

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement") is made as of the following date: April 1, 2005 ("Effective Date"). The general Terms and Conditions of the EEI and NEMA copyrighted Master Power Purchase and Sale Agreement, Version 2.1 (modified 04/25/00) (the "Model Agreement") as modified by the Addendum, the Cover Sheet, exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, between the Parties and all Transactions (including the Confirmation(s) entered into hereunder) shall be referred to as the "Master Agreement"; provided that, the provisions of the Confirmation shall control if and to the extent that there is a conflict between the provisions of the Master Agreement, as modified by the Addendum, and the Confirmation. The Parties to this Master Agreement are the following:

Name: Buena Vista Energy, LLC
("Party A" or "Seller")
All Notices: c/o EnXco

Name: Pacific Gas and Electric Company
("Party B," "Buyer" or "PG&E")
All Notices:

Street: 63-665 19th Avenue
City: North Palm Springs, CA Zip: 92258
Attn: Kelly Lloyd
Phone: (760) 329-1437
Facsimile: (760) 329-1503
Duns:
Federal Tax ID Number: [REDACTED]

Street: 245 Market Street, Mail Code N12E
City: San Francisco Zip: 94105
Attn: Contract Administration
Phone: (415) 973-0070
Facsimile: (415) 973-9176
Duns: 556650034
Federal Tax ID [REDACTED]

Invoices:

Attn: Kelly Lloyd
Phone: (760) 329-1437
Facsimile: (760) 329-1503

Invoices:

Attn: Marc Renson
Phone: (415) 973-1721
Facsimile: (415) 973-2151

Scheduling:

Attn: Raoul Jiminez
Phone: (925) 634-0567
Facsimile: (925) 634-2238

Scheduling:

Attn: Kevin Coffee
Phone: (415) 973-7631
Facsimile: (415) 973-5333

Payments:

Attn: Kelly Lloyd
Phone: (760) 329-1437
Facsimile: (760) 329-1503

Payments:

Attn: Marc Renson
Phone: (415) 973-1721
Facsimile: (415) 973-2151

Wire Transfer: To Be Provided

BNK:

ABA:

Wire Transfer:

BNK: [REDACTED]

ABA: [REDACTED]

Acct: [REDACTED]

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify:
- Option C Specify:

Promptly following demand by Party A, but in no event later than (i) 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 (ii) 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 and prepared in accordance with generally accepted accounting principles; provided however, that Party B shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com or on the U.S. Securities and Exchange Commission ("SEC") EDGAR information retrieval system; further provided, 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 Party A upon their completion and filing with the SEC.

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

(d) Downgrade Event:

- Not Applicable
- Applicable.

(e) Guarantor for Party B: Not Applicable

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B

Option C Specify: None.

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

(d) Downgrade Event:

Not Applicable

Applicable

(e) Guarantor for Party A: N/A

Guarantee Amount:

**8.4 Project Development Security;
Performance Assurance Please complete**

Applicable
Not Applicable

If Applicable:

**8.4 (a)(i) Project Development Security
Amount: USD\$860,000**

**8.4 (a)(ii) Project Development Security
Amount: USD\$1,419,000**

Type of Project Development Security:

Letter of Credit or Cash

**8.4(a)(iii) Performance Assurance
Amount: Subject to Section 3.8(c)(v) of
the Master Agreement, USD\$3,086,100**

Type of Performance Assurance:

Letter of Credit or Cash

Article 10

10.1 No Fault Termination

(a) Seller Termination Right

Not Applicable
Applicable

(b) PGC Funding Termination

Not Applicable
Applicable

10.11 Confidentiality

Confidentiality Applicable
If not checked, inapplicable.

Option B: RPS Confidentiality Applicable
If not checked, inapplicable.

Option C: Confidentiality Notification: If Option C is checked on the Cover Sheet, Seller has waived its right to notification in accordance with Section 10.11 (v).

Schedule M

Party A is a Governmental Entity or Public Power System

Party B is a Governmental Entity or Public Power System

Other Changes: See Addendum below.

Agreement Execution

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

By: G. W. Hardie III
Name: George W. Hardie III
Title: Authorized Representative
Date: April 3, 2009
Buena Vista Energy LLC

By: Gordon R. Smith
Name: Gordon R. Smith
Title: PRESIDENT & CEO
Date: APRIL 13, 2009

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**ADDENDUM TO
MASTER POWER PURCHASE AND SALES AGREEMENT**

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**ADDENDUM TO MASTER POWER PURCHASE AND SALE AGREEMENT BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY AND BUENA VISTA ENERGY, LLC:**

This Addendum modifies the General Terms and Conditions of the Master Agreement as set forth below and is made a part of the Agreement.

ARTICLE ONE: GENERAL DEFINITIONS

The following definitions are deleted in their entirety.

- 1.6 "Call Option"
- 1.15 "Delivery Period"
- 1.31 "NERC Business Day"
- 1.33 "Offsetting Transactions"
- 1.34 "Option"
- 1.35 "Option Buyer"
- 1.36 "Option Seller"
- 1.46 "Potential Event of Default"
- 1.48 "Put Option"
- 1.50 "Recording"
- 1.57 "Strike Price"

The following definitions are amended or added as new "Definitions" as follows:

"Bid Price" means the price as bid by Seller in response to the RFP or such other price as may be arrived at through negotiation.

"Broker" means a dealer in the California Renewables Energy Credit(s) market, which dealer is not affiliated with either Party or any other Broker from whom a quote is obtained.

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

"Commercial Operation" means the Unit(s) are operating and able to produce and deliver energy to Buyer pursuant to the terms of this Agreement.

"Commercial Operation Date" means the date on which Seller notifies Buyer that Commercial Operation has occurred and provides certification of a Licensed Professional Engineer with respect to the Unit(s) in compliance with the Initial Testing Requirements, as provided in Appendix I hereto.

"Construction" means the first date on which Seller directly or indirectly causes concrete for the foundations of the Unit(s) to be poured.

"Construction Cure Period" shall have the meaning set forth in Section 3.8(c) (iv).

"Construction Start Date" shall have the meaning set forth in Section 3.8(c) (iii).

The definition of "Costs" shall be deleted in its entirety and replaced with the following:

"Costs" means, with respect to the Non-Defaulting Party, 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 entering into new arrangements which replace a Terminated Transaction, and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

"Contract Year" means the twelve (12) consecutive months starting with the first day of the month following the Initial Energy Delivery Date.

"CPUC" or "Commission" means the California Public Utilities Commission.

"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:

- (1) Approves this Agreement in its entirety, including payments to be made by Buyer, subject to CPUC review of Buyer's administration of the Agreement.
- (2) 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; and
- (3) finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by Buyer from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC 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.

"Daily Delay Damages" means an amount equal to (i) the result of (a) Estimated Contract Quantity stated in MWhs multiplied by (b) the Contract Price specified in the Confirmation for the first Contract Year divided by (ii) 365.

