

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement"), which incorporates herein the General Terms and Conditions of the Edison Electric Institute and National Energy Marketers Association Master Power Purchase and Sale Agreement, Version 2.1 (modified 04/25/00) (the "General Terms and Conditions"), the Addendum, the Cover Sheet, the exhibits and schedules attached hereto and referenced herein, the Party B Tariff, and the Transaction (including the Confirmation entered into hereunder) (collectively, the "Agreement") is made as of the following date: September 14, 2005 ("Effective Date"). The Master Agreement, together with the Addendum, exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, between the Parties and all Transactions (including the Confirmation(s) entered into hereunder) shall be referred to as the "Agreement"; provided that, the provisions of each Confirmation shall control if and to the extent that there is a conflict between the provisions of the Master Agreement, as modified by the Addendum, and the Confirmation. The Parties to this Master Agreement are the following:

Name: Global Common LLC
("Party A" "Seller," or "El Nido")
All Notices:

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

Street: 95 Brook St
City: Garden City NY Zip: 11530
Attn: [REDACTED]
Phone: [REDACTED]
Facsimile: [REDACTED]
Duns: [REDACTED]
Federal Tax ID Number: [REDACTED]

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

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

Invoices:
Attn: Ted Yura
Phone: [REDACTED]
Facsimile: [REDACTED]

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

Scheduling:
Attn: Kevin Coffee
Phone: [REDACTED]
Facsimile: [REDACTED]

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

Payments:
Attn: Ted Yura
Phone: [REDACTED]
Facsimile: [REDACTED]

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

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

following demand by Party A, but in no event later than (i) 120 days after the end of each year with respect to PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (ii) 60 days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period and prepared in accordance with generally accepted accounting principles; provided however, that Party B shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com or on the U.S. Securities and Exchange Commission ("SEC") EDGAR information retrieval system; further provided, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Party A upon their completion and filing with the SEC.

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

(d) Downgrade Event:

- Not Applicable
- Applicable.

(e) Guarantor for Party B: Not Applicable

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A

Option B

Option C Specify: At any

time that Party B has provided a guaranty, as provided in Section 8.6 hereof, promptly following demand by Party B, but in no event later than (i) 120 days after the end of each year with respect to Party A's Guarantor's annual report containing audited consolidated financial statements for such fiscal year and (ii) 60 days after the end of each of Party A's Guarantor's first three fiscal quarters of each fiscal year, a copy of Party A's Guarantor's quarterly report containing unaudited consolidated financial statements for each accounting period and prepared in accordance with generally accepted accounting principles; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Party B upon their completion and, if applicable, filing with the SEC.

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

(d) Downgrade Event:

Not Applicable

Applicable

(e) Guarantor for Party A: Not applicable

Guarantee Amount: Not applicable

8.4 Project Development Security;
Performance Assurance

Applicable

Not Applicable

If Applicable:

8.4 (a)(i) Project Development Security
Amount: Product of \$5 per kW and the
Contract Capacity set forth in the

Confirmation, which shall equal \$45,000.

8.4 (a)(ii) Project Development Security Amount: Product of \$20 per kW and the Contract Capacity set forth in the Confirmation, which shall equal \$180,000.

Type of Project Development Security:

Cash or Letter of Credit

8.4(a)(iii) Performance Assurance Amount: six (6) months of assumed revenues calculated as follows: the product of (A) 50%, (b) \$65.00 and (c) the Contract Quantity, as defined in the Confirmation, which equals \$ 2,365,740.

Type of Performance Assurance:

Guaranty meeting the requirements set forth in Section 8.6 hereof, cash, or a Letter Credit.

Article 10

10.1 No Fault Termination

(a) Seller Termination Right

- Not Applicable
- Applicable

(b) PGC Funding Termination

- Not Applicable
- Applicable

10.11 Confidentiality

Confidentiality Applicable
If not checked, inapplicable.

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

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

Schedule M

Party A is a Governmental Entity or Public Power System


Party B is a Governmental Entity or Public Power System

Other Changes: See Addendum below.

Agreement Execution

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

Global Common LLC

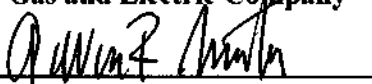
By: 

Name: Allen R. Jensen

Title: Partner

Date: 9/15/08

Pacific Gas and Electric Company

By: 

Name: Gordon R. Smith

Title: President and Chief Executive Officer

Date: 9/26/05



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

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**ADDENDUM TO MASTER POWER PURCHASE AND SALE AGREEMENT BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY AND GLOBAL COMMON LLC:**

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

ARTICLE ONE: GENERAL DEFINITIONS

The following definitions are deleted in their entirety.

