (ii) the Variable Charge, *if applicable*.

Where:

“Contract Heat Rate” means [____] (in MMBtu/MWh).

“Gas Index” means the index price (expressed in \$/MMBtu) for the applicable flow date published by Platts Gas Daily (in the internet publication currently accessed through www.platts.com) in the table entitled “Daily Price Survey” under the sub-section heading “Citygates” for the “SoCal Gas, city-gate” listing in the “Midpoint” index column. If any determination, ruling or decision by the CPUC significantly affects the SoCalGas system, and the Gas Index ceases to be published, or either Party reasonably believes that the Gas Index is substantially changed so that it does not adequately reflect the balance of economic benefits and burdens that the Parties agreed to, then either Party may provide the other with notice to such effect and the Parties shall negotiate in good faith to determine an alternative method or methods for determining the Gas Index in order to maintain the balance of economic benefits and burdens that the Parties agreed to with respect to the Gas Index as of the Effective Date. Any substitute index or indices must be recognized in the industry as a measure of average daily prices for gas delivered to the various receipt points on the SoCalGas system. If the Parties are unable to agree on a successor market, index, or methodology within thirty (30) days of the date of the notice, the dispute resolution procedures of Article Ten of this Agreement shall apply.

{Buyer Comment: References to “SoCalGas” throughout this Section may be modified if the applicable natural gas transporter is other than SoCalGas and should be replaced with references to PG&E Citygate for PG&E service area}

“Variable Charge” means [____] in \$/MWh.

- (c) Factor “APE” in Section 2(a) of this Exhibit D. The Allowed Payment Energy for each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy from the Generating Facility for all hours for 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 + FCP) x CAF

Where:

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

FCP = Firm Capacity Payment for the TOD Period, as determined in accordance with Section 3(g) of this Exhibit D, 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. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are:

<u>Capacity Payment Allocation Factors</u>		
<i>Season</i>	<i>TOD Period</i>	<i>Factor</i>
Summer	On-Peak Period	0.1792
	Mid-Peak	0.0310
	Off-Peak	0.0006
Winter	Mid-Peak	0.0178
	Off-Peak	0.0011
	Super-Off-Peak	0.0007

- (b) Factor “ACP” in Section 3(a) of this Exhibit D. 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 D, in kWh per hour.

AACP= The As-Available Capacity Price for the applicable year, as set forth in the following table:

As-Available Capacity Price				
Year	Price \$/kW-yr			
2011	\$ -	\$ -	\$ -	\$ -
2012	\$ -	\$ -	\$ -	\$ -
2013	\$ -	\$ -	\$ -	\$ -
2014	\$ -	\$ -	\$ -	\$ -

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

AS-AVAILABLE CAPACITY, in kWh per hour = MAC - FCC (but not less than zero)

Where:

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

FCC = The Firm Contract Capacity for all TOD Periods during a month.

- (d) Factor “MAC” in Section 3(c) of this Exhibit D. 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 D, in kWh.

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

- (e) Factor “LE” in Section 3(d) of this Exhibit D. The Limited TOD Energy for each TOD Period of any month is calculated as follows:

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

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 D, 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 D. The Allowed Hourly Energy is calculated as follows:

$$\text{ALLOWED HOURLY ENERGY in kWh} = 1 \text{ hour} \times \text{NCC}$$

Where:

NCC = The Net Contract Capacity, as set forth in Section 1.02(d), in kW.

- (g) Factor “FCP” in Section 3(a) of this Exhibit D. Each monthly Firm Capacity Payment is calculated as follows:

$$\text{FIRM CAPACITY PAYMENT in dollars} = \text{MFCP} \times \text{AF}$$

Where:

MFCP = Maximum Firm Capacity Payment for the TOD Period, as determined in accordance with Section 3(h) of this Exhibit D, in dollars.

- AF = (i) One (1), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is greater than or equal to 95%; or
 (ii) Zero (0), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is less than 60%; or
 (iii) If neither (i) nor (ii) are true, then AF is the Availability Penalty Factor, as calculated in Section 3(n) of this Exhibit D.

- (h) Factor “MFCP” in Section 3(g) of this Exhibit D. The Maximum Firm Capacity Payment for each TOD Period of each month is calculated as follows:

$$\text{MAXIMUM FIRM CAPACITY PAYMENT, in dollars} = \text{FCC} \times \text{CP}$$

Where:

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d), in kWh per hour.

CP = Firm Capacity Price, as set forth in the following table, in \$/kW-year:

Year	Firm Capacity Price			
	Price \$/kW-yr			
2011	\$ -	\$ -	\$ -	\$ -
2012	\$ -	\$ -	\$ -	\$ -
2013	\$ -	\$ -	\$ -	\$ -

2014	\$ -	\$ -	\$ -	\$ -
------	------	------	------	------

- (i) Factor “ACF” in Section 3(g) of this Exhibit D. The Availability Credit Factor for each monthly TOD Period is calculated as follows:

$$\text{AVAILABILITY CREDIT FACTOR} = (\text{ECH} + \text{CCH}) / \text{PH}$$

Where:

ECH = The total number of Earned Capacity Hours, determined in accordance with Section 3(j) of this Exhibit D.

CCH = The total number of Capacity Credit Hours, determined in accordance with Section 3(m) of this Exhibit D.