"Default Payment" means the payment of liquidated damages due from Seller to Buyer pursuant to Section 5.4 of this Agreement.

"Delivery Term" means the period of Product Delivery as set forth in the Confirmation.

"Delivered Energy" has the meaning set forth in the Confirmation.

"Distribution Loss Factor" is a multiplier factor that reduces the amount of Delivered Energy produced by Unit(s) connecting to PG&E's distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of Interconnection, as defined in the PG&E Wholesale Distribution Interconnection Tariff, at the point where PG&E's meter is physically located, and the first point of Interconnection, as defined in the ISO Tariff, with the ISO transmission grid.

"Emergency" means an actual or imminent condition or situation, which jeopardizes PG&E Electric System Integrity or the integrity of other systems to which PG&E is connected, as determined by PG&E in its sole discretion, or any condition so defined and declared by the ISO.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the generation from the Unit(s). Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Unit(s), (ii) production tax credits associated with the construction or operation of the energy projects 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 pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and/or air quality permits. If Seller's Unit(s) is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net GHGs associated with the production of electricity from such facility.

The definition of "Force Majeure" in Section 1.23 of the Agreement shall be deleted in its entirety and replaced with the following:

"Force Majeure" means any occurrence beyond the reasonable control of a Party, which causes that Party to be unable to perform, in whole or in part, an obligation under this Agreement, and which was not anticipated as of the date the particular transaction was agreed to, and which could not have been avoided by the exercise of due diligence. Force Majeure includes: (i) acts of God and natural catastrophes; (ii) actual or threatened civil disturbance, terrorism, war, or riot; (iii) strike or other labor dispute; (iv) emergencies declared by or forced curtailment required by the ISO or any other authorized successor or regional transmission organization or any state or federal regulator or legislature; or (v) Serial Defects.

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 regulatory approvals for the construction, operation, or maintenance of its Unit(s); (iv) Seller's inability to obtain sufficient fuel to operate the Unit(s); (v) Seller's failure to obtain funds from the California Energy Commission to supplement the payments made pursuant to this Agreement; (vi) a Forced Outage (unless caused by an event that itself qualifies as a Force Majeure) or (v) a strike or labor dispute limited only to Seller or its affiliates, including contractors or agents thereof.

"Forced Outage" means an unplanned reduction or suspension of the electrical output from the Unit(s) in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction.

The definition of "Gains" shall be deleted in its entirety and replaced with the following:

"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 a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner. 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 referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of the applicable Transaction and include the value of Environmental Attributes.

"GMM" means the Generation Meter Multiplier as defined in the ISO Tariff.

"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 use and operation of the Unit(s) or related project.

"Guaranteed Annual Energy Production" shall have the meaning set forth in Section 9.1 of the Confirmation.

"Guaranteed Commercial Operation Date" means December 31, 2006.

"Initial Testing Requirements" means the test principles set forth in Appendix I attached hereto.

"Initial Energy Delivery Date" shall have the meaning set forth in the Confirmation.

"Interconnection Facilities" means all means required pursuant to PG&E's Interconnection Handbook, and apparatus installed, to interconnect and deliver power from the Unit(s) to the Delivery Point by means of either the PG&E electric system or the ISO Grid, including, but not limited to, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the PG&E electric system (or other systems to which the PG&E electric system is connected, including the ISO Grid) and PG&E's customers from faults occurring at the Unit(s), and (b) the Unit(s) from faults occurring on the PG&E electric system or on the systems of others to which the PG&E electric system is directly or indirectly connected.

Interconnection Facilities also include any necessary additions and reinforcements by PG&E to the PG&E electric system required as a result of the interconnection of the Unit(s) to the PG&E electric system, the ISO Grid, or electric systems of others to which the PG&E electric system is directly or indirectly connected."

"Interest Amount" means with respect to an Interest Period, the amount of interest derived from: (x) the sum of: (a) the principal amount of Performance Assurance or Project Development Security 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; multiplied by (y) the Interest Rate in effect for that day; multiplied by (z) the number of days in that Interest Period; (u) divided by 360

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

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

The definition of "Interest Rate" in Section 1.26 of the Agreement shall be deleted in its entirety and replaced with the following:

"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.

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

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

"ISO Tariff" has the same meaning given to "Tariff" in the Confirmation.

"KVAR" means reactive kilovolt-ampere, a unit of measure of reactive power.

The definition of Letter(s) of Credit in Section 1.27 shall be deleted in its entirety and replaced with the following:

"Letter(s) of Credit" shall mean 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 Exhibit A to this Master Agreement. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

"Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state, (ii) has training and experience in the wind power industry, (iii) has no economic relationship, association, or nexus with Seller (other than being retained for the purposes of the Agreement), (iv) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Unit(s) or generating facility or of a manufacturer or supplier of any equipment installed the Unit(s) or generating facility, and (v) is licensed in an appropriate engineering discipline for the required certification being made.

The definition of "Losses" in Section 1.28 shall be deleted in its entirety and replaced with the following:

"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 a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner. 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 referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the applicable Transaction and include value of Environmental Attributes.

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

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

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

"Net Rated Output Capacity" means the Unit(s)'s maximum power production capability in any metering interval after deducting auxiliary loads, station electrical uses, and all applicable transformer and electrical losses including application of the Distribution Loss Factor assigned to the Unit(s)'s substation location, and application of the Generation Meter Multiplier as calculated by the ISO and assigned to the Delivery Point for the Unit(s).

"Outage Notification Form" means the notice form attached hereto as Appendix III, which shall be submitted by Seller to Buyer in accordance with the relevant provisions of Section 3.6 (PG&E reserves the right to revise or change the form upon written notice to Seller).

"Participating Transmission Owner" or "Participating TO" means an entity that (i) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (ii) has transferred to the ISO operational control of such facilities and/or entitlements to be made part of the ISO Grid.

"PGC Funding Award" means the final award of allocated PGC Funds from the CEC to Seller, pursuant to Section 25743(a) of the Public Resource Code, as shall be modified or amended from time to time.

"PGC Funding Confirmation" means a written notice from the CEC to Seller acknowledging Seller's request for PGC Funds and the availability of such funds for Seller in a future PGC Funding Award.

"Planned Outage" means removing the equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (i) must actually be conducted during the Planned Outage, and in Seller's sole discretion must be of the type that is both necessary to reliably maintain the Unit(s), (ii) cannot be reasonably conducted during Unit(s) operations, and (iii) causes the Net Rated Output Capacity to be reduced by at least 10%.

"Prolonged Outage" is any period of more than 30 consecutive days during which the Unit(s) is or will be unable, for whatever reason, to provide at least 60% of the Contract Capacity (as defined in the Confirmation).

"Production Tax Credit" or "PTC" means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as amended.