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

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

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

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

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

"Commercial Operation Date" means the date on which Seller notifies Buyer that Commercial Operation has occurred and Buyer accepts in writing the results of Seller's Initial Capacity Test report with respect to Unit(s) primarily providing a Unit Firm Product in compliance with the Initial and Annual Capacity Test Principles, as provided in Appendix I hereto.

"Construction" means the first date on which activities such as refurbishment or reconditioning of the facilities have commenced.

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

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

"Contract Quantity" has the meaning set forth in the Confirmation.

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

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

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

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

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

- (1) Approves this Agreement in its entirety, including payments to be made by Buyer, subject to CPUC review of Buyer's administration of the Agreement.
- (2) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law; and
- (3) finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by Buyer from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC Decision 03-06-071, or other applicable law.

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

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

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

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

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

"Dispatch Down Period" has the meaning set forth in the Confirmation.

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

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

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

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

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

legislature, physical damage to the transmission system making it impossible to transmit energy.

Force Majeure shall not be based on: (i) Buyer's inability economically to use or resell the Product purchased hereunder; (ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement, (iii) Seller's inability to obtain regulatory approvals for the construction, operation, or maintenance of its Unit(s); (iv) Seller's inability to obtain sufficient fuel to operate the Unit(s); (v) Seller's failure to obtain funds from the California Energy Commission to supplement the payments made pursuant to this Agreement; (vi) a Forced Outage, unless such outage is caused by a Force Majeure event, or (vii) a strike or labor dispute limited only to Seller or Buyer, or its affiliates, including contractors or agents thereof.

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

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

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

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

"Governmental Approval" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit(s) or related project.

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

"Guaranteed Project Milestone" shall have the meaning set forth in Section 3.8(d)(iii).

"Initial and Annual Capacity Test Principles" means the test principles set forth in Appendix I attached hereto.

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

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

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

"Interest Amount" means with respect to an Interest Period, the amount of interest derived from: (x) the sum of: (a) the principal amount of Performance Assurance or Project Development Security in the form of cash held by Buyer during that Interest Period, and (b) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; multiplied by (y) the Interest Rate in effect for that day; multiplied by (z) the number of days in that Interest Period; (u) divided by 360.

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

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

The definition of "Interest Rate" in Section 1.26 of the Agreement shall be deemed instead to be the definition of "Late Payment Interest Rate" and "Interest Rate" shall be defined as follows:

"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.

"Interim Operating Period" shall have the meaning set forth in the Confirmation.

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

"ISO Tariff" or "Tariff" means the tariff and protocol provisions of the ISO, as amended from time to time, and filed with the Federal Energy Regulatory Commission.

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

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

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

"Letter(s) of Credit" shall mean one or more irrevocable, non-transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A from S&P or A2 from Moody's, substantially in the form as contained in Exhibit A to this Master Agreement. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

"Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in California, (ii) has training and experience in the landfill gas power industry, (iii) has no economic relationship, association, or nexus with Seller or Buyer, (iv) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the

development of the Unit(s) or generating facility or of a manufacturer or supplier of any equipment installed the Unit(s) or generating facility, or (v) is licensed in an appropriate engineering discipline for the required certification being made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Project Development Security" is the security required of Party A, as specified in Section 8.4(a).

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

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

"RMR" means Reliability Must Run.

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

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

"Seller Excuse Hours" means, those hours during which Seller is unable to schedule or deliver Delivered Energy to Buyer as a result of a Force Majeure event or Dispatch Down Period.

"Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2, other than a Terminated Transaction resulting from an Event of Default under Section 5.1(m) of this Agreement (for which the exclusive remedy is set forth in Sections 5.4)."

"Tariff" shall have the same meaning as ISO Tariff, as defined above.

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

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

"TOD Period" has the meaning set forth in Section 8.2 of the Confirmation.

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

2.1 **Transaction.** The only Transaction contemplated in this Agreement is the sale and delivery to Buyer from Seller of the Product, as specified in the Confirmation, including all energy and capacity, as applicable, and Environmental Attributes associated with such Product, from the Unit(s) during the Delivery Term of the Transaction, as specified in the Confirmation.