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

- (j) Factor “ECH” in Section 3(i) of this Exhibit D. The Earned Capacity Hours for each monthly TOD Period is calculated as follows:

$$\text{EARNED CAPACITY HOURS} = \text{FE} / \text{FCC}$$

Where:

FE = The sum of the Firm TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(k) of this Exhibit D, in kWh.

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d) in kWh per hour.

- (k) Factor “FE” in Section 3(j) of this Exhibit D. The Firm TOD Energy for each TOD Period of any month is calculated as follows:

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

Where:

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

- (l) Factor “E” in Section 3(k) of this Exhibit D. The Allowed Firm Energy is calculated as follows:

$$\text{ALLOWED FIRM ENERGY in kWh} = 1 \text{ hour} \times \text{FCC}$$

Where:

FCC = The Firm Contract Capacity set forth in Section 1.02(d).

- (m) Factor “CCH” in Section 3(i) of this Exhibit D. The total number of Capacity Credit Hours for each monthly TOD Period is determined as follows:

$$\text{CAPACITY CREDIT HOURS} = \text{TCV} + \text{FCV} + \text{MCV}$$

Where:

TCV = The total Transmission Curtailment Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-2, when the Metered Energy was curtailed by either the CAISO or the Transmission Provider.

FCV = The total Force Majeure Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-1, when the Metered Energy was curtailed by a Force Majeure event claimed by Buyer to the extent the Generating Facility is otherwise available.

MCV = The total Maintenance Credit Value during the TOD Period, determined in accordance with Section 9 of Exhibit E.

- (n) Factor “APF” in Section 3(g) of this Exhibit D. The Availability Penalty Factor for each monthly TOD Period is calculated as follows:

$$\text{AVAILABILITY PENALTY FACTOR} = 1.0 - 2.0 \times (\text{CR} - \text{ACF})$$

Where:

APF = The greater of: (i) zero; and (ii) the result of the above equation for APF.

CR = 95%, the minimum Capacity Performance Requirement.

ACF = The Availability Credit Factor determined in accordance with Section 3(i) of this Exhibit D.

4. Time of Delivery Periods.

<i>TOD Period</i>	<i>Summer Jun 1st - Sep 30th</i>	<i>Winter Oct 1st - May 31st</i>	<i>Applicable Days</i>
On-Peak	Noon - 6:00 p.m.	Not Applicable.	Weekdays except Holidays.
Mid-Peak	8:00 a.m. - Noon	8:00 a.m. - 9:00 p.m.	Weekdays except Holidays.

	6:00 p.m. - 11:00 p.m.		Weekdays except Holidays.
Off-Peak	11:00 p.m. - 8:00 a.m.	6:00 a.m. - 8:00 a.m.	Weekdays except Holidays.
		9:00 p.m. - Midnight	Weekdays except Holidays.
	Midnight - Midnight	6:00 a.m. - Midnight	Weekends and Holidays.
Super-Off-Peak	Not Applicable.	Midnight - 6:00 a.m.	Weekdays, Weekends and Holidays.

“Holiday”, as used in the above table, means New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. When a Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

*** End of Exhibit D ***

EXHIBIT D-1
Force Majeure Credit Value

1. Overview. This Exhibit D-1 describes the methodology for computing Force Majeure Credit Value.
2. Scheduling. Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. Calculation of Force Majeure Credit Value. For every period of Force Majeure curtailment requested by Buyer, Buyer shall compute the Force Majeure Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-1, “Benchmark Capacity” is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the Force Majeure event and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.

Notwithstanding this Section 3(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Curtailment Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during the Curtailment Period and that would have been able to return to service during the Curtailment Period but for the circumstances constituting the Curtailment Period.

- (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\textit{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Force Majeure Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the

Curtailment Period have been applied.

- (d) After all the Hourly Credit Values have been applied, the final monthly Force Majeure Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

**** End of Exhibit D-1 ****

EXHIBIT D-2
Transmission Curtailment Credit Value

1. Overview. This Exhibit D-2 describes the methodology for computing Transmission Curtailment Credit Value.
2. Scheduling. Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. Calculation of Transmission Curtailment Credit Value. For every period of curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, Buyer shall compute the Transmission Curtailment Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-2, "Benchmark Capacity" is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the curtailment notification and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.

Notwithstanding this Section 3(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Curtailment Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during the Curtailment Period and that would have been able to return to service during the Curtailment Period but for the circumstances constituting the Curtailment Period.

- (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\textit{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of:

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Transmission Curtailment Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours

in the Curtailment Period have been applied.

- (d) After all the Hourly Credit Values have been applied, the final monthly Transmission Curtailment Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** *End of Exhibit D-2* ***

EXHIBIT E

Scheduling and Calculation of Maintenance Outage and Major Overhaul Credits

1. Overview. Seller shall follow the protocols established in this Exhibit E for the scheduling of Maintenance Outages and Major Overhauls, and for any subsequent notification that may be required to update a previously scheduled Maintenance Outage or Major Overhaul for which Seller wishes to obtain Maintenance Credit Value. This Exhibit E also describes the methodology for computing Maintenance Credit Value and Maintenance Debit Value.

2. Notification. Seller shall direct all Maintenance Outage and Major Overhaul notifications to Buyer's web-based outage scheduling system or an e-mail address designated by Buyer (the "Web Scheduler") and to the Generation Operations Center, whose URL and telephone number(s) can be found in Exhibit N.