"Prudent Electrical Practices" means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the independent power generation industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the independent power generation industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

"Public Goods Charge Funding" or "PGC Funds" means any supplemental energy payments, pursuant to Public Utilities Code Section 399.15, as shall be modified or amended from time to time.

"Renewable Energy Credit" means a tradeable credit that is recognized by the CPUC for purposes of Buyer's obligations under the Renewables Portfolio Standard Program, codified at California Public Utilities Code Section 399.11, et seq.

"Scheduling Coordinator" means an entity certified by the ISO as qualifying as a Scheduling Coordinator pursuant to the ISO Tariff, including, but not limited to Sections 2.2.3, 2.2.4, and 2.5.6 of the ISO Tariff, for the purposes of undertaking the functions specified in Section 2.2.6, "Responsibilities of a Scheduling Coordinator," of the ISO Tariff, as amended by the Federal Energy Regulatory Commission from time-to-time.

"Scheduled Energy" has the meaning set forth in the Confirmation.

"Serial Defect" means a material reduction in the output of the Unit(s) caused by the failure or removal from service of a component of the Unit(s), for which (A) the component manufacturer has issued a maintenance bulletin regarding the defect, or (B) the component is required under Prudent Electrical Practices to be removed or replaced in more than 25% of the Unit(s) during any 12 month period.

"Settlement Amount" means, with respect to a Transaction and 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 other than a Terminated Transaction resulting from an Event of Default under Sections 3.6(e) and 5.1(k) of this Agreement (for which the exclusive remedy is set forth in Sections 3.6(e) or 5.4, as applicable)."

"Term" shall have the meaning provided in Section 10.1(c) of this Agreement.

The definition of "Termination Payment" in the Master Agreement is deleted in its entirety and replaced with the following: " "Termination Payment" has the meaning used in Section 5."

"Unit(s)" has the meaning in the Confirmation for the Transaction entered into under this Agreement.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

Article Two is deleted in its entirety and replaced with the following:

2.1 Transaction. The only Transaction contemplated in this Agreement is the sale to PG&E from Seller of the Contract Quantity of Product, including all energy and capacity, as applicable, and Environmental Attributes from the Unit(s) during the Delivery Term of the Transaction, as specified in the Confirmation.

2.2 Governing Terms. Unless otherwise specifically agreed, the Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral or credit support arrangement between the Parties and the Transaction (including the Confirmation) shall form a single integrated agreement between the Parties (the "Agreement"). Any inconsistency between any terms of this Master Agreement, the ISO Tariff and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. The Transaction entered into under this Master Agreement shall be documented by a written confirmation ("Confirmation") entered into by the Parties prior to the commencement of the Transaction."

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

Article Three shall be deleted in its entirety and replaced with the following:

3.1 Seller's and Buyer's Obligations. With respect to the Transaction, subject to Sections 6 and 7 of the Confirmation, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, Contract Quantity as an As Available Product at the Delivery Point during the Delivery Term, and Buyer shall pay Seller the Contract Price, in accordance with the terms of the Confirmation. Subject to Sections 3, 6 and 7 of the Confirmation, Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to and at the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt from the Delivery Point. Subject to Section 3.3 of this Master Agreement and subject to Sections 6 and 7 of the Confirmation, the Parties intend that Seller will arrange and pay independently for any and all necessary electrical interconnection, Scheduling, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver power to the Delivery Point for sale pursuant to the terms of this Agreement in accordance with applicable laws. Subject to Section 3.3 of this Master Agreement and subject to Sections 6 and 7 of the Confirmation, Buyer shall not be obligated to arrange or pay for any of the services set forth in the preceding sentence, except as required by law. In the event that Seller makes any alteration or modification to the Unit(s) that results in an increase of the Net Rated Output Capacity of the Unit(s), Buyer shall have a right of first refusal to purchase the incremental output of the Unit(s). If Buyer fails to accept Seller's offer to purchase such output within sixty (60) days, Seller shall be free to sell such output to third parties on terms no less favorable to Seller than those offered to Buyer.

3.2 Environmental Attributes. Seller hereby provides and conveys all Environmental Attributes from the Unit(s) to Buyer as part of the Product being sold and delivered to Buyer and

purchased and accepted by Buyer, as such term is described in the applicable Confirmation for the period set forth in such Confirmation. Seller represents and warrants that Seller holds the rights to all Environmental Attributes from the Unit(s), and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Unit(s).

3.3 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, to and at the Delivery Point and bear all risks and costs associated with any transmission outages or curtailment. Seller shall be responsible for all ISO costs and charges, including imbalance charges due to deviations from power schedules, regardless of the cause thereof (other than if caused by Buyer), electric transmission losses and congestion. Buyer shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, from the Delivery Point and bears all risks and costs associated with any such outages or curtailment. Buyer shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point. Except for a failure or curtailment resulting from a Force Majeure or Dispatch Down Periods, as defined in the Confirmation, the failure of electric transmission service shall not excuse performance with respect to the Transaction(s).

3.4 Standard of Care.

(a) ISO Standards. All generation, scheduling and transmission services shall be performed in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs of the ISO and Prudent Electrical Practices. Seller, at its own expense, shall fulfill all contractual, metering and interconnection requirements as set forth in Participating Transmission Owner's applicable tariffs, the ISO Tariff and implementing ISO standards and requirements, including but not limited to executing ISO Interconnection, Participating Generator and Meter Service agreements and PTO Generator Special Facilities Agreements, so as to be able to deliver energy to the ISO controlled grid and bear all costs relating to all metering equipment installed to accommodate the Unit(s). Seller will exercise best efforts to comport and comply with conditions any modifications, amendments or additions to the ISO Tariffs.

(b) Reliability Standard. Seller agrees to abide by all North American Reliability Council, Western Electricity Coordinating Council ("WECC"), ISO reliability requirements and PG&E's requirements regarding interconnection of the Unit(s), including PG&E's Interconnection Handbook.

(c) Protective Apparatus. Seller, at no cost to Buyer, agrees to furnish and install the relays, meters, power circuit breakers, synchronizer and other control and protective apparatus as Buyer is required under its interconnection agreement with PG&E or ISO.

3.5 Metering. All output from the Unit(s) for a Transaction must be delivered through a single ISO revenue meter and that meter must be dedicated exclusively to those Unit(s) described herein. All Product purchased under a Transaction shall be measured by the Unit(s) ISO revenue meter. In addition, Seller hereby agrees to provide all meter data to Buyer, and consents to Buyer obtaining from the ISO the ISO meter data applicable to the Unit(s) and all inspection, testing and calibration data and reports. If the ISO makes any adjustment to any ISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.1, 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 ISO provides to Seller such binding adjustment to the meter data.

3.6 Outage Notification.

(a) ISO Approval of Outage(s). Seller is responsible for securing ISO approvals for Unit(s) outages, including securing changes in its outage schedules when ISO disapproves Seller's schedules or cancels previously approved outages. Seller shall communicate any ISO-required changes to PG&E in a timely manner, in accordance with the provisions set forth in Section 3.6(f) below.