2.2 **Governing Terms.** Unless otherwise specifically agreed, the Transaction between the Parties shall be governed by this Master Agreement. Any inconsistency between any terms of this Master Agreement, the ISO Tariff and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

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

3.1 **Seller's and Buyer's Obligations.** With respect to the Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, pursuant to the terms of the Confirmation, the Contract Quantity of the Product at the Delivery Point during the Delivery Term, and Buyer shall pay Seller the Contract Price. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to and at the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt from the Delivery Point. The Parties intend that Seller will arrange and pay independently for any and all necessary costs under and interconnection agreement with PG&E Subject to Section 3.3, the Parties intend that Seller will arrange and pay independently for any and all necessary electrical interconnection, Scheduling, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver power to the Delivery Point for sale pursuant to the terms of this Agreement. Seller shall not make any alteration or modification to the Unit(s) that results in a change to the Net Rated Output Capacity of the Unit(s) without Buyer's prior written consent.

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

3.3 Transmission and Scheduling.

(a) Seller Obligations. Seller shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, to and at the Delivery Point and bear all risks and costs associated with any transmission outages or curtailment. Seller shall be responsible for all ISO costs and charges, including imbalance charges due to deviations from power schedules, regardless of the cause thereof, electric transmission losses and congestion to and at the Delivery Point. Seller shall not responsible for any ancillary services.

(b) Buyer Obligations. Buyer shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, from the Delivery Point and bears all risks and costs associated with any such outages or curtailment. Buyer shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point. Buyer shall be responsible for all ISO costs and charges, regardless of the cause thereof, electric transmission losses and congestion from the Delivery Point.

(c) No Excuse. Except for a failure or curtailment resulting from a Force Majeure, the failure of electric transmission service shall not excuse performance with respect to either Party for the Transaction(s).

3.4 Standard of Care.

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

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

(c) Protective Apparatus. Seller, at no cost to Buyer, agrees to furnish and install the relays, meters, power circuit breakers, synchronizer and other control and protective apparatus as required in its interconnection agreements with Buyer. Buyer, in its sole judgment,

determines to be reasonably necessary for proper and safe operation of the Unit(s) in parallel with the PG&E or ISO system.

3.5 Metering. All output from the Unit(s) for a Transaction must be delivered through a single ISO revenue meter and that meter must be dedicated exclusively to those Unit(s) described herein. All Product purchased under a Transaction must be measured by the Unit(s) ISO revenue meter to be eligible for payment under this Agreement. In addition, Seller hereby agrees to provide all meter data to Buyer, and consents to Buyer obtaining from the ISO the ISO meter data applicable to the Unit(s) and all inspection, testing and calibration data and reports. If the ISO makes any adjustment to any ISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.1, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the ISO provides to Seller such binding adjustment to the meter data.

3.6 Outage Notification.

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

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

(c) Forced Outages. Seller shall, in accordance with the provisions set forth in Section 3.6(f) below, (i) use commercially reasonable efforts to notify Buyer of any Forced Outage within 10 minutes of the occurrence of such outage, (ii) provide a written estimate of its expected duration of the outage within 1 hour thereafter, and (iii) submit a completed Outage Notification Form to Buyer in accordance with the instructions provided therein. Seller shall not substitute power from any other source for the output of the Unit(s) during a Forced Outage.

(d) **Prolonged Outages.** Seller shall notify Buyer of a Prolonged Outage as soon as practicable under the circumstances by submitting a completed Outage Notification Form in accordance with the provisions set forth in Section 3.6(f) below, and provide an estimate of the duration of the outage therein. Seller shall notify Buyer in writing when the Unit(s) is again capable of meeting its Contract Quantity (as defined in the Confirmation) on a pro rata basis. Seller shall not substitute power from any other source for the output of the Unit(s) during a Prolonged Outage.

(e) **Force Majeure.** Within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party written notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely notice constitutes a waiver of a Force Majeure claim. An outage resulting from an event of Force Majeure that prevents the Unit(s) from delivering at least 60% of the Contract Quantity for a period of twelve (12) consecutive month (rolling) period shall, at the election of Buyer, constitute an Event of Default. 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. Seller shall not substitute power from any other source for the output of the Unit(s) during an outage resulting from Force Majeure. Buyer shall not be required to make any payments for capacity or energy not delivered or provided as a result of Force Majeure during the term of a Force Majeure. A Force Majeure shall not result in a breach or Event of Default hereunder except as provided in this Section 3.6(e) or Section 3.8(d)(iv).

