Execution Version

AMENDED AND RESTATED

POWER PURCHASE AND SALE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

ALPINE SUNTOWER, LLC
(as "Seller")

As-Available Product

Execution Version

AMENDED AND RESTATED
POWER PURCHASE AND SALE AGREEMENT

TABLE OF CONTENTS

PREAMBLE 1

GENERAL TERMS AND CONDITIONS 1

ARTICLE ONE: GENERAL DEFINITIONS 1

ARTICLE TWO: GOVERNING TERMS AND TERM 15

2.1 Entire Agreement 15
2.2 Interpretation 15
2.3 Authorized Representatives 16
2.4 Recording 16
2.5 Term 16
2.6 Binding Nature 16

ARTICLE THREE: OBLIGATIONS AND DELIVERIES 17

3.1 Seller's and Buyer's Obligations 17
3.2 Green Attributes 25
3.3 Resource Adequacy 25
3.4 Transmission and Scheduling 25
3.5 Standards of Care 30
3.6 Metering 30
3.7 Outage Notification 31
3.8 Operations Logs and Access Rights 32
3.9 New Generation Facility 33

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS 35

4.1 Contract Price 35
4.2 TOD Periods 35
4.3 TOD Factors and Monthly TOD Payment 36
4.4 Excess Energy 37
4.5 Monthly Test Product Payment 37
4.6 CAISO Congestion Charges 37
4.7 Annual Compliance Costs 37
4.8 Additional Compensation 38

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES 38

5.1 Events of Default 38
5.2 Declaration of Early Termination Date 40
5.3 Calculation of Termination Payment 40

5.4 Tax Benefits 41
5.5 Notice of Payment of Termination Payment 41
5.6 Disputes With Respect to Termination Payment 41
5.7 Rights And Remedies Are Cumulative 41
5.8 Duty to Mitigate 41

ARTICLE SIX: PAYMENT 42

6.1 Billing and Payment; Remedies 42
6.2 Disputes and Adjustments of Invoices 42

ARTICLE SEVEN: LIMITATIONS 42

7.1 Limitation of Remedies, Liability and Damages 42

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS 43

8.1 Buyer Financial Information 43
8.2 Seller Financial Information 43
8.3 Grant of Security Interest/Remedies 44
8.4 Performance Assurance 45
8.5 Letter of Credit 46

ARTICLE NINE: GOVERNMENTAL CHARGES 47

9.1 Cooperation 47
9.2 Governmental Charges 47

ARTICLE TEN: MISCELLANEOUS 47

10.1 Intentionally Omitted 47
10.2 Representations and Warranties 47
10.3 Covenants 48
10.4 Title and Risk of Loss 49
10.5 Indemnities 49
10.6 Assignment 50
10.7 Confidentiality 50
10.8 RPS Confidentiality 50
10.9 Audit 50
10.10 Insurance 51
10.11 Access to Financial Information 54
10.12 Governing Law 54
10.13 General 54
10.14 Severability 55
10.15 Counterparts 55

ARTICLE ELEVEN: CONDITIONS PRECEDENT 55

11.1 Conditions Precedent 55
11.2 Failure to Meet All Conditions Precedent 55

ARTICLE TWELVE: DISPUTE RESOLUTION 56

12.1 Intent of the Parties 56
12.2 Management Negotiations 56
12.3 Mediation 56
12.4 Arbitration 57

ARTICLE THIRTEEN: NOTICES 58

SIGNATURES 59

APPENDICES

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

Appendix I Form of Letter of Credit

Appendix II Initial Energy Delivery Date Confirmation Letter

Appendix III Milestones Schedule

Appendix IV Project And Site Description

Appendix V Commercial Operation Certification Procedure

Appendix VI Certificate of Commercial Operation

Appendix VII Form of Monthly Progress Report

Appendix VIII Outage Notification Form

Appendix IX Counterparty Notification Requirements for Outages and Generation Schedules

Appendix X Resource Adequacy

Appendix XI Notices List

Appendix XII Form of Certification – Construction Start Date

AMENDED AND RESTATED
POWER PURCHASE AND SALE AGREEMENT

PREAMBLE

This Amended and Restated Power Purchase and Sale Agreement, together with the appendices and any other attachments referenced herein, is made and entered into between Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E"), and Alpine SunTower, LLC, a California limited liability company ("Seller"), as of the Execution Date set forth on the signature page hereof. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 "AAA" means the American Arbitration Association.

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

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

1.4 "Annual Compliance Costs" has the meaning set forth in Section 4.7.

1.5 "Annual Compliance Cost Cap" has the meaning set forth in Section 4.7(a).

1.6 "Arbitration" has the meaning set forth in Section 12.3.

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

1.8 "Available Capacity" means the capacity from the Project, expressed in megawatts, that is available to generate Product.

1.9 "Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any

such petition filed or commenced against it (which petition is not dismissed within ninety (90) days), (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

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

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

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

1.13 "CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO revenue meter.

1.14 "CAISO Grid" means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO's operational control.

1.15 "CAISO Penalties" has the meaning set forth in Section 3.4(c)(v)(A).

1.16 "CAISO Revenues" means (i) the credits and other payments received from the CAISO as a result of Energy from the Project delivered during the period after termination of the Interim Operation Period but prior to the Final Commercial Operation Date, if any, including revenues associated with CAISO dispatches; and (ii) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Project for, or attributable to, scheduling and deliveries from the Project under this Agreement during the period after termination of the Interim Operation Period but prior to the Final Commercial Operation Date, if any.

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

1.18 "California Renewables Portfolio Standard" means the renewable energy program and policies established by Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.19 "Capacity Attributes" means any current or future defined characteristic, certificate, tag, or credit, whether general in nature or specific as to the location or any other attribute of the Project that is intended to value any aspect of the capacity of the Project to produce Energy, including, but not limited to, any related accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the

authority under federal or state Law, to require Buyer to procure, or to be procured at Buyer's expense, Resource Adequacy or other similar products.

1.20 "CEC" means the California Energy Commission or its successor agency.

1.21 "CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Project has achieved Commercial Operation and is delivering energy, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

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

1.23 "Commercial Operation" means that the applicable Initial Contract Capacity or Incremental Contract Capacity is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement.

1.24 "Commercial Operation Date" means the date(s) on which Seller: (a) notifies Buyer that Seller has achieved Commercial Operation of the Initial Contract Capacity or Incremental Contract Capacity, as applicable; and, (b) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Appendix VI, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix V hereto with respect to such Initial Contract Capacity or Incremental Contract Capacity.

1.25 "Condition(s) Precedent" has the meaning set forth in Section 11.1.

1.26 "Construction Cure Period" has the meaning set forth in Section 3.9(c)(iv)(B).

1.27 "Construction Start Date" means the later to occur of the date on which Seller delivers to Buyer (i) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (ii) a written certification substantially in the form attached hereto as Appendix XII.

1.28 "Contract Capacity" means the generation capacity designated for the Project in Section 3.1(f), net of all auxiliary loads, station electrical uses, and Electrical Losses.

1.29 "Contract Price" means the price in $U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in Section 4.1.

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

1.31 "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Final Commercial Operation Date and each

subsequent Contract Year shall commence on the anniversary of the Final Commercial Operation Date.

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

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

1.34 "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.

1.35 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's.

1.36 "Cure" has the meaning set forth in Section 8.5(a).

1.37 "Daily Delay Damages" means with respect to a Guaranteed Project Milestone, an amount equal to (a) the Project Development Security posted as of the first date that Daily Delay Damages are payable under this Agreement with respect to such Guaranteed Project Milestone, divided by (b) 120.

1.38 "Day-Ahead Availability Notice" has the meaning set forth in Section 3.4(c)(iii)(C).

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

1.40 "Defaulting Party" means the Party that is subject to an Event of Default.

1.41 "Delivered Energy" means all Energy produced from the Project as measured in MWh at the CAISO revenue meter of the Project, net of all Electrical Losses.

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

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

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

1.45 “Depreciation” means accelerated depreciation in respect of property described in Section 168(e)(3)(B)(vi)(I) of Section 168 of the Internal Revenue Code of 1986 as amended (the "Tax Code"), determined by utilizing the applicable method in Section 168(b) of the Tax Code, the applicable recovery period in Section 168(c) of the Tax Code and the applicable convention in Section 168(d) of the Tax Code.

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

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

1.48 “Dispatch Down Period” means the period of time during which there is any of the following: (a) a curtailment ordered from the CAISO for reasons including, but not limited to, any system emergency, as defined in the CAISO Tariff (“System Emergency”); (b) a curtailment ordered by the CAISO due to over generation as defined in the CAISO Tariff; (c) a curtailment ordered by the Participating Transmission Owner; or (d) scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point.

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

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

1.51 “Effective Date” shall mean the date on which all of the Conditions Precedent set forth in Section 11.1 have been satisfied or waived in writing by both Parties.

1.52 “Electrical Losses” means all applicable losses, including, but not limited to, any transmission or transformation losses, between the CAISO revenue meter and the Delivery Point.

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

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

1.55 “Energy” means electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified) and, for purposes of the definition of Green Attributes, “energy” shall mean “Energy” as defined herein.

1.56 "Energy Tax Credit(s)" means the tax credit for "energy property" described in Sections 48(a)(3)(A)(i) and 48(a)(5) of the Tax Code (as defined in the definition of "Depreciation").

1.57 "EPC Contract" means the Seller's engineering, procurement and construction contract with the EPC Contractor.

1.58 "EPC Contractor" means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller's.

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

1.60 "Event of Default" has the meaning set forth in Section 5.1.

1.61 "Execution Date" means the latest signature date found on the signature page of this Agreement.

1.62 "Executive(s)" has the meaning set forth in Section 12.2(a).

1.63 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.64 "Final Commercial Operation " means Commercial Operation has occurred of at least ninety-five percent (95%) of the Contract Capacity and Seller has provided a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Appendix VI, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix V hereto.

1.65 "Final Commercial Operation Date" means the date on which Final Commercial Operation occurs.

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

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

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

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

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

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

(b) Force Majeure shall not be based on:

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

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

(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project, except if Seller's inability to obtain permits or approvals is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

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

(vi) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

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

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

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

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

1.69 "Good Utility Practice" has the meaning provided in the CAISO Tariff.

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

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

1.72 "Governmental Charges" has the meaning set forth in Section 9.2.

1.73 "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

[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.

Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

1.70 "Guarantee" means a guarantee from a United States corporation or entity having a Credit Rating of at least A from S&P or A2 from Moody's, and that is in a form that is reasonably acceptable to Buyer.

1.71 "Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(iii)(B).

1.72 "Guaranteed Construction Start Date" has the meaning set forth in Section 3.9(c)(iii)(A).

1.73 "Guaranteed Energy Production" has the meaning set forth in Section 3.1(e).

1.74 "Guaranteed Project Milestones" are the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date set forth in 3.9(c)(iii).

1.75 "Hour Ahead" has the meaning set forth in the CAISO Tariff.

1.76 "Incremental Contract Capacity" has the meaning set forth in Section 3.1(c)(i).

1.77 "Initial Contract Capacity" means the first twelve (12) MW or greater of capacity comprising a portion of the Project to be installed at the Site.

1.78 "Initial Energy Delivery Date" has the meaning set forth in Section 3.1(c)(i).

1.79 "Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

1.80 "Interconnection Facilities" means the facilities, which include all apparatus installed pursuant to the Participating Transmission Owner's facility connection requirements, required to enable Seller to interconnect and deliver Energy from the Project to the Delivery Point.

1.81 "Interconnection Point" has the meaning set forth in Section 3.1(h)(i).

1.82 "Interest Amount" means, with respect to an Interest Period, the amount of interest calculated as follows: (i) the sum of (a) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (b) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (ii) multiplied by the Interest Rate in effect for that day; (iii) multiplied by the number of days in that Interest Period; (iv) divided by 360.

1.83 "Interest Payment Date" means the last Business Day of each calendar year.

