

**ENERGY PRICE AMENDMENT TO THE
POWER PURCHASE AGREEMENT
BETWEEN
THERMAL ENERGY DEVELOPMENT PARTNERSHIP, LP
AND
PACIFIC GAS AND ELECTRIC COMPANY
(PG&E LOG NO. 16P054)**

THIS AMENDMENT ("Amendment" or "Agreement") is made by and between PACIFIC GAS AND ELECTRIC COMPANY ("PG&E" or "Buyer"), a California corporation, and THERMAL ENERGY DEVELOPMENT PARTNERSHIP, LP, ("Seller"). PG&E and Seller are sometimes referred to herein individually as "Party" and collectively as the "Parties". Except as modified by this Amendment, the PPA remains unchanged.

RECITALS

A. On June 25th, 1985, Seller or Seller's predecessor and PG&E entered into a Power Purchase Agreement (as amended, the "PPA") pursuant to which PG&E purchases electric power from Seller and Seller sells electric power to PG&E. The PPA was assigned to Thermal Energy Development Partnership, LP on August 30, 1985.

B. The Parties executed the First Amendment in April, 1988, the Second Amendment in May, 1988, the Third Amendment in July, 2001, and the Fourth Amendment in April, 2006. In addition, the Parties are simultaneously executing the Fifth Amendment to the PPA.

C. Seller and PG&E now desire for the duration of the Delivery Term (defined below) to modify the purchase price and certain terms and conditions of the PPA, provide for the conveyance of Green Attributes (defined below), and add certain performance and payment adjustment provisions to the PPA.

D. Prior to executing this agreement, Seller has provided Buyer with an attestation declaring that all information shared with Buyer, including but not limited to financial cash flow models and historical revenue and cost data are accurate and correct. Additionally, the attestation declared that execution of this Amendment is necessary for Seller to continue operations of the Facility.

AMENDMENT

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In consideration of the mutual promises and covenants contained herein, PG&E and Seller agree to modify the PPA as follows:

1. DEFINITIONS

When used herein, the following definitions shall be used to interpret this Amendment.

“Amendment Price” means the price in United States dollars (\$U.S.) to be paid by PG&E to Seller for the purchase of the Product, as specified in Section 3.1(d).

“Available Capacity” means the expected amount of Energy to be produced from the Project, expressed in megawatts.

“Availability Standards” means the program set forth in Section 40.9 of the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible charges and incentive payments for performance thereunder.

“Benefits” is defined in Section 3.1(f).

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

“Buyer Curtailed Energy” is defined in Section 3.4(a).

“Buyer Curtailment Order” means the written instruction from PG&E to Seller ordering that Seller reduce generation from the Project for a specified period, as set forth in Section 3.4.

“Buyer Curtailment Period” means the period of hours during which Seller reduces generation from the Project in compliance with a Buyer Curtailment Order issued in accordance with Section 3.4. At a minimum, the period includes a one (1) hour ramp down period, two (2) hour period at the Buyer instructed generation level, and a one (1) hour ramp up period.

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

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“CAISO Costs” has the meaning set forth in Section 3.5(c) of this Amendment.

“CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case “CAISO Penalties” do not include the CAISO Costs addressed in Section 3.5(c) of this Amendment.

“CAISO Tariff” means the California Independent System Operator Corporation Operating Agreement and Tariff, dated March 31, 1997, as it may be modified from time to time.

“Condition Precedent” means each of, or one of, the conditions set forth in Section 4 below and “Conditions Precedent” shall refer to all of the conditions set forth in Section 4 below.

“Contract Quantity” has the meaning set forth in Section 3.1(d)(i) of this Amendment and includes Electrical Losses.

“Contract Year” means each twelve (12) month period commencing upon the Effective Date.

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

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

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

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

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

“DA Price” is defined as the resource specific day ahead LMP (as defined in the CAISO tariff).

“DA Scheduled Energy” is defined as the Day Ahead Scheduled Energy as defined in the CAISO Tariff.

“Day-Ahead Availability Notice” has the meaning set forth in Section 3.3(c) of this Amendment.

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

“Delivered Energy” means all Energy produced and delivered from the Project as measured in MWh at the point of delivery net of auxiliary loads and station electrical uses (unless otherwise specified) and all Electrical Losses in accordance with the PPA. For purposes of calculating firm capacity payments, Delivered Energy shall not include Electrical Losses.

“Delivery Term” has the meaning set forth in Section 2 of this Amendment.

“Effective Date” has the meaning set forth in Section 2 of this Amendment.

“Electrical Losses” includes losses or gains derived from the Generator Meter Multiplier based formula applicable to the Project.

“Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh.

“Energy Deviation” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) DA Scheduled Energy; and (b) Metered Energy for the Settlement Interval.

“Excess Product” has the meaning set forth in 3.4(b) of this Amendment.

“Facility” means the electric power generation plant and appurtenances used by Seller to produce the electricity sold to Buyer under the PPA.

“Fifth Amendment” means the simultaneously executed Amendment to the PPA increasing the firm capacity obligations of the Facility.

“Fixed Energy Price” has the meaning set forth in Section 3.1(a) of this Amendment.

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

“Generator Meter Multiplier or GMM” means the Electrical Losses, in accordance with the Settlement Agreement approved by CPUC Decision 06-07-032, applied to the generation for use in calculating energy payments.

“GMM-Adjusted DA Scheduled Energy” is defined as the Day-Ahead Scheduled Energy provided by the Seller, as defined in the CAISO Tariff, net of all Electrical Losses.

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided

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

"Holiday" has the meaning set forth in Section 3.1(b) of this Amendment.