(b) Planned Outages. Seller shall notify PG&E by submitting a completed Outage Notification Form in accordance with the provisions set forth in Section 3.6(f) below no later than December 1 of each year during the Delivery Term of its proposed Planned Outage schedule for the Unit(s) for the following calendar year. 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 Section 3.6(f) below no later than seven (7) days prior to each Planned Outage. Seller shall use commercially reasonable efforts, consistent with Prudent Electrical Practices, not to schedule Planned Outages during the months of January, June through September and December. Seller shall contact PG&E with any changes to the Planned Outage schedule if Seller believes the Unit(s) must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Electrical Practices. Seller shall not substitute power from any other source for the output of the Unit(s) during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the start of work, PG&E may request that Seller change its outage schedule. Seller shall notify PG&E of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If PG&E agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate PG&E's request. However, unless it is transmitting to Seller an ISO order, PG&E may not change Seller's Planned Outage schedule without Seller's approval.

(c) Forced Outages. Seller shall, in accordance with the provisions set forth in Section 3.6(f) below, use commercially reasonable efforts to (i) notify Buyer of any Forced Outage affecting at least 5 MW within 10 minutes of the occurrence of such outage, (ii) provide a written estimate of its expected duration of the outage within 1 hour thereafter, and (iii) submit a completed Outage Notification Form to Buyer in accordance with the instructions provided therein. Seller shall not substitute power from any other source for the output of the Unit(s) during a Forced Outage, other than in connection with the provision of Imbalance Energy to account for deviations between the Scheduled Amounts and Delivered Amounts in the ordinary course of business pursuant to the ISO Tariff.

(d) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as possible under the circumstances by submitting a completed Outage Notification Form in accordance with the provisions set forth in Section 3.6(f) below, and provide an estimate of the duration of the outage therein. Seller shall notify Buyer in writing when the Unit(s) is again capable of delivering the Product. Seller shall not substitute power from any other source for the output of the Unit(s) during a Prolonged Outage, other than in connection with the provision of Imbalance Energy to account for deviations between the Scheduled Amounts and Delivered Amounts in the ordinary course of business pursuant to the ISO Tariff.

(e) Force Majeure. Within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party written 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. Buyer may declare an Event of Default and terminate this Agreement on notice, which shall be effective thirty (30) days

after such notice is provided, upon the occurrence of a Force Majeure that prevents the Unit(s) from generating energy for more than twelve (12) consecutive months; provided that such twelve (12) month period shall be extended by an additional six (6) months upon receipt by Buyer of evidence from Seller that Seller is diligently working to end the Force Majeure. Upon any such termination, Seller shall forfeit any Performance Assurance and Buyer's sole remedy shall be the drawing down of such Performance Assurance, which shall be considered liquidated damages hereunder. In the event that Buyer is unable to accept energy from Seller due to a Force Majeure with respect to Buyer, Seller shall be entitled to sell the energy and Environmental Attributes to a third party during Buyer's Force Majeure period. Seller shall not substitute power from any other source for the output of the Unit(s) during an outage resulting from Force Majeure, other than in connection with the provision of Imbalance Energy to account for deviations between the Scheduled Amounts and Delivered Amounts in the ordinary course of business pursuant to the ISO Tariff. 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 capacity or energy not delivered or provided as a result of Force Majeure during the term of a Force Majeure.

(f) Notice Procedures. Notice of outages must be provided to PG&E as follows:

(i) **Pittsburg Control Center: ALWAYS notify the designated Control Center of shutdowns and startups as follows:**

(A) **Call for permission to parallel before any start-up at (925) 427-3560. Call Pittsburg Control Center again after your start-up with your parallel time. Call Pittsburg Control Center after any separation to report your separation time.**

(B) **Send the completed Outage Notification Form to Pittsburg Control Center by sending facsimile to: (925) 427-3862.**

(ii) **Power Trading: ALWAYS notify appropriate day-ahead or hour-ahead schedulers of outages and schedule changes, and send Outage Notification Form to:**

<u>Day-Ahead Trading Desk</u>	and	<u>Hour-Ahead Trading Desk</u>
Tel: 415-973-6222		Tel: 415-973-7900
Fax: 415-973-0400		Fax: 415-972-5340
daenergy@pge.com		rtenergy@pge.com

(iii) **Buena Vista Energy Power Settlements Departments: Send the Outage Notification Form by one of these methods:**

(A) **Internet site: http://www04/customer_services/business/qf. Contact PG&E for access and your password to this web site.**

(B) **Facsimile: (415) 973-2151, Attention: Manager, Power Settlements. The time and date must be on the facsimile.**

(C) **Mail: Pacific Gas and Electric Company, Attention: Manager, Power Settlements, Mail Code N12F, P.O. Box 770000, San Francisco, CA 94177.**

(iv) **Notification Form: The Outage Notification Form shall be used when reporting outages other than outages due to events of Force Majeure. The Outage**

Notification Form must be completely filled out, including date & start time of event, cause of the outage, expected duration, expected time and date of return to service.

(g) Testing the Unit(s) During an Outage. Notify the designated PG&E Control Center by telephone and the Power Settlements Department as provided elsewhere in this Agreement before testing the Unit(s) during an outage. Indicate on the original Outage Notification Form if testing will be conducted during an outage.

(h) Communication with PG&E Control Center. Seller shall maintain operating communications with the PG&E Control Center at Pittsburgh. The operating communications shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled outages, equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.

(i) Communications with ISO. Seller shall be responsible for all outage coordination communications with ISO outage coordination personnel and ISO operations management, including submission to ISO 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 ISO, and shall promptly inform PG&E of all clearance approvals and disapprovals and other communications with ISO pertaining to the status of planned or in-progress Unit(s) 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 PG&E. If either Party receives information through ISO or directly from transmission or distribution system owners regarding maintenance that will directly affect the Unit(s), it will provide this information promptly to the other Party.

3.7 Operations Logs and Access Rights.

(a) Operations Logs. Buyer 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 30 days of Buyer's request.

(b) Access Rights. PG&E, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Unit(s) at any time and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to PG&E by law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. PG&E shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Unit(s) operator. Seller shall keep PG&E advised of current procedures for contacting the Facility operator's Safety and Security Departments. Seller shall provide adequate and continuing access rights to transport, install, operate, maintain, service, replace and/or remove the interconnection facilities and related equipment or line extension that may be provided, owned, operated and maintained by PG&E.

If Section 3.8 is selected as "Applicable" then the following Section 3.8 shall be added as a new provision to the Agreement:

3.8 New Generation Facility Unit(s).

(a) Seller, at no cost to PG&E, shall be responsible to:

(i) Design and construct the Unit(s).