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

(i) Los Banos Switching Center: ALWAYS notify the designated Control Center of shutdowns and startups as follows:

(A) Call for permission to parallel before any start-up at (209) 826-8187. Call Los Banos Switching Center again after your start-up with your parallel time. Call Los Banos Switching Center Control Center after any separation to report your separation time.

(B) Send the completed Outage Notification Form to Los Banos Switching Center by sending facsimile to: (209) 826-3061.

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

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

(iii) PG&E Power Settlements Departments: Send the Outage Notification Form by one of these methods:

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

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

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

(iv) Notification Form: The Outage Notification Form shall be used when reporting outages other than outages due to events of Force Majeure. The Outage Notification Form must be completely filled out, including date & start time of event, cause of the outage, expected duration, expected time and date of return to service.

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

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

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

3.7 Operations Logs and Access Rights.

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

(b) Access Rights. PG&E, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Unit(s) on reasonable advance notice at any time and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to PG&E by law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21,

and rules on file with the CPUC. PG&E shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Unit(s) operator. Seller shall keep PG&E advised of current procedures for contacting the Facility operator's Safety and Security Departments. Seller shall provide adequate and continuing access rights to transport, install, operate, maintain, service, replace and/or remove the interconnection facilities and related equipment or line extension that may be provided, owned, operated and maintained by PG&E.

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

3.8 New Generation Facility Unit(s).

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

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

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

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

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

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

(vi) Within fifteen (15) days after the close of each calendar month until the Commercial Operation Date, provide to PG&E a Monthly Construction Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress.

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

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

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

(iii) In such notice, request modifications to the design of the Unit(s)'s electrical system. Such modifications shall be required if necessary, in PG&E's sole judgment, to maintain PG&E or ISO electric system integrity when the Unit(s) is operating in parallel with the PG&E electric system.

(iv) Inspect the Units(s)'s construction site or on-site Seller data and information pertaining to the Unit(s) during business hours upon reasonable notice; provided that Buyer shall agree to keep the information obtained confidential, in accordance with Section 10.11 hereof.

(c) Reliability Standard. Seller agrees to sign a WECC Reliability Management System ("RMS") Agreement before the Initial Energy Delivery Date, as provided in the Confirmation, and to abide by the RMS Agreement.

(d) Construction Milestones.

(i) The Parties agree time is of the essence in regards to the Transaction. As such, the Parties also agree certain milestones for the construction of the Unit(s) ("Milestones") must be achieved in a timely fashion or PG&E will suffer damages. Seller shall provide PG&E with any requested documentation to support the achievement of Milestones and dates below within ten (10) Business Days of receipt of such request by Seller.

(ii) If Seller misses three or more Milestones or misses any one by more than 90 days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) days of such missed Milestone completion date, a remedial action plan ("RAP"), which shall provide a detailed description of Seller's course of action and plan to achieve the missed Milestones and all subsequent Milestones by the Commercial Operation Date. Seller shall obtain approval from Buyer, which approval shall not be unreasonably withheld or delayed, with respect to remedial efforts detailed in the RAP; provided however, that such approval or withholding of approval shall not relieve Seller of its obligation to meet any subsequent Milestones and the Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, then subsection (iv) below shall apply..

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

(A) By April 1, 2006 Seller shall have started Construction of the Unit(s) ("Construction Start Date").

(B) By the Guaranteed Commercial Operation Date, Seller shall have demonstrated Commercial Operation of the Unit(s).

(iv) Seller shall cause the Unit(s) to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date or Construction begins after the Construction Start Date, as applicable, (as may be delayed on a day by day basis by Force Majeure up to one hundred eighty (180) days for either Guaranteed Project Milestone), Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to

Daily Delay Damages for each day or portion of a day that (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of 60 days ("Project Cure Period"); or (II) the Construction commences after the Construction Start Date, as applicable, up to a total of sixty (60) days ("Construction Cure Period"). Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone, would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the Construction Start Date, if Seller meets the Guaranteed Commercial Operation Date (including the applicable cure period). Such Daily Delay Damages shall be returned in accordance with Section 8.4(c) of this Agreement.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

Article Four shall be deleted in its entirety.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

Section 5.1 of the Agreement shall be modified as follows:

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

Section 5.1(e) is amended by adding at the end thereof, the following clause: ", except with respect for the failure of such Party to provide Project Development Security pursuant to Section 8.4(a)(ii) hereof."