"Interest Amount" means, with respect to an Interest Period, the amount of interest calculated as follows:

- (a) the sum of (i) the principal amount of collateral held by Buyer in the form of cash during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period;
- (b) multiplied by the Interest Rate in effect for that Interest Period;
- (c) multiplied by the number of days in that Interest Period;

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

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(d) divided by 360.

“Interest Payment Date” means the last Business Day of each calendar year.

“Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.

“Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

“Letter of Credit” means an irrevocable, non-transferable standby letter of credit (a) issued either by (i) a U.S. commercial bank, or (ii) a U.S. branch or subsidiary of a foreign commercial bank that meets the following conditions: (A) it has sufficient assets in the U.S. as determined by Buyer, and (B) it is acceptable to Buyer in its reasonable discretion; (b) for which the issuing U.S. bank, or foreign bank or subsidiary thereof, must have a Credit Rating of at least A from S&P or A2 from Moody’s; and (c) the form of which must be substantially in the form as contained in Appendix C to this Amendment; provided, that, if the Letter of Credit is issued by a branch of a foreign bank, Buyer may require changes to such form.

“Metered Energy” means the energy recorded by PG&E’s revenue meter at the Facility, adjusted for Loss Adjustment Factors as defined in the PPA.

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

“Payment Cap” means \$100.00/MWh throughout the Delivery Term.

“Performance Tolerance Band” has the meaning set forth in Section 3.5(c) of this Amendment.

“Planned Outage” means the scheduled removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project and, (b) cannot be reasonably conducted during Project operations.

“Posting Date” has the meaning set forth in Section 3.12 of this Amendment.

“Product” means the energy, capacity and all ancillary products, services or attributes similar to the foregoing which as of the Execution Date are produced by or associated with the Project, including, without limitation, capacity attributes, Green Attributes, and (to the extent the following may be provided by Seller without material additional expense or operational constraints) all other attributes for which there is a regulatory or other requirement imposed on

PG&E, or a market for which Seller could receive additional compensation but for its obligations under this Amendment.

“Project” means the Facility and all rights, obligations, and assets associated with ownership and operation of the Facility. For purposes of defining Green Attributes, the word “project” shall have the meaning set forth in this definition.

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

“Real Time Price” is defined as the simple average of the resource-specific LMPs over each hour (as defined in the CAISO tariff).

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

“Replacement Capacity Rules” means the program set forth in the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain requirements to replace Resource Adequacy Capacity (as defined in the CAISO Tariff) on outages.

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

“Scheduling Coordinator” has the meaning provided in the CAISO Tariff.

“Settlement Interval” means one (1) hour.

“TOD-Adjusted Fixed Energy Price” has the meaning set forth in Section 3.1(c) of this Amendment.

“TOD Factors” has the meaning set forth in Section 3.1(c) of this Amendment.

2. TERM

This Amendment shall become effective upon full satisfaction of the Conditions Precedent laid out in Section 4 of this Amendment, except that, if so approved by the CPUC and if Seller has provided written notice of its intention to operate prior to CPUC Approval, it shall be effective retroactive to September 1st, 2011 (“Effective Date”); provided that, if the CPUC does not approve the Effective Date set forth above or if Seller has not provided written notice of its intention to operate prior to CPUC Approval, the Effective Date shall be the first day of the

month following the date of a CPUC decision approving this Amendment. This Amendment shall remain in effect for a period of three years from the Effective Date (“Delivery Term”), unless terminated in accordance with the provisions hereof. PG&E shall have two options to extend this Amendment and the Delivery Term; the first option shall extend the Amendment for one additional year and the second option shall extend the Amendment for an additional eleven (11) months. Such options are to be exercised by written notice to Seller on or before one hundred eighty (180) days prior to the expiration of this Amendment. In the event that such option is exercised, the terms and conditions of this Amendment shall remain in effect throughout the period of such extension. The Parties agree that, solely for purposes of calculating the amounts in Appendix E, Section E-11 of the PPA, any firm capacity payments, or payments that would have been made, during Contract Years will not be included, nor will Contract Years be included as progress in the period of Seller’s actual performance, such that PG&E will not be able to recover an “excess” capacity payments during the Amendment Term, and Seller will not receive benefit based on progress towards the total period of performance during the Amendment Term.

3. OBLIGATIONS AND DELIVERIES

3.1 Amendment Price and Performance Requirements.

(a) If the Fifth Amendment does receive CPUC Approval, the Fixed Energy Price shall be \$74.25/MWh; however, if the Fifth Amendment does not receive CPUC Approval, then the Fixed Energy Price shall be \$75.00/MWh (“Fixed Energy Price”). The Fixed Energy Price shall be applicable throughout the Delivery Term.

(b) Time of Delivery (TOD) Periods.

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

“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.

(c) TOD Factors. The Fixed Energy Price set forth in Section 3.1(a) above shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified TOD Periods in which Delivered Energy is delivered, such adjusted price being referred to herein as the “TOD-Adjusted Fixed Energy Price”:

	<u>Summer</u>	<u>Winter</u>
Peak	1.2564	N/A
Partial-Peak	1.1535	1.1395
Off-Peak	0.9155	0.9628
Super Off-Peak	0.7439	0.8216

PG&E may update the TOD factors set forth above at the beginning of each calendar year using the energy-only portion of the TOD factors (as adjusted by PG&E, if necessary, to reflect PG&E's CPUC-approved TOD periods) set forth in PG&E's most recent RPS solicitation (e.g., 2012 TOD factors are those based on PG&E's 2011 RPS solicitation).