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

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

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

(v) In the event that construction of Seller's Unit(s) is not complete as of the execution date of this Agreement, at PG&E's request, provide to PG&E Seller's electrical specifications and design drawings pertaining to Seller's Unit(s) for PG&E's review prior to finalizing design of the Unit(s) and before beginning construction work based on such specifications and drawings. Seller shall provide to PG&E reasonable advance written Notice of any changes in Seller's Unit(s) and provide to PG&E specifications and design drawings of any such changes for PG&E's review.

(vi) Within five (5) days after the close of each calendar month until the Commercial Operation Date, provide to PG&E a Monthly Construction 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.

(b) PG&E shall have the right to:

(i) Review the design of the Unit(s)'s electrical system, design drawings and documents. With respect to review of the Unit(s)'s electrical system, such review may include, but not be limited to, the Unit(s), governor, excitation system, synchronizing equipment, protective relays, and neutral grounding.

(ii) Notify Seller in writing of the results of the review within thirty (30) calendar days of PG&E's receipt of all specifications for the Unit(s), including a description of any flaws perceived by PG&E in the design.

(iii) Request modifications to the design of the Unit(s)'s electrical system. Such modifications shall be required if necessary as determined in accordance with Seller's interconnection agreement with PG&E or the ISO.

(iv) Inspect the Units(s)'s construction site or on-site Seller data and information pertaining to the Unit(s) during business hours upon reasonable 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 Unit(s)

("Milestones") must be achieved in a timely fashion or PG&E will suffer damages. Seller shall provide PG&E with any requested documentation to support the achievement of Milestones and dates below within ten (10) Business Days of receipt of such request by Seller.

(ii) If Seller misses three or more Milestones or misses any one by more than 90 days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) days of such missed Milestone completion date, a remedial action plan ("RAP"), 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 Commercial Operation Date. Seller shall obtain approval from Buyer, which approval shall not be unreasonably withheld or delayed, with respect to remedial efforts detailed in the RAP; provided however, that such approval or withholding of approval shall not relieve Seller of its obligation to meet any subsequent Milestones and the Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, and Seller is not excused by Force Majeure, Buyer at its sole discretion may reject any RAP submitted under this Section 3.8(c)(ii) and, subject to the Project Cure Period or Construction Cure Period as provided in (iv) below, declare an Event of Default, as provided in subsection (iv) and Section 5.1(k) below.

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

(A) By August 1, 2006, Seller shall have started Construction of the Unit(s) ("Construction Start Date"); provided that Seller shall have a one-time right to extend the Construction Start Date by a period of not more than 365 days by providing Buyer with evidence that Seller's application for a conditional use permit from Contra Costa County has not been approved by Contra Costa County in a form reasonably acceptable to Seller and notifying Buyer of the new Construction Start Date and Guaranteed Commercial Operation Date, which date may be extended in accordance with subpart (B) below.

(B) By December 31, 2006, the Guaranteed Commercial Operation Date, Seller shall have demonstrated Commercial Operations; provided that if Seller has extended the Construction Start Date as permitted in subpart (A) above, then the Guaranteed Commercial Operation Date may be extended by Seller by an equal or lesser number of days as such new Construction Start Date

(iv) Seller shall cause the Unit(s) to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur prior to October 1, 2005. If the Construction begins after the Construction Start Date and/or the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date (as may be delayed on a day by day basis by Force Majeure up to one hundred eighty (180) days for either Guaranteed Project Milestone), Seller shall pay Buyer delay damages equal to the Daily Delay Damages for each day or portion of a day that (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of 60 days ("Project Cure Period"); or (II) the Construction commences after the Construction Start Date, as applicable, up to a total of sixty (60) days ("Construction Cure Period"). Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to delay in starting Construction on or before the Construction Start Date or achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date would be difficult or impossible to predict with

certainty, and (b) the Daily Delay Damages are an appropriate approximation of such damages.

(v) Notwithstanding anything in this Agreement or in the Confirmation to the contrary, Seller may elect to install the Unit(s) in two phases; provided that there has been no PTC Extension for 2006 prior to the date on which Seller provides notice, as provided herein, and Seller starts Construction of Phase I (as defined below) during 2005 with the good faith intention of achieving Commercial Operation of Phase I no later than December 31, 2005. To exercise such two phase option, Seller shall (i) provide written notice of its election to Buyer no later than September 30, 2005, which notice shall contain Seller's best estimate of the number of Units to be installed as part of each planned phase and the expected Net Rated Output Capacity of each phase and (ii) begin Construction of Phase I in 2005. If Seller makes such election, (A) in the first phase Seller shall construct Unit(s) with not less than 28 MW of Net Rated Output Capacity ("Phase I") and (B) in the second phase, Seller shall construct the balance of the Unit(s) with a Net Rated Output Capacity that when combined with the Phase I Unit(s) will total not more than 43 MW ("Phase II"). In the event that Seller is unable to achieve Commercial Operation with respect to Phase I by December 31, 2005, then both Phases I and II shall be subject to the Guaranteed Project Milestones. In the event of such election: (a) upon the commencement of Construction of Phase I, the Construction Start Date shall be deemed to have occurred with respect to Phase I and Seller's Project Development Security for Phase I shall be reduced under Section 8.4(a)(i) and Seller shall only post security under Section 8.4(a)(ii) with respect to the expected Net Rated Output Capacity of Phase I, and (b) upon Commercial Operation of Phase I, the Commercial Operation Date shall be deemed to have occurred with respect to Phase I, the Project Development Security for Phase I shall be returned to Seller in accordance with Section 8.4(c) hereof, the Estimated Contract Quantity, Guaranteed Annual Energy Production and Performance Assurance shall be reduced for Phase I on a pro rata basis to reflect the Net Rated Output Capacity of Phase I relative to the Net Rated Output Capacity of the Unit(s) as set forth in the Confirmation as of the Execution Date ("Phase I Allocation"). Upon the Commercial Operation Date of Phase II, the Estimated Contract Quantity, Guaranteed Annual Energy Production, and Performance Assurance shall be increased to reflect the original amounts set forth in the Cover Sheet and Confirmation as of the Execution Date. Nothing in this Section 3.8(c)(v) shall limit Seller's rights to delay the Construction Start Date or Guaranteed Commercial Operation Date as provided in Sections 3.8(c)(iii), 3.8(c)(iv) or 10.1(c), or to terminate this Agreement and the Transaction under Section 10.1(c) (except with respect to Phase I after it has achieved Commercial Operation) in the event that no 2007 PTC Extension occurs. For the sake of clarity, if the Commercial Operation Date for Phase I occurs on or before December 31, 2005, neither Party may terminate the Agreement or the Transaction with respect to Phase I as a result of any failure to complete Phase II. Upon any termination of Phase II by Seller as permitted under Section 10.1(c) hereof, the Project Development Security for Phase II shall be returned to Seller within 2 Business Days of Buyer's receipt of Seller's notice of such termination per Section 10.1(c) hereof.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

Sections 4.1 and 4.2 shall be deleted in its entirety and replaced with the following Section 4.1: "The Parties agree that remedies for a Party's failure to schedule and/or deliver or receive, as applicable, all or part of the Product shall be governed by the Confirmation."