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

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

1.86 "Interim Operation Period" has the meaning set forth in Section 3.1(p).

1.87 "Interim Operation Energy" shall mean Delivered Energy that is delivered during the Interim Operation Period.

1.88 "Interim Operation Product" means the Interim Operation Energy, capacity and all related products, services, or attributes similar to the foregoing which are or can be produced by or associated with the Project, including, without limitation, renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

1.89 "Interim Operation Product Price" has the meaning set forth in Section 4.5(b).

1.90 "Law" means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Sections 10.2(b) and 10.12, "law" shall mean "Law" as defined herein.

1.91 "Letter(s) of Credit" means one or more irrevocable, non-transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A from S&P or A2 from Moody's, substantially in the form as contained in Appendix I to this Agreement, or in any other form reasonably acceptable to Buyer.

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

1.93 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product. If the conditions in Section 5.4 are met, the term "Losses" shall include loss of Tax Benefits.

1.94 "Manager" has the meaning set forth in Section 12.2(a).

1.95 "Milestones" has the meaning set forth in Section 3.9(c)(i).

1.96 "Monthly Progress Report" means the report similar in form and content attached hereto as Appendix VII.

1.97 "Monthly Period" has the meaning set forth in Section 4.2.

1.98 "Monthly TOD Payment" has the meaning set forth in Section 4.3(b).

1.99 "Moody's" means Moody's Investor Services, Inc., or its successor.

1.100 "MRTU" or "Market Redesign and Technology Upgrade" means the locational marginal pricing market system to be governed by the CAISO MRTU Tariff approved by FERC.

1.101 "MWh" means megawatt-hour.

1.102 "NERC" means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

1.103 "NERC Holiday" has the meaning set forth in Section 4.2.

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

1.105 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.106 "Notice" shall, unless otherwise specified in the Agreement, mean written communications required or permitted to be delivered hereunder by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail). Appendix XI contains the names and addresses to be used for Notices.

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

1.108 "Obligor" means the Party breaching the terms of this Agreement.

1.109 "Outage Notification Form" means the form attached hereto as Appendix VIII, which shall be submitted by Seller to Buyer in accordance with the relevant provisions of Section 3.7.

1.110 "Participating Intermittent Resource" or "PIRP" shall have the meaning set forth in the CAISO Tariff.

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

1.112 "Party" or "Parties" means the Buyer or Seller individually, or to both collectively. For purposes of Section 10.12, "party" or "parties" shall mean "Party" or "Parties" as defined herein.

1.113 "Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations hereunder and includes Project Development Security and Delivery Term Security.

1.114 "Performance Measurement Period" has the meaning set forth in Section 3.1(e).

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

1.116 "Preamble" means the paragraph that precedes Article One: General Definitions to this Agreement.

1.117 "Product" means the Test Energy, Interim Operation Energy, Energy, capacity and all related products, services, or attributes similar to the foregoing which are or can

be produced by or associated with the Project, including, without limitation, renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

1.118 "Project" means all of the Unit(s) at the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, excluding the real property of the Site and any land rights or interests in land, and including but not limited to the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described on Appendix IV, and as the Contract Capacity may be adjusted pursuant to Section 3.1(f). For purposes of the definition of Green Attributes "project" shall mean "Project" as defined herein.

1.119 "Project Cure Period" has the meaning set forth in Section 3.9(c)(iv)(B).

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

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

1.122 "Qualifying Protocols" has the meaning set forth in Section 3.4(b)(i).

1.123 "RA Capacity" means the maximum megawatt amount that the CAISO recognizes from a Project that qualifies for Buyer's Resource Adequacy Requirements and is associated with the Project's Capacity Attributes.

1.124 "Recording" has the meaning set forth in Section 2.4.

1.125 "Referral Date" has the meaning set forth in Section 12.2(a).

1.126 "Remedial Action Plan" has the meaning provided in Section 3.9(c)(ii).

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

1.128 "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 the CAISO or its successor entity.

1.129 "Resource Adequacy Requirements" has the meaning set forth in Section 3.3.

1.130 "RFP" means the solicitation from which this Agreement is the result.

1.131 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.132 "SCADA" has the meaning set forth in Section 3.1(o)(i)(A).

1.133 "Schedule" means the actions of Buyer, and/or its designated representatives, including its Scheduling Coordinators and Transmission Provider, if applicable, of notifying, requesting and confirming the quantity of Product to be delivered hourly on any given day or days at a specified Delivery Point.

1.134 "Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator" of the CAISO Tariff, as amended from time to time.

1.135 "SEC" means the U.S. Securities and Exchange Commission.

1.136 "Seller" shall have the meaning set forth in the Preamble.

1.137 "Seller Excuse Hours" means those hours during which Seller is unable to Schedule or deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer's failure to perform its obligations under this Agreement, or (c) a Dispatch Down Period.

1.138 "Settlement Amount" means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.139 "Site" shall mean the location of the Project as described in Appendix IV.

1.140 "SLIC" means the scheduling and logging system for the CAISO, as that logging application may be modified from time to time.

1.141 "Tax Benefits" means the present value (using a discount rate of eight percent (8%)) of the expected economic benefit associated with the Energy Tax Credits related to the Project and Depreciation.

1.142 "Term" shall have the meaning provided in Section 2.5 of this Agreement.

1.143 "Terminated Transaction" means the Transaction terminated in accordance with Section 5.2 of this Agreement.

1.144 "Termination Payment" has the meaning set forth in Section 5.2.

1.145 "Test Energy" shall mean Delivered Energy that is delivered prior to the Initial Energy Delivery Date.

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

1.147 "Test Product Delivery Period" has the meaning set forth in Section 3.1(n).

1.148 "Test Product Price" has the meaning set forth in Section 4.5.

1.149 "TOD" means time of delivery of Delivered Energy from Seller to Buyer.

1.150 "TOD Factors" shall have the meaning set forth in Section 4.3(a).

1.151 "TOD Period" has the meaning set forth in Section 4.2.

1.152 "Transaction" means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.

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

1.154 "Transmission Upgrades" means any additions and/or reinforcements to an electric transmission system that are required as the result of the interconnection of the Project to the Participating Transmission Owner's electric system and/or to permit delivery of the Product to Buyer's Load, as defined in the CAISO Tariff, safely and reliably, in the quantities and at the times at which delivery of such Product may be required under this Agreement, up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project.

1.155 "Unit" means the photovoltaic systems used to produce the Products, which are described in Appendix IV for the Transaction entered into under this Agreement.

1.156 "WECC" means the Western Electricity Coordinating Council or successor agency.

1.157 "WREGIS" means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

1.158 "WREGIS Certificate Deficit" has the meaning set forth in Section 3.1(k)(v).

1.159 "WREGIS Certificates" shall have the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for demonstrating compliance with the California Renewables Portfolio Standard.

1.160 "WREGIS Operating Rules" shall mean those operating rules and requirements adopted by WREGIS as of June 4, 2007, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties. Nothing

herein modifies, alters or affects in any way the Parties' obligations under the Confidentiality Agreement, dated August 28, 2007, entered into between the Parties in connection with the RFP.

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

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

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

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

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

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

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

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

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

2.4. Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all scheduling and dispatch related telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such Recording, and agrees to notify its officers and employees of such Recording and to obtain any necessary consent

of such officers and employees. In the event of any dispute between the Parties, a Party in possession of any Recording shall furnish a copy of such Recording to the other Party upon request and at the requesting Party's expense.

2.5 Term. The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 11.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to Section 5.2 or Section 11.2 of this Agreement (the "Term"); provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for twelve (12) months, or until expiration of the applicable statute of limitations, whichever is longer.

2.6 Binding Nature.

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

(i) Sections 5.1(a)(iv)-(v), and 5.1(b)(v);

(ii) Section 5.1(a)(ii) only with respect to Section 10.2;

(iii) Sections 5.2 through 5.8;

(iv) Sections 8.3, 8.4(a)(i), 8.4(b), 8.4(d), and 8.5;

(v) Sections 10.2(a), 10.6 through 10.8, and Sections 10.12 through 10.15; and

(vi) Articles One, Two, Seven, Eleven, Twelve and Thirteen.

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is an As-Available Product. Other than as expressly provided in this Agreement, Buyer has no right under this Agreement to dispatch the Project or require Seller to provide ancillary services.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Interim Operation Period and the Test Product Delivery Period, Seller shall sell and deliver, or cause to be delivered, the Product to the Delivery Point, and Buyer

shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price, the Interim Operation Product Price, or the Test Product Price, as applicable, in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except as specified in Sections 3.1(n), 3.1(p) and 4.5 regarding Test Product during the Test Product Delivery Period and Interim Operation Product during the Interim Operation Period. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product at and after its receipt from the Delivery Point. The Parties agree that Seller shall arrange and pay independently for any and all necessary costs under any interconnection agreement with the Participating Transmission Owner. In accordance with Section 3.4, the Parties agree that Seller shall arrange and pay independently for any and all necessary electrical interconnection, Scheduling, distribution, and/or transmission services (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. The Parties further agree that Buyer shall arrange and pay independently for any and all necessary Scheduling, distribution, and/or transmission services (and any regulatory approvals required for the foregoing) sufficient to allow Buyer to receive the Product at and from the Delivery Point pursuant to the terms of this Agreement. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(c) Project Deliveries.

(i) Initial Energy Delivery Date. The Parties acknowledge and agree that, as a result of the manner in which the Project will be constructed, portions of the Project will achieve Commercial Operation at various times between the Construction Start Date and the Final Commercial Operation Date. The "Initial Energy Delivery Date" shall be the date on which Product is first delivered by Seller to Buyer and all of the following have been satisfied: (A) the Commercial Operation Date has occurred with respect to the Initial Contract Capacity, (B) Buyer has received a portion of the Delivery Term Security equal to the product of (I) the ratio of the Initial Contract Capacity to the Contract Capacity, and (II) the total Delivery Term Security, (C) Seller shall have obtained the requisite CEC Certification and Verification for the Project; (D) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing by both Parties, and (E) Seller has met its obligations under this Agreement to allow Buyer to receive delivery of the Product under Section 3.1(h) (Interconnection Facilities), Section 3.1(k) (WREGIS), Section 3.1(o) (Access to Data and Installation and Maintenance of Weather Station), Section 3.4 (Transmission and Scheduling), and Section 3.6 (Metering). As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix II. Seller shall provide a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Appendix VI, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix V hereto with respect to such Initial Contract Capacity.

(ii) Incremental Contract Capacity. Following the Initial Energy Delivery Date, Seller will notify Buyer at least ten (10) days and not more than thirty (30) days prior to the date any incremental portion of the Contract Capacity of at least one-half (0.5) MW ("Incremental Contract Capacity") will be completed and achieve Commercial Operation; provided that Seller must post additional Delivery Term Security in accordance with Section 8.4(a)(iii) before Product generated by such Incremental Contract Capacity may be delivered to

the Buyer. All of the requirements in Section 3.1(c)(i)(A) – (E) for the Initial Energy Delivery Date must be satisfied for each increment of Incremental Contract Capacity. Seller shall provide a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Appendix VI, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix V hereto with respect to such Incremental Contract Capacity.

(iii) Delivery Term. The Parties shall specify and agree to the period of Product delivery for the "Delivery Term," as defined herein, by checking one of the following boxes:

☐ Delivery shall be for a period of ten (10) Contract Years.

☐ Delivery shall be for a period of fifteen (15) Contract Years.

X Delivery shall be for a period of twenty (20) Contract Years.

☐ Non-standard Delivery shall be for a period of ____ Contract Years. [Discuss 25 year Contract]

As used herein, "Delivery Term" shall mean the period of Contract Years specified above beginning on the Final Commercial Operation Date in connection with this Agreement and continuing until the end of the 20th Contract Year unless terminated as provided by the terms of this Agreement.

