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**POWER PURCHASE AND SALE AGREEMENT**

**Between**

**PACIFIC GAS AND ELECTRIC COMPANY**

**(as "Buyer")**

**and**

**GEYSERS POWER COMPANY, LLC**

**(as "Seller")**

**Baseload Product**

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**POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

This Power Purchase and Sale Agreement is made as of the Execution Date set forth on the signature page hereof. The General Terms and Conditions attached hereto, along with this Cover Sheet, appendices, schedules and any written supplements hereto between the Parties shall be referred to collectively as the "Agreement." Seller and Buyer listed below are each individually considered a "Party" and collectively are considered the "Parties" to the Agreement.

Name: Geysers Power Company, LLC  
("Seller" or "Party A") ("Seller")  
All Notices:

Delivery Address:  
717 Texas Avenue, Suite 1000  
Houston, TX 77002

with copy to:

Geysers Power Company, LLC  
10350 Socrates Mine Road  
Middletown, CA 95461  
Attention: Geothermal Sr. Vice-President  
([GeysersPPA@calpine.com](mailto:GeysersPPA@calpine.com))

with copy to:

Delivery Address:  
Western Region Office  
Calpine Corporation  
P.O. Box 11749  
Pleasanton, CA 94588  
Western Region Office  
Calpine Corporation  
3875 Hopyard Road, Suite 345  
Pleasanton, CA 94588

Mail Address: (if different from above)  
Western Region Office  
Calpine Corporation  
P.O. Box 11749  
Pleasanton, CA 94588  
Facsimile: (925) 479-7303  
Attention: Asset Management

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

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

Mail Address:  
P.O. Box 770000, Mail Code N12E  
San Francisco, CA 94177

Attn: Kelly A. Everidge ([kabd@pge.com](mailto:kabd@pge.com))

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Attn: Contract Administration  
Phone: (713) 830-8845  
Facsimile: (713) 830-8751

Director, Contract Mgmt & Settlements  
Phone: (415) 973-0070  
Facsimile: (415) 973-9176

Duns: 16-966-8212  
Federal Tax ID Number: [REDACTED]

Duns:  
Federal Tax ID Number:

**Invoices:**  
Attn: Power Accounting  
  
Phone: (713) 830-2000  
Facsimile: (713) 830-8749

**Invoices:**  
Attn: Alice Gong (axl3@pge.com)  
Manager, Bilateral Settlements  
Phone: (415) 973-4569  
Facsimile: (415) 973-2151

**Confirmations:**  
Attn: Confirmations Department  
Phone: (713) 830-8333  
Facsimile: (713) 830-8868

**Scheduling:**  
Attn: Scheduling  
Phone: (713) 830-8612  
Facsimile: (713) 830-8722

**Scheduling:**  
Attn: Kevin F. Coffee (kfc1@pge.com)  
Phone: (415) 973-7631  
Facsimile: (415) 973-0400

**Payments:**  
Attn: Power Accounting  
  
Phone: (713) 830-2000  
Facsimile: (713) 830-8749

**Payments:**  
Attn: Alice Gong (axl3@pge.com)  
Manager, Bilateral Settlements  
Phone: (415) 973-4569  
Facsimile: (415) 973-2151

**Wire Transfer:**  
BNK: [REDACTED]  
ABA: [REDACTED]  
ACCT: [REDACTED]

**Wire Transfer:**  
BNK: [REDACTED]  
ABA: [REDACTED]  
Acct: [REDACTED]

**Credit and Collections:**  
Attn: Corporate Credit Manager  
  
Phone: (713) 830-8877  
Facsimile: (713) 570-4764

**Credit and Collections:**  
Attn: Credit Risk Management  
  
Phone: 415-973-0004  
Facsimile: 415-973-7301

With additional Notices of an Event of  
Default to Contract Manager:  
Attn: Attn: Risk Management Counsel  
  
Phone: (713) 830-8835  
Facsimile: (713) 830-8751

**Contract Manager:**  
  
Attn: Jeannette Woo (jxw7@pge.com)  
Manager, Contract Management  
Phone: (415) 973-5097  
Facsimile: (415) 973-2207

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with copy to:

Attn: General Counsel  
Phone: (408) 995-5115  
Facsimile: (408) 995-0505

With additional Notices of an Event of Default  
to:

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

**Agreement Execution**

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

GEYSERS POWER COMPANY, LLC

PACIFIC GAS AND ELECTRIC  
COMPANY

By: Mike Roget  
Name: Mike Roget  
Title: Vice President

By: \_\_\_\_\_  
Name: Roy M. Kuga  
Title: Vice President, Energy Supply

Date: October 12, 2006

Date: October 12, 2006

**EXECUTION VERSION**

with copy to:

Attn: General Counsel  
Phone: (408) 995-5115  
Facsimile: (408) 995-0505

With additional Notices of an Event of Default  
to:

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

**Agreement Execution**

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

GEYSERS POWER COMPANY, LLC

PACIFIC GAS AND ELECTRIC  
COMPANY

By: \_\_\_\_\_  
Name: Mike Rogers  
Title: Vice President

By:   
Name: Roy M. Kuga  
Title: Vice President, Energy Supply

Date: October 12, 2006

Date: October 12, 2006

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**POWER PURCHASE AND SALE AGREEMENT**

**GENERAL TERMS AND CONDITIONS**

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**ARTICLE ONE: DEFINITIONS**

- 1.1 "AAA" has the meaning set forth in Section 12.2(d).
- 1.2 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.3 "Aggregate Available RA Capacity Quantity" has the meaning set forth in Section 3.5(d)(ii).
- 1.4 "Annual Aggregate RA Capacity Quantity" means the total amount of the Designated RA Capacity as determined pursuant to Section 3.5(b), which amount cannot exceed the Net Qualifying Capacity for the Designated Eligible Units, as authorized by the CPUC in the CPUC RA Decisions, and/or by the CAISO.
- 1.5 "Available RA Capacity Quantity" has the meaning set forth in Section 3.5(d)(ii).
- 1.6 "Average Energy Price" has the meaning set forth in Section 3.4(c).
- 1.7 "Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.
- 1.8 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.
- 1.9 "Buyer Curtailment" has the meaning set forth in Section 3.3(f).
- 1.10 "Buyer's Security" has the meaning set forth in Section 8.3(b)
- 1.11 "CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.
- 1.12 "CAISO Control Area" has the meaning specified in the CAISO Tariff.



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

1.14 "CAISO Penalties" means any fees, liabilities, assessments, or similar charges assessed by the CAISO in connection with any act or omission associated with the Scheduling of Energy.

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

1.16 "California Renewables Portfolio Standard" means the renewable energy program and policies established by Senate Bill 1038, as codified in California Public Utilities Code Sections 399.11 through 399.15 and Sections 381, 383.5, and 445, respectively.

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

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

1.19 "Contract Energy Price" has the meaning set forth in Section 3.3(b).

1.20 "Contract Energy Quantity" has the meaning set forth in Section 3.3(a).

1.21 "Contract Year" means a calendar year; provided that, if the Initial Energy Delivery Date is a date other than January 1, 2007, the first Contract Year shall run from the Initial Energy Delivery Date through December 31, 2007.

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

1.23 "Cover Sheet" means the Cover Sheet that precedes Article One; General Definitions to this Agreement.

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

1.25 "CPUC Approval" means a decision of the CPUC, without conditions or modifications unacceptable to either Party in its sole discretion, which contains the following terms:

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(a) Approval of this Agreement in its entirety, including payments to be made by Buyer hereunder and the hedging undertaken by Buyer to fix its costs therefor, as "reasonable", and a statement that Buyer is entitled to full cost recovery therefor, subject only to CPUC review of Buyer's administration of the Agreement;

(b) A finding 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

(c) A finding that all or some portion of 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, that is, no longer subject to rehearing or appeal.

1.26 "CPUC RA Decisions" mean CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-070-031 or subsequent decisions related to resource adequacy, as may be amended or issued from time to time by the CPUC.

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

1.28 "Day Ahead Schedule" shall have the meaning set forth in the CAISO Tariff.

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

1.30 "Delivered EA Energy" means all Scheduled Energy from Eligible Units with associated Environmental Attributes delivered to Buyer as measured in MWh at the Delivery Point.

1.31 "Delivery Point" means (a) prior to the implementation of MRTU, NP15, and (b) upon implementation of MRTU, (i) the interconnection point of the Eligible Unit listed in Appendix I unless the Geysers Hub is formed, in which case, deliveries pursuant to subsection (b) of this definition shall be to the Geysers Hub, and (ii) for deliveries of Scheduled Energy that is non-Delivered EA Energy and includes imbalance Energy, the NP15 EZ Gen Hub or similar generation-based trading hub that replaces NP15.

1.32 "Delivery Term" has the meaning set forth in Section 3.2.

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1.33 "Designated Eligible Units" has the meaning set forth in Section 3.5(b).

1.34 "Designated RA Capacity" means, for each Designated Eligible Unit, the RA Capacity that Seller provides to Buyer pursuant to this Agreement to the extent such capacity is certified for inclusion in Buyer's RAR Showings and, if applicable, LAR Showings, in each case as determined or approved by the CPUC pursuant to the CPUC RA Decisions (and/or by the CAISO). Designated RA Capacity shall include those attributes associated with the capacity identified in the Eligible Unit and Transaction Information form, a form of which is attached as Appendix II, pursuant to Section 3.5(b). For each Monthly Delivery Period, a Designated Eligible Unit's Designated RA Capacity shall be equal to the Designated Eligible Unit's RA Capacity, after reflecting adjustments for Planned Outages, if any, required by the CPUC (and/or, to the extent authorized by the CPUC, by the CAISO), or a Governmental Body having jurisdiction, provided that the total amount of Designated RA Capacity from all Designated Eligible Units shall not exceed the Annual Aggregate RA Capacity Quantity.

1.35 "Designated RA Capacity Quotient" has the meaning set forth in Section 3.5(e).

1.36 "Dispatch Down" means (a) curtailments ordered from the CAISO or Buyer as a result of a System Emergency (as defined in the CAISO Tariff), and (b) scheduled or unscheduled maintenance on the PTO's transmission facilities that prevents Buyer from receiving Energy at the Delivery Point from the Eligible Unit that had been previously scheduled to deliver such Energy.

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

1.38 "EA Adjustment" has the meaning set forth in Section 3.4(a).

1.39 "EA Tracking" has the meaning set forth in Section 4.3.

1.40 "Early Termination Date" has the meaning set forth in Section 5.2.

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

1.42 "Electrical Losses" means all applicable losses, including, but not limited to, the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the applicable GMM or any successor method to account for losses or congestion established by the CAISO (or successor organization) and assigned to the interconnection point for the Eligible Unit, if applicable.

1.43 "Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in Public Utilities Code Sections 399.12 or 399.16, as may be amended.

1.44 "Eligible Unit" means, subject to the limitations set forth below, any of the following units located at the Geysers Known Geothermal Resource Area: Geysers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, and 20. A unit is not an Eligible Unit (a) so long as

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the Energy and capacity from such unit is committed to Buyer pursuant to a Standard Offer (SO) contract or (b) if such unit is no longer CEC-certified as an eligible renewable resource.

1.45 "Energy" means electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified).