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

Section 5.1 of the Agreement shall be modified as follows:

Section 5.1(a) is amended by adding the following proviso at the end thereof: "provided that, Buyer shall not be subject to an Event of Default if the failure to pay is caused solely by Seller's failure to provide Wire Transfer instructions."

Section 5.1(c) is amended by deleting the reference to "three (3) Business Days" and replacing it with "thirty (30) days."

The following new "Events of Default" shall be included in Section 5.1 of the Agreement, as amended:

Section 5.1(i) is added as follows: "if at any time during the Term of Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement electrical power that was not generated by the Unit(s) other than in connection with the provision of Imbalance Energy to account for deviations between the Scheduled Amounts and Delivered Amounts in the ordinary course of business pursuant to the ISO Tariff"; and

Section 5.1(j) is added as follows: "failure to meet the Performance Requirements set forth in Section 9.1 of the Confirmation after notice of such failure is given and the applicable cure period has run;"

Section 5.1(k) is added as follows: "failure by Seller to meet either of the Guaranteed Project Milestones set forth in Section 3.8(c)(iii) hereof after the applicable Project Cure Period or Construction Cure Period has expired."

Section 5.2 of the Agreement shall be deleted in its entirety and replaced with the following:

5.2 Declaration of Early Termination Date and Calculation of Settlement Amounts. 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 (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. Except for an Early Termination Date resulting from an Event of Default under Sections 3.6(e) and 5.1(k) hereof, the Non-defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such 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. 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.

Section 5.3 through 5.7 of the Agreement shall be deleted in their entirety and replaced with the following:

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount; (the "Termination Payment"). 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.

5.4 Default Payment: Upon an Early Termination Date resulting from an Event of Default under Sections 3.6(e) or 5.1(k) hereof, Seller, as a Defaulting Party, shall forfeit the remainder of the Project Development Security or Performance Assurance, as applicable, held by PG&E which amount of Project Development Security may have been reduced by amounts drawn from such security as Daily Delay Damages; provided that if the Unit(s) are installed in phases under Section 3.8(c)(v) and the Event of Default is under Section 5.1(k) with respect only to Phase II, then this Agreement and the Transaction shall remain in full force and effect with respect to Phase I, and Seller shall only forfeit Project Development Security for Phase II and shall not forfeit any Performance Assurance for Phase I. Upon payment of the Default Payment, Seller shall be released of all further liabilities and obligations under this Agreement, but for the Indemnity by Seller under Section 10.4(a).

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 or Default Payment, as applicable, and whether such 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 or Default Payment, as applicable, shall be made to the Non-Defaulting Party, as applicable, within two (2) 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 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 and transfer Performance Assurance to the Non-Defaulting Party in an amount equal to such payment amount."

5.7 Determination of Market Price. For Section 5.2 of this Agreement, which permits the determination of market price in calculating Gains or Losses, such price may, at the option of the Party whose right it is to use the market price, be determined by reference to market referent prices set by the CPUC, exchange prices, or by the average of market quotations provided by five or more bona fide unaffiliated market participants. If five or more quotes are obtained, the high and low quotations shall be excluded and a simple average of the other three quotations shall be used for this purpose. If the number of available quotes is 3, then the average of the 3 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 used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be for: (a) a like amount (b) of the same Product (c) at the same Delivery Point (d) on the same day and (e) for the remaining Delivery Term or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the contract value of the remaining Delivery Term and the equivalent quantities and relevant market prices for the same term that either

are quoted by a bona fide market participant or which are reasonably expected to be available in the market for a replacement contract for the Transaction. It is expressly agreed that neither Party shall be required to enter into a replacement transaction in order to determine the market price."

ARTICLE SIX: PAYMENT AND NETTING

Article Six is deleted in its entirety and replaced with the following.

6.1 Billing and Payment; Remedies. On or before the 15th calendar day of each month, Seller shall provide to Buyer (i) records of metered data, including ISO metering and transaction data, sufficient to document and verify the generation of Product by the Unit(s) for all hours during the preceding month or preceding months with respect to adjustments for Imbalance Energy pursuant to Section 8.5 of the Confirmation, and (ii) an invoice, in the format reasonably specified by Buyer, covering the services provided in the preceding month and any adjustments for Imbalance Energy pursuant to Section 8.5 of the Confirmation with respect to prior months. Buyer shall pay the undisputed amount of such invoices on or before the later of the thirtieth (30th) day of each month or fifteen (15) calendar days after receipt of the invoice. If the 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.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustments 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 3.5(b), 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) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date to 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 to 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 twenty-four (24) 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 of under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

Section 7.1 shall be deleted in its entirety and replaced with the following:

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 OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.4 (INDEMNITY), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

The introductory paragraph in Section 8.1 shall be deleted in its entirety and replaced with the following: "Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet and shall only apply if marked as "Applicable" on the Cover Sheet."

The introductory paragraph in Section 8.2 shall be deleted in its entirety and replaced with the following: "Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet and shall only apply if marked as "Applicable" on the Cover Sheet."

If the Parties elect as being applicable on the Cover Sheet, the following new Sections 8.4, 8.5 and 8.6 shall be added to Article Eight:

8.4 Project Development Security; Performance Assurance.

(a) Project Development Security; Performance Assurance. Subject to Section 3.8(c)(v), to secure its obligations under this Agreement, in addition to satisfying any credit terms pursuant to the terms of Section 8.2 to the extent marked "Applicable," Seller agrees to deliver to Buyer (the "Secured Party") within thirty (30) days of the date on which all of the conditions precedent set forth in Article Eleven are either satisfied or waived, and Seller shall maintain in full force and effect, in cash or by Letter of Credit (i) until the Construction Start Date, Project Development Security in the amount set forth on the Cover Sheet; (ii) from the Construction Start Date until the Commercial Operation Date, Project Development Security in the amount set forth on

the Cover Sheet and (iii) from the Commercial Operation Date until the end of the Term, Performance Assurance in the amount set forth on the Cover Sheet, the form of which shall be mutually acceptable. Except as set forth in Sections 3.6(e) and 5.4, any such security shall not be deemed a limitation of damages. Seller shall be entitled to the return all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the Construction Start Date, if Seller meets the Guaranteed Commercial Operation Date (including the applicable cure period). Such Daily Delay Damages shall be returned in accordance with subsection (c) below.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security for Daily Delay Damages until such time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are owed to Buyer under this Agreement, or upon termination under Section 10.1(c), then Seller shall no longer be required to maintain the Project Development Security and such security, including amounts held by Buyer as Daily Delay Damages because of a delayed Construction Start Date, shall be returned to Seller within two (2) Business Days of Seller's provision of Performance Assurance; provided however, that with Buyer's consent, Seller may elect to apply the Project Development Security toward the Performance Assurance, if any, provided pursuant to this Section 8.4.