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

Section 5.1(i) is added as follows: "if at any time during the Term of Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement electrical power that was not generated by the Unit(s)"; and

Section 5.1(j) is added as follows: "failure to meet the Annual Performance Requirement agreed to pursuant to Section 9.1(a) of the Confirmation, except as excused pursuant to Section 9.1(b) of the Confirmation;"

Section 5.1(k) is added as follows: "a default pursuant to the Force Majeure provision set forth in Section 3.6(e) hereof;"

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

Section 5.1(m) is added as follows: "failure by Seller to post Project Development Security pursuant

to Section 8.4(a)(ii) hereof.”

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

5.2 Declaration of Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

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

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

5.4 Default Payment. Upon an Early Termination Date resulting from an Event of Default under Section 5.1(m) hereof, Seller, as a Defaulting Party, shall forfeit the Project Development Security held by Buyer at the time of such default. Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to Seller's failure to develop the Units pursuant to this Agreement would be difficult or impossible to predict with certainty, and (b) the Project Development Security is an appropriate approximation of such damages. Upon payment of the Default Payment, Seller shall be released of all further liabilities and obligations under this Agreement, but for the Indemnity by Seller under Section 10.4(a).

5.5 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within two (2) Business Days after such notice is effective.

5.6 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment."

5.7 Determination of Market Price. For Section 5.2 of this Agreement, which permits the determination of market price in calculating Gains or Losses, such price may, at the option of the Party whose right it is to use the market price, be determined by reference to market referent prices set by the CPUC, exchange prices, or by the average of market quotations provided by five or more bona fide unaffiliated market participants. If five or more quotes are obtained, the high and low quotations shall be excluded and a simple average of the other three quotations shall be used for this purpose. If the number of available quotes is 3, then the average of the 3 quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be for: (a) a like amount (b) of the same Product (c) at the same Delivery Point (d) on the same day and (e) for the remaining Delivery Term or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the contract value of the remaining Delivery Term and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant or which are reasonably expected to be available in the market for a replacement contract for the Transaction. It is expressly agreed that neither Party shall be required to enter into a replacement transaction in order to determine the market price.

The following new Section 5.8 shall be added as follows

5.8 Buyer Right of First Refusal. In the event that Seller is able to achieve Commercial Operation of the Unit(s) within the two-year period following the Early Termination Date, then Seller agrees to offer to sell and schedule all of the energy produced by the Unit(s) to Buyer, and Buyer, in its sole discretion, shall have the right, but not the obligation to purchase such energy ("Option"). Buyer shall have ninety (90) days from its receipt of notice of Seller's offer, as described above, to exercise the Option by notifying Seller in writing of its acceptance of such offer. The Option shall terminate upon the occurrence of either of the following events: (a) Buyer provides written notice to Seller rejecting the exercise of the Option, or (b) the Option expires without being exercised. In the event that Buyer does not exercise the Option, for a period of one (1) year from the date on which Seller offered the Option to Buyer ("Restriction Period"), Seller shall not be permitted to sell energy produced from the Units to any other entity on terms less favorable to Seller than those offered to Buyer. After the Restriction Period ends, Seller shall no longer be restricted by the terms of this Agreement from selling or scheduling any of the energy produced from the Unit(s).

ARTICLE SIX: PAYMENT AND NETTING

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

6.1 Billing and Payment; Remedies. On or before the fifth (5th) Business Day of each month, Seller or the Seller's Scheduling Coordinator shall provide to Buyer (i) records of metered data, including ISO metering and transaction data sufficient to document and verify the generation of

Product by the Unit(s) for all hours during the preceding month, or preceding months, with respect to adjustments for Imbalance Energy pursuant to Section 8.7 of the Confirmation, and (ii) an invoice, in the format specified by Buyer, covering the services provided in the preceding month or preceding months, with respect to adjustments for Imbalance Energy pursuant to Section 8.7 of the Confirmation. Buyer shall pay the undisputed amount of such invoices on or before the latter of the twentieth (20th) calendar 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 following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Late Payment Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustments arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.5(b), in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within 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 contract. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