3. Scheduling.

(a) Seller shall schedule all Maintenance Outages and Major Overhauls with Buyer in advance. Seller's failure to schedule an unplanned outage in advance is not a default under this Agreement. The notice requirements for Maintenance Outages and Major Overhauls are as follows:

<i>Outage Duration</i>	<i>Minimum Advance Notice</i>
Maintenance Outage, Less than 1 day	24 Hours
Maintenance Outage, 1 day or more	168 Hours
Major Overhaul	6 Months

(b) Seller shall provide the following information when scheduling a Maintenance Outage or a Major Overhaul via the Web Scheduler:

- (i) The identification number set forth on the cover page of this Agreement;
- (ii) Password (supplied by Buyer);
- (iii) Generating Unit Number*;
- (iv) Capacity Credit Period, including:
 - (1) The date and time when Seller expects the Capacity Credit Period to begin, and
 - (2) The date and time when Seller expects the ~~Capacity Credit Period to end~~ _{to end};
- (v) "Scheduled Power Offline"**_{**, in kW, is the Hourly Power Output that is expected to be offline during each hour of the outage period, as such may}

be updated as set forth in this Exhibit E; and

- (vi) Reason for the requested Maintenance Outage or Major Overhaul.

**Unit designation is applicable only when the contract calls for separate tracking of outage allowance for each Generating Unit.*

***If unit designation is applicable, Seller must provide the expected Scheduled Power Offline of the Generating Unit scheduled for maintenance; otherwise, Seller must provide the expected Scheduled Power Offline of the Generating Facility.*

4. Rescheduling.

- (a) A Maintenance Outage and the associated Capacity Credit Period may be rescheduled if Seller's request to reschedule is received by Buyer no later than 5:00 p.m. PPT on the day before the Maintenance Outage was previously scheduled to begin.
- (b) A Major Overhaul and the associated Capacity Credit Period may be rescheduled provided:
 - (i) The rescheduled Major Overhaul begins six months or more after the first outage notification date and time;
 - (ii) The notification to reschedule is made at least one week before the Major Overhaul was previously scheduled to begin; and
 - (iii) There is at least a one-month period between the notification to reschedule and the commencement of the rescheduled Major Overhaul.
- (c) Maintenance Outages and Major Overhauls may be rescheduled more than once.

5. Extension.

- (a) Seller may extend a Maintenance Outage or a Major Overhaul and the associated Capacity Credit Period by notifying Buyer of the extension no later than 5:00 p.m. PPT on the day before the outage was previously scheduled to end. Seller's failure to provide such notice, to the extent resulting from unexpected circumstances, is not a default under this Agreement.
- (b) Maintenance Outages and Major Overhauls and the associated Capacity Credit Periods may be extended more than once.
- (c) For a Maintenance Outage and the associated Capacity Credit Period which is less than 24 hours in duration, the extension cannot result in a total outage duration greater than 23 hours.

6. Cancellation. If Seller cancels a scheduled Maintenance Outage, Major Overhaul or the associated Capacity Credit Period, a cancellation notice must be received by Buyer no later than 5:00 p.m. PPT on the day before such Maintenance Outage or Major Overhaul was scheduled to begin.
7. Updating Scheduled Power Offline.
 - (a) If a change in the Hourly Power Output is anticipated or occurs during a Maintenance Outage or a Major Overhaul, the Scheduled Power Offline must be updated on a prospective basis as soon as possible via the Web Scheduler. Scheduled Power Offline cannot be updated once the Maintenance Outage or Major Overhaul is over.
 - (b) Multiple updates to the Scheduled Power Offline can be submitted if necessary on a prospective basis.
 - (c) If a Maintenance Outage or a Major Overhaul is completed ahead of schedule and Seller's Hourly Power Output has returned to normal output levels earlier than expected, Seller shall advise Buyer of the situation by providing an update to the Scheduled Power Offline as described in Section 7(a) of this Exhibit E.
8. Restrictions.
 - (a) Seller shall make reasonable efforts not to schedule a Maintenance Outage or Major Overhaul during the Peak Months. Should an outage be required during the said period, Seller shall abide by the limit as set forth in Section 1.05(d) for minor maintenance work during peak months.
 - (b) Each Capacity Credit Period must be scheduled to start and stop at the beginning of an hour. Also, when scheduling an outage, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
 - (c) Seller may not schedule a Maintenance Outage or a Major Overhaul that overlaps another Maintenance Outage, Major Overhaul, or Curtailment Period already scheduled on the Generating Facility. If unit designation is applicable in Section 3(b)(iii) of this Exhibit E, this restriction applies to the Generating Unit.
9. Maintenance Credit Calculation. For every properly scheduled Maintenance Outage and Major Overhaul, to the extent there is an associated Capacity Credit Period, Buyer shall compute and apply the associated Maintenance Credit Value and the Maintenance Debit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every scheduled Maintenance Outage and Major Overhaul. For purposes of this Exhibit E, "Benchmark Capacity" is defined as the highest Hourly Power Output, not to exceed Firm

Contract Capacity, at or after the time of outage notification, and before the start of the outage. If the outage is rescheduled, the most recent notification time shall be used in defining Benchmark Capacity. If the outage is extended, or its Scheduled Power Offline is updated, the original notification time shall be used in defining Benchmark Capacity, unless the outage has been rescheduled before the extension, in which case the most recent rescheduling notification time shall be used in defining Benchmark Capacity.