1.46 "Environmental Attributes" or "EA" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the generation of Delivered EA Energy from an Eligible Unit pursuant to the terms hereof, and the displacement of conventional Energy generation associated therewith. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) 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 a MWh 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 Eligible Unit, (ii) production tax credits associated with the construction or operation of the Eligible Unit 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 Eligible Unit for compliance with local, state, or federal operating and/or air quality permits. If the Eligible Unit is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes, to ensure that there are zero net emissions associated with the production of electricity from the Eligible Unit.

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

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

1.49 "Excess Outage Test" has the meaning set forth in Section 3.5(d)(i) and relates to the determination of RA Capacity that is not counted as part of the Available RA Capacity Quantity for the affected Eligible Unit(s).

1.50 "Execution Date" has the meaning set forth on the Cover Sheet.

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1.51 "Existing CAISO Tariff" or "Existing Tariff" means the CAISO's Simplified and Reorganized ISO Tariff on file as of the Execution Date.

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

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

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

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

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

(d) emergencies declared by a forced curtailment required by the CAISO or any other authorized successor or regional transmission organization or any state or federal regulator or legislature making it impossible for the CAISO to transmit Energy, including Energy to be delivered pursuant to this Agreement.

Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product, or any element thereof, 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 approvals of any type for the construction, operation, or maintenance of the Geysers Project;

(iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Geysers Project, except if Seller's inability to obtain sufficient fuel, power or

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materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a) through (d) above;

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

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

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

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

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

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

1.56 "Geysers Hub" means, upon implementation of MRTU, the aggregation, if any, by the CAISO for Scheduling purposes of the locational marginal pricing nodes to which the interconnection points of all of the Eligible Units have been aggregated or assigned.

1.57 "Geysers Main RMR Agreement" means the RMR Agreement between Seller and CAISO with respect to all the Units of the Geysers Project except Units 13 and 16.

1.58 "Geysers Project" means all of the Eligible Units and the other assets, tangible and intangible, associated therewith.

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1.59 "Geysers Units 13 and 16 RMR Agreement" means the RMR Agreement between Seller and CAISO with respect to Units 13 and 16 of the Geysers Project.

Tariff. 1.60 "GMM" means the Generation Meter Multiplier as defined in the CAISO

1.61 "GMM Adjustment" has the meaning set forth in Section 3.3(j).

Tariff. 1.62 "Good Utility Practice" shall have the meaning provided in the CAISO

1.63 "Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

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

1.65 "Hour Ahead" shall have the meaning set forth in the CAISO Tariff.

1.66 "Initial Energy Delivery Date" shall have the meaning set forth in Section 3.2.

1.67 "Interconnection Facilities" means the facilities, which include all apparatus installed and means required pursuant to the PTO's transmission department's facility connection requirements, to which Seller shall be able to interconnect and deliver Energy from an Eligible Unit to a Delivery Point, including, but not limited to, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required pursuant to Good Utility Practices and in accordance with any agreements entered into by Seller necessary for interconnection to the PTO's transmission system and the CAISO Grid.

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

1.69 "Interim Geysers RA Confirm" means that certain Confirmation – Resource Adequacy Product (2007), dated as of September 22, 2006, by and between Buyer and Seller.

1.70 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC RA Decisions having jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RA, or local capacity requirement in other regulatory proceedings or legislative actions.

1.71 "LAR Attributes" means, with respect to a Designated Eligible Unit, and except as otherwise specifically limited by this Agreement, any and all resource adequacy

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attributes (or other locational attributes related to system reliability), as may be identified from time to time by the CAISO or CPUC, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Designated Eligible Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with the CAISO Control Area where in the Designated Eligible Unit is physically located or electrically interconnected. To the extent necessary for the Buyer to fully meet its LAR and RAR, and in accordance with Section 3.5(c), these attributes shall also include all attributes under the currently existing Reliability Must Run contracts per the CAISO Tariff and FERC. For clarity, it should be understood that the LAR Attributes associated with a Designated Eligible Unit by virtue of its location or point of electrical interconnection may change as the CAISO, or a Governmental Body, defines new or re-defines existing LAR regions, provided that such change will not result in a change in payments made pursuant to this transaction.

1.72 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC RA Decisions, having jurisdiction over the LSE.

1.73 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipally serving load in the CAISO Control Area (excluding exports).

1.74 "Law" means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Body of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Delivery Term; or any binding interpretation of the foregoing.

1.75 "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 Appendix III to this Agreement.

1.76 "LMP Adjustment" has the meaning set forth in Section 3.3(i).

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



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exclude any loss of Production Tax Credits or other federal or state tax credits related to the Project or generation therefrom.

1.78 "Maintenance Outage" has the meaning specified in the NERC/GADS Protocols.

1.79 "Monthly Contract Period" means each calendar month during the Contract Year.

1.80 "Monthly Designated RA Capacity" means the Designated RA Capacity as calculated per Section 3.5(d), or as revised by the CPUC or CAISO Tariff, for each month during the Delivery Term.

1.81 "Monthly RA Capacity Payment" has the meaning set forth in Section 3.5(a).

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

1.83 "MRTU" means the locational marginal pricing market system to be governed by the CAISO Tariff approved by FERC in Docket ER06-615.

1.84 "MWh" means megawatt-hour.

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

1.86 "NERC/GADS Protocols" means the North American Electric Reliability Council (NERC) Generating Availability Data System (GADS) protocols, as may be updated from time to time.

1.87 "Net Qualifying Capacity" means the amount of capacity that qualifies for use by Buyer in meeting its RA and LAR requirements, as determined by either the CPUC or the CAISO in accordance with either the CPUC RA Decisions or the CAISO Tariff.

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

1.89 "Notice" means, unless otherwise specified in the Agreement, written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail) pursuant to Article Thirteen and Appendix IV.

1.90 "Original Geysers PPA" means collectively (a) Confirmation Letter between Calpine Energy Services, L.P. ("CES") and Buyer, dated as of November 14, 2002, as amended, for CPN/PG&E - Unit-Firm Renewable Product Geysers Unit 20 (GEYS20 7 Unit20) and (b) Confirmation Letter between Calpine Energy Services, L.P. ("CES") and Buyer, dated as of November 14, 2002, as amended, for CPN/PG&E - Unit-Firm Renewable Product Geysers Unit 13 (GEYS13 7 Unit13), which were both executed under the Master Power Purchase & Sale Agreement, Version 2.1 (modified 4/25/00), including the Cover Sheet and exhibits thereto,

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prepared by the Edison Electric Institute and the National Energy Marketers Association, and entered into by CES and Buyer, as modified by the Schedule A thereto.

1.91 "Outages" means Maintenance Outages, Planned Outages and Unplanned Outages, as each such term is defined by the NERC/GADS Protocols.

1.92 "Outage Notification Form" means the notice form attached hereto as Appendix V, which shall be submitted by Seller to Buyer in accordance with the relevant provisions of Section 4.4.

1.93 "Participating Transmission Owner" or "PTO" means Pacific Gas and Electric Company in its capacity as the owner of certain transmission facilities placed under the operational control of the CAISO pursuant to the terms of the CAISO Tariff and certain agreements between the CAISO and Pacific Gas and Electric Company.

1.94 "Planned Outage" has the meaning specified in the NERC/GADS Protocols and, for the purposes of Section 3.5, "scheduled outages" as described in the CPUC RA Decisions.

1.95 "Product" means the Energy, Environmental Attributes, and RA Capacity, as set forth in Section 3.1.

1.96 "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 may be amended from time to time.

1.97 "RMR Agreement" means a must-run service agreement between a generating facility and the CAISO, as amended from time to time.

1.98 "RA Capacity" means the amount of capacity of a Designated Eligible Unit that is sold to Buyer and qualifies to meet Buyer's RAR and LAR requirements for the applicable RA Compliance Period, as determined by the CAISO, CPUC, or other Governmental Body authorized to make such determination. RA Capacity encompasses both the RAR Attributes and LAR Attributes of the capacity provided by a Designated Eligible Unit pursuant to Section 3.5.

1.99 "RA Compliance Period" means that period of time for which Buyer must demonstrate to the CPUC its compliance with the Resource Adequacy Requirements; as of the Execution Date, the RA Compliance Period is one calendar year.

1.100 "RA Deadline" has the meaning set forth in Section 3.5(b).

1.101 "RA Product" means a resource adequacy capacity product that, under applicable CPUC RA Decisions or other Governmental Body rules, is a substitute for, addition to, or successor to the RA Capacity described herein.

1.102 "Replacement Index" has the meaning set forth in Section 3.3(b).

1.103 "Replacement RA Capacity" has the meaning set forth in Section 3.5(g).

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1.104 "Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC RA Decisions or other Governmental Body having jurisdiction.

1.105 "RAR Attributes" means, with respect to a Designated Eligible Unit, and except as otherwise specifically limited by this Agreement, any and all resource adequacy attributes, as may be identified and modified from time to time by the CPUC, or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any IAR Attributes. For clarity, it should be understood that the RAR Attributes associated with a Designated Eligible Unit by virtue of its location or point of electrical interconnection may change as the CAISO, or a Governmental Body, defines new or re-defines existing regions and RAR, provided that such change will not result in a change in payments made pursuant to this transaction.

1.106 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC RA Decisions.

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

1.108 "SB 107" has the meaning set forth in Section 3.4(d).

1.109 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinator, if applicable, of notifying, requesting and confirming to each other the Contract Energy Quantity to be delivered on any given hour, day or days during the Delivery Term at a specified Delivery Point.

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

1.111 "Scheduled Energy" shall have the meaning set forth in Section 3.3(d).

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

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

1.114 "Settlement and Release of Claims Agreement" means that certain Settlement and Release of Claims Agreement entered into by and among Delta Energy Center, LLC, Los Esteros Critical Energy Facility, LLC, Geysers Power Company, LLC, Creed Energy Center, LLC, Gilroy Energy Center, LLC, Goose Haven Energy Center, LLC, Los Medanos Energy Center, LLC, Metcalf Energy Center, LLC, Pacific Gas and Electric Company, the California Independent System Operator Corporation, and the California Electricity Oversight Board.

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1.115 "Supply Plan" means the supply plans, or similar or successor filings, that each Unit's Scheduling Coordinator submits to the CAISO, or a Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes or LAR Attributes.

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

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

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

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

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

1.121 "WREGIS" shall have the meaning set forth in Section 3.4(f) hereof.

1.122 "Year-Ahead Compliance Filing" means the requirement under CPUC Decision 06-07-031 for Buyer to identify, as of a prescribed date, Designated RA Capacity with which it is satisfying its RAR for the next Contract Year, in reliance on counting any Unit's Net Qualifying Capacity as published by CAISO on or about July 1 prior to the start of the next Contract Year.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Cover Sheet and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire agreement between the Parties. Upon satisfaction or waiver of the conditions precedent set forth in Article Eleven, and as of the Initial Energy Delivery Date, both the Original Geysers PPA and the Interim Geysers RA Confirm shall be terminated, and superseded by this Agreement. The Parties acknowledge that concurrently with the execution of this Agreement, the Settlement and Release of Claims Agreement will be executed by the Parties, and certain other persons. To the extent there is a conflict, or disagreement, between this Agreement and the Settlement and Release of Claims Agreement, the terms of this Agreement shall control.

2.2 Interpretation. The following rules of interpretation shall apply:

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

(b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments,

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supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies.