Off-Peak TOD factors will be calculated as a residual to preserve the correctness of the monthly hourly weighting. An example for Period A – Summer is: [Number of hours in month - (1.2564 * Number of Summer Peak hours in Month) - (1.1535 * Number of Summer Partial-Peak hours in Month) - (0.7439 * Number of Summer Super Off-Peak hours in Month)] / Number of Summer Off-Peak hours in Month.

(d) During each Contract Year of the Delivery Term, in which a major overhaul is not scheduled as described in Section 3.11(c), Buyer shall pay to Seller a price ("Amendment Price") based on the quantity of Product delivered as outlined below:

(i) If Seller delivers at least 95% of the Contract Quantity of 144,928 MWh ("Contract Quantity") during the Contract Year, it shall receive the TOD-Adjusted Fixed Energy Price.

(ii) If Seller delivers at least 90% of the Contract Quantity but less than 95% of the Contract Quantity during the Contract Year, it shall receive 80% of the TOD-Adjusted Fixed Energy Price.

(iii) If Seller delivers less than 90% of the Contract Quantity during the Contract Year, it shall receive the lesser of (a) 80% of the TOD-Adjusted Fixed Energy Price or (b) the existing price under the PPA (excluding, if applicable, the hourly locational adjustment, or "LA"), as adjusted by the TOD Factors.

(iv) PG&E shall pay for Seller's deliveries exceeding 110% of the Contract Quantity at the lesser of the TOD-Adjusted Fixed Energy Price or the existing price under the PPA (excluding, if applicable, the hourly locational adjustment, or "LA").

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With respect to any partial Contract Year occurring at the end of the Delivery Term, the Contract Quantity shall be prorated based upon the actual performance of the Facility for the preceding five years for the same period as in the partial Contract Year.

The Generator Meter Multiplier shall continue to be applied to the metered energy. Additionally, the annual calculation per Appendix E of the PPA for Performance Bonus Factor and firm capacity payments shall continue to apply.

(e) True-up and Payments

(i) Prior to CPUC Approval

If (A) PG&E has received Seller's written notice in accordance with Section 2 of Seller's intention to operate prior to CPUC Approval and (B) Seller has posted Delivery Term Security in accordance with Section 3.12, then within forty five (45) days following such CPUC Approval, Buyer shall true-up the difference between payments under the PPA and payments under this Amendment beginning on the Effective Date by making a retroactive payment to Seller such that payments made to Seller by PG&E for deliveries prior to CPUC Approval match the amount calculated by the following formula: Delivered Energy * TOD-Adjusted Fixed Energy Price, subject to all provisions of this Amendment.

(ii) Monthly Price.

If Seller has posted Delivery Term Security in accordance with Section 3.12, then PG&E shall on a monthly basis pay Seller using the TOD-Adjusted Fixed Energy Price; if Seller has not posted Delivery Term Security, PG&E shall on a monthly basis pay Seller using the existing price under the PPA (subject to TOD factors and excluding, if applicable, the hourly locational adjustment, or "LA") and subject to all provisions of this Amendment ("Monthly Price"). In any case, Seller will be subject to an annual true-up per Section 3.1 (e)(iii); for any invoices that PG&E provides Seller prior to the annual-true up, PG&E will be providing Seller the Monthly Price.

(iii) Annual True-Up.

For each Contract Year following the Effective Date, PG&E or Seller, as applicable, shall make a retroactive payment such that payments made to Seller by PG&E for deliveries during such Contract Year match the Amendment Price as calculated in accordance with Section 3.1(d) above based on the percent of the annual Contract Quantity delivered by Seller in such Contract Year.

Notwithstanding the above, the total payments made to Seller for such Contract Year shall not exceed the product of Delivered Energy multiplied by the Payment Cap. If PG&E's payments to Seller exceed such amount, then Seller shall refund any excess payment to PG&E. In addition, within one hundred and twenty (120) days following the Delivery Term, a final true-up shall be made with respect to any partial Contract Year since the last annual true-up. For purposes of implementing such final true-up, the provisions of this Amendment shall remain binding upon the parties and effective for a period of 6 months following the end of the Delivery Term.

In the event of a dispute per Section 3.1 (f), the final true-up will be withheld pending resolution of the dispute.

- (f) Subsidies or Grants. Seller shall use commercially reasonable efforts to identify and apply for public subsidies or grants that are generally available to generating facilities of a type similar to the Project and are available for the purpose of providing financial assistance to biomass energy producers, whether in the form of additional income for energy produced, a tax credit or tax relief, or money to offset the cost of biomass fuel and the transportation thereof (collectively, the "Benefits"). To the extent such a Benefit is obtained by Seller, Seller shall return to Buyer 80% of the amount actually received and realized directly by Seller. Within 90 days following each Contract Year, Seller shall provide to Buyer a written attestation setting forth in reasonable detail all Benefits that were available to Seller, the steps taken by Seller to identify and apply for such available Benefits, those for which Seller applied, those for which Seller did not apply accompanied by Seller's rationale for not applying, and a statement of 80% of the amount of the Benefits that Seller received. If Seller fails to provide an attestation or if Buyer reasonably believes that Seller has failed to apply for or to account properly for an available Benefit, Buyer may notify Seller of the issue and initiate the dispute resolution procedure set forth in the PPA. If Seller is found to have breached its obligations under this provision, Buyer may either bill Seller for the amount of the Benefit Seller has failed to apply for or has miscalculated the amount of or withhold from subsequent monthly payments to Seller an amortized amount equal to the actual value of the Benefit.
- (g) Products Attributable to Compliance Obligations. Notwithstanding anything else in this Amendment, Seller shall be required to transfer only the Green Attributes it actually receives and shall not be required to purchase Green Attributes to meet the requirements of Section 3.2 below or any other obligation in this Amendment. If any portion of Seller's delivered Product cannot be counted against Buyer's compliance requirements under the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, the Fixed Energy Price for each MWh that cannot be counted for RPS compliance purposes shall be the lesser of the TOD-Adjusted Fixed Energy Price or the existing price under the PPA (excluding, if applicable, the hourly locational adjustment, or "LA").