In the special case of a less-than-one-day Maintenance Outage that directly follows another less-than-one-day Maintenance Outage, Benchmark Capacity of the outage that follows is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, between these two outage time periods. In the event of back-to-back, less-than-one-day Maintenance Outages, Benchmark Capacity for the second outage shall be zero.

Notwithstanding this Section 9(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Capacity Credit Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during such Capacity Credit Period.

- (b) For each hour in the Capacity Credit Period of the Maintenance Outage or the Major Overhaul, an Hourly Credit Value and Hourly Debit Value shall be calculated using following formulas:

(i) $\text{Hourly Credit Value} = (\text{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$

where *Delta* is the lesser of

Benchmark Capacity minus Hourly Power Output, or
Scheduled Power Offline.

However, in all cases, *Delta* shall never be less than zero.

(ii) $\text{Hourly Debit Value} = (\text{Scheduled Power Offline} / \text{Firm Contract Capacity}) * 1 \text{ hour}$

- (c) For each hour in the Capacity Credit Period, the Hourly Credit Value shall be applied as Maintenance Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Capacity Credit Period have been applied, or until the condition described in Section 9(d) of this Exhibit E is met, whichever comes first.

- (d) Simultaneous to Section 9(c) of this Exhibit E, for each hour in the Capacity Credit Period, the Hourly Debit Value shall be accumulated as Maintenance Debit Value in a Term-Year-to-date account whose increasing total is to be compared to the appropriate limit set forth in Sections 1.05(a) or (b). Once the Term-Year-to-date total reaches or exceeds the limit, no more Hourly Credit Values shall be applied.
- (e) After all the Hourly Credit Values have been applied and the Hourly Debit Values accounted for, the final monthly Maintenance Credit Value and the Term-Year-to-date cumulative Maintenance Debit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

The above description of the evaluation process assumes that the outage was properly scheduled with sufficient advance notice pursuant to this Exhibit E and was approved by Buyer (or the CAISO, if applicable). Any deviation from the proper scheduling protocol can result in reduced Maintenance Credit Value or increased Maintenance Debit Value.

*** *End of Exhibit E* ***

EXHIBIT F
New CHP Facilities Requirements

PG&E Note: Parties to discuss whether these requirements also apply to Existing CHP Facilities; PG&E is continuing to review performance assurance provisions

1. Financial Information.

- (n) 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 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 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 F 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.

- (o) For purposes of the requirement set forth in Section 1(a) of this Exhibit F:
 - (i) If Seller 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.

- (p) 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 365 days following the Term End Date. The Performance Assurance Amount due to Buyer by Seller shall be calculated on the Calculation Date in the amount of any positive Current Mark-to-Market Value in accordance with Section 6 of Exhibit F.

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 F, 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 F, 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 F, from a Guarantor acceptable to Buyer, to satisfy Seller's Performance Assurance obligation.

- (q) 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 30 days before the expiration of the outstanding Letter of Credit or within five

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 F 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.
- (r) Guaranty Agreement. If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit O executed by the Guarantor identified in Section 1.07(b)(i) 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.

(s) Administration of Performance Assurance.

- (i) If the Performance Assurance Amount is greater than the Performance Assurance already posted to Buyer by Seller (excluding any Performance Assurance posted to Buyer as Development Security), then upon Notice by Buyer, Seller shall provide to Buyer additional Performance Assurance within one Business Day, if Notice is received prior to 10:00 a.m. PPT, or two Business Days, if Notice is received after 10:00 a.m. PPT, so long as with respect to Buyer (1) no Event of Default has occurred and is continuing, and (2) no Early Termination Date has occurred or been designated as a result of an Event of Default for which there exists any unsatisfied payment obligation. The amount of additional Performance Assurance to be provided to Buyer by Seller shall be rounded up to the nearest \$100,000.
- (ii) If the Performance Assurance Amount is less than the Performance Assurance already posted to Buyer by Seller (excluding any Performance Assurance posted to Buyer as Development Security), then upon Notice by Seller, Buyer shall return, or effectuate the return, to Seller, of Performance Assurance in excess of Seller's Performance Assurance Amount within one Business Day, if Notice is received prior to 10:00 a.m. PPT, or two Business Days, if Notice is received after 10:00 a.m. PPT, so long as with respect to Seller (1) no Event of Default has occurred and is continuing, and (2) no Early Termination Date has occurred or been designated as a result of an Event of Default for which there exist any unsatisfied payment obligation. The amount of Performance Assurance to be returned to Seller by Buyer shall be rounded down to the nearest \$100,000.
- (iii) If Seller disputes the amount of Performance Assurance requested by Buyer and such dispute relates to the amount of the Performance Assurance Amount claimed by Buyer, then Seller shall (1) notify Buyer of the existence and nature of the dispute not later than 10:00 a.m. PPT on the first Business Day following the date that the demand for Performance Assurance is made by Buyer, and (2) provide Performance Assurance to or for the benefit of Buyer in an amount equal to Seller's own estimate, made

in good faith, in a commercially reasonable manner, and with the Current Mark-to-Market Value calculated in accordance with Section 6 of this Exhibit F. The Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by Buyer, then each Party shall, within two Business Days, obtain quotations for power and natural gas forward prices from three Reference Market-Makers for the purpose of recalculating the Current Mark-to-Market Value in accordance with Section 6 of this Exhibit F. The Performance Assurance Amount shall then be recalculated with the Current Mark-to-Market Value using the quotations obtained by the Parties (taking the arithmetic average of the Parties' quotations resultant Current Mark-to-Market Value calculations to obtain the Current Mark-to-Market Value; *provided, however*, if only one Party can obtain the required quotations for power and natural gas forward prices, then the quotations obtained by that Party shall be used to calculate the Current Mark-to-Market Value; *provided further*, if neither Party can obtain the required quotations for power and natural gas forward prices, then Buyer's original calculation shall be used). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Business Day in accordance with the results of such recalculation.