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

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

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

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

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

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

2.4 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between representatives of the Parties responsible for the Scheduling of Energy or the operation of the Eligible Units or the PTO's transmission system, which conversations are conducted in connection with the scheduling of Energy, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

2.5 Term. The term of this Agreement shall commence upon the satisfaction of the Conditions Precedent set forth in Section 11.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to any of Sections 5.2, 11.2 or 11.4 of this Agreement (the "Term"); provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether

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directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Seller's Security or the Buyer's Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

2.6 **Binding Nature.** This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under Sections 2.7, Section 5.1(a)(ii) only with respect to Section 10.1, and 10.6 and Articles Eleven and Twelve. Upon occurrence of the Effective Date, this Agreement shall be in full force and effect, enforceable and binding in all respects.

2.7 **Good Faith and Fair Dealing.** Each Party expressly assumes a duty of good faith and fair dealing with respect to its performance of its obligations under this Agreement.

**ARTICLE THREE: PRODUCT; TERM; COMPENSATION**

3.1 **Transaction.** During the Delivery Term, Seller agrees to sell and deliver, or cause to deliver, as applicable, and Buyer agrees to buy and accept, or cause to accept, as applicable, (the "Transaction") the Contract Energy Quantity described in Section 3.3, the quantity of Environmental Attributes described in Section 3.4, and the quantity of Resource Adequacy Capacity described in Section 3.5 pursuant to the terms of this Agreement (collectively, the "Product"). Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term.

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

- Delivery shall be for a period of ten (10) Contract Years.
- Delivery shall be for a period of fifteen (15) Contract Years.
- Delivery shall be for a period of twenty (20) Contract Years.
- x Non-standard Delivery shall be for a period of 6 Contract Years.

As used herein, "Delivery Term" shall mean the period of Contract Years specified in the immediately preceding sentence beginning on the first date that Seller delivers Product to Buyer from the Project ("Initial Energy Delivery Date") in connection with this Agreement and continuing through December 31, 2012 unless terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall be no earlier than January 1, 2007 and shall not occur until 12:00:01 a.m. PPT of the third (3<sup>rd</sup>) Business Day after all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix VI on the Initial Energy Delivery Date.

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3.3 Contract Energy.

(a) Contract Energy Quantity. Except as otherwise provided in this Agreement, including periods during which Seller's Schedules have been curtailed due to a Dispatch Down or Buyer Curtailment pursuant to subsection (e), below, Seller shall Schedule the delivery of, and Buyer shall Schedule the receipt of, 200 MWs of Energy (the "Contract Energy Quantity") during every hour during the Delivery Term to a Delivery Point.

(b) Payment. In accordance with the billing and payment terms set forth in Article Six, Buyer shall pay to Seller in arrears for each month during the Delivery Term pursuant to the following formula, which is set forth to establish the monthly payment for the Product provided under this Agreement, including certain adjustments thereto associated with GMMs or locational marginal pricing at the Geysers Project, as applicable:

$$\{\Sigma \text{ (for each hour of the month) [THEQP + (either the GMM Adjustment or the LMP Adjustment) + EA Adjustment Payment]}\} + \text{the Monthly RA Capacity Payment}$$

Where:

THEQ (total hourly energy quantity) = the Scheduled Energy in the hour plus any MWs deemed delivered in the hour pursuant to the last sentence of Section 3.3(f)

THEQP (total hourly energy quantity payment) = THEQ \* the Contract Energy Price for the hour

GMM Adjustment = if applicable, determined in accordance with Section 3.3(j)

LMP Adjustment = if applicable, determined in accordance with Section 3.3(i)

EA Adjustment Payment = (EA Adjustment as set forth in Section 3.4(a)) \* Delivered EA Energy

Monthly RA Capacity Payment = determined in accordance with Section 3.5(a)

The "Contract Energy Price" shall be equal to the Floating Daily Price based on the Intercontinental Exchange ("ICE"), Day Ahead Weighted Average Prices for On Peak and Off Peak at NP15 as posted daily by ICE for the applicable hour of delivery. On Peak Hours are defined as Hours Ending (HE) 07-22 PPT Mondays through Saturdays, excluding Holidays. Off Peak Hours are defined as Mondays through Saturdays HE 01-HE 06 plus HE 23-HE 24 PPT plus all day Sundays and Holidays. Upon the implementation of MRTU the "Contract Energy Price" shall remain the Floating Daily Price based on the ICE, Day Ahead Weighted Average Prices for On Peak and Off Peak at the successor to NP15 as posted daily by ICE for the applicable hour of delivery. This is expected to be the NP15 EZ Generator Hub price. If ICE no longer publishes a Floating Daily Price for On Peak and Off Peak delivery of Energy into NP15 or its successor after NP15, the applicable index will be the Dow Jones index at NP15 for the same On Peak and Off Peak periods. If both indices cease to exist in a form representing NP15 or its successor then either Party may demand a meeting as soon as practicable for the Parties to

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determine an alternate index or an appropriate modification to the index (the "Replacement Index") to preserve the relative economic bargain as of the Execution Date if such Party believes in good faith that the then-current methodology does not accurately reflect the intent of the Parties as of the Execution Date. If the Parties are unable to agree to a Replacement Index within five (5) Business Days of a request for a meeting by requesting Party, unless otherwise agreed by the Parties in writing, either Party may submit the determination of a Replacement Index to the expedited dispute resolution mechanism in Section 12.4 below.

An example of the application of this Section 3.3(b) is set forth in Exhibit 3.3(b).

**(c) Transmission Service; CAISO Charges. During the Delivery Term:**

(i) 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 such transmission service, including, but not limited to, any transmission outages or curtailment. Seller shall be responsible for all CAISO costs and charges, including imbalance charges due to deviations from the Schedule (as defined in the CAISO Tariff), regardless of the cause thereof, electric transmission losses and congestion to and at the Delivery Point. Seller shall fulfill all contractual, metering and applicable interconnection requirements so as to be able to deliver Energy to the CAISO Grid. Seller shall, at its sole expense, be obligated to maintain the Interconnection Facilities, including metering facilities. Seller shall also assume all liability and reimburse Buyer for any and all charges, including, as defined below, incurred by Buyer as a result of Seller's failure to abide by the CAISO Tariff and all applicable protocols. Seller shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller's responsibilities for payment for imbalance and congestion charges and CAISO Penalties, as defined below, incurred pursuant to this subsection (c)(i).

(ii) Buyer shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment. Buyer shall Schedule or arrange for Scheduling services from the CAISO to receive the Contract Energy Quantity at the Delivery Point. Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion from the Delivery Point. Buyer shall also assume all liability and reimburse Seller for any and all charges, including, as defined below, incurred by Seller as a result of Buyer's failure to abide by the CAISO Tariff and all applicable protocols. Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Buyer shall promptly notify Seller as soon as possible of any material imbalance that is occurring or has occurred. Such notification shall not alter Buyer's responsibilities for payment for all imbalance and congestion charges and CAISO Penalties, as defined below, incurred pursuant to this subsection (c)(ii).

**(d) Scheduling and Scheduling Coordinator.** Each of Seller and Buyer shall be its own Scheduling Coordinator with respect to this Transaction, or designate a qualified third party to fulfill such role. Throughout the Delivery Term, Seller shall designate a SC trade for delivery of the Contract Energy Quantity solely to Buyer's SC ("Scheduled Energy"). Conduct of deliveries through SC-to-SC trades shall be in compliance with the CAISO Tariff. During the



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Delivery Term, Buyer or Buyer's SC shall conduct all scheduling in full compliance with the applicable CAISO Tariff, protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff.

(c) Dispatch Down. Notwithstanding this Section 3.3, Seller shall reduce the Contract Energy Quantity to be Scheduled or delivered in an hour under this Section 3.3 during any Dispatch Down period.

(f) Buyer Curtailment. In addition to a Dispatch Down required by the CAISO, Buyer shall have the right to curtail, partially or completely, the delivery of the Contract Energy Quantity, at no cost to Buyer, for up to fifty (50) hours in each Contract Year, not including Dispatch Down periods, for: (i) overgeneration as defined in the CAISO Tariff or in Buyer's forecast of such, including but not limited to a request by the CAISO to manage overgeneration conditions pursuant to CAISO Operating Procedure G 202, as the same may be amended, supplemented, or replaced, in whole or in part, from time to time; and (ii) Buyer to generate power from its hydro facilities in order to avoid a Hydro Spill Condition (bypassing water past unloaded power houses that otherwise would have generated energy) for safety reasons; provided, however, that any such curtailment under this subsection (f) shall be in blocks of no less than four (4) consecutive hours ("Buyer Curtailment"). Buyer shall have no liability to Seller of any kind relating to or resulting from such curtailments conforming to the requirements of this subsection (f). For such curtailments exceeding the allowable fifty (50) hours in any Contract Year, excluding Dispatch Down periods, Buyer shall pay Seller the Contract Energy Price for each MWh that Seller would have Scheduled Energy pursuant to Section 3.3(a) absent the curtailment.

(g) Buyer Excuses. The performance of Buyer to receive or pay for the Contract Energy Quantity shall be excused only (i) during periods of Force Majeure, (ii) by Seller's failure to perform, (iii) during Dispatch Down periods, or (iv) for up to 50 hours in any Contract Year due to a Buyer Curtailment.

(h) No Excuse. Except for a failure or curtailment resulting from a Force Majeure or during a Dispatch Down period or Buyer Curtailment, the failure of electric transmission service shall not excuse performance with respect to either Party for the delivery or receipt of the Contract Energy Quantity to be provided under this Agreement. For the avoidance of doubt, this subsection (h) shall not apply to the determination of the MEADF under Section 3.4(b) or the application of the MEADF in Sections 3.4(c) and 5.2(b)(i).

(i) LMP Adjustment.

(i) Parties Intent; Regulatory Change. The Parties acknowledge that, upon the implementation by the CAISO of a locational marginal pricing (LMP) market structure contemplated in MRTU as of the Execution Date, the Delivery Points of the individual Eligible Units may be aggregated or assigned to different LMP pricing nodes. In such a circumstance, for any hour, the LMP-prices at the nodes aggregating the various Delivery Points may vary from one and another. It is the intent of the Parties that if a LMP market structure is implemented during the Delivery Term, for each MWh of Scheduled Energy from the Geysers Project, there shall be a pricing true-up to adjust the price received by the Seller for the MWhs of Delivered EA Energy pursuant to the terms of this Section 3.3(i) to equal the volume-weighted average nodal price for the total quantity of energy

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available from the Eligible Geysers Project for each hour. In the event that either Party in good faith determines that the mechanism set forth in this Section 3.3(i) does not accurately administer or reflect the intent of the Parties articulated herein, then such Party shall contact the other Party and the Parties shall negotiate in good faith to appropriately revise this Section 3.3(i). The intent of this mechanism is to remove any "Seller's Choice" opportunity to deliver from any specific Eligible Unit(s) where the LMP energy value is higher or lower than the weighted average of all of the Eligible Units. Upon the date when the other Party receives notice from the first Party, the application of the LMP Adjustment in Section 3.3(i) shall be suspended, subject to true-up, until the Parties agree to modifications to this Section 3.3(h). If the Parties are unable to agree to modifications to this Section 3.3(i) within 45 days of notice being provided hereunder, then either Party may initiate expedited dispute resolution pursuant to Section 12.4 hereof. In the event that LMP is not implemented during the Delivery Term, or a Geysers Hub is formed during the Delivery Term, this Section 3.3(i) shall be of no effect and the LMP Adjustment calculation in (ii) below shall be deemed to be zero for all purposes hereunder.