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

3.3 Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. To avoid the Imbalance Penalty Provision of Section 3.5 (d) (2), Seller shall forecast the Available Capacity of the Project accurately and transmit such information in a format reasonably acceptable to Buyer at such times as set forth below. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer and the CAISO.

(a) Annual Forecast of Available Capacity. No later than July 1 of the first calendar year following the Execution Date and on or before July 1 of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Available Capacity for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

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

(c) Daily Forecast of Available Capacity. During the Delivery Term, Seller or Seller's agent shall provide a binding day ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer via Buyer's internet site, as provided in Appendix A, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. Buyer shall act as Scheduling Coordinator and schedule the output of the Project with the CAISO at the level forecasted in the Day-Ahead Availability Notice. For avoidance of doubt, Seller shall have no liability for CAISO Costs or CAISO Penalties or otherwise resulting from the negligence of Buyer in its capacity as Scheduling Coordinator.

The current industry standard Preschedule Day timetable in the WECC is as follows:

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

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events.



Exceptions are posted on the WECC website (www.wecc.biz) under the document title, "Preschedule Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day Ahead Schedules, then Seller must notify Buyer of such change by telephone and shall send a revised notice to Buyer's Internet site set forth in Appendix A; however, Buyer will not be obligated to update the Day-Ahead Availability Notice for any such changes after ~~the~~ a time that is less than fourteen (14) hours prior to the Preschedule Day. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

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

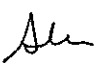
If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, (I) until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day Ahead Schedule of Available Capacity submitted by Seller to Buyer and Seller and (II) to the extent Seller's failure contributes to an imbalance that exceeds the Performance Tolerance Band, Seller shall be subject to the Imbalance Penalty Provision set forth in Section 3.5(c).

(d) Hourly Forecast of Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer is required to submit Schedules to the CAISO in accordance with the Hour-Ahead Scheduling Process. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Hour-Ahead Schedule Process deadline, but before such deadline, then Seller must likewise notify Buyer. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Project during or after the end of such outage. These notices and changes to Available Capacity shall be communicated by telephone to Buyer's Real-Time Desk and shall be sent to Buyer's internet site as set forth in Appendix A:

Real-Time Desk
Primary Telephone: (415) 973-4500

3.4 Buyer Economic Curtailment.

(a) Pursuant to a Buyer Curtailment Order submitted by PG&E upon one (1) hours notice, Seller agrees to reduce the output of the unit to no less than 10 MW (at PG&E's option)



for every hour so instructed up to a total of One-Hundred (100) hours per Contract Year. Buyer will be limited to two (2) Buyer Curtailment Orders per day during the Off-Peak and Super Off-Peak hours only. If Seller complies with the Buyer Curtailment Order, Seller shall be paid seventy five percent (75%) of the TOD-Adjusted Fixed Energy Price multiplied by the amount of Buyer Curtailed Energy for each hour of the Buyer Curtailment Period. Energy not delivered during a Buyer Curtailment Period ("Buyer Curtailed Energy") shall be calculated as the difference between: (A) the greater of (i) the average Delivered Energy per hour during the five (5) hours immediately preceding the commencement of the Buyer Curtailment Period and (ii) the average amount of energy per hour included in the Day Ahead Schedule for the five (5) hours immediately preceding the commencement of the Buyer Curtailment Period and (B) the hourly average Delivered Energy during the Buyer Curtailment Period. Buyer Curtailed Energy shall be deemed delivered at the Project's meter net of all Electrical Losses for the purposes of calculating Seller's annual delivery of Contract Quantity in Section 3.1(d) above and the PPA.

(b) If Seller fails to comply with a Buyer Curtailment Order provided in compliance with Section 3.4(a), then, for each MWh of Delivered Energy over the Performance Tolerance Band that the Project generated above the Buyer Curtailment Order ("Excess Product"), Seller shall pay Buyer the greater of: (A) 200% of the Amendment Price for such hours plus any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order; or (B) the absolute value of the CAISO Real-Time Price for such hours plus any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order.

For avoidance of doubt, Article 7 of the PPA (Curtailment) shall continue to apply.

3.5 Forecasting Penalties.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller's failure to perform any covenant or obligation set forth in this Amendment. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer's actions, including those resulting in a Buyer Curtailment Period.

(b) PG&E shall be responsible for all costs and charges assessed by the CAISO with respect to scheduling and imbalances except as provided in Section 3.5(c) below. Seller and PG&E shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify PG&E as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller's and PG&E's respective responsibilities for payment for scheduling and imbalance costs and charges under this Amendment. Throughout the Delivery Term, PG&E shall be entitled to all Integrated Forward Market Load Uplift Obligation credits, as defined or required under the CAISO Tariff, associated with the Energy generated from the Project.