- (iv) If Buyer disputes the amount of Performance Assurance to be reduced by Buyer and such dispute relates to the amount of the Performance Assurance Amount claimed by Seller, then Buyer shall (1) notify Seller of the existence and nature of the dispute not later than 10:00 a.m. PPT on the first Business Day following the date that the demand to reduce Performance Assurance is made by Seller, and (2) effect the reduction of Performance Assurance to or for the benefit of Seller in an amount equal to Buyer's own estimate, made in good faith, in a commercially reasonable manner and with the Current Mark-to-Market Value calculated in accordance with Section 6 of Exhibit F. The Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by Seller, then each Party shall, within two Business Days, obtain quotations for power and natural gas forward prices from three Reference Market-Makers for the purpose of recalculating the Current Mark-to-Market Value in accordance with Section 6 of Exhibit F. The Performance Assurance Amount shall then be recalculated with the Current Mark-to-Market Value using the quotations obtained by the Parties (taking the arithmetic average of the Parties' quotations resultant Current Mark-to-Market Value calculations to obtain the Current Mark-to-Market Value; *provided, however*, if only one Party can obtain the required quotations for power and natural gas forward prices, then the

quotations obtained by that Party shall be used to calculate the Current Mark-to-Market Value); *provided further*, if neither Party can obtain the required quotations for power and natural gas forward prices, then Buyer's original calculation shall be used. Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Business Day in accordance with the results of such recalculation.

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 F 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:

- (t) 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;
- (u) Draw on any outstanding Letter of Credit issued for its benefit; and
- (v) 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.

- (w) Introduction. If Seller is required to post Development Security, such Development Security shall be held by Buyer as security for Seller's meeting the Term Start Date and: (i) if Seller designates only Firm Contract Capacity, successful completion of the Demonstration as set forth in Exhibit C; (ii) if Seller designates only As-Available Contract Capacity, Seller delivers 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; or (iii) if Seller designates both Firm Contract Capacity and As-Available Contract Capacity, both (i) and (ii) of this Section 1.04(a) are required.

(x) Development Security. If Seller is required to post 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 Net Contract Capacity on or before the 30th day following the Effective Date. Seller shall post additional Development Security in the amount of \$40 per kW of Net Contract Capacity (for a total posted amount of \$60 per kW of Development Security) at the end of the 18th month 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 P.

(y) 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 F and 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(a), 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 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.

- (z) 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 F or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), Seller demonstrates the Net Contract Capacity on or before the Firm Operation Date as follows:
 - (1) If Seller designates only Firm Contract Capacity, successful completion of the Demonstration as set forth in Exhibit C;
 - (2) If Seller designates only As-Available Contract Capacity, Seller delivers 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; or
 - (3) If Seller designates both Firm Contract Capacity and As-Available Contract Capacity, both (1) and (2) of this Section 1.04(d) are required.
- (aa) Deficient Installation of Net 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 Net Contract Capacity or only demonstrates a portion of the Net Contract Capacity:
- (i) If Seller designates only Firm Contract Capacity, based on the

Demonstration, if any, as set forth in Exhibit C;

- (ii) If Seller designates only As-Available Contract Capacity, Seller delivers to Buyer certificates from a California-licensed professional engineer qualified to make a representation setting forth the As-Available Contract Capacity; or
- (iii) If Seller designates both Firm Contract Capacity and As-Available Contract Capacity, both (i) and (ii) of this Section 1.04(e),

then Seller will only be entitled to a return of the portion of the Development Security posted by Seller equal to the product of either (1) \$20 per kW times the kilowatts of Net Contract Capacity which Seller has demonstrated, if any, if the Term Start Date occurs within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of Net Contract Capacity which Seller has demonstrated, if any, if the Term Start Date occurs after the 18th month following the Effective Date.

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 F shall be calculated using the adjusted Net Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted Net Contract Capacity shall be returned to Seller.

- (ab) Seller shall provide Notice to Buyer of its request for a refund of the Development Security.

5. Interest Payments on Cash Deposits.

- (ac) 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.
- (ad) 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.

- (ac) 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.

6. Mark-to-Market Calculation. On any Calculation Date, the Current Mark-to-Market Value for this Agreement will be calculated by taking the sum of the Present Values for each remaining (full or partial) month before the termination of this Agreement using the equation below:

$$\text{Current Mark-to-Market Value} = \sum_{i=1}^n (MV_{t,i} - MV_{o,i})$$

Where:

$$MV_{t,i} = [(P_{t,i} - G_{t,i} \times HR_i) \times Q_i] \times CF_t$$

$$MV_{o,i} = [(P_{o,i} - G_{o,i} \times HR_i) \times Q_i] \times CF_{o, -7 \text{ days}}$$

[Note: This section needs to be modified for the other utilities and currently only reflects SCE mark-to-market valuation]