(ii) LMP Adjustment Calculation. For each hour in any month during the Delivery Term, a "LMP Adjustment" shall be calculated as follows, which formula is intended to quantify the hourly difference between an average nodal price for delivery from the Geysers Project and the average weighted price of the actual deliveries from the Eligible Units providing Delivered EA Energy for such hour:

$$\text{LMP Adjustment (positive or negative)} = (\text{WADNP} - \text{WAGNP}) * (\text{quantity Delivered EA Energy in the hour})$$

Where:

WAGNP (weighted average Geysers Project nodal price) the average nodal price for an hour calculated by (A) taking the sum of (1) the Available Capacity Quantity of Eligible Unit(s) aggregated or assigned to a particular node multiplied by (2) the simple average nodal price for the hour published by the CAISO for each node that includes an Eligible Unit, divided by (B) the Total Available Capacity Quantity of Eligible Unit(s). "Available Capacity Quantity of Eligible Unit" means for an Eligible Unit that amount of generation capacity that is available during a certain hour that is not subject to a Forced Outage. "Total Available Capacity Quantity of Eligible Unit(s)" means the aggregate of the Available Capacity Quantity for all the Eligible Units.

WADNP (weighted average Delivered EA Energy nodal price) the average nodal price for an hour calculated by (1) taking the sum for the total amount of Delivered EA Energy in the hour from each Eligible Unit providing such Delivered EA Energy of (A) the product of the Delivered EA Energy delivered from an Eligible Unit to a node multiplied by (B) the simple average of the nodal price published by the CAISO for such node during the hour, divided by (2) the total Delivered EA Energy for such hour.

An example of the LMP Adjustment calculation is attached hereto as Exhibit 3.3(i).

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(j) GMM Adjustment. Prior to the implementation of MRTU, during each month of the Delivery Term, an adjustment shall be made to the payments due under Section 3.3(a) to adjust for the associated GMM attributable to the Eligible Units providing Delivered EA Energy in an hour. The intent of this adjustment is preserve the agreement by the Parties that the cost of delivery of Delivered EA Energy from the Eligible Units is determined as if the delivery from such Eligible Unit's interconnection point even as the Scheduled Energy is Scheduled to NP15. The "GMM Adjustment" shall be determined as follows:

$$[1 - \text{Hourly EA GMM}] * \text{Delivered EA Energy for the hour} * \text{MCP}$$

Where:

Hourly EA GMM = the weighted average of the GMMs attributable to the Eligible Units deemed to have provided Delivered EA Energy pursuant to Section 4.3

MCP = the Market Clearing Price in NP15 published by the CAISO for the hour

An example of the GMM Adjustment calculation is attached hereto as Exhibit 3.3(j).

3.4 Environmental Attributes.

(a) Environmental Attributes (EA) Price. For each MWh of Delivered EA Energy, which Energy has been generated from Eligible Unit, and whereby Seller grants to Buyer all rights to the Environmental Attributes associated with the generation of such Energy as provided in this Section 3.4, Buyer shall pay to Seller an "EA Adjustment" of \$7.78/MWh, which payment shall be invoiced and paid monthly. Upon delivery of such Energy, Buyer shall be deemed to have received the Environmental Attribute associated with the generation of each such delivered MWh. The amount of Environmental Attributes associated with the Delivered EA Energy shall be determined in accordance with the EA Tracking procedures set forth in Section 4.3 below.

(b) Minimum EA Delivery. Except as otherwise provided herein, the Minimum Environmental Attribute Delivery Factor ("MEADF") shall be no less than 95% of the Scheduled Energy in each Contract Year from Eligible Units, which shall be determined as follows:

$$\text{MEADF} = (\text{DEA} + \text{EEA}) / (\text{MG})$$

Where:

MG (maximum generation) is 200 MW multiplied by the number of hours in the applicable Contract Year

DEA (Delivered EA Energy) is the quantity in MWhs of the Delivered EA Energy delivered to Buyer in an applicable Contract Year

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EEA (Excused EA) is the cumulative amount of MWhs of Scheduled Energy without associated Environmental Attributes for MWh delivered during any period in MWhs determined in accordance with (i) through (iii) herein below:

(i) as a result of a Force Majeure event affecting the generation capacity of the Geysers Project whereupon Seller's delivery obligation of Delivered EA Energy, but not its Contract Energy Quantity delivery Scheduling obligation, shall be excused on MWh basis during such Force Majeure event in an amount equal to:

$$\text{EEA during the Force Majeure event} = \text{FMQ} * \text{ACEQ}$$

Where:

FMQ (Force Majeure Quotient) = (generation capacity of the Geysers Project prior to the Force Majeure event less generation capacity of the Geysers Project as of the Force Majeure event)/(generation capacity of the Geysers Project prior to the Force Majeure event)

ACEQ (Adjusted Contract Energy Quantity) = Contract Energy Quantity less any reduction due to Dispatch Down pursuant to Section 3.3(e), Buyer Curtailment pursuant to Section 3.3(f), or any suspension by Seller of deliveries pursuant to Section 5.2; or

(ii) where delivery from an Eligible Unit is curtailed or subject to a Dispatch Down pursuant to Section 3.3(e) or a Buyer Curtailment pursuant to Section 3.3(f); or

(iii) due to an outage, whether due to a Force Majeure or otherwise, of PTO's transmission system and/or the CAISO Grid, which Outage curtails the delivery by Seller of any or all the Contract Energy Quantity Scheduled from any Eligible Unit to the extent of such curtailment.

The Parties shall calculate the MEADF within 45 days of the end of Contract Year. If the Parties dispute the calculation of the MEADF, such disputes will be resolved pursuant to the dispute resolution provisions set forth in Section 12.4. A dispute concerning the calculation of the MEADF shall not relieve either Party of its obligations under this Agreement, including the obligation to continue to provide and pay for the Product.

An example the MEADF calculation under this Section 3.4(b) shall be set forth in Exhibit 3.4(b). The MEADF calculation incorporates all RPS-eligible energy delivered (baseline and incremental). The intent of the MEADF calculation in this Section 3.4(b) is to determine the percentage of the total Scheduled Energy Scheduled in any Contract Year that includes the Environmental Attributes.

(c) EA Shortfall Penalty. If the MEADF is less than 95%, determined in accordance with subsection (b), Seller shall pay to Buyer an amount equal to (i) 10% of the Average Energy Price (defined below) for the Contract Year times (ii) the difference between 0.95 less the MEADF times (iii) Contract Energy Quantity (iv) the number of hours in the Contract year (the "Shortfall Penalty"). For purposes of this Section 3.4(c) and Section

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3.4(d)(iii), the "Average Energy Price" shall be determined by determining the quotient (x) of the sum of the Contract Energy Price for each such hour of the Contract Year divided by (y) the number of hours in that contract year. Seller shall make payment to Buyer within ten (10) Business Days of the determination of the MEADF. Except as specifically provided in this Agreement, the Shortfall Penalty shall be the exclusive remedy for a MEADF determination of less than 95% for a Contract Year. An example of the application of this subsection (c) is set forth in Exhibit 3.4(c).

(d) Incremental EA Energy.

(i) Minimum Incremental EA Amount. Except as provided in this subsection (d), in every Contract Year commencing January 1, 2008, and notwithstanding any penalties assessed pursuant to subsection (c), Seller shall provide at least 832,200 MWh of the Delivered EA Energy from Eligible Units that are CEC-certified to produce "incremental energy" ("Minimum Incremental EA Amount"). The Parties shall calculate the Minimum Incremental EA Amount within 45 days of the end of Contract Year. If the Parties dispute the calculation of the Minimum Incremental EA Amount, such disputes will be resolved pursuant to the dispute resolution provisions set forth in Section 12.4. A dispute concerning the calculation of the Minimum Incremental EA Amount shall not relieve either Party of its obligations under this Agreement, including the obligation to continue to provide and pay for the Product.

(ii) Seller's Excuses. Seller shall be relieved on an hour for hour basis during the period (A) where there is a Force Majeure event affecting all or any portion of the generation capacity of Eligible Units at the Geysers Project that are CEC-certified to produce "incremental energy" determined as of the first day of the current Contract Year, (B) where delivery from an Eligible Unit providing "incremental energy" is curtailed or subject to a Dispatch Down pursuant to Section 3.3(e) or a Buyer Curtailment pursuant to Section 3.3(f), and/or (C) where there is an outage, whether due to a Force Majeure or otherwise, of PTO's transmission system and/or the CAISO Grid, which Outage curtails the delivery by Seller of any or all the Contract Energy Quantity from an Eligible Unit previously Scheduled to provide Delivered EA Energy with an "incremental energy" attribute. A Force Majeure event shall not include the prior commitment by Seller of energy or capacity from an Eligible Unit to a third party.

(iii) Minimum Incremental EA Amount Penalty. Unless excused pursuant to (d)(ii), for each MWh less than the Minimum Incremental EA Amount determined for any Contract Year after January 1, 2008, Seller shall pay to Buyer a penalty equal to either (A) if no penalty is assessed against Buyer for not meeting its incremental EA requirement, thirty (30) percent of the Average Energy Price for the Contract Year or (B) if the CPUC assesses a penalty against Buyer, the greater of thirty (30) percent of the Average Energy Price for the Contract Year or \$50.

(iv) SB 107. To the extent that an "incremental energy" distinction is no longer determinative of qualification by Buyer of the Environmental Attributes to meet its Renewable Portfolio Standard pursuant to California Senate Bill No. 107 "Renewable Energy: Public Interest Energy Research, Demonstration, and Development Program" ("SB 107") or otherwise, this subsection (d) shall be deemed void and of no further effect upon the effectiveness of such determination. The Parties shall provide written Notice

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to each other confirming the conclusion that the "incremental energy" requirement is no longer in effect and the date thereof.

(c) Regulatory Compliance: EA. Seller and, if applicable, its successors, will take such action or actions as necessary such that (i) the Eligible Units will qualify and will be certified by the CEC as Eligible Renewable Energy Resources and (ii) the Delivered EA Energy will qualify under the requirements of the California Renewables Portfolio Standard.

(f) Exclusive Right: EA. Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns, have or will have ownership of, or a demonstrable exclusive right to control, the Eligible Units, and that, throughout the Delivery Term, the Delivered EA Energy will be transferred to Buyer unencumbered by any claim of any other Person. Seller represents, warrants and covenants that it has good, marketable title to the Delivered EA Energy sold hereunder.

Seller hereby provides and conveys all Environmental Attributes associated with the Delivered EA Energy from the Eligible Unit(s) to Buyer as part of the Product being delivered, as such term is described in the Agreement for the period set forth in this Agreement. Seller represents and warrants that Seller holds the rights to all Environmental Attributes associated with the Delivered EA Energy from the Eligible Unit(s), and Seller agrees to convey and hereby conveys all such Environmental Attributes associated with the Delivered EA Energy to Buyer as included in the delivery of the Delivered EA Energy from the Eligible Unit(s).