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

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION,

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

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

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

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

8.4 Project Development Security; Performance Assurance.

(a) Project Development Security; Performance Assurance. To secure its obligations under this Agreement, in addition to satisfying any credit terms pursuant to the terms of Section 8.2 to the extent marked "Applicable," Seller agrees to deliver to Buyer (the "Secured Party") (i) upon execution of this Agreement, the Project Development Security in the amount set forth on the Coversheet, with respect to this subpart 8.4(a)(i); (ii) within thirty (30) days of the date on which all of the conditions precedent set forth in Article Eleven are either satisfied or waived Project Development Security in the amount and in the form set forth on the Cover Sheet with respect to this subpart 8.4(a)(ii), which Seller shall maintain in full force and effect until the Commercial Operation Date,; and (iii) from the Commercial Operation Date until the end of the Term, Performance Assurance in the amount and in the form set forth on the Cover Sheet, with respect to this subpart 8.4(a)(iii). Any such security shall not be deemed a limitation of damages.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security, provided pursuant to Section 8.4(a)(ii), for Daily Delay Damages until such time as such Project Development Security is exhausted. Buyer shall also be entitled to draw upon such Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are owed to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, provided pursuant to Section 8.4(a)(ii), and such Project Development Security, or any portion not owed to Buyer, including amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date, shall be returned to Seller within two (2) Business Days of Seller's provision of Performance Assurance; provided however, that with Buyer's consent, Seller may elect to apply the Project Development Security toward the Performance Assurance, if any, provided pursuant to this Section 8.4.

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

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

8.5 Letter of Credit.

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

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

8.6 Guaranty. Seller shall be permitted to substitute a guaranty, in a form acceptable to Buyer, for Performance Assurance in the form of cash or a Letter of Credit, if both of the following conditions are met: the Guarantor must (a) be incorporated in a jurisdiction of the United States, and (b) have a Credit Rating that is not less than either BBB by S&P or Baa2 by Moody's. Buyer shall return such cash or Letter of Credit in its possession within ten (10) Business Days of Buyer's receipt and acceptance such guaranty. Seller shall notify Buyer immediately of a downgrade in Guarantor's Credit Rating below the requirements set forth above. In the event that the Guarantor ceases to meet the criteria set forth above, then, within five (5) Business Days of notice from Buyer, Seller shall post Performance Assurance in the form of cash or a Letter of Credit.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any governmental authority ("Governmental Charges") on or with respect to the Product or the Transaction arising prior to the Delivery Point, including but not limited to, *ad valorem* taxes and other taxes attributable to the Project, land, land rights or interests in land for the Unit(s). Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction at and from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Confirmation; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

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

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

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

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

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

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

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

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

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

10.4 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under the Transaction to and at the Delivery Point, specified in the Confirmation, (ii) Seller's operation and/or maintenance of the Unit(s), or (iii) Seller's actions or inactions with respect to this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction of economic loss of property belonging to Buyer, Seller, or others, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its agents, employees, directors, or officers. Seller shall further indemnify PG&E for all penalties assessed against PG&E by the CPUC pursuant to the Renewable Portfolio Standard, Public Utilities Code Section 399 et. seq., to the extent caused by Seller's failure to deliver its energy and Contract Capacity, as provided in the Confirmation, unless such failure is caused by a Force Majeure event.

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

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

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

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its affiliates and/or its successors in interest, or its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

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

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

10.8 General. This Agreement constitutes the entire agreement between the Parties relating to its subject matter. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns. Nothing in this Agreement shall in any way restrict or otherwise limit the rights of either Party under Sections 205 and 206 of the Federal Power Act.

Section 10.11 of the Agreement is deleted in its entirety and is replaced with the following provision, irrespective of the election made by Seller on the Cover Sheet:

10.11 Confidentiality. Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party's employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071 and made applicable to this Agreement by D.04-06-015, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 10.12 of this Agreement; (v) in order to comply with any applicable law, regulation, or any exchange, control area or ISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 10.11 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

The following new Section 10.12 shall be added as follows:

10.12 RPS Confidentiality. Notwithstanding Section 10.11 of this Agreement, at any time on or after the date on which Buyer makes its advice filing letter seeking CPUC Approval of the Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, delivery term, project location, and project capacity. If Option B is checked on the Cover Sheet, neither Party shall disclose Party name or project location, pursuant to this Section 10.12, until six months after such CPUC Approval.

The following new Section 10.13 shall be added as follows:

10.13 Insurance. Throughout the term of this Agreement, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with respect to the Unit(s) specified in the Confirmation. PG&E reserves the right to request coverages of the type and amounts that are required by lenders for similarly financed projects. Reviews of such insurance may be conducted by PG&E on an annual basis. Seller is also responsible for its agents and contractors' maintaining sufficient limits of the appropriate insurance coverage. The insurance carrier or carriers and form of policy shall be subject to review and approval by PG&E.