Variable	Description	Units
n	The number of forward months included in the <u>mark-to-market calculation</u> .	#
i	A forward month. For the balance of the month of the Calculation Date, i=0. For the month following the month of the Calculation Date, i=1, etc.	#
P _{t,i}	The midpoint from a Forward Price Assessment for SP15 EZ Gen Hub on-peak for the relevant forward month <i>i</i> on the Calculation Date <u>for combined cycle technology (for combustion turbine technology, the on-peak price will be multiplied by 1.20 for the relevant forward month <i>i</i>).</u> <u>If no monthly price is available for a Forward Price Assessment, then the applicable monthly Shaped Price will be used.</u>	\$/MWh

P _{o,i}	The midpoint from a Forward Price Assessment for SP15 EZ Gen Hub on-peak for <u>the relevant forward month i on the Effective Date for combined cycle technology (for combustion turbine technology, the on-peak price will be multiplied by 1.20 for the relevant forward month i)</u> . If no monthly price is available for a Forward Price Assessment, then the applicable monthly Shaped Price shall be <u>used</u> .	\$/MWh
G _{t,i}	<u>NYMEX Southern California Gas City Gate natural gas (i.e., closing price for NYMEX Henry Hub plus Henry Hub to SoCal City Gate Basis) for the relevant forward month i on the Calculation Date. If no such gas price is available on the Calculation Date, then a proxy value of NYMEX Southern California Border natural gas plus five cents adder (i.e., closing price for NYMEX Henry Hub plus Henry Hub to SoCal Border Basis plus five cents per MMBtu) for the relevant forward month i shall apply. If neither of the aforementioned gas prices is available, then the gas price for the relevant calendar month of the last available year shall be used.</u>	\$/MMBtu
G _{o,i}	<u>NYMEX Southern California Gas City Gate natural gas (i.e., closing price for NYMEX Henry Hub plus Henry Hub to SoCal City Gate Basis) for the relevant forward month i on the Effective Date. If no such gas price is available on the Effective Date, then a proxy value of NYMEX Southern California Border natural gas plus five cents adder (i.e., closing price for NYMEX Henry Hub plus Henry Hub to SoCal Border Basis plus five cents per MMBtu) for the relevant forward month i shall apply. If neither of the aforementioned gas prices is available, then the gas price for the relevant calendar month of the last available year shall be used.</u>	\$/MMBtu
HR _i	[] {Buyer Comment: The heat rate will be determined on a Generating Unit basis.}	MMBtu/ MWh
Q _i	The <u>Net Contract Capacity multiplied by the hours remaining under the Term for the relevant forward month.</u>	MW * Hours

CF _t	The capacity factor on the Calculation Date, determined by dividing the power price (P _{t,i}) by the gas price (G _{t,i}) for the relevant forward months, to generate a market heat rate (“MHR”) curve and calculating what percent of the relevant forward months the Heat Rate at full load (“HR”) is below the MHR. This is formulaically equal to the quotient of (a) the number of months HR<MHR and (b) the total months subject to the calculation. At no time will the CF _t be below <u>10%</u> .	%
CF _o	The capacity factor on [____], determined by dividing the power price (P _{o-7 days,i}) by the <u>natural</u> gas price (G _{o-7 days,i}) for the relevant forward months, to generate a market heat rate (“MHR”) curve and calculating what percent of the relevant forward months the Heat Rate at full load (“HR”) is below the MHR. This is formulaically equal to the quotient of (a) the number of months HR<MHR and (b) the total <u>remaining</u> months subject to the <u>mark-to-market</u> calculation. At no time shall the <u>CF</u> be below <u>10%</u> .	%

A positive Current Mark-to-Market Value implies Buyer has the potential for realization of market gains and thus has exposure to Seller's default or non-performance. Notwithstanding anything to the contrary contained in this Agreement, if the Current Mark-to-Market Value determined pursuant to the calculation set forth in this Section 6 is less than zero dollars, then the Current Mark-to-Market Value is deemed to be zero dollars.

7. Shaped Price Calculation.

(af) Shape Calculation. “Shape” means the ratio, expressed as a percentage, of a Forward Price Assessment of (i) the price of power for a calendar quarter to the price of power for the calendar year that such quarter falls within, or (ii) the price of power for a month to the price of power for the quarter that such month falls within. There are four quarterly Shapes (for the first through fourth calendar quarters) and twelve monthly Shapes (for the months of January through December) in every calendar year.

For purposes of determining the applicable quarterly Shape, an annual price is calculated as the simple average of the four quarterly prices within the last available year. For example, the first quarter Shape is calculated using the following formula: Shape_{Q1} = P_{Q1} / Average (P_{Q1} + P_{Q2} + P_{Q3} + P_{Q4})

For purposes of determining the applicable monthly Shape, a quarterly price is calculated as the simple average of the three monthly prices within the applicable

quarter. For example, the January Shape is calculated using the following formula: $Shape_{Jan} = P_{Jan} / \text{Average} (P_{Jan} + P_{Feb} + P_{Mar})$

(ag) Calculation of Shaped Prices. “Shaped Price” means, if there is no Forward Price Assessment for the relevant calendar month, the price of power calculated in accordance with the following process. If no monthly price is available for a Forward Price Assessment but a quarterly price is available, then use a monthly Shape to calculate a monthly Shaped Price from a quarterly price using the following formula: $P_M = P_Q \times Shape_M$

Where:

P_M is the missing monthly power price

P_Q is the quarterly power price applicable to the relevant calendar month

$Shape_M$ is the applicable “Shape” for the missing month

If no monthly or quarterly price is available for a Forward Price Assessment but an annual price is available, then use a quarterly Shape to calculate a quarterly Shaped Price from an annual price using the following formula: $P_Q = P_Y \times Shape_Q$

Where:

P_Q is the missing quarterly power price

P_Y is the yearly power price applicable to the applicable calendar quarter

$Shape_Q$ is the applicable “Shape” for the missing quarter

**** End of Exhibit F ****

EXHIBIT G
Scheduling Coordinator Services

This Exhibit G is only applicable when Buyer is Scheduling Coordinator.