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

(e) Contract Quantity and Guaranteed Energy Production. The Contract Quantity during each Contract Year is expected to be at least 140,000 MWh subject to adjustment pursuant to Section 3.1(f)(ii). The Parties agree that the actual amount of Delivered Energy may vary from the Contract Quantity. Throughout the Delivery Term, Seller shall be required to provide Delivered Energy in an amount no less than the Guaranteed Energy Production in any twenty-four (24) consecutive months during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" means an amount of Energy, as measured in MWh, equal to the product of (i) and (ii), where (i) is the product of two (2) times 75% of the Contract Quantity, and (ii) is the difference between (A) and (B), with the difference divided by (A), where (A) is the number of hours in the applicable Performance Measurement Period and (B) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period, which Guaranteed Energy Production is described by the following formula.

Guaranteed Energy Production =

[2 * 75% * 140,000 Mwh] * [(Hours in Performance Measurement Period – Seller Excuse Hours)/ Hours in Performance Measurement Period]

If Seller delivers less than the Guaranteed Energy Production in any Performance Measurement Period, then within sixty (60) days after the last day of the last month of such Performance Measurement Period, Buyer shall provide Notice to Seller of such failure and Buyer may, at its option, declare an Event of Default. If, during such sixty (60) day period, Buyer fails to declare an Event of Default with respect to Seller's failure to meet the Guaranteed Energy Production requirement, then Buyer shall be deemed to have waived its right to declare an Event of Default based on Seller's failure with respect to the Performance Measurement Period that served as the

basis for the default. In the event that Buyer waived its right to declare an Event of Default with respect to the Performance Measurement Period that served as the basis for such default, Buyer shall again have the right to declare an Event of Default, subject to the conditions set forth in this subsection (e), if as of the last day of the subsequent Performance Measurement Period, Seller again fails to achieve the Guaranteed Energy Production requirement for such subsequent Performance Measurement Period.

(f) Contract Capacity; Decrease in Contract Capacity.

(i) Contract Capacity. Except for Seller's right to decrease the Contract Capacity pursuant to Section 3.1(f)(ii) below, the Contract Capacity of the Project shall be sixty-six (66) MW. Throughout the Delivery Term, Seller shall sell to Buyer all Product produced by the Project.

(ii) Decrease in Contract Capacity after Final Commercial Operation Date. Seller shall have a one time right to decrease the Contract Capacity for the Project, provided that (A) Seller provides Buyer with Notice of the change in Contract Capacity specifying the amount of the change in Contract Capacity no later than three hundred sixty-five (365) days following the Final Commercial Operation Date, (B) the change in Contract Capacity shall in no event result in a decrease of more than five percent (5%) of the Contract Capacity on the Final Commercial Operation Date, and (C) as of the date of the Notice of the change in Contract Capacity pursuant to this Section 3.1(f)(ii), Contract Capacity shall be adjusted as set forth in such Notice, and all terms and conditions related to Contract Capacity and Contract Quantity shall be adjusted accordingly to reflect the change in Contract Capacity. If Seller does not provide Notice within the specified time period, Seller's right to a change in Contract Capacity is waived.

(g) Project. All Test Product, Interim Operation Product, and Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity or the anticipated output of the Project without Buyer's prior written consent, except for the changes to Contract Capacity pursuant to Section 3.1(f)(ii). Notwithstanding the foregoing, Buyer's consent shall not be required for maintenance, repair or replacement of facilities or equipment in accordance with Good Utility Practice and Seller may add new units at the Site so long as it (i) employs physical or other reliable means to separate the capacity and output of the new units from the original units, and (ii) does not sell any output from such new units to Buyer without Buyer's consent. The Project is further described in Appendix IV.

(h) Interconnection Facilities.

(i) Interconnection Point. The interconnection point is Southern California Edison Company's Neenach substation.

(ii) Seller Obligations. Seller shall (A) be obligated, at its sole expense, to maintain the Interconnection Facilities, including metering facilities as provided in its interconnection agreement with the Participating Transmission Owner, and (B) perform or cause to be performed, in accordance with the CAISO Tariff, all necessary Transmission Upgrades and Network Upgrades, as defined in the CAISO Tariff, which shall include Delivery Network Upgrades and Reliability Network Upgrades, as such terms are defined in the CAISO Tariff.

(i) Performance Excuses.

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

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

(iii) Dispatch Down/Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce delivery amounts as directed by the CAISO or the Participating Transmission Owner during any Dispatch Down Period.

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

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

(k) WREGIS. Seller shall, subject to Section 3.1(k)(viii), take all commercially reasonable actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to the Delivered Energy generated by the Project are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall comply with all Laws, and the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.1(k)(x); provided that Seller fulfills its obligations under Sections 3.1(k)(i) - (iii) and (v) – (vii) below. In addition, subject to Section 3.1(k)(viii):

(i) Prior to the Initial Energy Delivery Date, Seller shall register the Project with WREGIS. During the Delivery Term, Seller shall establish and maintain an account with WREGIS ("Seller's WREGIS Account"). Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account, subject to the limitations in Section 4.7.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. The WREGIS Certificates are expected to be created no later than ninety (90)

calendar days after the end of each calendar month for Energy generated by the Project in that calendar month. For example, for Energy generated by the Project in January 2009, the WREGIS Certificates will be created in WREGIS no later than April 30, 2009. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

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

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Energy generated by the Project for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Energy generated by the Project in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 6 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided that, with respect to a WREGIS Certificate Deficit, Seller may transfer to Buyer an amount of WREGIS Certificates of the same calendar year vintage in an amount that shall cause the WREGIS Certificate Deficit to equal zero (0); provided further that (A) at the time of such transfer, the replacement WREGIS Certificates provided by Seller are allowed by the CPUC and CEC for Buyer's compliance with the California Renewables Portfolio Standard and provide Buyer with Green Attributes equivalent to those supplied as part of the Product under this Agreement including generation or creation of such Green Attributes from an ERR facility located in California, and (B) the replacement WREGIS Certificates are transferred to Buyer no later than ten (10) Business Days after the end of the calendar month in which the WREGIS Certificates are created for the Deficient Month. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller's obligations under this Section 3.1(k), if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission, and if the error or omission is not corrected, the amount of Energy generated by the Project in the Deficient Month shall not be reduced by the amount of the WREGIS Certificate Deficiency.

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

(viii) Buyer shall reimburse Seller for any WREGIS expenses, if necessary, consistent with Section 4.7.

(ix) During the Test Product Delivery Period and the Interim Operation Period with respect to the Test Product and Interim Operation Product, Seller shall comply with the obligations under this Section 3.1(k).

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

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

(m) Obtaining and Maintaining CEC Certification and Verification. Seller shall file an application for pre-certification with the CEC no later than the Construction Start Date, and shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

(n) Test Energy. During the period commencing on the first date on which the Project is capable of delivering Product to Buyer and ending on the Initial Energy Delivery Date (the "Test Product Delivery Period"), Seller shall sell any Test Product produced by the Project before the Initial Energy Delivery Date to Buyer in accordance with this Agreement and the following:

(i) Buyer shall pay Seller for the Test Product as set forth in Section 4.5(a); and,

(ii) During the Test Product Delivery Period, Seller shall, subject to Section 4.7, comply with the obligations set forth in Sections 3.1(k) and (m) above and make the representation and warranty in Section 10.2(b) as of the effective date of CEC Certification and Verification.

(iii) Buyer may terminate the Test Product Delivery Period and terminate its purchase of Test Product from Seller if Seller has not achieved the Final Commercial Operation Date by the Guaranteed Commercial Operation Date.

(iv) Seller shall provide Notice to the Buyer that Seller will sell Test Product to Buyer at least sixty (60) days prior to commencement of the Test Product Delivery Period.

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

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

(A) read-only access to meteorological measurements, transformer availability, and Energy output information collected by the supervisory control and data acquisition ("SCADA") system for the Project;

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

(C) full, real-time access to the Project's SLIC client application;

(D) net plant electrical output at each electric revenue meter; and

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

(F) an equation to reflect the potential generation of the Project as a function of solar insolation and temperature. Seller agrees to use commercially reasonable efforts to update the equation as necessary and provide the updated equation to Buyer.

(ii) Intentionally Omitted

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

(iv) Installation, Maintenance and Repair.

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

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide quality data to Buyer or Buyer's third-party Scheduling Coordinator (as applicable). Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

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

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

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

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

(p) Interim Operation. During the period commencing on the Initial Energy Delivery Date and ending on the earlier of eleven (11) months after the Initial Energy Delivery Date, subject to any extension under Section 3.1(p)(iv), or the Final Commercial Operation Date (the "Interim Operation Period"), Buyer will purchase and receive, and Seller will sell and deliver, the Interim Operation Product in accordance with this Agreement and the following:

(i) Buyer shall pay Seller for the Interim Operation Product as set forth in Section 4.5(b);

(ii) During the Interim Operation Period, Seller shall, subject to Section 4.7, comply with the obligations set forth in Sections 3.1(k) and (m) above and make the representation and warranty in Section 10.2(b) as of the effective date of CEC Certification and Verification;

(iii) During the Interim Operation Period, Buyer shall not be obligated to receive or purchase for any hour during the Interim Operation Period Delivered Energy in excess of the Initial Contract Capacity plus any Incremental Contract Capacity. Buyer's obligation to purchase Interim Product associated with the Initial Contract Capacity or

Incremental Contract Capacity does not commence until the Commercial Operation Date of the Initial Contract Capacity or Incremental Contract Capacity;

(iv) Without limiting either Parties' rights or obligations under Section 3.9(c)(iv) or Article Five, the Interim Operation Period shall terminate if Seller has not achieved Final Commercial Operation by the earlier of: (A) the date that is eleven (11) months after the Initial Energy Delivery Date, provided that such date may be extended on a day-for-day basis for any of the delays described in Section 3.9(c)(iv)(A)(III), or (B) the Guaranteed Commercial Operation Date; and

(v) For Seller's full compensation for Product delivered after a termination of the Interim Operation Period pursuant to Section 3.1(p)(iv), Buyer shall forward to Seller the CAISO Revenues. After the termination of the Interim Operations Period and before the Final Commercial Operations Date, Buyer is not responsible for any CAISO Charges under Section 3.4(c)(v)(B).

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

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

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller Obligations. During the Test Product Delivery Period, Interim Operation Period, and the Delivery Term, Seller shall arrange and be responsible for transmission service to the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including, if applicable those set forth in the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, to the extent applicable, executing applicable interconnection agreements, Participating Generator Agreement, and Meter Service Agreement, so as to be able to deliver Energy to the CAISO Grid.

(ii) Buyer Obligations. Subject to Section 3.1(i)(ii) and 3.1(i)(iii), during the Test Product Delivery Period, Interim Operation Period, and the Delivery Term, Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and bear

all risks and costs associated with such transmission service, including, but not limited to, any transmission outages, congestion costs, or curtailment.

(b) EIRP Requirements.

(i) Participating Intermittent Resource. The intent of this Agreement is that the Project shall be a certified Participating Intermittent Resource. The Parties acknowledge that as of the Execution Date, the CAISO has not yet established protocols for scheduling solar power to permit solar projects to participate in EIRP ("Qualifying Protocols"). As soon as practicable, but not more than ninety (90) days after Qualifying Protocols are finalized and made effective by the CAISO, Seller shall prepare and submit any necessary application or documentation to, and thereafter use diligent efforts to, cause the Project to become certified as a Participating Intermittent Resource including negotiating and executing all necessary documents to become a Participating Intermittent Resource (each as defined by the CAISO Tariff and collectively, the "Program Agreements"). Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Project as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. Following certification and whenever applicable, Seller and Buyer shall comply with EIRP, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during the Delivery Term.

(ii) Withdrawal From Participation In EIRP. Buyer has the option, but not the obligation, at its own discretion at any time during the Delivery Term, to require Seller to withdraw from the EIRP. Buyer shall provide Notice to Seller if Buyer elects to exercise its option to require Seller to withdraw from the EIRP. Seller shall withdraw from the EIRP within thirty (30) days of receiving such Notice.