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation insurance or self-insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Seller's licensee performs work.

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

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no additional coverage deletions and be endorsed for "Failure to Supply" coverage.

(ii) The limit shall not be less than \$10,000,000 each occurrence for bodily injury, property damage and personal injury.

(c) Seller shall (i) prior to the Startup Period or Initial Energy Delivery Date (as defined in the Confirmation), whichever occurs first, furnish a certificate of insurance to PG&E, which certificate shall provide that such insurance shall not be terminated nor expire except on thirty (30) calendar days' prior written Notice to PG&E, (ii) maintain such insurance in effect for so long as Seller's Unit(s) is operated in parallel with the PG&E electric system, (iii) furnish an endorsement specifying that Seller's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it and (iv) furnish to PG&E an additional insured endorsement with respect to such insurance in substantially the following form:

'In consideration of the premium charged, PG&E, its director, officers, agents, and employees are named as additional insured with respect to all liabilities arising out of Seller's use and ownership of Seller's Unit(s).'

'The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limit of the carrier's liability. PG&E will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.'

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

The following new Section 10.14 is added as follows:

10.14. Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and Security and Exchange Commission rules require PG&E to evaluate if PG&E must consolidate Seller's financial information, subject to limits of this Article. PG&E may require access to certain financial records and personnel to determine if consolidated financial reporting is required, subject to Confidentiality provisions of this agreement. Seller will provide financial information needed for Buyer to comply with Section 404 of the Sarbanes-Oxley Act of 2002.

Any information provided to PG&E pursuant to this Section 10.14 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which PG&E has power-purchase contracts. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

The following new Section 10.15 shall be added as follows:

10.15 Covenants.

(a) Each Party covenants that throughout the Delivery Term:

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

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

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

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

(b) Seller, and, if applicable, its successors, covenants that throughout the Delivery Term of each Transaction entered into under this Agreement: (a) the Unit(s) will qualify and will be certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16 as of the date of this Agreement; and (b) the Unit's(s') output delivered to Buyer will qualify under the requirements of the California Renewables Portfolio Standard in effect as of the date of this Agreement .

The following shall be added as "ARTICLE ELEVEN" to the Agreement:

ARTICLE ELEVEN: CONDITIONS PRECEDENT

11.1 Conditions Precedent. The term of this Agreement shall not commence until the occurrence of **all** of the following:

(a) This Agreement, which includes the Confirmation, has been duly executed by the authorized representatives of each of PG&E and Seller;

(b) CPUC Approval has been obtained; and

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

11.2 Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied on or before 180 days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement and the Transaction(s) effective upon receipt of Notice by the other Party.

The following shall be added as a new "ARTICLE TWELVE" to the Agreement:

ARTICLE TWELVE: DISPUTE RESOLUTION

12. Dispute Resolution.

Mindful of the high costs of litigation, not only in dollars but time and energy as well, the Parties intend to and do hereby establish a final and binding out-of-court dispute resolution procedure to be followed in the event any controversy should arise out of or concerning the performance of the Transaction(s). Accordingly, it is agreed as follows:

12.1 Negotiation.

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

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

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

(d) If the matter is not resolved within 45 calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to subpart (a) above, refuses or will not meet within 10 Business Days, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.2.

(e) If a dispute exists with respect to the Termination Payment, and such dispute cannot be resolved by good faith negotiation of the Parties within 10 Business Days of the Non-Defaulting Party's receipt of the detailed basis for the explanation of the dispute, pursuant to Section 5.5 of this Agreement, then either Party may refer the matter to Arbitration, pursuant to Section 12.3 of this Agreement.

12.2 Mediation. If the dispute (other than a dispute regarding the Termination Payment) cannot be so resolved by negotiation as set forth in Section 12.1 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the American Arbitration Association ("AAA"). As the first step the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. If within 60 days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration"). Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field. Either Party may initiate arbitration by filing with AAA a notice of intent to arbitrate within 60 days of service of the written demand for mediation.

12.3 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of three per Party and shall be held within 30 days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six hours duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) To the extent that the dispute concerns the calculation of the Termination Payment (but not whether there has been an Event of Default giving rise to the right to require the payment of such Termination Payment), each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages pursuant to Section 5.2 of this Agreement.

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

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

OTHER CHANGES

Schedule M is deleted in its entirety.

Schedule P is deleted in its entirety and replaced with the new Schedule P attached hereto.