(g) Regulatory Cooperation: EA. Seller and Buyer agree to take such action or actions that are reasonably necessary for (i) the Eligible Units to qualify and be certified by the CEC as Eligible Renewable Energy Resources, (ii) that the Delivered EA Energy qualify under the requirements of the California Renewables Portfolio Standard, and (iii) at least 832,200 MWh of Delivered EA Energy is qualified as CEC certified "incremental energy"; provided, however, that Seller shall not be obligated to take any action or actions involving the modification of the Geysers Project.

(h) Climate Action Registry. Seller shall register the Geysers Project with the California Climate Action Registry as may be required by the CPUC pursuant to Decision 06-02-032 and any subsequent order on or before the Effective Date.

(i) WREGIS. Prior to the Effective Date, Seller shall register the Geysers Project in the Western Renewable Energy Generating Information System or any successor renewable energy tracking program ("WREGIS"), and take all other actions necessary to ensure that the Energy and Environmental Attributes produced from the Project are tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard. In the event that WREGIS is not in operation as of the Effective Date, Seller shall perform its obligations, as required per this subsection, as soon as WREGIS is in operation.

3.5 Resource Adequacy (RA).

(a) Monthly RA Capacity Payment. Subject to the requirements in this Section 3.5, a "Monthly RA Capacity Payment" (rounded to the nearest penny (i.e. two decimal places)) shall be determined for each month during the Delivery Term as follows:

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$[\$3.083 \text{ per kW-month} * \text{AARCQ} * 1,000] - \text{ARAA}$

Where:

AARCQ = the Aggregate Available RA Capacity Quantity determined in accordance with either Sections 3.5(d) or (e)(D)

ARAA = the Aggregate RA Availability Adjustment determined in accordance with Section 3.5(e)

In no case shall the Monthly Capacity Payment be less than zero for any month. An example of the application of this Section 3.5(a) is set forth in Exhibit 3.5(a).

(b) Annual RA Capacity Quantity; Designation of Eligible Units. No less than 60 days prior to the RA Deadline for each year preceding a Contract Year, Buyer shall submit to Seller a list of its preferred Eligible Units to be designated for the following Contract Year. Seller will designate the Eligible Units pursuant to the priority for the Contract Year set forth in Buyer's Pre-Designation of Eligible Units (Appendix VII attached hereto) necessary to provide an aggregate Net Qualifying Capacity of no less than 170 MW and no more than 230 MW. Seller shall provide the designated units in Buyer's preferred order unless an Eligible Unit is previously committed to a capacity contract with a third party or is unavailable due to a Planned Outage schedule in excess of that allowed by the CPUC to count the Eligible Unit's capacity during any month of the Contract Year, unless such requirement is waived by each of Buyer and Seller for the particular Eligible Unit. If a preferred Eligible Unit is unavailable due to one of these reasons then Seller shall designate the next available Eligible Unit set forth in Buyer's Pre-Designation of Eligible Units (Appendix VII attached hereto). The full output of Eligible Units should be allocated unless it is necessary to provide a partial unit to meet the RA limits above. No less than 45 days from the RA Deadline for the next Contract Year, Seller shall notify Buyer which Eligible Units it will designate by submitting for Buyer's approval, which approval will not be unreasonably withheld, completed Eligible Unit and Transaction Information forms in the form attached hereto as Appendix VI, along with the reasons for a deviation from Buyer's preferred Eligible Units, for the Eligible Units to continue to be designated and any proposed newly Eligible Units. Within ten (10) days, Buyer shall provide Notice of its acceptance of the Eligible Unit and Transaction Information forms for the Contract Year. Upon Buyer's approval of the Eligible Unit and Transaction Information forms submitted by Buyer, the Eligible Units designated therein shall be the "Designated Eligible Units" for the Contract Year and the aggregate Net Qualifying Capacity of the Designated Eligible Units shall be the "Annual Aggregate RA Capacity Quantity". If the Parties are unable to agree to a designation of the Designated Eligible Units, the Parties agree to submit to expedited dispute resolution as set forth in Section 12.4. For the avoidance of doubt, Seller and Buyer agree not to designate any unit that is subject to a Standard Offer contract with Buyer prior to termination of such Standard Offer contract. The "RA Deadline" is the earlier of the date upon which either the CPUC and/or the CAISO require Buyer to make a Year-Ahead Compliance Filing.

(c) RA Capacity Rights and Obligations. Seller sells to Buyer, and Buyer purchases from Seller, the right to claim the Designated RA Capacity from each of the Designated Eligible Units. Designated RA Capacity includes both the RAR Attributes and LAR Attributes necessary to comply fully with and be counted by the Buyer under the Year-Ahead Compliance Filing and any monthly compliance RAR filings for or during the RA Compliance

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Period. The intent of the Parties under this Section 3.5(c) is to (A) enable Buyer to fully maintain the rights to claim the Designated RA Capacity from the Designated Eligible Units provided to Buyer hereby in the event that the rights and obligations of the RA Product change during the Delivery Term, pursuant to the provisions of the RA product as specified in the terms of this Section 3.5, and (B) to preserve the benefits of the bargain reached hereby, including, without limitation, the possibility of providing Seller with additional compensation for incremental obligations undertaken by Seller. Furthermore, Buyer's purchase of the Designated RA Capacity from the Designated Eligible Units obligates Seller to make the Designated RA Capacity available to the CAISO pursuant to the CAISO Tariff. Specifically:

(i) (A) The Designated RA Capacity from the Designated Eligible Units shall include any enhanced CAISO call rights and availability obligations that may be defined under any future CPUC RA Decision, without additional compensation to the Seller under this Agreement, to the extent such call rights and availability obligations are now a part of the obligations under the existing *pro forma* RMR Agreement; and (B) to the extent such enhanced CAISO call rights or availability obligations go beyond CAISO call rights included in the existing *pro forma* RMR Agreement, such call rights and availability obligations shall also be included in the Designated RA Capacity from the Designated Eligible Units without additional compensation to Seller if the same do not impose additional operating or opportunity costs on Seller and/or Seller has the opportunity to earn and retain market revenues outside this Agreement with respect thereto.

(ii) If during the Delivery Term any capacity-related product that is currently required to be provided under the *pro forma* RMR Agreement existing as of the Execution Date, or any capacity-related or availability obligation that is currently imposed under the *pro forma* RMR Agreement existing as of the Execution Date, shall become part of the Designated RA Capacity or a substitute or successor RA Product, then that capacity-related product and capacity-related or availability obligation shall also become part of the rights and obligations under this Agreement, without additional compensation to the Seller under this Agreement, except as provided in this subsection (c)(ii). Seller shall be entitled to seek additional compensation if (A) the RA Product and the RAR or LAR Showings are changed hereafter to impose RMR service-related requirements upon Seller, (B) such RMR service-related requirements have either (x) changed from, or are additional to, the rights and obligations in the *pro forma* RMR Agreement or (y) incorporate only certain aspects of the rights and obligations set forth in the *pro forma* RMR Agreement and as a result Seller incurs opportunity or out-of-pocket costs not previously borne by Seller under the *pro forma* RMR Agreement, and (C) the CPUC or CAISO, as applicable, has failed to (1) offer to such Seller a *pro forma* RMR Agreement, (2) promulgate a rule or adopt a tariff modification that incorporates the new requirement of the RA Product, or (3) institute a proceeding or stakeholder process prior to the incorporation of the RMR-related service requirement(s) into the RAR and LAR obligations. If none of the conditions set forth in (C)(1)-(3), above is satisfied, and if Seller does not waive those conditions, any modification of the of the rights and obligations in this Section 3.5 or Section 4, with respect to the Designated RA Capacity from the Eligible Units, shall be subject to Section 3.5(k). For illustrative purposes, inclusion by the CPUC or CAISO of predispatch obligations in the RA Product without meeting at least one of the conditions set forth in clauses (C)(1) - (3), would be subject to this provision.

(iii) Buyer's purchase of the Designated RA Capacity from the Designated Eligible Units does not confer on Buyer any right to the generation capacity from



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the Designated Eligible Units, other than the right to include the Designated RA Capacity in Buyer's Year-Ahead Compliance Filing and other RAR Showings and/or LAR Showings, if applicable. Specifically, the Designated RA Capacity provided under this Section 3.5 does not confer on Buyer any right to any energy or ancillary services associated with the capacity of the Designated Eligible Units, and Seller has no obligation to make such energy or ancillary services available to Buyer. Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Seller retains the right to sell to a third party any RA Capacity from a Designated Eligible Unit in excess of the Designated RA Capacity quantity from that Eligible Unit. It is agreed and understood that Seller may retain for its own account any revenue it receives that is: (1) associated with the start-up, shut-down, or minimum load costs of the Designated Eligible Unit, (2) capacity revenue associated with the sale of energy dispatch rights, including ancillary services, from the Eligible Unit other than such revenues that are required to be credited to Buyer under Section 3.5(i) hereof, (3) derived from capacity sales associated with the sale of ancillary services to the CAISO, and (4) derived from energy sales from a Designated Eligible Unit. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Section 3.5 for re-sale in such market, and to receive and retain any and all related revenues. If CAISO is authorized to purchase and commences purchase of Designated RA Capacity, Seller shall not sell any Designated RA Capacity purchased by Buyer to the CAISO, and only Buyer may sell to the CAISO any such Designated RA Capacity that Buyer has purchased hereunder.

(iv) If during the Delivery Term any future CPUC RA Decision, or action by a Governmental Body, or any new capacity-based market creates new attributes associated with the RA Product which are separate and distinct from those that are necessary and sufficient to fully meet Buyer's compliance requirements in Buyer's Year-Ahead Compliance Filing and other RAR Showings and/or LAR Showings, such products are not automatically included as part of the Designated RA Capacity; however, Seller shall provide Buyer with a right of first offer with respect to all such products.

(v) [intentionally left blank].

(vi) Buyer and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right and ability to use the Designated RA Capacity from the Designated Eligible Units to comply fully with Buyer's RAR and, if applicable, LAR. Such commercially reasonable actions shall include, without limitation, Seller's unqualified obligation to cooperate fully with Buyer and to provide, or cause to be provided, to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR or LAR under applicable Laws, any and all documentation necessary to certify or qualify fully the Designated RA Capacity for the Year-Ahead Compliance Filing and in any monthly compliance filing. Seller's obligations shall also include, without limitation, providing information requested by the CPUC, the CAISO, or successors to demonstrate for each Monthly Contract Period the Net Qualifying Capacity for the Designated Eligible Unit.

(vii) Seller represents, warrants and covenants to Buyer that, throughout the Delivery Term:

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1. Seller owns, or has the exclusive right to the RA Capacity sold to Buyer under this Agreement from each Designated Eligible Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may be needed to demonstrate such ownership or exclusive right;

2. No portion of the Designated RA Capacity from any Designated Eligible Unit has been, or shall be, committed by Seller to any third party in order to satisfy RAR and/or LAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Designated Eligible Unit's owner or operator;

3. No portion of the Designated RA Capacity from a Designated Eligible Unit has been committed by Seller in order to satisfy RAR and/or LAR, or analogous obligations in any non-CAISO market;

4. Each Unit is connected to the CAISO Grid, is within the CAISO Control Area, and is under the control of CAISO;

5. Seller has notified the SC of each Designated Eligible Unit from which Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated, and Seller shall cause the SC to deliver the Supply Plans in accordance with the timing and other requirements of the CAISO Tariff; and

6. Seller has notified each Designated Eligible Unit's SC that Buyer is entitled to the revenues set forth in subsection (h), if any, and SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues pursuant to the terms of subsection (h) hereof.