(iii) Material Changes to EIRP. If either, (A) EIRP is no longer in effect or (B) EIRP is materially changed, then the Parties shall use commercially reasonable efforts to negotiate a mutually acceptable successor arrangement and modify this Agreement, as necessary, to arrive at a mutually agreeable amendment that will provide a Scheduling or other arrangement for the delivery of Energy from the Project to Buyer. Unless and until such mutually agreeable amendment is executed and effective, each of the Parties' obligations under this Agreement shall continue in full force and effect, including, but not limited to, the Parties' obligations under Section 4.6.

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

(i) Designation of Scheduling Coordinator.

(A) At least ninety (90) days before the Initial Energy Delivery Date or the commencement of the Test Product Delivery Period, whichever occurs first, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or a third-party Scheduling Coordinator designated by Buyer, as Seller's Scheduling Coordinator, and Buyer or third-party Scheduling Coordinator designated by Buyer, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller's Scheduling Coordinator. If Buyer designates a third-party Scheduling Coordinator, the Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the third-party Scheduling Coordinator assumes duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new third-party Scheduling Coordinator is designated by Buyer upon similar Notice. Buyer shall be responsible for all acts

and omissions of the designated third-party Scheduling Coordinator and for all costs, charges and liabilities incurred by the third-party Scheduling Coordinator to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Product Delivery Period, Interim Operation Period, and the Delivery Term, except upon the occurrence and during the continuation of a Buyer Event of Default as noticed in Section 5.2.

(ii) Buyer's Responsibilities As Scheduling Coordinator. Buyer or the third-party Scheduling Coordinator designated by Buyer shall comply with all obligations as Seller's Scheduling Coordinator under the CAISO Tariff and shall conduct all Scheduling in full compliance with the applicable CAISO Tariff, protocols and scheduling practices for Energy on a Day-Ahead and/or Hour-Ahead basis as such terms are defined in the CAISO Tariff, including EIRP requirements, if applicable.

(iii) Available Capacity Forecasting. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information, including, but not limited to, the status of photovoltaic modules, inverters, transformers, and any other equipment that may impact availability, in a format reasonably acceptable to Buyer. Buyer and Seller shall agree on reasonable changes to the requirements and procedures set forth below in this Section 3.4(c)(iii) 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, Seller or the designated third-party Scheduling Coordinator (as applicable) and the CAISO, including, but not limited to, automated forecast and outage submissions.

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

(B) Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Test Product Delivery Period, Interim Operation Period, and the Delivery Term, Seller shall provide to Buyer or the designated third-party Scheduling Coordinator (if applicable) a 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 Test Product Delivery Period, Interim Operation Period, and the Delivery Term, Seller shall provide a day-ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or the designated third-party Scheduling Coordinator (if applicable) via Buyer's internet site, as provided in Appendix IX, no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. The current industry standard Preschedule Day timetable in the WECC is as follows:

(1) Monday – Preschedule Day for Tuesday

(2) Tuesday – Preschedule Day for Wednesday

(3) Wednesday – Preschedule Day for Thursday

(4) Thursday – Preschedule Day for Friday and Saturday

(5) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, "Prescheduling Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least two and a half (2.5) MW as of a time that is less than fourteen (14) hours prior the Preschedule Day but before the CAISO deadline for Day-Ahead Schedules, then Seller must notify Buyer of such change by telephone and shall send a revised Day-Ahead Availability Notice via Buyer's internet site, as provided in Appendix IX. Notice of any changes in Available Capacity, whether due to Forced Outage, Force Majeure, or other cause shall be provided to Buyer or the designated third-party Scheduling Coordinator (if applicable) at the same time as such information is provided to the CAISO. 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 as required by the CAISO or reasonably requested by Buyer. If Buyer's internet site is unavailable or at Buyer's discretion, Notices shall be provided to Buyer's Day-Ahead Trading Desk:

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

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required in this Section 3.4(c)(iii)(C), then until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Availability Notice provided by Seller to Buyer.

(D) Hourly Forecast of Available Capacity. During the Test Product Delivery Period, Interim Operation Period, and the Delivery Term, on the actual day identified in the Day Ahead Availability Notice, Seller shall notify Buyer of any changes of two and a half (2.5) MW or more for the Available Capacity in the Day-Ahead Availability Notice as soon as reasonably possible, and to the extent reasonably possible no later than one (1) hour before Buyer or the designated third-party Scheduling Coordinator (if applicable) is required to submit Hour-Ahead schedules to the CAISO. Available Capacity changes that occur less than one (1) hour before the CAISO deadline for Hour-Ahead Schedules, but before the CAISO Hour-Ahead deadline, shall also be reported by Seller to Buyer. 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. Changes to Available Capacity shall be communicated by telephone to Buyer's Hour-Ahead Trading Desk and shall be sent to Buyer's internet site.

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

(iv) Replacement Of Scheduling Coordinator.

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

(B) Buyer shall submit, or if applicable cause the designated third-party Scheduling Coordinator to submit, a letter to the CAISO identifying the date on which Buyer or the designated third-party Scheduling Coordinator (if applicable) resigns as Seller's SC by the first to occur of either: (I) ninety (90) days prior to the end of the Delivery Term; or (II) the date of the early termination of this Agreement.

(v) CAISO Charges And Available Capacity Forecasting Penalties.

(A) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties, as defined below, incurred by Buyer as a result of Seller's actions. Buyer shall assume all liability and pay, cause to be paid, or reimburse Seller for any and all CAISO Penalties, as defined below, incurred by Seller as a result of Buyer's actions. As used herein, "CAISO Penalties" means any fees, liabilities, assessments, or similar charges assessed by the CAISO, in accordance with the CAISO Tariff, for violation of the CAISO Tariff and applicable protocols, WECC rules or CAISO operating instructions or orders as a result of a Party's failure to follow Good Utility Practices, but shall not include costs and charges related to Scheduling and imbalances (which are addressed in Section 3.4(c)(v)(B) below).

(B) Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling (including Day-Ahead Scheduling) and imbalances. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. If Seller fails to comply with all applicable outage notification procedures under this Agreement, then Seller shall be responsible for all resulting CAISO expenses, costs and charges incurred by Buyer. Buyer shall pass through such CAISO expenses, costs, or charges to Seller based on the preliminary CAISO invoices as may be adjusted based on the final invoices for the relevant period. Buyer may net such amounts from subsequent Monthly TOD Payments to Seller under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(C) Available Capacity Forecasting Penalties.

(I) In the event Seller does not for a given hour: (a) comply with the installation, maintenance and repair requirements of Section 3.6; or (b) provide the Available Capacity forecasts required in Section 3.4(c)(iii), and the sum of energy deviations

in that given hour exceed the Performance Tolerance Band defined below, then Seller shall be responsible for Available Capacity Forecasting Penalties as set forth below.

(II) The Performance Tolerance Band is the greater of: (a) five (5) MW multiplied by one (1) hour (the interval of time for monitoring availability forecasting requirements); or (b) three (3) percent multiplied by Contract Capacity multiplied by one (1) hour.

(III) The Available Capacity Forecasting Penalty shall be equal to one hundred fifty percent (150%) of the Contract Price for each MW of Available Capacity deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 3.4(c)(v)(C)(I). Settlement of Available Capacity Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.

3.5 Standards of Care.

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

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

(c) Reliability Standard. Seller agrees to abide by all applicable (i) NERC, WECC and CAISO reliability requirements, including Resource Adequacy Requirements and CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities", and (ii) requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner. Seller shall enter into and comply with the WECC Reliability Management System (Generator) Agreement, or successor agreement, throughout the Test Product Delivery Period, Interim Operation Period, and the Delivery Term.

3.6 Metering. All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project. All Delivered Energy must be measured by the Project's CAISO revenue meter. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project Site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall provide updated meter data to Buyer and submit revised monthly invoices, if necessary, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification.

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

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a completed Outage Notification Form in accordance with the provisions set forth in Appendix IX no later than August 1st of each year during the Delivery Term. Notwithstanding the submission of the Outage Notification Form described in the previous sentence, Seller shall also submit a completed Outage Notification Form in accordance with the provisions set forth in Appendix IX 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. 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 substitute Energy from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of Work for the Planned Outage, Buyer may request that Seller change its Planned Outage schedule. Seller shall notify Buyer of any incremental costs or foregone or gained revenues associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs or foregone revenues, or gained revenues. If Buyer agrees to pay the incremental costs or foregone revenues, Seller shall use commercially reasonable efforts to accommodate Buyer's request. If Seller recovers or is awarded gained revenues, Buyer may offset such gained revenues against Seller's incremental costs or foregone revenues associated with future Planned Outage schedule changes.

(c) Forced Outages. Seller shall, in accordance with the provisions set forth in Appendix IX, (i) use commercially reasonable efforts to notify Buyer of any Forced Outage required to be reported under the CAISO Tariff, (ii) provide a written estimate of its expected duration of the outage within one (1) hour thereafter, and (iii) submit a completed Outage Notification Form (Appendix VIII or other form as provided by Buyer upon Notice to Seller) to Buyer in accordance with the instructions provided therein. Seller shall not substitute Energy from any other source for the output of the Project during a Forced Outage.

(d) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable under the circumstances by submitting a completed Outage Notification Form (Appendix VIII) in accordance with the provisions set forth in Appendix IX, and provide an estimate of the duration of the outage therein. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis. Seller shall not substitute Energy from any other source for the output of the Project during a Prolonged Outage.

(e) Force Majeure. Within forty-eight (48) hours of the commencement of an event of Force Majeure or within forty-eight (48) hours of the time the non-performing Party should have known of an event of Force Majeure, whichever is later, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure or within two (2) weeks of the time the non-performing Party should have known of an event of Force Majeure, whichever is later, the non-performing Party shall provide the other Party with Notice in the form of a letter

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

(f) Outage Procedures. The agreement of the Parties with respect to the procedures for (i) providing notice (ii) communicating during an outage and (iii) testing of the Project during an outage shall be set forth in Appendix VIII and Appendix IX or other form as provided by Buyer upon Notice to Seller.

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

(h) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7, or 3.8 or Appendix IX, Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, outage notification procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to use commercially reasonable efforts to implement any such changes as reasonably deemed necessary by Buyer. PG&E reserves the right to revise or change the Outage Notification Form upon written Notice to Seller.

3.8 Operations Logs and Access Rights.

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

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by Law or regulatory requirements. Buyer shall make reasonable efforts to coordinate its emergency activities with the safety and security departments, if any, of the Project operator and shall at all times comply with Seller's safety and

security requirements when on the Site. Seller shall keep Buyer advised of current procedures for contacting the Project operator's safety and security departments.

3.9 New Generation Facility.

☒ Add Section 3.9.

If not checked, this Section 3.9 is inapplicable.

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

(i) Design and construct the Project.

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

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

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

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review and comment (but not approval) prior to finalizing design of the Project and before beginning construction Work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any changes in the Project and provide to Buyer specifications and design drawings of any such changes. Any specification, drawing, or other document provided to Buyer hereunder may be redacted by Seller to remove any information that is confidential or proprietary.

(vi) Within fifteen (15) days after the close of each month from the first month following the satisfaction of all of the Conditions Precedent set forth in Section 11.1, until the Final Commercial Operation Date, provide to Buyer a Monthly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The Monthly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

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

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

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

(c) Construction Milestones.

(i) The Parties agree time is of the essence in regards to the Transaction. As such, the Parties also agree certain milestones for the construction of the Project as set forth in Appendix III hereto ("Milestones") must be achieved in a timely fashion or Buyer will suffer damages. Seller shall provide Buyer with any reasonably requested documentation to support the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

(ii) If Seller misses three (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan"), which shall provide a detailed description of Seller's course of action and plan to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, then subsection (iv) below shall apply. If the missed Milestone(s) is not a Guaranteed Project Milestone, and so long as Seller complies with its obligations in Section 3.9(c)(i) and (ii), Seller shall not be considered in default of its obligations under this Agreement.