(c) Throughout the Delivery Term, Seller shall be responsible for all costs and charges assessed by the CAISO that are incurred by PG&E for any Energy Deviation greater than the Performance Tolerance Band during any Settlement Interval except to the extent caused by Buyer's actions, including those resulting in a Buyer Curtailment Period ("CAISO Costs"). For purposes of this Amendment, the "Performance Tolerance Band" shall equal the greater of 3% of nameplate capacity or 1 MW. PG&E shall implement this provision using preliminary CAISO invoices, with any applicable true-ups based on the final invoices. PG&E may set off amounts owing from Seller related to the Imbalance Penalty Provision against other payments it owes to Seller under this Amendment; provided that, any residual unpaid amount owed shall be added to or set off against the final true-up payment made in accordance with Section 3.1(e), as applicable.

(d) The following criteria will be used for calculating payments to Seller in any given Settlement Interval, in accordance with Section 3.1 and other relevant sections of this Amendment.

1. If Seller is within the Performance Tolerance Band in any particular Settlement Interval, payment for Delivered Energy provided during the Settlement Interval will be calculated as Amendment Price.

2. If Seller is outside of the Performance Tolerance Band in any particular Settlement Interval, payment for Delivered Energy provided during the Settlement Interval will be calculated according to the formulas in the following matrix ("Imbalance Penalty Provision"):

Metered Energy > DA Scheduled Energy		Metered Energy < DA Scheduled Energy	
Real Time Price > Amendment Price	Real Time Price < Amendment Price	Real Time Price > DA Price	Real Time Price < DA Price
Amendment Price* Delivered Energy – CAISO Penalties – CAISO Costs	Amendment Price* GMM-Adjusted DA Scheduled Energy + Real Time Price*(Energy Deviation) – CAISO Penalties – CAISO Costs	Amendment Price*(Delivered Energy) – (Real Time Price-DA Price)*(Energy Deviation) – CAISO Penalties – CAISO Costs	Amendment Price*(Delivered Energy) – CAISO Penalties – CAISO Costs

For avoidance of doubt, PG&E shall continue to measure and pay for energy and capacity in accordance with the PPA, and all amendments thereto.

3.6 Buyer Right to Call. In addition, during the Delivery Term, at PG&E's request via phone call, email or other form of communication mutually agreed to by PG&E and Seller, the Seller shall make good faith efforts to maximize generation from the Facility. For any hours on a specific day that PG&E does request maximum generation, PG&E shall pay Seller a Summer Peak Rate (Fixed Energy Price × TOD Factor of 1.2564) for all energy generated by Seller and delivered to PG&E in excess of the scheduled amounts for the applicable hours indicated in the

schedule provided by Seller in Section 3.3(c), above, and PG&E shall also pay any CAISO charges or Imbalances resulting from PG&E's request to the extent that request causes Seller to deviate from the Day Ahead Schedule or hourly Forecast.

3.7 Additional Compensation. Except as otherwise provided in Section 3.1(f), in the event that Seller is compensated by a third party for any Products produced by the Project, including, but not limited to, compensation for Resource Adequacy, Reliability Must Run, or Green Attributes, Seller shall remit all such compensation directly to PG&E.

3.8 WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

3.9 Seller Representations and Warranties.

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

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

3.10 Greenhouse Gas Reporting and Verification Requirements.

(a) Reporting. If the Facility's GHG emissions exceed 10,000 metric tons of carbon dioxide equivalent (mtCO₂e), including biomass CO₂ and CO₂e, in any given calendar year of the Delivery Term, Seller shall report the Facility's emissions to the California Air Resources Board or any successor entity (CARB) for that year in accordance with the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Title 17, California Code of Regulations, Sections 95100 to 95133, as amended or modified by CARB or any successor entity) or any other authorized Governmental Authority having jurisdiction in California which includes, but is not limited to, the greenhouse gas (GHG) emissions data report, verification report, and verification opinion or such other annual report submitted to the CARB, detailing and/or verifying the GHG emissions of the Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the "CARB Annual Reports"). On or before the fifth (5th) Business Day following Seller's timely submission of either the CARB Annual Reports or

the GHG Reporting and Verification Reports, Seller shall deliver a true and accurate copy of that report to PG&E.

(b) Biomass Verification. If the Facility's emissions exceed 25,000 metric tons of carbon dioxide equivalent (mtCO₂e) in any given calendar year of the Delivery Term, Seller shall obtain verification of its biomass-derived fuel in accordance with the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Title 17, California Code of Regulations, Sections 95100 to 95133, as may be amended or modified from time to time) such that its biomass-derived fuel will not be subject to a compliance obligation under Title 17, California Code of Regulations, Section 95852.2, as may be amended or modified from time to time.

(c) Required Information. To the extent not set forth in the CARB Annual Reports (or if Seller is not required to submit the CARB Annual Reports for any reason), then Seller shall submit to PG&E, along with the CARB Annual Reports (or, if Seller is not required to submit the CARB Annual Reports for any reason, then on the ninetieth (90th) day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the useful thermal energy output of the Facility; and (2) total fuel usage of the Facility; and (3) the total amount of greenhouse gas emissions attributable to the Facility, the electric energy used to serve the site host load, and the useful thermal energy output of the Facility; and (4) the total electric energy produced by the Facility, the electric energy used to serve the site host load, and the electric energy delivered to PG&E.

(d) Other Information. If PG&E requires any other information in order to comply with any Greenhouse Gas emissions reporting requirements adopted by the CARB or by any other Governmental Authority and imposed on PG&E, then PG&E and Seller shall work in good faith to reach a mutually acceptable agreement on the provision of information.