(viii) Buyer and Seller Cooperation: RA. Buyer and Seller hereby agree to take such actions as are reasonably necessary for Buyer to be able to utilize this Agreement and the rights granted hereunder to satisfy fully that portion of its Resource Adequacy Requirements that is associated with the rights and products purchased under this Agreement.

(d) Aggregate Available RA Capacity Quantity; Excess Outage Test.

(i) Excess Outage Test. In accordance with the table below, or as adjusted by the CPUC or CAISO Tariff, the Designated RA Capacity from a Designated Eligible Unit is determined to have been available for purposes of calculating Available RA Capacity Quantity for such Designated Eligible Unit (the "Excess Outage Test").

Time Period	Monthly Designated RA Capacity for the Designated Eligible Unit Is Deemed Provided, solely for purposes of this subsection (d)
Summer (May through	Any month where days of approved scheduled outages for a Designated Eligible Unit exceed 25% of days in the month, Designated RA Capacity for the Designated Eligible Unit is deemed not to have been provided to the extent

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September)	of the Designated RA Capacity affected by such scheduled outage. If scheduled outages are less than or equal to 25% of days in the month, Designated RA Capacity for the Designated Eligible Unit is deemed to have been provided.
Non-Summer Months (October through April)	<p>For scheduled outages of less than 1 week, Designated RA Capacity for the Designated Eligible Unit is deemed to have been provided.</p> <p>For scheduled outages between 1 week and 2 weeks, Designated RA Capacity for the Designated Eligible Unit is deemed to have been provided by prorating the Designated RA Capacity using the formula:</p> $\{[1 - (\text{days of scheduled outages}/\text{days in month}) - 0.25] \times \text{Designated RA Capacity affected by the scheduled outage}\} = \text{Designated RA Capacity deemed provided in the month for each Designated Eligible Unit.}$ <p>For scheduled outages over 2 weeks, the Designated RA Capacity affected by the scheduled outage for the Designated Eligible Unit is deemed not to have been provided.</p>

(ii) The "Available RA Capacity Quantity" of an Eligible Unit shall be determined in MWs for every month by applying the formula pursuant to the Excess Outage Test in 3.5(d)(i) above to calculate the Designated RA Capacity, in MWs, from a Designated Eligible Unit. The "Aggregate Available RA Capacity Quantity" shall be determined by taking the sum of the Available RA Capacity Quantity of all of the Designated Eligible Units and the Designated RA Capacity from Replacement Eligible Units provided pursuant to subsection (g). Buyer's sole remedy for having an Aggregate Available RA Capacity Quantity that is less than the Annual Aggregate RA Capacity Quantity in any month is a downward adjustment to the Monthly Capacity Payment. Except as specifically provided herein, Seller is not liable for replacement capacity, damages, or any penalty or fine for such a shortfall.

An example of the application of this Section 3.5(d) is attached hereto as Exhibit 3.5(d).

(e) Aggregate RA Availability Adjustment. In addition to any adjustment to the Available RA Capacity Quantity pursuant to the Excess Outage Test, the determination of the Aggregate Available RA Capacity Quantity for purposes of calculating the Monthly Capacity Payment under subsection (a) also shall be subject to adjustment pursuant to the RA Availability test set forth in this subsection (e). The percentage of availability ("Designated RA Capacity Quotient") of the aggregate of the Designated RA Capacity for each month during an RA Compliance Period shall be calculated by determining the quotient of (x) the aggregate of the actual Designated RA Capacity for a month during the RA Compliance Period, divided by (y) the Annual Aggregate RA Capacity Quantity. An "Aggregate RA Availability Adjustment" shall be applied to the Monthly Capacity Payment in subsection (a) in accordance with the following:

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- (A) When the Designated RA Capacity Quotient for the month during a RA Compliance Period is greater than or equal to 80 percent, the Aggregate RA Availability Adjustment shall be zero.
- (B) When the Designated RA Capacity Quotient is greater than or equal to 50 percent, but less than 80 percent, the Aggregate RA Availability Adjustment equals:  
$$(.80 - \text{Designated RA Capacity Quotient}) * .50 * \$3.083 * \text{Annual Aggregate Capacity Quantity} * 1000$$
- (C) When the Designated RA Capacity Quotient is less than 50 percent, but greater than 0, the Aggregate RA Availability Adjustment equals:  
$$\{[(.80 - .50) * .50] + [(.50 - \text{Designated RA Capacity Quotient}) * 1.00]\} * \$3.083 * \text{Annual Aggregate RA Capacity Quantity} * 1000$$
- (D) When the Designated RA Capacity Quotient is zero for the entire month during a RA Compliance Period the Aggregate Available RA Capacity Quantity for the month shall be deemed to be zero.

In no case shall the Aggregate RA Availability Adjustment be less than zero. The final product of this Aggregate RA Availability Adjustment calculation shall be rounded to the nearest penny (i.e., two decimal places). The Aggregate RA Availability Adjustment shall be subtracted from the Monthly Capacity Payment in subsection (a) to determine the amount due to the Seller for the Designated RA Capacity. An example of the application of this subsection (e) is set forth in Exhibit 3.5(e).

Buyer's sole remedy for having a Designated RA Capacity Quotient determined to be less than 80 percent in a month during the Delivery Term is that the Aggregate RA Availability Adjustment shall be deducted from the Monthly Capacity Payment in subsection (a). The failure to equal or exceed 80 percent Designated RA Capacity Quotient shall not constitute a breach of this Agreement by Seller, and, therefore, Seller is not liable to Buyer for replacement capacity, damages, or any penalty or fine, except as may otherwise be provided explicitly herein.

For purposes of this subsection (e), to the extent that the Designated RA Capacity is derated as a result of a change in rating criteria or standards applied by the CAISO, the CPUC or other Governmental Body having jurisdiction, but not to the extent that the derating is the result of degradation of the physical operating performance of the Designated Eligible Unit, the change in rating criteria or standards shall be treated as a regulatory change subject to the procedures of subsection (k). Pending the outcome of any determination or agreement for additional compensation, pursuant to subsection (k), to reflect the change in rating criteria or standards, for purposes of this subsection (e), neither the Designated RA Capacity Quotient nor the Aggregate RA Availability Adjustment shall be reduced below what it would be as a result of applying the existing rating criteria or standards.

(f) [Intentionally left blank]

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(g) Seller's Right to Offer Replacement Capacity.

(i) For purposes of the application of the Excess Outage Test to determine the Aggregate Available RA Capacity Quantity in subsection (d), or the application of the Designated RA Capacity Quotient to determine the Aggregate RA Availability Adjustment in subsection (e), Seller shall have the right to offer replacement capacity ("Replacement RA Capacity") that has equivalent RAR and, if necessary, LAR Attributes, as the Designated RA Capacity for a Designated Eligible Unit, provided that (A) such Replacement RA Capacity is permitted within CPUC and CAISO rules, (B) such Replacement RA Capacity has not previously been provided as an RA Product for such Monthly Contract Period, (C) the Replacement RA capacity can be counted by Buyer for RA counting purposes and fully satisfies the same RAR and LAR requirements as were met by the capacity being replaced, such as for the Year-Ahead Compliance Filing and/or any monthly compliance RAR filings, and (D) Buyer is economically indifferent with respect to the Replacement RA Capacity. For this purpose, "Buyer's economic indifference" means that, if Seller elects to provide Replacement RA Capacity, Seller is responsible to pay any costs to make such Replacement RA Capacity effectively equivalent to the Designated RA Capacity Quantity from a Designated Eligible Unit, including any additional costs that Buyer may incur to ensure equivalent RAR and/or LAR coverage and to pay for CAISO backstop purchases. For clarity, this may include the cost of purchasing LAR and RAR Attributes from other units to provide the LAR and RAR attributes of the original units if the CAISO and/or CPUC do not judge the Replacement RA Capacity to provide the full attributes of the Designated RA Capacity Designated Eligible Units. Any offer by Seller of Replacement RA Capacity shall be such that: (a) the total amount of Designated RA Capacity provided to Buyer from all Designated Eligible Units and replacement units does not exceed the Annual Aggregate RA Capacity Quantity from the Designated Eligible Units under this Agreement and (b) the CPUC and/or CAISO have pre-approved the replacement capacity as fully meeting the applicable RAR or LAR requirements.

(ii) For purposes of the Excess Outage Test and the determination of the Aggregate Available RA Capacity Quantity in subsection (d), Seller shall identify replacement units meeting the above requirements no later than thirty (30) Days from the loss of any Designated RA Capacity. Once Seller has identified in writing any replacement units that meet the requirements of this Section 3.5 and Buyer has accepted such Replacement RA Capacity, such acceptance not to be unreasonably withheld, any such replacement unit shall be automatically deemed to be a Designated Eligible Unit for purposes of amending this Agreement until Seller notifies Buyer, in writing, of the availability of the original Designated Eligible Units.

(h) Allocation of Other Payments and Costs. Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Designated Eligible Unit for (i) start-up, shut-down and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any future markets for black start or reactive power services. However, Buyer shall be entitled to receive and retain all final revenues associated with the Designated RA Capacity of any Designated Eligible Unit during the Delivery Term (including any capacity or availability revenues from RMR Agreements for any Designated Eligible Unit, and Reliability Compensation Services Tariff capacity payments, but excluding payments described in clauses (i) and (ii) above and excluding any payments associated with capital improvements at the Unit, and all such revenues received by Seller, a Designated Eligible

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Unit's SC, owner, or operator shall be paid to Buyer within thirty (30) days. Seller hereby indemnifies Buyer for any such revenues that Buyer does not receive within the thirty-day period, and Seller shall pay such revenues to Buyer if the Designated Eligible Unit's SC, owner, or operator fails to remit those revenues to Buyer. In the event that Buyer receives, either directly or through Seller's indemnification of Buyer, any revenues associated with an RMR Agreement for the Designated RA Capacity that later must be refunded to the payor of such monies, Buyer shall, within thirty (30) days, remit to Seller the amount of such prior payment subject to refund.