(iii) "Guaranteed Project Milestones" are as follows:

(A) The Construction Start Date shall occur no later than June 1, 2011, which date shall be defined as the "Guaranteed Construction Start Date"; and

(B) Seller shall have demonstrated Final Commercial Operation per the terms of Appendix V no later than March 31, 2012, which shall be defined as the "Guaranteed Commercial Operation Date."

(iv) Seller shall cause the Project to achieve the Final Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Final Commercial Operation Date shall not occur more than three hundred and sixty-five (365) days prior to the Guaranteed Commercial Operation Date.

(A) Extension of Guaranteed Project Milestones. Prior to the commencement of the Project Cure Period or the Construction Cure Period, described in Section 3.9(c)(iv)(B) below, Seller may extend the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date on a day-for-day basis as a result of: (I) CAISO interconnection queue or other transmission-related delays for the Project; (II) permitting delays before the CEC or a Governmental Authority responsible for permitting similar to the CEC if the CEC does not have jurisdiction for the Project; or (III) Force Majeure. Each of the Guaranteed Project Milestones may be extended for a total of one hundred and eighty (180) days ("Maximum Extension Period"). Seller shall provide Buyer Notice of an extension pursuant to this Section 3.9(c)(iv)(A), which Notice shall include: (1) a description of the specific circumstance for an extension of a Guaranteed Project Milestone; and (2) the expected duration of the extension of a Guaranteed Project Milestone, which shall not exceed the Maximum Extension Period for each Guaranteed Project Milestone ("Milestone Extension Notice"). Seller shall also promptly provide Notice to Buyer upon the expiration of Maximum Extension Period of any Guaranteed Project Milestone. If Seller has a provided a Milestone Extension Notice and Seller has exceeded the Maximum Extension Period, Buyer may draw upon the Project Development Security in the

amount of Daily Delay Damages pursuant to Section 3.9(c)(iv)(B) below immediately following the expiration of the Maximum Extension Period.

(B) Cure Periods. If the Final Commercial Operation Date occurs after the Guaranteed Commercial Operation Date or the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (I) the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, up to a total of one hundred twenty (120) days ("Construction Cure Period"); or (B) the Final Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of one hundred twenty (120) days ("Project Cure Period"). Each Party agrees and acknowledges that (1) the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone, would be difficult or impossible to predict with certainty, and (2) the Daily Delay Damages are an appropriate approximation of such damages. Such Daily Delay Damages shall be Buyer's sole remedy for any failure by Seller to meet the Guaranteed Project Milestones. If Buyer draws upon the Project Development Security for any failure to meet the Guaranteed Construction Start Date, the Guaranteed Commercial Operation Date shall automatically be extended, day for day, for each day of Daily Delay Damages paid by Seller. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the Guaranteed Construction Start Date, only if Seller meets the Guaranteed Commercial Operation Date (as may be extended as described above in subsection 3.9(c)(iv)(A)) and as provided further in Section 8.4(c) of this Agreement. Buyer shall retain all Daily Delay Damages drawn as a result of Seller's failure to meet the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date (as may be cured as described in this subsection 3.9(c)(iv)(B)), if Seller fails to meet the Guaranteed Commercial Operation Date (as may be extended as described above in subsection 3.9(c)(iv)(A)).

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price. The Contract Price for each MWh of Delivered Energy (excluding Test Product and Interim Operation Product) in each Contract Year shall be as follows:

Contract Year	**Contract Price ($/MWh)**
Delivery Term	$125.00/MWh

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

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

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

A. June – September;

B. October, November, December, January and February; and

C. March - May.

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

1. **Super-Peak** (5x8) = hours ending 13 – 20 (Pacific Prevailing Time (PPT)) Monday – Friday (*except* NERC Holidays) in the applicable Monthly Period.

2. **Shoulder** = hours ending 7 – 12, 21 and 22 PPT Monday – Friday (*except* NERC Holidays); and hours ending 7 – 22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.

3. **Night** (7x8) = hours ending 1 - 6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

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

4.3 TOD Factors and Monthly TOD Payment.

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

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	2.037	0.921	0.700
B. Oct. – Dec.; Jan. & Feb.	1.203	1.049	0.841
C. Mar. – May	1.030	0.855	0.656

(b) Monthly TOD Payment. For each month, Buyer shall pay Seller for Delivered Energy in each TOD Period ("Monthly TOD Payment") the amount resulting from multiplying the Test Product Price, Interim Operation Product Price, or the Contract Price, as

applicable, times the TOD Factor for the applicable TOD Period, times the Delivered Energy in each hour:

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

4.4 Excess Energy. In any Contract Year, if Seller delivers Delivered Energy in excess of one hundred and twenty percent (120%) of the annual Contract Quantity amount, the Contract Price for such Delivered Energy in excess of such one hundred and twenty percent (120%) shall be adjusted to be eighty-five percent (85%) of the applicable Contract Price.

4.5 Monthly Test Product and Interim Operation Product Payment.

(a) For each month during the Test Product Delivery Period, Buyer shall pay Seller (i) the Contract Price multiplied by eighty percent (80%) ("Test Product Price"), times (ii) the Test Energy in each hour, times (iii) the TOD Factor for the applicable TOD Period.

(b) For each month during the Interim Operation Period, Buyer shall pay Seller (i) the Contract Price minus Fifteen Dollars per MWh ($15/MWh) ("Interim Operation Product Price"), times (ii) the Interim Operation Energy in each hour, times (iii) the TOD Factor for the applicable TOD Period.

4.6 CAISO Congestion Charges. Seller shall assume all liability and pay for all congestion charges up to the Delivery Point. Buyer shall assume all liability and pay for all congestion charges at and after the Delivery Point.

4.7 Annual Compliance Costs. For purposes of this section, "Annual Compliance Costs" include out-of-pocket costs and expenses incurred by Seller during a calendar year during the Delivery Term and paid directly to third parties in connection with participation in or compliance with: (1) CEC Certification and Verification as required by Sections 3.1(m) and 10.2(b) and the Renewable Energy Credit definition and attributes in Section 10.2(b); (2) the Resource Adequacy Requirements as required by Section 3.3 and Appendix X; (3) WREGIS as required by Section 3.1(k); and (4) Section 3.1(j) concerning greenhouse gas emissions for the Project, if any. Annual Compliance Costs do not include Seller's internal administrative and staffing costs. If during a calendar year during the Delivery Term, Seller incurs a capital cost which qualifies as an Annual Compliance Cost under this Section 4.7, and the capital cost exceeds One Hundred and Fifteen Thousand Dollars ($115,000), then the total capital cost shall be prorated over the expected life of the improvement or equipment, and only the prorated portion of the capital cost, including any associated financing or carrying cost, for a calendar year during the Delivery Term shall be included in the Annual Compliance Costs. Seller expects its Annual Compliance Costs to be Fifteen Thousand Dollars ($15,000) per calendar year during the Delivery Term.

(a) For each calendar year during the Test Product Delivery Period, Interim Operation period, or the Delivery Term, Seller shall be responsible for payment of all Annual Compliance Costs up to $115,000 ("Annual Compliance Cost Cap"). In the event and to the extent that Seller's Annual Compliance Costs during a calendar year exceed the Annual Compliance Cost Cap, Buyer shall reimburse Seller for the costs that exceed the Annual Compliance Cost Cap.

(b) To the extent Seller's Annual Compliance Costs exceed the Annual Compliance Cost Cap in a given calendar year during the Test Product Delivery Period, Interim Operation Period, or the Delivery Term, Seller shall provide an invoice to Buyer for the Annual Compliance Costs in excess of the Annual Compliance Cost Cap, and Buyer shall pay this invoice within thirty (30) days of receipt of the invoice. Seller shall provide to Buyer any invoices or other documentation to demonstrate that it has paid Annual Compliance Costs in a calendar year that exceed the Annual Compliance Cost Cap.

(c) To the extent Seller receives any reimbursement of its Annual Compliance Costs for a calendar year in which Buyer paid a portion of these costs under Section 4.7(b), Seller shall provide the reimbursement to Buyer up to the amount of Annual Compliance Costs paid or reimbursed by Buyer.

(d) If Seller anticipates that its Annual Compliance Costs will be in excess of the Annual Compliance Cost Cap, Seller shall provide to Buyer Notice with an estimate of the expected Annual Compliance Costs. Buyer shall, within thirty (30) days of the delivery of such Notice with the estimate, provide Seller Notice of Buyer's request for Seller to incur the Annual Compliance Costs in excess of the Annual Compliance Cost Cap; provided further that if Buyer does not provide Seller Notice to incur the Annual Compliance Costs within the thirty (30) day period, Seller shall incur such Annual Compliance Costs and Buyer shall be deemed to have requested Seller to incur such Annual Compliance Costs.

4.8 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Test Products, Interim Operation Products, or Products produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that, nothing herein precludes Seller from retaining credits related to Transmission Upgrades as contemplated in Section 3.1(h)(ii).

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean:

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

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

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

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after Notice; provided that if the remedy may not be effected within such thirty (30) day period and the non-performing Party uses reasonable efforts to effect such remedy within sixty (60) days after Notice, then the total cure period pursuant to this Section 5.1(a)(iii) shall be sixty (60) days after Notice;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) With respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project;

(ii) an outage resulting from an event of Force Majeure that prevents the Project from delivering at least fifty percent (50%) of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months ("Force Majeure Failure") and Buyer provides Notice of the Force Majeure Failure within thirty (30) days after the occurrence of the Force Majeure Failure; provided that Seller shall be entitled to an additional period of time (not to exceed six (6) months including the time period for Buyer's approval of a mitigation plan) to remedy the Force Majeure if within forty-five (45) days of receipt of Notice from Buyer that a Force Majeure Failure has occurred, Seller presents Buyer with a commercially reasonable plan for mitigation of the effect of the Force Majeure for Buyer's approval, which approval shall not be unreasonably withheld or delayed, and Seller diligently pursues such mitigation plan throughout said additional period of up to six (6) months; provided further that (A) such mitigation plan shall be deemed approved by Buyer if Buyer has not provided Notice of acceptance or rejection to Seller within fourteen (14) days after Seller presents the Notice of the mitigation plan, and (B) if Buyer rejects the mitigation plan by Notice, then the Parties shall engage in good-faith negotiation of a commercially reasonable mitigation plan for a period of fourteen (14) days after Notice of rejection. If the Parties are unable to agree upon a commercially reasonable mitigation plan, then either Party may submit the dispute for mediation pursuant to Section 12.3, provided, however, that mediation in this instance shall be limited to only the first step of mediation set forth therein and the mediator shall have pertinent engineering experience. The mediator shall issue a determination of the commercial reasonableness of Seller's mitigation plan within sixty (60) days of the date of Buyer's Notice of rejection of the mitigation plan or after service of a written demand for mediation on the other Party, whichever is later. If the mediator determines the Seller's mitigation plan is not commercially reasonable or does not issue a determination within the sixty (60) day time frame, Buyer may send a Notice of Event of Default pursuant to Section 5.2.

(iii) failure by Seller to meet either of the Guaranteed Project Milestones set forth in Section 3.9(c)(iii), after giving effect to any applicable extensions pursuant

to Section 3.9(c)(iv)(A), and in each case after the applicable Construction Cure Period or Project Cure Period has expired;

(iv) failure to achieve the Guaranteed Energy Production requirement as set forth in Section 3.1(e) of this Agreement; or

(v) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement.