1. Designation of Buyer as Scheduling Coordinator.
 - (a) At least 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, unless Seller terminates Buyer as Scheduling Coordinator in accordance with Section 7 of this Exhibit G, 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, and Seller may not revoke Buyer's authorization to act as Scheduling Coordinator unless agreed to by Buyer;
 - (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff and the 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 I, 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, CAISO Forced Outage Reports, or must offer waiver forms.
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.

Net Contract Capacity (kW)	Monthly Scheduling Fee
Less than 10,000	\$2,500
10,000 - 100,000	\$5000
Greater than 100,000	\$7500

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 Sections 1 through 4 of Exhibit J, 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 G 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 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. Terminating Buyer's Designation as Scheduling Coordinator.
 - (a) Seller may terminate Buyer as Scheduling Coordinator:
 - (i) In accordance with Section 7(b) of this Exhibit G; or
 - (ii) If Buyer materially fails to fulfill its obligations as Scheduling Coordinator and:
 - (1) Seller provides advance Notice to Buyer setting forth in reasonable detail the nature of such failure and such failure is not remedied within 30 days after such Notice; *provided, however*, that if such failure is not reasonably capable of being remedied within such 30-day period, Buyer shall have such additional time (not to exceed 120 days) as is reasonably necessary to remedy such failure, so long as Buyer promptly commences and diligently pursues such remedy;
 - (2) Seller (A) submits to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the date of

Buyer's termination as Scheduling Coordinator and (B) causes its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and

- (3) The Parties will take any other action necessary to terminate the designation of Buyer as Scheduling Coordinator, including amending this Agreement.
- (b) 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.
- (c) Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.

*** *End of Exhibit G* ***

EXHIBIT H
Milestone Progress Reporting Form

1. Introduction. This Exhibit H is only applicable if the Generating Facility is a New CHP Facility.

Seller shall prepare a written milestone progress report as set forth in Section 3.11 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 N, 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 H ***

EXHIBIT I
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.

No later than 30 days before the Term Start Date (or, in the case of a New 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 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 N.

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 I, 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 N.

- (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 I 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.

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.
3. *Seller's Forecasting Accuracy Requirements. If a (non-zero) Firm Contract Capacity quantity is applicable to this Agreement, then this Section 3 applies to Seller.*
- (a) *Accuracy Metric. With respect to each calendar month "m", as soon as practicable after the end of such month, Buyer shall calculate and report to Seller the monthly mean absolute error (" MAE_m ") between Seller's Day-Ahead Forecasts and the respective daily summations of Metered Energy:*

$$\text{MAE}_m = \frac{\text{Forecast Error}}{\text{Total Forecast}}$$

$$\text{Forecast Error} = \sum_i^n |f_i - a_i|$$

$$\text{Total Forecast} = \sum_i^n f_i$$

where:

- n = the total number of hours in calendar month “m”
- i = an hour within month “m”
- f_i = Seller's Day-Ahead Forecast for hour “i”
- a_i = the quantity of (i) Metered Energy for hour “i” plus the quantity of energy not delivered as a result of a Real-Time Forced Outage for hour “i” (in MWh) when the Generating Facility is not PIRP-eligible, or when Buyer is not Scheduling Coordinator; or (ii) the actual available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible and Buyer is Scheduling Coordinator.

Buyer shall report each MAE_m to Seller and, upon Seller's request, Buyer shall furnish all supporting calculations within a reasonable timeframe.

- (b) *Forecasting Penalty. If the MAE_m for a particular month “m” is greater than 15% or if the average Forecast error for all hours of the month is greater than three MW, then an “MAE Failure” will be deemed to have occurred. An MAE Failure will be waived if Seller demonstrates to Buyer's reasonable satisfaction that the MAE Failure was the result of unexpected changes in either electrical or steam demand associated with the Site Host Load. If such MAE Failure has been waived, then that month does not count as a month in which there was an MAE Failure.*

For each month in which an MAE Failure has occurred, Seller shall pay a fee equal to the applicable Monthly Scheduling Fee in addition to any otherwise applicable Monthly Scheduling Fee.

During each month an MAE Failure occurs, subject to the limitations of the following paragraph, Seller will continue to receive Monthly Capacity Payments for the Firm Contract Capacity based on the Firm Capacity Price and capacity payment calculations for firm capacity as set forth in Section 3 of Exhibit D.

If, however, an MAE Failure occurs three times in any rolling 12-month period, then starting on the first day of the calendar month immediately following the third such occurrence (such month, the “First Penalty Month”):

- (i) The quantity of Firm Contract Capacity specified in Section 1.02(d) will be deemed to be zero (“Penalized Firm Contract Capacity”); and
- (ii) The quantity of As-Available Contract Capacity specified in Section 1.02(d) will be deemed increased by the quantity of Firm Contract Capacity as such quantity existed before the First Penalty Month (“Penalized As-Available Contract Capacity”).

The Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall continue to be in effect during every subsequent calendar month until there are two consecutive calendar months without an MAE Failure (including a month in which an MAE Failure has been waived).

Upon such event, starting on the first day of the calendar month immediately following the second consecutive month during which Buyer does not have an MAE Failure, the Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall revert to the Firm Contract Capacity and As-Available Contract Capacity quantities existing before the First Penalty Month.

*** *End of Exhibit I* ***

EXHIBIT J
CAISO Charges

If at any time after the Term Start Date Buyer is not Scheduling Coordinator for the Generating Facility, then Buyer will not be responsible for any CAISO Charges.

If at any time after the Term Start Date Buyer is Scheduling Coordinator for the Generating Facility, then Buyer 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 Net 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;
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) increase output to the Firm Contract Capacity, (b) curtail output, or (c) 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; or
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.

If any of Sections 1 through 4 of this Exhibit J 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 J ***

EXHIBIT K
Scheduling and Delivery Deviation Adjustments

If Buyer is Scheduling Coordinator for the Generating Facility and if the Generating Facility is not PIRP-eligible, then Seller or Buyer, as the case may be, shall be responsible for the following 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 = $(D - A) \times (EP - P)$

or

If $A > E$, then SDD Energy Adjustment = $(A - E) \times (P - EP)$

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 I corresponding to the Settlement Interval;

C = Performance Tolerance Band =

The greater of (a) three percent of the Seller's Final Energy Forecast divided by the number of Settlement Intervals in such hour or (b) one (1) MWh 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 Energy Price applicable to the Settlement Interval specified in Section 2(b) of Exhibit D; 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 = $(\text{Absolute Value } (B - A) - C) \times$
Uninstructed Deviation GMC Rate.

Otherwise, the SDD Administrative Charge = 0.

*** *End of Exhibit K* ***

EXHIBIT L
Physical Trade Settlement Amount

This Exhibit L is only applicable when Buyer is not Scheduling Coordinator.

1. Physical Trades Cleared in the IFM. The CAISO Revenue credited to Buyer's account by CAISO as a result of a Physical Trade having cleared in the IFM shall be for Buyer's account.
2. Physical Trades not Cleared in the IFM. With respect to each calendar month “m”, as soon as practicable after the end of such month, Buyer shall calculate the Physical Trade Settlement Amount (“PTSA_i”) for each hour as follows:

$$PTSA_i = CPT_i \times (CPTP_i - PNode_i)$$

Where:

- i = an hour within month “m”
- CPT = Converted Physical Trade, in MWh
- CPTP = Converted Physical Trade Price, and
- PNode = the Generating Facility's PNode price, in dollars per MWh.

If the PTSA_i is positive *and* Seller submitted the original Physical Trade in accordance with Section 3.14(r)(ii) and Exhibit I, then Buyer shall owe Seller the PTSA_m for month m. In any event the PTSA_i is negative, however, then Seller shall owe Buyer the PTSA_i.

*** End of Exhibit L ***

EXHIBIT M
SC Trade Settlement Amount

This Exhibit M is only applicable when Buyer is not Scheduling Coordinator.

If, in any Settlement Interval, a Generating Facility's Scheduled Amount differs from the Generating Facility's Metered Energy by more than the SC Trade Tolerance Band, then Seller shall be subject to a payment adjustment calculated by Buyer in accordance with the procedures and formulas set forth below.

(1) Under-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy, and the Market Price is greater than the Day-Ahead Price payable during the Settlement Interval, then Seller's monthly payment amount shall be reduced by each Under-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[A - B] \times [D - C]$$

Where A = The Metered Energy in the Settlement Interval being calculated.

B = The Scheduled Amount in the Settlement Interval being calculated.

C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.

D = Market Price for the Settlement Interval being calculated in \$/kWh.

No under-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy if, during such Settlement Interval, the Market Price is equal to or less than the Day-Ahead Price payable during the Settlement Interval.

(2) Over-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy, and the Market Price is less than the Day-Ahead Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Over-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[B - A] \times [(C - D)]$$

Where A = The Metered Energy in the Settlement Interval being calculated.

B = The Scheduled Amount in the Settlement Interval being calculated.

*C = Day-Ahead Price for the Settlement Interval being calculated in
\$/kWh.*

*D = Market Price for the Settlement Interval being calculated in
\$/kWh.*

No over-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy if, during such Settlement Interval, the Market Price is greater than or equal to the Day-Ahead Price payable during the Settlement Interval.

**** End of Exhibit M ****

EXHIBIT N
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 N ***

EXHIBIT O
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 is 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 collectibility, 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.

[signature page follows]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of _____, ____.

_____ [legal name]

By: _____

Name: _____

Title: _____

*** End of Exhibit O ***

EXHIBIT P
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.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the

List of Exhibits

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: _____

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 either (1) \$20 per kW of Net Contract Capacity which Seller failed to demonstrate, if the Term Start Date occurs within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of Net Contract Capacity which Seller failed to demonstrate, if the Term Start Date occurs after the 18th month following the Effective Date.

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 P ***

EXHIBIT Q
Seller's Milestone Schedule

<i>No.</i>	<i>Target Date</i>	<i>Milestones</i>

*** End of Exhibit Q ***

EXHIBIT R
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").
- (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.
- (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 R ***

EXHIBIT S
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 _____ mmmBTUs _____
- 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 S ***