(d) Calculation of Performance Assurance. The amount of the Performance Assurance required by this Section 8.4 and set forth on the Cover Sheet.

(e) Transfer of Interest. Buyer shall pay interest on any cash held as Project Development Security or Performance Assurance at the Interest Rate. On or before each Interest Payment Date, Buyer shall transfer the Interest Amount due to Seller for Performance Assurance or Project Development Security in the form of cash by wire transfer to the bank account specified under "Wire Transfer" on the Cover Sheet of this Agreement.

8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 8, then Seller shall (i) 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, and (ii) (A) 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 (B) 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, in the event (x) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P; or (y) the issuer of an outstanding Letter of Credit indicates its intent not to renew such Letter of Credit, (z) if an issuer of a Letter of Credit shall fail to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer. 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.

8.6 Investment Grade Credit. In the event that and for so long as either (i) Seller is incorporated in a jurisdiction of the United States and has a credit quality reasonably acceptable to Buyer, or (ii) a Guarantor of Seller that is (A) reasonably acceptable to Buyer, (B) is incorporated in a jurisdiction of the United States, and (C) has a Credit Rating that is not less than either BBB- by S&P or Baa3 by Moody's (or, if the Guarantor is not rated by either S&P or Moody's, has a credit quality that is otherwise acceptable to Buyer in Buyer's reasonable discretion), has executed and delivered a Guaranty in a form reasonably acceptable to Buyer, then Seller shall be permitted to substitute such Guarantee for cash or Letter of Credit held by Buyer as Performance Assurance, in the case of Guarantor, or return all Performance Assurance, in the case of such creditworthy Seller. Buyer shall return such cash or Letter of Credit in its possession within five (5) Business Days of Buyer's acceptance of such Guarantee or determination that Seller is creditworthy, as applicable. In the event that Seller or Seller's Guarantor, ceases to meet the criteria set forth above, then, within five (5) Business Days of notice from Buyer, Seller shall post Performance Assurance in the form of cash or a Letter of Credit.

ARTICLE NINE: GOVERNMENTAL CHARGES

Section 9.2 is deleted in its entirety and replaced with the following:

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any governmental authority ("Governmental Charges") on or with respect to the Product or the Transaction arising 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 Unit(s). PG&E 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 PG&E's responsibility hereunder, PG&E shall promptly reimburse Seller for such Governmental Charges. If PG&E is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Seller shall promptly reimburse PG&E 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.

ARTICLE TEN: MISCELLANEOUS

Section 10.1 of the Agreement shall be deleted in its entirety and replaced with the following:

10.1 No Fault Termination Rights; Remedies and Term of Master Agreement.

(a) Seller Termination Right. If "Seller Termination Right" is specified as being "Applicable" on the Cover Sheet then the following provisions in this Section 10.1(a) shall apply.

(i)(A) If Seller's Bid Price exceeds the Market Price Referent, Seller may seek a PGC Funding Award from the California Energy Commission, or its successor agency ("CEC"), for an amount (in \$ per MWh) equal to the positive difference derived by subtracting (a) the Market Price Referent (in \$ per MWh) from (b) the Bid Price (in \$ per MWh) ("PGC Fund Amount"). To the extent that Seller seeks such PGC Fund Award, Seller

shall use best efforts to comply with all funding criteria and obtain the PGC Fund Amount and Buyer shall reasonably support Seller's efforts. If Seller does not obtain a PGC Funding Confirmation or PGC Funding Award by 11:59 p.m. Pacific Standard Time on the 120th day from the date on which Buyer files this Agreement for CPUC Approval ("Funding Termination Deadline"), then Seller may unilaterally terminate this Transaction prior to the Funding Termination Deadline effective as of the date on which Buyer receives Seller's written notice of termination. If Seller exercises this termination right, neither Buyer nor Seller shall be subject to liability of any kind.

(B) At any time prior to the Funding Termination Deadline, if applicable, Seller shall send to Buyer within ten (10) days of (I) obtaining a PGC Funding Confirmation or PGC Funding Award, written notice of such confirmation or award and a copy of the final funding award agreement entered into by the California Energy Commission, or its successor agency ("CEC") and Seller, if the funding award agreement has been granted at that time, or (II) receiving written notice from the CEC denying Seller's application for the requested PGC Fund Amount, a copy of such notice and a written statement from Seller, in which Seller shall (1) waive its termination rights under this Section 10.1(a)(i) or (2) notify Buyer that the Transaction is terminated, pursuant to the terms of this Confirmation. If Seller has the right to terminate this Transaction, but fails to send written notice of termination by the Funding Termination Deadline, then Seller's termination right per this subsection 10.1(a)(i) shall be deemed waived in its entirety.

(b) PGC Funding Termination Event. If "PGC Funding Termination Event" is specified as being "Applicable" on the Cover Sheet then the following provisions in this Section 10.1(b) shall apply:

(i) PGC Funding Revocation. If at any time after Seller obtains a PGC Funding Confirmation or PGC Funding Award, (A) the PGC Funding Confirmation or PGC Funding Award is revoked in whole or in part by the CEC for reasons not caused by Seller's action or inaction, (B) such revocation occurs prior to the issuance of a PGC Funding Award or during the term of the PGC Funding Award, and (C) Seller has not received a financial benefit in the form of tax credits or any other source of public funding or credit directly related to the Product sold under this Confirmation, which benefit would offset the loss incurred from the revocation of the PGC Funding Confirmation or PGC Funding Award, then Seller shall have the right to terminate this Transaction, subject to Buyer's Right of First Refusal Option. If Seller exercises this termination right neither Buyer nor Seller shall be subject to liability arising from such termination.

Not more than ten (10) days from Seller's receipt of written notification regarding revocation of the PGC Funding Confirmation or PGC Funding Award in whole or part, Seller shall notify Buyer in writing of the revocation of the PGC Funding Confirmation or PGC Funding Award, certify it has not received an offsetting financial benefit per clause (C) above, and certify that such revocation is not due to Seller's action or inaction. Seller shall also provide Buyer with a copy of such CEC notification. ("Revocation Notice"). Seller shall specify in its Revocation Notice what percentage of lost PGC funding it is willing to accept to continue to perform under this Transaction (not exceeding 100%).

(ii) Right of First Refusal Option.

(A) Option. Buyer, in its sole discretion, shall have the right, but not the obligation, to pay to Seller the percentage of lost PGC funding specified in its

Revocation Notice ("Lost PGC Funds") and Seller shall continue performing under the Transaction for the remaining term of the Transaction (the "Option"). Buyer shall have 30 days from its receipt of the Revocation Notice to exercise the Option ("Exercise Period"), subject to Option Approval, as defined below.