5.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right to (a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date"); (b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date, and collect liquidated damages ("Termination Payment"), which shall be calculated in accordance with Section 5.3 below; (c) withhold any payments due to the Defaulting Party under this Agreement; (d) suspend performance; and (e) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. The Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the "Settlement Amount" is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The foregoing shall not relieve the Non-Defaulting Party of its obligation to pay for performance rendered prior to an Early Termination Date. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.3 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Product, (c) at the same Delivery Point, and (d) for the remaining Delivery Term, or in any other commercially reasonable manner. In the event Seller is the Non-Defaulting Party and it is including a loss of Tax Benefits in its calculation of the Settlement Amount, such calculation shall be set forth in reasonable detail (including the basis for the calculation of the value of the Depreciation) and shall have been verified to Buyer by a nationally recognized independent public accounting firm selected by Seller and reasonably acceptable to Buyer. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remaining Delivery Term of the Terminated Transaction and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Transaction. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The

Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Notwithstanding the foregoing, Seller's liability for the Settlement Amount and resulting Termination Payment arising from either an Event of Default under Section 5.1(b)(iii) or an Event of Default under Section 3.9 and the termination of this Agreement as a result thereof shall be calculated based on Daily Delay Damages and shall in no event exceed the aggregate cap on Daily Delay Damages of $1,980,000, as set forth in Section 8.4(a)(ii), minus any Daily Delay Damages previously paid to Buyer pursuant to the terms of this Agreement.

5.4 Tax Benefits. The Parties agree that if: (i) the Non-Defaulting Party is the Seller, and (ii) Seller declares an Early Termination Date pursuant to Section 5.2 based on an Event of Default by Buyer occurring prior to the Guaranteed Commercial Operation Date, then the term "Losses" may include loss of Tax Benefits. The Parties further agree as follows:

(a) Seller may not claim lost Tax Benefits as a component of Seller's Losses if Seller would not, had Seller and Buyer performed their obligations under the Agreement and the Agreement remained in effect, have been able to obtain the Tax Benefits being claimed for the development, ownership, or operation of the Project, or if the Project would not have been eligible or qualified for the Tax Benefits in question;

(b) Any component of a Termination Payment based on lost Tax Benefits shall be the Tax Benefits that Seller would have received if the Seller did not declare an Early Termination Date less any Tax Benefits (or the economic equivalent thereof) received by Seller notwithstanding Seller's declaration of an Early Termination Date; and

(c) To the extent that Buyer compensates Seller for any Tax Benefits as part of a Loss in a Termination Payment, Seller shall promptly refund to Buyer that portion of any Termination Payment made to Seller that is attributable to lost Tax Benefits (or the economic equivalent thereof) that Seller subsequently obtains or for which the Project or Seller is eligible or qualifies and could have obtained using commercially reasonable efforts and that was not otherwise taken into account in determining the Termination Payment under Section 5.3. Seller shall provide Buyer with prompt Notice if it or the Project obtains, or becomes eligible or qualifies for and could obtain using commercially reasonable efforts, Tax Benefits for which Buyer has compensated Seller hereunder.

5.5 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

5.6 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

5.7 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Five shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.8 Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement pursuant to Article Five.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month after the commencement of the Test Product Delivery Period and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, and (b) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Sections 4.3, 4.4 and 4.5, and, if applicable, Section 4.6. Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO 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 SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE, UNLESS EXPRESSLY HEREIN PROVIDED. THE VALUE OF ANY ENERGY TAX CREDITS OR OTHER TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT PRIOR TO THE FINAL COMMERCIAL OPERATION DATE, IF ANY, SHALL BE DEEMED DIRECT DAMAGES. THIS SECTION 7.1 SHALL NOT LIMIT THE PROVISIONS OF SECTION 10.5 (INDEMNITIES). IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

8.2 Seller Financial Information. The applicable financial information shall be provided as specified under either Option A or Option B described in this Section 8.2. The Option selected is indicated below:

X Option A

Option B

Option A: If requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's, or, at Seller's option, Seller's parent company's annual report containing audited consolidated financial statements for such fiscal year; provided that, if Seller does not prepare audited financial statements, Seller shall provide unaudited financial statements, and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases, the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Buyer, Seller shall deliver to Buyer (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of the Seller's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall exercise its rights and remedies according to the terms and conditions of this Agreement, and shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Performance Assurance.

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

(i) Project Development Security pursuant to this subsection 8.4(a)(i) in the amount of $198,000 and in the form of cash from the Execution Date of this Agreement until Seller posts Project Development Security pursuant to subsection 8.4(a)(ii) below with Buyer.

(ii) Project Development Security pursuant to this subsection 8.4(a)(ii) in the amount of $1,782,000 for the Project and in the form of cash or a Letter of Credit from a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Article Eleven are either satisfied or waived until Seller posts Delivery Term Security pursuant to subsection 8.4 (a)(iii) below with Buyer. The amount required in this subsection 8.4(a)(ii) is in addition to the amount already provided by Seller in subsection 8.4(a)(i). The total amount of Project Development Security under 8.4(a)(i) and 8.4(a)(ii) shall be $1,980,000.

(iii) Delivery Term Security pursuant to this subsection 8.4(a)(iii) shall be $20,373,000 in the form of cash, a Letter of Credit or Guarantee from the Final Commercial Operation Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to subsection 8.4(a)(ii) toward the Delivery Term Security posted pursuant to this subsection 8.4(a)(iii). Prior to the delivery of any Product generated by any Incremental Contract Capacity, Seller shall post a portion of the Delivery Term Security equal to the product of (A) the ratio of the Incremental Contract Capacity to the Contract Capacity, and (B) the total Delivery Term Security. The Delivery Term Security shall not be deemed a limitation of damages during the Delivery Term.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security posted by Seller for Daily Delay Damages until such time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date; provided, however, that notwithstanding anything to the contrary in this Agreement, the Project Development Security shall be the sole and exclusive remedy available for any damages incurred by Buyer prior to the Final Commercial Operation Date.

(c) Termination of Project Development Security. If after the Final Commercial Operation Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). If Seller has met the Guaranteed Commercial Operation Date, then the Project Development Security returned shall include amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date. The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) toward the Delivery Term Security posted pursuant to Section 8.4(a)(iii).

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security or Delivery Term Security, as applicable, at the Interest Rate. All accrued interest shall be transferred to Seller in the form of cash by wire transfer to the bank

account specified under "Wire Transfer" in Appendix XI, Notices List. After Seller posts the Project Development Security or the Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for such Project Development Security or Delivery Term Security.

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller thirty (30) days after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including compensation for any Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit (x) fails to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P, (y) indicates its intent not to renew such Letter of Credit, or (z) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall (i) provide 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 (ii) post cash in each case in an amount equal to the outstanding Letter of Credit within five (5) Business Days after Buyer receives Notice of such refusal ("Cure"), as applicable. If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight.

(b) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller; *provided that* Buyer shall bear its own costs, including costs of outside counsel, associated with the establishment, maintenance, renewal, substitution, increase or cancellation of Buyer's rights and obligations in connection with any Letter of Credit.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Except as otherwise provided for herein, Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product or the Transaction arising prior to the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction at and from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are

Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party's exemption is lost or reduced, each Party's responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

ARTICLE TEN: MISCELLANEOUS

10.1 Intentionally Omitted.

10.2 Representations and Warranties.

(a) General Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

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

(ii) it has all regulatory authorizations necessary for it to perform its obligations under this Agreement, except for (A) CPUC Approval in the case of Buyer, and (B) all permits necessary to install, operate and maintain the Project in the case of Seller;

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

(iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

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

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

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

(viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the

other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(ix) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

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

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

10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Test Product Delivery Period, Interim Operation Period, and the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

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

(iii) it shall perform its obligations under this Agreement and the Transaction in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it; and

(iv) it shall maintain its status as a "forward contract merchant" within the meaning of the United States Bankruptcy Code (for so long as such term has the same definition as in effect as of the date of this Agreement).

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Project to apply towards satisfaction of its Resource Adequacy Requirements; and

(ii) Seller covenants throughout the Test Product Delivery Period, Interim Operation Period, and the Delivery Term that it, or its permitted successors or assigns, have or will have ownership of, or a demonstrable exclusive right to control, the Project.

10.4 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Delivery Point.

10.5 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, (ii) Seller's operation and/or maintenance of the Project, or (iii) Seller's actions or inactions with respect to this Agreement, including, without limitation, any loss, Claim, action or suit, for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused by the willful misconduct or sole negligence of Buyer, its agents, employees, directors, or officers. Seller shall further indemnify Buyer for all penalties assessed against Buyer by the CPUC pursuant to the California Renewables Portfolio Standard to the extent caused by Seller's failure to deliver the Product, unless such failure is caused by Force Majeure, or Buyer's breach or default under this Agreement; provided that in no event shall Seller's proportionate liability for such penalty exceed the ratio of Seller's shortfall under this Agreement to Buyer's total shortfall providing the basis for penalty.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement at and after the Delivery Point, including, without limitation, any loss, Claim, action or suit, for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused by the willful misconduct or sole negligence of Seller, its agents, employees, directors or officers.

(c) No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.6 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably

withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers.

10.7 Confidentiality.

X Confidentiality Applicable

If not checked, this Section 10.7 is inapplicable.

Confidentiality Notification: If checked, Seller has waived its right to notification in accordance with Section 10.7(e).

Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (a) the Party's employees, lenders or potential lenders, investors or potential investors, counsel, accountants, contractors, advisors, or a Party's direct parent company who have a need to know such information and have agreed to keep such terms confidential, (b) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement, (c) to the CPUC under seal for purposes of review, (d) disclosure of terms specified in and pursuant to Section 10.8 of this Agreement; (e) in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (f); or (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC. In connection with requests made pursuant to clause (e) of this Section 10.7 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

10.8. RPS Confidentiality. Notwithstanding Section 10.7 of this Agreement, at any time on or after the date and time on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, Delivery Term, Project location, Contract Capacity, anticipated Final Commercial Operation Date, Contract Quantity, and Delivery Point.

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

10.10. Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage.

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers' Liability insurance shall not be less than $1,000,000 for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, with no alterations to the coverage form.

(ii) The limit shall not be less than $10,000,000 each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller (Insurance Services Office Form CG2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;"

(B) be endorsed to specify that the Seller's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it; and

(C) include a severability of interest clause.

(c) Business Auto.

(i) Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 "any auto".

(ii) The limit shall not be less than $5,000,000 each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) Aircraft Liability.

(i) If the scope of Work involves aircraft, coverage for bodily injury, property damage, including injury sustained by any passenger, applying to all aircraft owned, furnished or used by the Seller in the performance of this Agreement shall be maintained. Work that involves chemical spraying shall include coverage for pesticide and herbicide application.

(ii) The limit shall not be less than $5,000,000 single limit for bodily injury and property damage including passenger liability.

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of Work performed by or for the Seller;

(B) be endorsed to specify that the Seller's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it; and

(C) all rights of subrogation against PG&E shall be waived with respect to all physical damage to any aircraft used during the performance of this Agreement.

(e) Watercraft Liability.

(i) If the scope of Work involves watercraft, Marine protection and indemnity or other liability coverage, including coverage for injury sustained by any passenger, apply to all watercraft used in the performance of this Agreement.

(ii) The limit shall not be less than $1,000,000 for each occurrence for bodily injury and property damage including passenger legal liability.

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work by or for the Seller;

(B) be endorsed to specify that the Seller's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it.

(f) Seller's Pollution Liability.

(i) Coverage for bodily injury and property damage from sudden and accidental pollution conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit shall not be less than $1,000,000 each occurrence for bodily injury and property damage and may be obtained by endorsement under the limits under Section 10.10(b).

(iii) The policy shall endorse PG&E as additional insured.

(g) All Risk Property Insurance.

(i) An All Risk Property insurance policy including earthquake and flood shall be maintained during the course of Work being performed and include start-up and testing for installed equipment. Such policy shall include coverage for materials and equipment while under the care, custody and control of the Seller during the course of Work, at the Site, offsite or while in transit to the Site.

(ii) Coverage shall be written to cover the full replacement cost of the property, except earthquake and flood, which may be subject to sublimits available.

(h) Intentionally omitted.

(i) Additional Insurance Provisions.

(i) Before commencing performance of the Work, Seller shall furnish PG&E with certificates of insurance and endorsements of all required insurance for Seller.

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to PG&E.

(iii) The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to:

Pacific Gas and Electric Company
Insurance Department—Suite 2400
One Market, Spear Tower
San Francisco, CA 94105

(iv) Reviews of such insurance may be conducted by PG&E on an annual basis and, in addition, PG&E may inspect the original policies or require complete certified copies at any time.