(i) Reliability Must Run Contract Obligation. During the Delivery Term, the Parties agree, if any Eligible Unit is designated by the CAISO to provide service under either the Geysers Main RMR Agreement or any new Geysers Units 13 and 16 RMR Agreement, then Seller shall amend such RMR Agreement, and make the necessary or desirable filings at FERC to effect such amendment, to revise the Fixed Option Payment Factor ("FOPF") and the Surcharge Payment Factor ("SPF") to zero (0) for RMR-designated Eligible Units totaling as near as possible, but not exceeding, the total contract quantity in MWs to be sold under this Agreement during the same period of time. The requirements of the preceding sentence shall apply regardless of which Eligible Units are designated to provide service under the applicable RMR Agreement and regardless of which Eligible Units are designated to provide capacity under this Agreement; provided, however, that Seller shall not be obligated to amend the applicable RMR Agreement to revise the FOPF and SPF to zero (0) for Eligible Units so as to affect MWs in excess of the contract quantities of the Resource Adequacy Capacity Product to be sold in this Agreement. If the CAISO has designated, to provide service under RMR Agreement(s), Eligible Units whose total Maximum Net Dependable Capacity ("MNDC") exceeds the total contract quantity in MW of the Resource Adequacy Capacity Product to be sold under this Agreement during the same period of time and no combination of the sum of MNDCs of those Eligible Units designated to provide service under RMR Agreements equals the contract quantity in MW of the Resource Adequacy Capacity Product to be sold in this Agreement, then in order to reduce the correct amount, in MW, to which the zero (0) FOPF and SPF will apply, Seller shall amend such RMR Agreements to reduce the FOPF and SPF of the Eligible Unit with the smallest MNDC ("Small Unit") by multiplying each existing, otherwise unrevised factor by (a) the Small Unit's MNDC minus the difference between (i) the total contract quantity in MW of the Resource Adequacy Capacity Product to be sold under this Agreement during the same period of time and (ii) the sum of MNDCs of all Eligible Units other than the Small Unit designated to provide service under RMR Agreement(s) divided by (b) the Small Unit's MNDC. In addition, Seller shall retain any revenues it may receive from the CAISO or any other third party with respect to any Eligible Unit for (1) start-up, shut-down and minimum load costs, (2) capacity revenue for ancillary services, (3) energy sales, and (4) any future markets for black start or reactive power services; provided, however, Seller shall not be able to retain, and shall pass through to Buyer, any market revenues for RMR services if Seller is compensated for such services under an RMR Agreement. An example of the application of this provision is set forth in Exhibit 3.5(i).

In addition to the requirements set forth in the preceding paragraph, Seller agrees that, if it executes an agreement with a third party under which Seller sells any capacity product from an Eligible Unit that is or has been designated to provide service under either the Geysers Main RMR Agreement or a new Geysers Units 13 and 16 RMR Agreement, then either: (A) such third party will not be granted the right in connection with that agreement to receive revenues under the applicable RMR Agreement as a pass through or otherwise; or (B) if the capacity product sold to such third party by Seller provides, pursuant to the CAISO Tariff or a

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CPUC decision or otherwise, that the buyer of such a capacity product must receive revenues under the applicable RMR Agreement, then Seller shall amend such RMR Agreement, and make the necessary or desirable filings at FERC to effect such amendment, to revise the FOPF and SPF to zero (0) for the RMR-designated Eligible Units. If the total MNDC of the Eligible Units under such RMR Agreement exceeds the total contract quantity in MW of the capacity product sold to the third-party buyer, then in order to reduce the correct amount, in MW, to which the zero (0) FOPF and SPF will apply, Seller shall amend such RMR Agreement to reduce the FOPF and SPF of the Eligible Unit with the smallest MNDC ("Small Unit") by multiplying each existing, otherwise unrevised factor by (a) the Small Unit's MNDC minus the difference between (i) the total contract quantity in MW of the capacity product sold to the buyer and (ii) the sum of MNDCs of all Eligible Units other than the Small Unit designated to provide service under RMR Agreement(s) divided by (b) the Small Unit's MNDC.

(j) CAISO Tariff Compliance Requirements.

(i) During the Delivery Term, except to the extent any Designated Eligible Unit is subject to an Outage or is affected by an event of Force Majeure that results in a partial or full Outage of that Designated Eligible Unit, Seller shall either Schedule or cause to be Scheduled the Designated RA Capacity of the Designated Eligible Unit with the CAISO, pursuant to the terms of the CAISO Tariff in place at the time. Seller's full payment or reimbursement to Buyer of any costs incurred by Buyer as a result of, and any penalties or remedies imposed for Seller's violation of, any requirements under the Existing Tariff shall constitute the sole penalty to Seller and sole remedy available to Buyer hereunder for any violation by Seller of the requirements of the Existing Tariff, and any satisfaction of such penalties or remedies or cure of the violations thereof shall constitute alternative performance for purposes of calculating Available RA Capacity under the Excess Outage Test pursuant to subsection (d) or the Designated RA Capacity Quotient and the calculation of the Aggregate RA Availability Adjustment pursuant to subsection (e) of this Section 3.5.

(ii) To clarify, Buyer shall have no liability for, and Seller shall fully reimburse Buyer for, any penalties or other costs resulting from the failure of Seller or the failure of any Designated Eligible Unit's Scheduling Coordinator, owner, or operator to comply with CAISO Tariff provisions, including any penalties or fines imposed on Buyer, Seller, or the Designated Eligible Unit's Scheduling Coordinator, owner, or operator for such noncompliance. Seller shall have no other liability to Buyer for such noncompliance.

(iii) To the extent that Seller breaches an obligation it has with respect to maintaining the Designated Eligible Units in accordance with Article Four or submitting documents or filings in accordance with subsection (c)(v) of this Section 3.5, and such breach causes Buyer to incur fines or penalties in connection with its obligation to make its LAR or RAR Showings, which fines or penalties Buyer is unable to avoid or mitigate using all reasonable efforts, then, as an exception to the exclusivity of the limitation of damages remedies under this Section 3.5, Seller shall reimburse Buyer fully for (A) such fines or penalties actually incurred by Buyer and (B) any other direct costs that Buyer incurs to replace the Designated RA Capacity under this Section 3.5. To the extent that Seller reimburses Buyer for any of these penalties, fines or costs, Seller shall be deemed to have cured any breach hereunder, and, therefore, shall not be subject to any reduction in payment or determination of reduced availability pursuant to subsections (d) or (e) of this Section 3.5. For example, if Seller offers Replacement RA Capacity from a unit without the same LAR

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attributes and Buyer must contract with another unit to meet its LAR requirements, those costs would be considered direct costs subject to the Seller's liability requirements under this Section 3.5. The Parties shall make all reasonable efforts to minimize the imposition of such penalties or fines and to minimize costs.

**(k) Regulatory Change: RA. THIS SUBSECTION (k) SHALL APPLY ONLY TO CHANGES AFFECTING SELLER'S AND BUYER'S RIGHTS AND OBLIGATIONS UNDER THIS SECTION 3.5 (AND TO ARTICLE FOUR INsofar AS THOSE OBLIGATIONS ARE DIRECTLY RELATED TO THE RIGHTS AND OBLIGATIONS UNDER THIS SECTION 3.5). UNDER NO CIRCUMSTANCES MAY THE CONTRACT TERM REOPENERS CONTEMPLATED IN THIS SUBSECTION (k) BE APPLIED TO REGULATORY CHANGES AFFECTING SELLER'S OR BUYER'S RIGHTS AND OBLIGATIONS UNDER OTHER SECTIONS OF THIS AGREEMENT UNLESS SPECIFICALLY PROVIDED THEREIN.**

(i) During the Delivery Term, if as a result of future CPUC RA Decisions, changes to the CAISO Tariff, or other regulatory action by a Governmental Body, changes are made in RAR, RAR Attributes, LAR Attributes, or obligations upon a unit to provide RA Capacity and such changes would impose additional operating or opportunity costs upon Seller in order for the Designated RA Capacity to comply fully with and be counted by Buyer under the Year-Ahead Compliance Filing and any monthly compliance RAR or LAR filings for or during the RA Compliance Period, Buyer and Seller shall negotiate modifications to this Section 3.5 (and Article Four, to the extent applicable to this Section 3.5), including an additional fair market price for the additional attributes. The Parties' negotiations shall be commenced, upon notice by either Buyer or Seller, by meetings of executive officers or their designees, who shall thereafter each present to the other the minimum necessary modifications to this Section 3.5 (and Article Four, to the extent applicable to this Section 3.5). If Buyer and Seller cannot agree on the modifications, there shall be submitted to expedited dispute resolution procedures set forth in Section 12.4 only the issues of whether the new requirements have imposed additional costs (including opportunity costs) on Seller and the amount of such costs, if any. Any modifications to this Section 3.5 (and Article Four, to the extent applicable to this Section 3.5) agreed to hereunder or determined by binding arbitration shall be effective for periods in which changes in RAR, RAR Attributes, LAR Attributes, or obligations upon a Designated Eligible Unit to provide RA Capacity are made effective under the applicable CPUC RA Decision, CAISO Tariff, or other regulatory action by a Governmental Body, unless Buyer and Seller shall agree otherwise. Attached hereto as Exhibit 3.5(k) are descriptive examples of how the Parties and the arbitrator may determine any price changes associated with the additional operating or opportunity costs imposed upon Seller pursuant to the regulatory change contemplated herein.

(ii) During the Delivery Term new capacity-related attributes may be identified in the CAISO Tariff, or may be created by another Governmental Body, or a new market may develop for new capacity-related attributes. If, despite such developments the rights and obligations described in this Section 3.5 (and Article Four, to the extent applicable to this Section 3.5) continue, without the addition of such new attributes, to provide Designated RA Capacity that fully complies with and can be counted by Buyer under the Year-Ahead Compliance Filing and any monthly compliance RAR or LAR filings for or during the applicable RA Compliance Period, Seller may sell such attributes to a third party, but shall first provide Buyer with the right of first offer with respect to such attributes.



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(iii) If as a result of future CPUC RA Decisions, changes to the CAISO Tariff, or other regulatory action by a Governmental Body that makes changes such that Buyer has no obligation to purchase any RA Capacity or any successor capacity product from any person or to pay the CAISO or any other entity for purchasing RA Capacity or any successor capacity product, then the obligations under this Agreement to buy, sell, and make available such RA Products described herein shall be deemed to be void and of no force and effect with regard to RA Product sold hereby, without liability or cost to either Buyer or Seller, and the RA Adjustment for purposes of Section 3.3(a) shall be deemed to be zero. However, this Section 3.5 and the Monthly RA Capacity Payment shall continue in effect if Buyer's obligation to purchase the Designated RA Capacity or any successor capacity product is removed or satisfied as a result of Buyer having made investments that effectively replaced any purchases of capacity, such as its construction of new transmission lines, or as a result of having purchased excess RA Capacity or any successor capacity or reliability product from another supplier or if another entity is required to purchase such capacity or reliability product on Buyer's behalf or on behalf of Buyer's retail customers.

3.6 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for the Environmental Attributes or the Annual Aggregate RA Capacity Quantity sold to Buyer pursuant to this Article Three, Seller shall remit all such compensation directly to Buyer. Notwithstanding anything to the contrary herein, and for avoidance of doubt, nothing herein precludes Seller from retaining credits related to transmission upgrades paid for by Seller associated with the Geysers Project or any Production Tax Credit.

**ARTICLE FOUR: GEYSERS PROJECT OPERATION; METERING; EA TRACKING;  
OUTAGE NOTICES**

4.1 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Geysers Project. In the event that there is a conflict among the requirements of the CAISO, NERC and/or the WECC, Seller shall comply first with the requirements of the NERC, second with the requirements of the WECC and third with the requirements of the CAISO. In no event shall Seller be obligated to take any action, or cause any action, which conflicts with a requirement of Law.

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

(c) CPUC Maintenance Requirements. Seller agrees to abide by, if applicable, CPUC General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, if applicable to the Eligible Unit, provided that the owner or operator of any Eligible Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities. Any failure by Seller to meet these obligations during the Delivery Term may subject Seller to any applicable penalties under either the CAISO Tariff or CPUC GO 167, and may subject the Designated RA Capacity to possible disqualification from satisfying RAR as

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determined by the CAISO or CPUC. Such failure to meet its obligations shall not constitute a breach of Seller's obligation under Section 3.5 to provide the Designated RA Capacity unless specifically set forth in that Section 3.5.