(B) Exercise of Option. If Buyer chooses to exercise the Option, Buyer shall send written notice to Seller stating that Buyer is exercising the Option, conditioned upon Buyer's receipt of Option Approval, as defined below, within 180 days of date on which Buyer received the Revocation Notice. The effectiveness of the Option exercise shall be subject to Buyer's receipt of a final, non-appealable order issued by the CPUC, satisfactory to Buyer, approving Buyer's exercise of the Option and recovery of costs associated with the payment of the percentage of lost PGC Funding ("Option Approval"). The date on which Buyer provides written notice of its Option exercise to Seller shall be the "Exercise Date." Buyer shall file an advice filing or application seeking the Option Approval within 30 days of the Exercise Date.

(C) Payment. Prior to Buyer's receipt of Option Approval, Buyer shall pay Seller the Lost PGC Funds, which would have been due to Seller on a monthly basis for the period between the Exercise Date and the next invoice following the date on which the Option Approval is issued. Upon receipt of Option Approval Buyer shall continue paying Seller's Lost PGC Funds on a monthly basis until the expiration of the term of Seller's PGC Funding Award, or Reinstatement of Seller's PGC funding, whichever comes first.

(D) Seller's Termination Right. Seller may terminate the Transaction in accordance with subsection (b)(i) above upon the occurrence of any of the following events: (I) Buyer provides written notice to Seller rejecting the exercise of the Option, (II) the Option expires without being exercised, (III) Buyer fails to seek Option Approval within 30 days of the Exercise Date, or (IV) Buyer fails to obtain Option Approval within 180 days of Buyer's receipt of the Revocation Notice. If Seller then terminates the Transaction, such termination shall be effective 30 days from the date on which Seller notifies Buyer of such termination. Both Parties shall continue to perform under this Transaction until the effectiveness of any such termination by Seller."

(iii) Reinstatement of PGC Funding. If the PGC Funding Award is reinstated in its entirety, including retroactive payments for lost PGC Funds, at anytime before (A) Seller's termination of this Transaction or (B) Buyer's exercise of the Option, then Seller shall no longer be permitted to terminate this Transaction, pursuant to this Section 10(b)(i), and both Parties shall continue to perform under this Transaction. If the PGC Funding Award is reinstated in whole or in part at anytime after Buyer has exercised the Option, then Buyer shall be relieved of all further obligations to pay any of Seller's lost PGC Funds, which will be covered by the reinstated PGC Funding Award. If PGC Funding Award is reinstated in whole or in part on a retroactive basis after Buyer has exercised the Option, then Buyer shall have the right to offset against payments due to Seller that portion of such award amount equivalent to the lost PGC Funds paid by Buyer to Seller between the period in which the PGC Funds were revoked and reinstated. Seller shall notify Buyer in writing of any such reinstatement of PGC Funds within 10 days of receiving notice of such reinstatement from the CEC, CPUC, or other regulatory agency responsible for the PGC Funds program, which notice shall include a copy of such notice.

(c) Production Tax Credit ("PTC"). If legislation providing an extension of tax credits for wind energy facilities/Units for a period of at least ten (10) years in the amount of at least eighteen US dollars (\$18.00) per MWh with an adjustment in each year for inflation ("PTC

Extension") for a wind energy facility/Unit placed in service at any time on before December 31, 2006, is not enacted by February 28, 2006, then each of the Guaranteed Project Milestones set forth in Section 3.8(c)(iii) shall be extended for one year and the other Milestones shall be adjusted as well; provided that such extension shall not apply to Phase I if Phase I has achieved Commercial Operation by December 31, 2005. Subject to Section 3.8(c)(v), if a PTC Extension for a wind energy facility/Unit placed in service at any time on before December 31, 2007 ("2007 PTC Extension"), is not enacted by February 28, 2007 Seller may terminate this Agreement and the Transaction entered into hereunder without liability to Buyer by written notice to Buyer. If Seller has the right to terminate this Agreement and the Transaction pursuant to this subsection 10.1(c), but fails to send written notice of termination by September 1, 2007, then Seller's termination right per this subsection 10.1(c) shall be deemed waived in its entirety.

(d) Term of Master Agreement. The Term of this Agreement shall commence upon the satisfaction of the Conditions Precedent set forth in Article Eleven of this Agreement and shall remain in effect until the conclusion of the Delivery Term set forth in the Confirmation or unless terminated sooner pursuant to Sections 10.1(c) or 11.2 hereof; provided however, that if the Transaction has been terminated under Section 5.2 this Agreement shall remain in effect until the Parties have fulfilled all obligations with respect to the Transaction.

(e) Right of First Offer. If Seller terminates the Transaction (or any phase under Section 3.8(c)(v)) as permitted under the Agreement and Seller subsequently installs the Unit(s), Seller shall notify Buyer no later than thirty (30) days prior to the commencement of Construction and shall, at Buyer's election, negotiate with Buyer in good faith for the purchase of the Product from the Unit(s). If the Parties fail to agree within sixty (60) days of Seller's notice to Buyer, Seller shall have no further obligations or restrictions under this Section 10.1(e), with respect to the Agreement or the Transaction; provided that, if Buyer provides a binding offer in writing to Seller (including a proposed power purchase agreement) within ten (10) Business Days after the end of such sixty (60) day negotiation period, Seller shall either accept such offer and enter into the proposed power purchase agreement or shall not enter into an agreement with any other buyer that contains terms, taken as a whole, that are less favorable to Seller than those offered by Buyer. This Section 10.1(e) shall survive termination of the Transaction for a period of eighteen (18) months.

Section 10.2(ii) shall be deleted and replaced with the following:

"(ii) except for CPUC Approval, in the case of Buyer, and all permits necessary to install, operate and maintain the Project in the case of Seller, it has all regulatory authorizations necessary for it to perform its obligations under this Agreement and the Transaction entered into hereunder."

Section 10.2 (vii) shall be deleted and replaced with the following:

"(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 and the Transaction;"

Section 10.2 (x) shall be deleted and replaced with the following:

"(x) it has entered into this Agreement and the Transaction in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;"

Section 10.4 "Indemnity" shall be deleted in its entirety and replaced with the following:

10.4 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 delivery of the Product under the Transaction to and at the Delivery Point, specified in the Confirmation, (ii) Seller's operation and/or maintenance of the Unit(s), 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 economic loss of property belonging to Buyer, Seller, or others, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered by Seller under the Transaction after the Delivery Point, specified in the Confirmation or (ii) Buyer'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 economic loss of property belonging to Buyer, Seller, or others, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its 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.

Section 10.5 "Assignment" is deleted in its entirety and replaced with the following:

10.5 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 and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

Section 10.6 is amended by substituting "California" for "New York."

Section 10.8 is deleted in its entirety and replaced with the following:

10.8 General. This Agreement constitutes the entire agreement between the Parties relating to its subject matter. This Agreement shall be considered for all purposes as prepared