(v) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(vi) The insurance carrier or carriers and form of policy shall be subject to review and approval by PG&E.

(j) Form And Content.

(i) All policies or binders with respect to insurance maintained by Seller shall:

(A) waive any right of subrogation of the insurers hereunder against PG&E, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy; and

(B) with respect to any additional insured, provide that such insurance will not be invalidated by any action or inaction of each such insured and will insure each such insured regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured.

10.11 Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Buyer will require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

(a) Complete financial statements and notes to financial statements; and

(b) Financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter.

Any information provided to Buyer pursuant to this Section 10.11 shall be considered confidential in accordance with the terms of this Agreement and shall only disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

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

10.13 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing an original document. This Agreement shall be binding on each Party's successors and permitted assigns. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall 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).

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

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

ARTICLE ELEVEN: CONDITIONS PRECEDENT

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

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

(b) CPUC Approval has been obtained; and

(c) Buyer receives a final and non-appealable order of the CPUC that finds that Buyer's entry into this Agreement is reasonable and that payments to be made by Buyer hereunder are recoverable in rates.

Such occurrences in subsections (a) through (c) shall be referred to collectively as "Conditions Precedent".

Within thirty (30) days of the Execution Date, Buyer shall submit this Agreement to the CPUC with the appropriate request for CPUC Approval.

11.2 Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied or waived in writing by both Parties on or before two hundred forty (240) days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party, which Notice must be received on or before two hundred seventy (270) days from the date on which Buyer files this Agreement for CPUC Approval. Neither Party shall have any obligation or liability to the other, including for a Termination Payment, by reason of such termination.

ARTICLE TWELVE: DISPUTE RESOLUTION

12.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article Twelve. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of this procedure.

12.2 Management Negotiations.

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

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

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

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

12.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the AAA. As the first step, the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by Arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration"). The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the AAA a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

12.4 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and

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

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

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

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

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

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

ARTICLE THIRTEEN: NOTICES

Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, as provided in Appendix IX, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may

periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

ALPINE SUNTOWER, LLC,
a California limited liability company

Signature: _____

Name: Tom Doyle

Title: President

Date: 4/21/10

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

Signature: _____

Name: Roy M. Kuga

Title: Vice President, Energy Supply Management

Date: 4/19/10

APPENDIX I

FORM OF LETTER OF CREDIT

ISSUING BANK LETTERHEAD ADDRESS

Date: _____

Irrevocable Standby Letter of Credit Number:_____

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

Applicant: _____
[insert Applicant's address]_____
_____

Account Party: _____
[insert Account Party's address]___
_____

[Advising Bank, if applicable]
[Confirming Bank, if applicable]

Amount: USD [Amount]
US Dollars [Spell out amount in words]

We hereby issue our Irrevocable Standby Letter of Credit ("Letter of Credit") at this office in your favor at the request of the Applicant and for the account of the Account Party. Payments under this Letter of Credit are payable at sight against the following documents:

1. Your sight draft drawn on us marked "drawn under [Issuing Bank] [Letter of Credit Number] dated [Date]";

AND

2. Beneficiary's signed statement certifying:

"Pursuant to the terms of that certain Power Purchase and Sale Agreement dated _____ ("Agreement") by and between Account Party and Beneficiary, Beneficiary is entitled to draw on this Letter of Credit for amounts owed by Account Party under the Agreement."

OR

"This Letter of Credit will expire in thirty (30) days or less and Account Party has not provided alternate security acceptable to Pacific Gas and Electric Company."

This Letter of Credit expires at our counters located at [INSERT ADDRESS] on [INSERT DATE], ("Expiration Date") but the Expiration Date shall be automatically extended without amendment for a period of one year and on each successive Expiration Date, unless at least sixty (60) days before the then current Expiration Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

Special Conditions:

1. Partial drawing(s) are permitted.

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. This Letter of Credit shall terminate upon the earlier of:

   a. the making by you of the final drawing available to be made hereunder;

   b. the surrender of this original Letter of Credit accompanied by your letter acknowledging termination of this Letter of Credit; and

   c. the Expiration Date.

We hereby engage with you that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored if drawn and presented for payment at any time before the close of business [INSERT TIME] at our counters located at [INSERT ADDRESS] on or before the Expiration Date or in the event of Force Majeure, as defined under Article 36 of the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 ("UCP"), that interrupts our business, within fifteen (15) days after resumption of our business, whichever is later.

Except as otherwise stated herein, this credit is subject to the UCP and, with respect to matters not so covered, this Letter of Credit is subject to and governed by the laws of the State of New York.

If you have any questions regarding this Letter of Credit, please call [Telephone No.].

By: _____
Authorized Signature
Name: _____
Title: _____

APPENDIX II

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Amended and Restated Power Purchase and Sale Agreement dated _____, 2010 ("Agreement") by and between Pacific Gas and Electric Company ("Buyer") and Alpine SunTower LLC ("Seller"), this letter ("Initial Energy Delivery Date Confirmation Letter") serves to document the Parties' further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and Buyer has received the Product, as specified in the Agreement, as of this _____ day of _____, _____ (the "Initial Energy Delivery Date"). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Seller represents to Buyer that it has been granted status as an Exempt Wholesale Generator. Additionally Seller provides the following FERC Tariff information for reference purposes only:

Tariff: Dated: Docket Number:

IN WITNESS WHEREOF, each Party has caused this Initial Energy Delivery Date Confirmation Letter to be duly executed by its authorized representative as of the date of last signature provided below:

ALPINE SUNTOWER, LLC	**PACIFIC GAS AND ELECTRIC COMPANY**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX III

MILESTONES SCHEDULE

	Identify Milestone	Date for Completion
1	Submits interconnection application.	Complete
2	Receives a completed Large Generator Interconnection Study. Phase I Study Results.	Complete
3	Executes a Transmission Owner Tariff and/or applicable service agreement. Large Generator Interconnection Agreement (LGIA)	January 31, 2011
4	Receives all Permits needed to begin Construction.	April 30, 2011
5	Receives FERC acceptance of Interconnection Agreement and transmission agreement(s).	April 30, 2011
6	Construction Start Date	6/1/2011
7	Begins startup activities – backfeed power coincident with in-service date of interconnection	11/30/2011
10	Final Commercial Operation Date	3/31/2012

APPENDIX IV

PROJECT AND SITE DESCRIPTION

PROJECT DESCRIPTION:

Project name: Alpine Solar Generating Station

Project Site name: Alpine

Project physical address: The site is about 20 miles west-northwest from the city of Lancaster and situated between California State Route 138 (SR 138), also known as West Avenue D in the area, and the Kern County line.

Total Units at the Project: 66 MW net (ac)

Technology Type: Photovoltaic

Substation: Neenach

The term "Site" as defined in the Agreement means the following parcel description upon which the facility is located:

The Project electric generating units and related stormwater control structures will be an area bounded by a deep natural drainage course on the north, West Avenue C on the south, 210th Street West on the east, and 220th Street West on the west.

The nameplate capacity of the Project is 66 MW.

APPENDIX V

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

In accordance with its obligation under that certain Amended and Restated Power Purchase and Sale Agreement, dated _____, 2010, (the "Agreement") by and between Pacific Gas and Electric Company ("Buyer") and Alpine SunTower, LLC ("Seller") to declare and recognize the Commercial Operation Date, Seller shall notify Buyer that the Project is operating and able to produce and deliver Energy to Buyer in accordance with the terms of the Agreement ("Commercial Operation") by delivering a Certificate of Commercial Operation, in the form attached as Appendix VI to the Agreement, from a Licensed Professional Engineer with respect to the Project's ability to deliver an As-Available Product. All terms not defined herein shall have the meaning set forth in the Agreement.

The Certificate of Commercial Operation, in the form attached as Appendix VI to the Agreement, shall be submitted by Seller, and supported by the following:

1) [TBD]

2) [TBD]

3) [TBD]

4) [TBD]

5) Statement that the Project is operational and interconnected with the CAISO Grid and capable of delivering Energy through either (a) the permanent Interconnection Facilities or (b) a temporary interconnection or other alternative interconnection arrangement that permits the Project to transmit Energy.

APPENDIX VI

CERTIFICATE OF COMMERCIAL OPERATION

Alpine SunTower, LLC.

The undersigned, Alpine SunTower, LLC (the "Seller"), does hereby deliver this Certificate of Commercial Operation to Pacific Gas and Electric Company (the "Buyer"). All capitalized terms not defined herein shall have the meaning set forth in the Amended and Restated Power Purchase and Sale Agreement, dated _____, 2010 (the "Agreement") between Seller and Buyer.

In accordance with its obligation to declare that the Project is operating and able to produce and deliver Energy to Buyer in accordance with the terms of the Agreement ("Commercial Operation"), Seller, through the Licensed Professional Engineer, hereby certifies and represents to Buyer that Commercial Operation has been achieved and that the following statements are true as of the date set forth herein:

This certified statement of the Licensed Professional Engineer is provided as evidence of Commercial Operation of the Project to provide an As-Available Product and meet, at a minimum, the requirements indicated herein.

a. The Project has achieved the following:

1. [TBD], as defined in Appendix V of the Agreement; and
2. [TBD], as defined in Appendix V of the Agreement; and
3. [TBD], as defined in Appendix V of the Agreement; and
4. [TBD], as defined in Appendix V of the Agreement.

b. The Project is operational and interconnected with the CAISO Grid and capable of delivering Energy through either (a) the permanent Interconnection Facilities or (b) a temporary interconnection or other alternative interconnection arrangement that permits the Project to transmit Energy, in accordance with all requirements of the Agreement applicable as of the Commercial Operation Date.

EXECUTED by SELLER this _____ day of _____, 20__

Alpine SunTower, LLC	[LICENSED PROFESSIONAL ENGINEER] as the Professional Engineer
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

APPENDIX VII

FORM OF MONTHLY PROGRESS REPORT

Monthly Progress Report of

("Seller")

provided to Pacific Gas and Electric Company ("Buyer")

[Date]

1.0 Instructions.

Any capitalized terms used in this report which are not defined herein shall have the meanings ascribed to them in the Amended and Restated Power Purchase and Sale Agreement by and between Alpine SunTower, LLC ("Seller") and Pacific Gas and Electric Company dated _____, 2010 (the "Agreement").

Seller shall review the status of each significant Milestone of the construction schedule (the "Schedule") for the Project and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual dispute over the interpretation of a law or regulation, actual opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Project or related project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Milestone;

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Project or related project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Milestone;

(iv) Any material change in the Seller's schedule for initiating or completing any material aspect of Project; and,

(v) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form of Monthly Progress Report to Buyer, attention Contract Management, together with all attachments and exhibits. Seller shall deliver such Reports to Buyer either by U.S. Mail or electronic mail.

2.0 Executive Summary.

2.1. Major activities to be performed for each aspect of the Project during the current month.

Please provide a brief summary of the Major[1] activities to be performed for each of the following aspects of the Project during the current month:

2.1.1 Design

2.1.2 Property Acquisition

2.1.3 Engineering

2.1.4 Major Equipment procurement

2.1.5 Construction and Interconnection

2.1.6 Milestone report

2.1.7 Permitting (See Section 3.0 below)

2.1.8 Startup Testing and Commissioning

2.2. Major activities scheduled to be performed in the previous month but not completed as scheduled.

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous month and their status, including those activities that were not completed as scheduled:

2.2.1 Design

2.2.2 Property Acquisition

2.2.3 Engineering

2.2.4 Major Equipment procurement

2.2.5 Construction and Interconnection

2.2.6 Milestone report

2.2.7 Permitting

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[1] For Purposes of this report, "Major" shall mean any activity, event, or occurrence which may have a material adverse effect on the construction of the Project or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse effect includes, but is not limited to, Seller's inability to achieve a Milestone date.