3.11 Outage Scheduling.

(a) CAISO Approval of Outage(s). In its role as the Scheduling Coordinator, Buyer is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Buyer's schedules or cancels previously approved outages. Buyer shall put forth commercially responsible efforts to secure and communicate CAISO approvals for Project outages in a timely manner to Seller. Buyer is responsible for entering Project outages in the Scheduling and Logging system for the CAISO (SLIC).

(b) Planned Outages. During the Delivery Term, Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with the Annual Forecast of Available Capacity described in Section 3.3 (a) and implementing the notification procedures set forth in Appendix A no later than July 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of January, June through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage

schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage. Subject to Section 3.11(a), after any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may direct that Seller change its outage schedule as ordered by CAISO. For non-CAISO ordered changes to a Planned Outage schedule requested by Buyer, Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

(c) Major Overhaul. Subject to the notification requirements described in Section 3.11(b) Seller may elect to perform one (1) major overhaul of the facility during the Term of Amendment. In the Contract Year in which Seller schedules and performs the major overhaul, the Contract Quantity specified in Section 3.1(d) shall be reduced by 17 MWh for each Planned Outage Hour above 600 Planned Outage Hours up to a maximum of 1,080 additional Planned Outage Hours.

(d) Forced Outages. Seller shall notify Buyer of a Forced Outage within ten (10) minutes of the commencement of the Forced Outage and in accordance with the notification procedures set forth in Appendix A. In its role as Scheduling Coordinator, Buyer shall put forth commercially reasonable efforts to submit such outages to CAISO.

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

(f) Communications with CAISO. In its role as the Scheduling Coordinator, Buyer shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications.

(g) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.3 or Appendix A, Seller understands and acknowledges that the specified access to data and installation and maintenance of weather stations, transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and operating procedures described in the above-referenced sections are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increase cost of performance to Seller hereunder other than *de minimis* amounts.

3.12 Delivery Term Security. To qualify for the benefits provided by Sections 3.1(e)(i) and (ii), Seller must, within 90 days of Execution Date (the "Posting Date"), provide to PG&E the full amount of Delivery Term Security as follows:

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(a) Seller shall post and maintain Delivery Term Security in the amount of \$1,942,983 and in the form of cash or a Letter of Credit from the Posting Date until the end of the Delivery Term.

(b) The amount of Delivery Term Security is not a limitation on Buyer's recovery of damages under this Agreement and the underlying PPA.

(c) Buyer shall pay interest on the Delivery Term Security, as applicable, at the Interest Rate, provided that such interest shall be retained by Buyer until Seller posts the entire amount of Delivery Term Security pursuant to Section 3.12(a). Thereafter, Buyer shall transfer all accrued interest to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix B, (Notices List) on or before each Interest Payment Date the Interest Amount due to Seller for such Delivery Term Security.

(d) Buyer shall promptly return the unused portion of the Delivery Term Security, including the payment of any interest due, to Seller after the following has occurred: (i) the Amendment has expired and (ii) Seller has satisfied any annual true up obligation under Section 3.1(e)(iii).

3.13 Letter of Credit.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in Section 3.12 and Section 3.13, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Amendment. In the event the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least an "A2" by Moody's and at least an "A" by S&P, (ii) indicates its intent not to renew such Letter of Credit or (iii) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall cure such default by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after Buyer receives Notice of such refusal (all of which is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of Section 3.12.

(b) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

3.14 Availability Standards.

(a) Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Availability Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards, if applicable. Seller understands and agrees that assessment of its obligations under the Availability Standards will be based on the approved CPUC Net Qualifying Capacity associated with the facility unless Seller provides Notice to Buyer of a Planned Outage as described in Section 3.11, in which case such a Planned Outage will be incorporated into the assessment.

(b) Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules, if applicable, provided that Seller has given Buyer Notice of the outages subject to the Replacement Capacity Rules at least ninety (90) days before the first day of the month for which the outage will occur. If Seller fails to provide such Notice, then Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules for such outage.

(c) To the extent Seller has an exemption from the Availability Standards or the Replacement Capacity Rules under the CAISO Tariff, Sections 3.14(a) or 3.14(b) above, respectively, shall not apply.

3.15 Interconnection Facilities, Seller Obligations.

(a) Within one year of the effective date, Seller shall (A) arrange and pay independently for any and all necessary costs under any interconnection agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer's Interconnection Facilities, including metering facilities to be maintained; (C) comply with the procedures set forth in the applicable CAISO agreements or procedures provided under the CAISO tariff in order to obtain the applicable Electric System Upgrades and (D) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the nameplate capacity of the Project during the times at which such delivery is anticipated under this Amendment.

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

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

4. **CONDITIONS PRECEDENT**

This Amendment shall not become effective until the occurrence of the following:

(A) This Amendment has been duly executed by an authorized representative of each Party;

(B) The Fifth Amendment to the PPA has been duly executed by an authorized representative of each; and

(C) CPUC Approval has been obtained for this and the Fifth Amendment.

PG&E shall request CPUC Approval of the Amendment following the Execution Date. If for any reason PG&E has not submitted an advice letter to the CPUC for this purpose within 120 days of execution, Seller may terminate this Amendment without penalty or liability to PG&E. If the Conditions Precedent set forth above are not satisfied or waived in writing by both Parties on or before two hundred forty (240) days from the date on which PG&E files this Amendment for CPUC Approval, then (i) either Party may terminate this Amendment effective upon receipt of notice by the other Party and (ii) neither Party shall have any obligation or liability to the other hereunder, including for a termination payment or otherwise, by reason of a termination made pursuant to this provision.

(D) CPUC finds that in its approval or otherwise, payments to be made under this and the Fifth Amendment are reasonable.