4.2 Metering. All Delivered EA Energy from the Geysers Project during the Delivery Term must be delivered through CAISO revenue meters. For the Environmental Attributes to be counted pursuant to Section 3.4 and Section 4.3, all Delivered EA Energy must be measured by the CAISO revenue meters. Seller shall bear all costs relating to all the metering equipment installed to fulfill the requirements under this Section 4.2. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meters at the Geysers Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

4.3 EA Tracking.

(a) Scheduling of Energy from Eligible Units. In addition to the requirements set forth in Sections 3.4 and Article Six, Seller shall provide the following to Buyer:

(i) Annual Forecast of Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day Scheduled Energy, by hour, for the following calendar year and the Eligible Units that are forecast to provide the energy and RA Capacity for that year.

(ii) Monthly Forecast of Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average Scheduled Energy, by hour, for the following month, indicating the Eligible Units that will be forecast to provide energy for the period ("Monthly Delivery Forecast").

(iii) Meter Data: EA Tracking. As part of Seller's Invoice to Buyer described in Article Six, Seller shall provide to Buyer meter data from each of the Eligible Units from which Seller delivered Delivered EA Energy pursuant to Article Three. Such meter data shall provide with sufficient detail the quantity of Energy generated during an hour and the identity of the Eligible Unit. This Agreement provides for no energy shaping or banking service.

(b) Schematic. An example of the application of this Section 4.3 is set forth in Exhibit 4.3(b).

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4.4 Outage Notification for Contract Energy, Delivered EA Energy,  
Designated RA Capacity.

(a) Outages. In the event of a Forced Outage or a scheduling change imposed by Buyer or CAISO, which results in a change to the scheduled deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator to provide any and all changes to the Day-Ahead Schedule and to provide a revised schedule thereto as soon as possible, but in no event later than one (1) hour before Buyer's Scheduling Coordinator is required to submit Hour-Ahead schedules to the CAISO. With respect to any Forced Outage, Seller shall (A) use commercially reasonable efforts to notify Buyer, orally, of such Outage within ten (10) minutes of the occurrence of such Outage, and (B) submit an Outage Notification Form, as provided in Appendix V of this Agreement, to Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Eligible Unit during or after the end of such Outage.

(b) CAISO Approval of Outage(s). Seller is responsible for securing CAISO approvals for the outages associated with Eligible Units designated pursuant to Section 3.5 for purposes of providing Designated RA Capacity, including securing changes in its Outage Schedules when CAISO disapproves Seller's schedules or cancels previously approved Outages.

(c) Planned Outages: RA. No later than January 15, April 15, July 15 and October 15 of the Contract Year, Seller shall submit to each of Buyer and the CAISO each designated Eligible Unit's schedule of proposed Planned or Maintenance Outages ("Outage Schedule") for the period or to the end of the Contract Year, whichever is shorter in the form included in Appendix VIII. Within twenty (20) Business Days after its receipt of an Outage Schedule, the Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall seek to accommodate the Buyer's requests regarding the timing of any Planned or Maintenance Outages in a commercially reasonable manner consistent with Good Utility Practices. Seller shall notify Buyer and the CAISO within five (5) Business Days of any change to the Outage Schedule. A Planned Outage cannot exceed 15 consecutive days in length (unless the Parties, prior to the first day of the Planned Outage, agree otherwise), and shall not be scheduled from each May 1 through September 30 during the RA Compliance Period. In the event that Seller has a previously Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make commercially reasonable efforts to reschedule such Planned Outage.

(d) Planned Outages and Forced Outages: EA and Contract Energy Quantity. Pursuant to the obligations of Section 3.4, and except as specifically set forth therein, a Planned Outage or a Forced Outage, except as a result of Force Majeure, of any Eligible Unit shall have no effect on Seller's obligation to provide at least 95% of Scheduled Energy from Eligible Units (that is, at least 95% of the Scheduled Energy must be delivered from eligible renewable energy resources in each Contract Year). A Planned Outage or a Forced Outage affecting any Eligible Unit at the Geysers Project shall have no effect on Seller's obligation to schedule the Contract Energy Quantity pursuant to Section 3.3.

(e) Force Majeure. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party the oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force

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Majeure the non-performing Party shall provide the other Party with 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. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

(f) [Intentionally left blank]

(g) Communications with CAISO. Seller shall be responsible for all Outage coordination communications with CAISO Outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other Outage-related communications. Seller shall timely provide Buyer with summaries of all Outage plans and clearance requests submitted to CAISO, and shall promptly inform Buyer of all clearance approvals and other communications with CAISO pertaining to the status of planned or in-progress Geysers Project Outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current Outages, and make this available to Buyer and the PTO's transmission department upon request. If either Party receives information regarding maintenance that will directly affect the Geysers Project, it will provide this information promptly to the other Party.

4.5 Operations Logs and Access Rights.

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

(b) Access Rights. Subject to the requirements of this subsection (b), Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Geysers Project on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Geysers Project operator. Seller shall keep Buyer advised of current procedures for contacting the Geysers Project twenty-four hour operations desk. Buyer agrees and acknowledges that any authorized agent, employee or inspector seeking access to the Geysers Project must comply with all safety, health and environmental procedures and protocols of the Geysers Project and its operator. In addition Buyer agrees that it will not constitute a breach of this subsection (b) if access to the Geysers Project is denied or revoked as a result of any such authorized agent, employee or inspector of Buyer refusing to comply with the safety, health and environmental requirements, including, without, limitation the execution of waiver of liability forms.

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

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

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made;

(iii) such Party becomes Bankrupt after the Effective Date;

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

(v) such Party fails to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3 of this Agreement, which such failure is not remedied within five (5) Business Days after written notice is received by the Defaulting Party.

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

(i) except (A) as caused by an event of Force Majeure affecting all or a portion of the generation capacity of the Geysers Project, including any generation capacity from Eligible Units that have been committed to a third party, and (B) MWhs not Scheduled or delivered due to a Dispatch Down pursuant to Section 3.3(e) or Buyer Curtailment pursuant to Section 3.3(f), or as a result of Buyer's failure to Schedule or accept the delivery of the Scheduled Energy, or Seller's suspension of its obligations hereunder pursuant to Section 5.2, the failure of Seller to deliver less than 90% of MEADF; or

(ii) except (A) as caused by an event of Force Majeure affecting all or a portion of the generation capacity of Eligible Units at the Geysers Project, including any generation capacity from Eligible Units that have been committed to a third party, that are CEC-certified to produce "incremental energy", or (B) for MWhs not Scheduled or delivered due to a Dispatch Down pursuant to Section 3.3(e) or Buyer Curtailment pursuant to Section 3.3(f) or as a result of Buyer's failure to Schedule or accept the delivery of the Scheduled Energy or Seller's suspension of its obligations hereunder pursuant to Section 5.2, the failure of Seller to deliver less than the 744,600 MWh of Delivered EA Energy from Eligible Units that are CEC-certified to produce "incremental energy" in a Contract Year.

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5.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date"), (b) to accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date and collect liquidated damages ("Termination Payment"), which shall be calculated in accordance with Section 5.3 below; (ii) withhold any payments due to the Defaulting Party under this Agreement; (c) suspend performance; and (d) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. The Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the "Settlement Amount" is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.3 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Product, (c) at the same Delivery Point, and (d) for the remaining Delivery Term, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remaining Delivery Term of the Terminated Transaction and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Transaction. For purposes of identifying applicable replacement products, those products should include Environmental Attributes (EA) and local Resource Adequacy (RA) attributes equal to the EA and RA provided by Seller hereunder as part of the Product; provided that, the EA and RA components of the Product may be valued as unbundled products if the same are not available in the market as bundled parts of an energy product. 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.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall

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be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective.

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

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

**ARTICLE SIX: PAYMENT**

6.1 Billing and Payment Remedies. On or about the tenth (10<sup>th</sup>) day of each month beginning with the second calendar month of the first Contract Year and every calendar month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the delivery of the Environmental Attributes pursuant to Sections 3.4 and 4.3, for each Eligible Unit providing Delivered EA Energy for all hours during the preceding month, and/or preceding months with respect to adjustments pursuant to Section 3.4, and (b) an invoice, in the format agreed to by Buyer, covering the services provided in the preceding month determined in accordance with Article Three, as adjusted for as provided in Sections 3.4 and 3.5. Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25<sup>th</sup>) day of each month or fifteen (15) calendar days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 4.2, 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 Scheduled Energy and/or the Delivered EA Energy 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

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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 twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made; provided that such waiver shall not apply to any adjustment or dispute related to Seller's performance under any applicable RMR Agreement. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

**ARTICLE SEVEN: LIMITATIONS**

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTIONS 3.5(j)(iii) AND 10.4 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**ARTICLE EIGHT: FINANCIAL INFORMATION AND COLLATERAL REQUIREMENTS**

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver (a) within one hundred twenty 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



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financial statements for such fiscal year and (b) within sixty days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles; provided however, that Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on [www.pge-corp.com](http://www.pge-corp.com) or on the 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 Seller upon their completion and filing with the SEC.

8.2 Seller Financial Information. If requested by Buyer, Seller shall deliver (a) within one hundred twenty days after the end of each fiscal year, to the extent that Seller is a wholly-owned subsidiary of Calpine Corporation, a copy of Calpine Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty days after the end of each of Calpine Corporation's first three fiscal quarters of each fiscal year, a copy of Calpine Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles; provided however, that Seller shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on [www.calpine.com](http://www.calpine.com) or on the 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 Buyer upon their completion and filing with the SEC. If Seller is no longer a wholly-owned subsidiary of Calpine Corporation, or if Seller's financial statements are publicly reported on a non-consolidated basis, Seller shall provide to Buyer, subject to the terms of this Section 8.2, the equivalent reports produced by itself or its parent corporation if (1) such reports are made public pursuant to the SEC reporting requirements then in effect or (2) in the case of a new corporate owner, that the financial statements of the Seller are consolidated with the financial statements of the new corporate owner. If Seller is no longer a wholly-owned subsidiary of Calpine Corporation and does not provide similar public reports under SEC reporting requirements, Seller shall provide equivalent information concerning Seller's financial condition as requested by Buyer to the extent permitted by the applicable Law and consistent with SEC reporting requirements.

8.3 Collateral Requirements.

(a) Seller Security. To secure its obligations under this Agreement, Seller shall provide collateral equal to six (6) months of the aggregate amounts associated with the EA Adjustment and collateral equal to six (6) months of the aggregate amount associated with the Monthly RA Capacity Payment determined in accordance with Sections 3.4(a) and 3.5(a), which amount shall be adjusted annually for each Contract Year to reflect variations in the Annual Aggregate RA Capacity Quantity (the "Seller Security"). Seller's obligation to provide the Seller Security shall accrue at the rate 50% of the EA Adjustment and the Monthly RA Capacity Payment for each monthly settlement amount during the first Contract Year until Seller Security amount is accrued, which may be subsequently adjusted in succeeding Contract Years in the event of a change to the Annual Aggregate RA Capacity Quantity pursuant to Section 3.5(e). The Seller Security shall accrue by the withholding by Buyer of that amount of the monthly settlement amount owed to Seller specified in this Section 8.3(a) and shall be held in escrow by Buyer as the Seller Security until all commitments under this Agreement are satisfied. In the event the Seller Security is held by Buyer as a cash-withholding, interest shall accrue on such