2.2.8 Startup Testing and Commissioning

3.0 Permitting.

The following describes each of the Major Governmental Approvals required for the construction of the Project and the status thereof:

3.1 State and/or Federal Governmental Approvals.

Please describe each of the Major state and/or Federal Governmental Approvals to be obtained by Seller (or Seller's contractor or construction engineer (the "EPC Contractor") (including its subcontractors)) and the status thereof:

DESCRIPTION	STATUS

3.2 Local and/or county Governmental Approvals.

Please describe each of the Major local and/or county Governmental Approvals to be obtained by Seller (or the EPC Contractor (including its subcontractors)) and the status of each.

DESCRIPTION	STATUS

3.3. Permitting activities that occurred during the previous month.

Please list all permitting activities that occurred during the previous month.

3.4 Permitting activities occurring during the current month.

Please list all permitting activities that are expected to occur during the current month.

3.5 Permitting Notices received from EPC Contractor.

Please attach to this Monthly Progress Report copies of any notices related to permitting activities received from EPC Contractor (including its subcontractors) during the previous month.

4.0 Design Activities.

4.1 Table of design schedule to be followed by Seller and its subcontractors.

The following table lists the design schedule to be followed by Seller and the EPC Contractor (including its subcontractors).

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

4.2 Design activities to be performed during the current month.

Please explain in detail the design activities that are expected to be performed during the current month.

4.3. Table of design activities completed during the previous month.

Please explain in detail the design activities that were completed during the previous month.

5.0 Property Acquisition Activities.

5.1 Table of property acquisition schedule to be followed by Seller.

The following table lists the property acquisition schedule to be followed by Seller.

ACTIVITY	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

5.2 Property Acquisition activities to be performed during the current month.

Please explain in detail the property acquisition activities that are expected to be performed during the current month.

5.3. Table of property acquisition activities completed during the previous month.

Please explain in detail the property acquisition activities that were completed during the previous month.

6.0 Engineering Activities.

6.1 Table of engineering schedule to be followed by Seller and the EPC Contractor (including its subcontractors).

The following table lists the engineering schedule to be followed by Seller and its subcontractors:

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

6.2 Engineering activities to be performed during the current month.

Please explain in detail the engineering activities that are expected to be performed during the current month.

6.3. Engineering activities completed during the previous month.

Please explain in detail the engineering activities that were completed during the previous month.

6.4. Three-month look-ahead engineering schedule.

Please provide a three-month look ahead engineering schedule.

7.0 Major Equipment Procurement.

7.1 Table of major equipment to be procured by Seller or the EPC Contractor (including its subcontractors).

The following table lists major equipment to be procured by Seller or EPC Contractor (including its subcontractors):

EQUIPMENT DESCRIPTION	MANUFACTURER	MODEL	CONTRACTED DELIVERY DATE	ACTUAL DELIVERY DATE	PROJECTED INSTALLATION DATE	ACTUAL INSTALLATION DATE

7.2 Major Equipment procurement activities to be performed during the current month.

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

7.3 Major Equipment procurement activities completed during the previous month.

Please explain in detail the major equipment procurement activities that were completed during the previous month.

8.0 Construction and Interconnection Activities.

8.1 Table of construction and interconnection activities to be performed by Seller or EPC Contractor (including its subcontractors).

The following tables lists construction and interconnection activities to be performed by Seller and its subcontractors:

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

8.2 Construction interconnection activities to be performed during the current month.

Please explain in detail the construction and interconnection activities that are expected to be performed during the current month.

8.3 Construction and interconnection activities completed during the previous month.

Please explain in detail the construction and interconnection activities that were completed in the previous month.

8.4 EPC Contractor Monthly Progress Report.

Please attach a copy of the Monthly Progress Reports received during the previous month from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

8.5 Three-month look-ahead construction and interconnection schedule.

Please provide a three-month look-ahead construction schedule.

9.0 Milestones.

9.1 Milestone schedule.

Please state the status and progress of each Milestone and identify any completed Milestone(s) for the previous month.

9.2 Remedial Action Plan (applicable if Seller fails to achieve Milestone by the Milestone Date).

Please explain in detail each of the following aspects of Seller's Remedial Action Plan, as provided in Section 3.9(c) of the Agreement:

9.2.1 Missed Milestone

9.2.2 Plans to achieve missed Milestone

9.2.3 Plans to achieve subsequent Milestone

9.2.4 Delays in engineering schedule

Please explain in detail any delays beyond the scheduled Milestone Dates stated in Section 5.1, any impact from the delays on the engineering schedule, and Seller's plans to remedy such impact.

9.2.5 Delays in Major Equipment procurement

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 6.1, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

9.2.6 Delays in construction and interconnection schedule

Please explain in detail any delays beyond the scheduled completion dates stated in Section 7.1, any impact from the delays on the construction and interconnection schedule, and Seller's plans to remedy such impact.

10.0 Safety and Health Reports

10.1 Please list all accidents from the previous month:

10.2 Any work stoppage from the previous month:

10.3 Work stoppage impact on construction of the Project:

I, _____, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By:_____

Name:_____

Title:_____

Date:_____

PLEASE DO NOT ALTER THIS

APPENDIX VIII

OUTAGE NOTIFICATION FORM

Consistent with Appendix IX, send via Email to DAenergy@pge.com and Bilat_Settlements@pge.com

Email Subject Field: dd/mm/yyyy - dd/mm/yyyy eSolar Alpine Outage Notification

NOTIFICATION OF:

SCHEDULED OUTAGE / FORCED OUTAGE / DERATE / PROLONGED OUTAGE

The Unit will shut down for SCHEDULED OUTAGE from:

_____ to_____

(Date and Time) (Date and Time)

The Unit experienced a FORCED OUTAGE/DERATE/PROLONGED OUTAGE from:
_____ to_____

(Date and Time) (Date and Time)

The FORCED OUTAGE/DERATE/CHANGE IN AVAILABILITY was confirmed via telephone on _____ with _____

(Date and Time) (Name of PG&E Individual)

COMMENTS: Description and Cause of Forced Outage/Derate/Planned Outage

_____
_____
_____
_____
_____

Outage Notification Form submitted by: _____ Phone #: _____

(Individual Name)

APPENDIX IX

COUNTERPARTY NOTIFICATION REQUIREMENTS FOR

OUTAGES AND GENERATION SCHEDULES

ALPINE SUNTOWER NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. SUBMISSION OF AVAILABILE CAPACITY AND PROJECT OUTAGES

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

2. If the website is unavailable, follow the procedures set forth below:

    a. For all email correspondence, enter the following in the email subject field: Delivery Date, Contract Name, Email Purpose (For example: "dd/mm/yyyy - dd/mm/yyyy eSolar Alpine Daily Forecast of Available Capacity")

    b. For Annual Forecasts of Available Capacity, as required in Section 3.4(c)(iii)(A), email to DAenergy@pge.com and Bilat_Settlements@pge.com.

    c. For Monthly and Daily Forecasts of Available Capacity, as required in Sections 3.4(c)(iii)(B) and 3.4(c)(iii)(C) respectively, email to DAenergy@pge.com.

    d. For Hourly Forecasts of Available Capacity, as required in Section 3.4(c)(iii)(D), call PG&E's Hour-ahead Trading Desk at 415.973.4500 and email to RealTime@pge.com.

    e. For project outages, complete the specifics in Appendix VIII in the body of an email and submit to DAenergy@pge.com and Bilat Settlements@pge.com

APPENDIX X

RESOURCE ADEQUACY

1. Consistent with Section 3.3 of the Agreement, Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary for Buyer to apply the Contract Capacity towards Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to, the following:

   A. Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the Interconnection Point; and

   B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity that has jurisdiction, including the CAISO, with respect to Resource Adequacy.

2. Seller shall comply with applicable Resource Adequacy reporting requirements set forth in the CAISO Tariff, including but not limited to the following:

   A. Taking all commercially reasonable actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity;

   B. Coordinating with Buyer with regard to the submission of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff, to the CAISO; and

   C. Complying with the dispatch requirements applicable to the Project's resource type, as set forth in the CAISO Tariff and complying with the applicable reporting requirements.

3. RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Delivery Point identified in Section 3.1(d) of the Agreement.

APPENDIX XI

NOTICES LIST

Name: Alpine SunTower, LLC ("Seller")	Name: Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E")
All Notices:	All Notices:
Delivery Address:	**Delivery Address**:
1817 Aston Avenue, Suite 104	77 Beale Street, Mail Code N12E
Carlsbad, CA 92008	San Francisco, CA 94105-1702
Mail Address: (if different from above)	**Mail Address**:
	P.O. Box 770000, Mail Code N12E, San Francisco, CA 94177
Attn: [redacted]	Attn: Candice Chan, Director, Contract Mgmt & Settlements
Phone [redacted]	Phone: (415) 973-0070
Facsimile [redacted]	Facsimile: (415) 973-9176
Duns:	**Duns:** [redacted]
Federal Tax ID Number:	Federal Tax ID Number: 94-0742640
Invoices:	**Invoices:**
Attn: [redacted]	Attn: Amol Patel (AxPx@pge.com), Manager, Bilateral Settlements
Phone: [redacted]	Phone: (415) 973-6510
Facsimile: [redacted]	Facsimile: (415) 973-2151
Scheduling:	**Scheduling:**
Attn: To be provided by Seller.	Attn: Kevin F. Coffee (kfc1@pge.com)
Phone:	Phone: (415) 973-7631
Facsimile:	Facsimile: (415) 973-0400
Payments:	**Payments:**
Attn: [redacted]	Attn: Amol Patel (AxPx@pge.com), Manager, Bilateral Settlements

Phone: [redacted]

Facsimile: [redacted]

Phone: (415) 973-6510

Facsimile: (415) 973-2151

Wire Transfer:

BNK: To be provided by Seller.
ABA:
ACCT:

Wire Transfer:

BNK: [redacted]
ABA:
ACCT

ACCT TITLE: [redacted]

Credit and Collections:

Attn: To be provided by Seller.

Phone:

Facsimile:

Credit and Collections:

Attn: Jack Foley (JrDc@pge.com)

Manager, Credit Risk Management

Phone: (415) 973-0004

Facsimile: (415) 973-7301

With additional Notices of an Event of Default:

Attn: [redacted]

Phone [redacted]

Facsimile [redacted]

Contract Manager:

Attn: Jeannette Woo (jxw7@pge.com)

Manager, Contract Management

Phone: (415) 973-5097

Facsimile: (415) 973-2207

With additional Notices of an Event of Default to:
PG&E Law Department

Attn: Renewables Portfolio Standard attorney

Phone: (415) 973-4377

Facsimile: (415) 972-5952

APPENDIX XII

FORM OF CERTIFICATION – CONSTRUCTION START DATE

Alpine SunTower, LLC.

The undersigned, Alpine SunTower, LLC (the "Seller"), does hereby deliver this Certificate of Construction Start Date to Pacific Gas and Electric Company (the "Buyer"). All capitalized terms not defined herein shall have the meaning set forth in the Amended and Restated Power Purchase and Sale Agreement, dated _____, 2010 (the "Agreement") between Seller and Buyer.

In accordance with its obligation to declare that the Construction Start Date for the Project, Seller hereby certifies and represents to Buyer that it has commenced construction of the Project and that it has provided a Notice to Proceed to the EPC Contractor for the Project. Attached is a true and correct copy of the Notice to Proceed provided to the EPC Contractor.

EXECUTED by SELLER this _____ day of _____, 20__

Alpine SunTower, LLC

By: _____

Name: _____

Title: _____

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

ALPINE SUNTOWER, LLC,
a California limited liability company

Signature: _____

Name: Tom Doyle

Title: President

Date: 4/21/10

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

Signature: _____

Name: Roy M. Kuga

Title: Vice President, Energy Supply Management

Date: 4/19/10

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

ALPINE SUNTOWER, LLC,
a California limited liability company

Signature: _____

Name: Tom Doyle

Title: President

Date: 4/21/10

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

Signature: _____

Name: Roy M. Kuga

Title: Vice President, Energy Supply Management

Date: 4/19/10