5. CONFIDENTIALITY

(a) This Amendment contains confidential information, which, if communicated by Seller or its legal counsel to any third party, would cause regulatory and economic harm to Buyer, for which Buyer has no legal or equitable remedy. Specifically, Seller agrees not to disclose, and shall instruct its legal counsel not to disclose, to any third party any details of the credit and security provisions, Amendment Price, or the Contract Quantity, a volumetric performance requirement, of the Amendment, including but not limited to the amount of Delivery Term Security being provided by Seller and the relationship of that security amount to the monthly payment from PG&E for energy, the agreed to Amendment Price for energy, or the Contract Quantity associated with the Amendment Price and that quantity's relationship to the historical performance of the Facility; provided that, Seller may disclose such information to its lenders and investors, whether current or prospective, and its advisors after making all such persons aware of the terms of this confidentiality agreement and receiving each such party's agreement to abide by the terms hereof. If such information about the Amendment is disclosed to or becomes known to any third party other than the CPUC, and if the source of that disclosure is traced back to any of Seller's employees, directors, agents, advisors, including its legal counsel, lenders or investors, Buyer may, without recourse by or liability of any kind to Seller, terminate the Amendment, effective upon delivery of notice of the termination to Seller; provided that, if Seller can demonstrate that such information was in the public domain or was already known to the third party who has learned of the information without violation of this agreement by Seller or any employee or agent of Seller, PG&E may not terminate the Amendment and Seller shall not be liable hereunder for the disclosure.

(b) Seller agrees that its obligations undertaken pursuant to this Article 5 shall survive and continue for the period of five (5) years from the date the Amendment is approved by the California Public Utilities Commission.

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6. GENERAL TERMS AND CONDITIONS

A. Effect on PPA. Except as expressly modified by this Amendment, all terms and conditions of the PPA shall remain in full force and effect during the Delivery Term. For avoidance of doubt, the termination or expiration of this Amendment shall not affect the continued effectiveness of the PPA.

B. Complete Agreement. This Amendment sets forth the entire agreement of the Parties on all matters addressed herein, and as such, this Amendment supersedes any and all prior or contemporaneous statements or agreements by the Parties as to such matters. This Amendment may be modified only by a writing executed by both Parties.

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

D. General. This Amendment shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one or another Party as a result of the preparation, substitution, submission, or other event of drafting, negotiation, or execution hereof. Waiver by a Party of any default by another Party shall not be construed as a waiver of any other default. Facsimile or PDF transmission of a document or of the execution page of this Amendment shall have the same legal effect as an original. This Amendment shall be binding upon each Party's assignees, transferees, or successors.

E. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same agreement. The latest signature date found on the signature page below shall be the "Execution Date" of this Amendment.

F. Severability. If any provision of this Amendment is determined to be invalid, void, or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, and the Parties shall use commercially reasonable efforts to modify this Amendment to give effect to the original intent of the Parties.

G. No Waiver. No waiver of any requirement of this Amendment shall constitute a waiver of subsequent compliance, and all provisions of the Amendment shall remain in full force and effect notwithstanding such a waiver.

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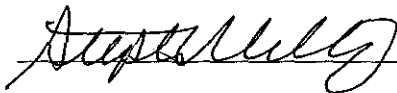
7. SIGNATURES

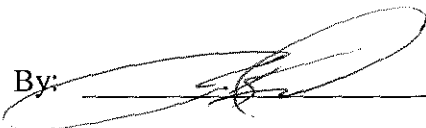
IN WITNESS WHEREOF, Seller and PG&E have caused this Amendment to be executed by their authorized representatives.

THERMAL ENERGY DEVELOPMENT
PARTNERSHIP, LP,

PACIFIC GAS AND ELECTRIC
COMPANY,

a California corporation

By: 

By: 

Name: Stephen Mullennix

Name: Roy Kuen

Title: Senior Vice President, USRG Tracy
GP LLC, General Partner to Thermal
Energy Development Partnership, LP

Title: Vice President, Energy Supply Management

Date: 9/21/11

Date: September 12, 2011



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APPENDIX A

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR ROUTINE START-UP AND SHUTDOWNS

Prior to paralleling or after disconnecting from the electric system, notify the applicable Participating Transmission Owner's (PTO) switching center

- Call the applicable Participating Transmission Owner's (PTO) switching center and advise of the intent to parallel.
- Call the applicable Participating Transmission Owner's (PTO) switching center after the unit has been paralleled and report the parallel time and intended unit output.
- Call the applicable Participant Transmission Owner's (PTO) switching center after any routine separation.

B. SUBMISSION OF AVAILABLE CAPACITY AND PLANNED OUTAGES

1. Submit information by posting to PG&E's Power Procurement Information Center, which is located at www.pge.com under "B2B" at the bottom of the home page. After selecting "B2B" at the bottom of the page, select "Wholesale Power" in the center of the next page. Then select "Electric Procurement" along the left banner of the next page. After selecting the "Power Procurement Information Center" icon in the middle of the page, you will be required to enter a username and password, which will be assigned to you by PG&E's Bilateral Settlements Group.
2. If the website is unavailable, implement the procedures set forth below:
 - a. For all email correspondence, enter the following in the email subject field: **Delivery Date Range, Contract Name, Email Purpose (For example: "dd/mm/yyyy through dd/mm/yyyy XYZ Company Project #2 Daily Forecast of Available Capacity")**
 - b. For Annual Forecasts of Available Capacity, email to DAenergy@pge.com and BilatSettlements@pge.com.
 - c. For Monthly and Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
 - d. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Day Ahead Schedules, call primary phone (415) 973-6222 or backup phone (415) 973-4500. Also send email to DAenergy@pge.com.

- e. For Hourly Forecasts of Available Capacity, call PG&E's Real Time Desk at (415) 973-4500 and email to RealTime@pge.com.
- f. For Planned Outages and Prolonged Outages, complete the specifics below and submit by email to PGOutageCoordination@pge.com, DAenergy@pge.com and Bilat_Settlements@pge.com.
 - i. *Email subject Field: dd/mm/yyyy through dd/mm/yyyy XYZ Company Project #2 Outage Notification*
 - ii. *Email body:*
 - 1. *Type of Outage: Planned Outage, Forced Outage, Prolonged Outage*
 - 2. *Start Date and Start Time*
 - 3. *Estimated or Actual End Date and End Time*
 - 4. *Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted*
 - 5. *Text description of additional information as needed, including, but not limited to, changes to a Planned Outage, Prolonged Outage or Forced Outage.*

C. FORCED OUTAGE REPORTING

- 1. Forced Outages – Seller shall notify PG&E Merchant Generation desk verbally within 10 minutes of the event or as soon as reasonably possible, after the safety of all personnel and securing of all facility equipment.
 - a. Verbal notification shall include time of forced outage, cause, current availability and estimated return date and time.
 - b. After verbally notifying PG&E Merchant Generation desk of the forced outage, Seller shall also put forth commercially reasonable efforts to notify PG&E Settlements via PG&E's electronic website "PPIC".
 - c. If the "PPIC website is unavailable, submit the following information via email to Bilat_Settlements@pge.com.
 - i. *Email subject Field: dd/mm/yyyy through dd/mm/yyyy XYZ Company Project #2 Outage Notification*
 - ii. *Email body:*
 - 1. *Type of Outage: Planned Outage, Forced Outage, Prolonged Outage*

2. *Start Date and Start Time*
3. *Estimated or Actual End Date and End Time*
4. *Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted*

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**APPENDIX B
NOTICES LIST**

Name: Thermal Energy Development Partnership, LP, ("Seller")

All Notices:

Delivery Address:
14800 W. Schulte Road
Tracy, CA 95377

Mail Address:
14800 W. Schulte Road
Tracy, CA 95377
Attn: [REDACTED]

Phone: [REDACTED]
Facsimile: [REDACTED]

DUNS: [REDACTED]
Federal Tax ID Number: 63-0967265

Invoices:
PurEnergy LLC

[REDACTED]

Phone: [REDACTED]
Facsimile: [REDACTED]

Scheduling:
TEDP, LP

Attn: [REDACTED]
[REDACTED]
Phone: [REDACTED]
Facsimile: [REDACTED]

Payments:
PurEnergy, LLC

[REDACTED]

Name: Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E")

All Notices:

Delivery Address:
77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Mail Address:
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177
Attn: Candice Chan (CWW9@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780
Facsimile: (415) 973-5507

DUNS:
Federal Tax ID Number:

Invoices:

Attn: Azmat Mukhtar (ASM3@pge.com)

Manager, Bilateral Settlements
Phone: (415) 973-4277
Facsimile: (415) 973-2151

Scheduling:

Attn: Mike McDermott (m0mc@pge.com)

Phone: (415) 973-4072
Facsimile: (415) 973-0400

Payments:

Attn: Azmat Mukhtar (ASM3@pge.com)

Manager, Bilateral Settlements

slu

Phone: [REDACTED]
Facsimile: [REDACTED]

**Wire Transfer: Thermal Energy
Development Partnership, LP**

BNK: [REDACTED]
ABA: [REDACTED]
ACCT: [REDACTED]

Credit and Collections:

Attn: [REDACTED]
[REDACTED]
Phone: [REDACTED]
Facsimile: [REDACTED]

With additional Notices of an Event of
Default to Contract Manager:

Attn: [REDACTED]
[REDACTED]
Phone: [REDACTED]
Facsimile: [REDACTED]

And:

USRG Tracy GP, LLC
C/O USRG
2425 Olympic Blvd., Ste. 4050W
Santa Monica, CA 90404
Phone: (310) 586-3900
Facsimile: (310) 586-3901

Phone: (415) 973-4277
Facsimile: (415) 973-2151

Wire Transfer:

BNK:
ABA:
ACCT:

Credit and Collections:

Attn: Justice Awuku
Manager, Credit Risk Management
Phone: (415) 973-4414
Facsimile: (415) 973-7301

Contract Manager:

Attn: Mark Zimmerman (MWZ1 @pge.com)
Manager, Contract Management
Phone: (415) 973-6515
Facsimile: 415-972-5507

With additional Notices of an Event of Default
to:

PG&E Law Department
Attn: Renewables Portfolio Standard attorney
Phone: (415) 973-4377
Facsimile: (415) 972-5952

AW

**APPENDIX C
FORM OF LETTER OF CREDIT**

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

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

Applicant: [Insert name and address
of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

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

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

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. [insert number] and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “Pursuant to the terms of that certain Power Purchase Agreement (“PPA”), dated _____, between Beneficiary and [insert name of Seller under the PPA], Beneficiary is entitled to draw under Letter of Credit No. [insert number] amounts owed by [insert name of Seller under the PPA] under the PPA; or



B. "Letter of Credit No. [insert number] will expire in thirty (30) days or less and [insert name of Seller under the PPA] has not provided replacement security acceptable to Beneficiary.

Special Conditions:

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

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

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

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

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

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

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



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

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

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

Title: _____

A handwritten signature in the bottom right corner of the page.

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

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

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

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____

Alu