Exhibit A is deleted in its entirety and replaced with the following:

Exhibit A, Form of Letter of Credit.

The following new Appendices are included as follows:

Appendix I, Initial and Annual Capacity Test Principles, attached hereto and made a part hereof.

Appendix II, Monthly Construction Progress Report, attached hereto and made a part hereof.

Appendix III, Outage Notification Form, attached hereto and made a part hereof.

SCHEDULE P

Product Definitions:

"As Available" means, with respect to a Transaction, that Seller shall deliver to Buyer and Buyer shall purchase at the Delivery Point the Product from the Units, in accordance with the terms of this Agreement and subject to the excuses for performance specified in this Agreement."

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a specified generation asset or assets specified in the Transaction. The following Products shall be considered "Unit Firm" products:

"Peaking" means with respect to a Transaction, a Product for which Delivery Periods coincide with Peak Periods, as defined by Buyer.

"Baseload" means with respect to a Transaction, a Product for which Delivery levels are uniform for all Delivery Periods.

"Dispatchable" means with respect to a Transaction, a Product for which Seller makes available unit-contingent capacity for a Buyer to schedule and dispatch up or down at Buyer's option."

EXHIBIT A

LETTER OF CREDIT

**ISSUING BANK LETTERHEAD
ADDRESS**

Date: _____

Irrevocable Standby Letter of Credit Number: _____

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

Applicant: _____
Address: _____

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

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

We hereby issue our Irrevocable Standby Letter of Credit at this office in your favor for the account of Applicant by sight payment against the following documents:

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

AND

2. Beneficiary's signed statement certifying:

"Applicant is in default under that certain Agreement dated ___ by and between Applicant and Pacific Gas and Electric Company and the amount drawn hereunder is not greater than the amount due and owing to Beneficiary pursuant to that agreement."

OR

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

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

Special Conditions:

1. Partial drawing(s) are permitted.
2. All banking charges associated with this Letter of Credit are for the account of the Applicant.
3. This Letter of Credit is not transferable.

We hereby engage with you that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored if drawn and presented for payment at any time before the close of business [INSERT TIME] at our counters located at [INSERT ADDRESS] on or before the Expiration Date or in the event of Force Majeure, as defined under Article 17 of the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500 ("UCP"), interrupting our business, within fifteen (15) days after resumption of our business, whichever is later.

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

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

By: _____
Authorized Signature

Name: _____

Title: _____

APPENDIX I

Principles for Initial and Annual Capacity Demonstration Tests

The following outlines the principles that will form the commercial basis for the detailed criteria, protocols, schedule and conditions to be agreed to by Buyer and Seller for the Initial and Annual Capacity Demonstration Tests, as required by the Master Agreement and applicable Confirmation.

1. The Initial Capacity Demonstration Test applies only to Unit(s) supplying Unit Firm Products (Baseload, Peaking, and Dispatchable). Successful passage of this test is required to demonstrate Commercial Operations. The selected EPC Refurbishment Contractor or Operator will certify that the Unit(s) is ready for performance testing and will provide technical and labor support for such test.
2. The principle for the Initial and Annual Capacity Demonstration Test performance criteria will be generation and delivery of the Contract Capacity over the specified duration of the test as stated as percentage Capacity Factors in the Performance Requirements for the applicable TOD Period.
3. For the Baseload product, passage of the Test will require the Unit(s) to meet the Performance Requirements specified in the Confirmation for the TOD Periods applicable for the month(s) in which the Annual Capacity Test takes place for the duration of three hundred thirty-six (336) consecutive hours (two (2) weeks). For the purpose of illustration, for an Annual Capacity Test taking place during Monthly Period A (June through September), the test criteria would be to demonstrate ninety-five percent (95%) Capacity Factor during the Super-Peak TOD Period, ninety percent (90%) Capacity Factor during the Shoulder TOD Period, and eighty percent (80%) Capacity Factor during the Night TOD Period — each such requirement to be calculated as a mean of the amount of Delivered Energy during the applicable TOD period for the fourteen (14)-day duration of the Annual Capacity Test divided by the product resulting from multiplying the Contract Capacity times the number of hours in the applicable TOD period. For the purposes of calculating Delivered Energy for the Annual Capacity Test, Delivered Energy shall exclude any energy greater than 10 MW Contract Capacity in each hour.
4. Buyer can request an Annual Capacity Test no more often than once during any twelve (12)-month period.
5. If Seller fails to pass the Annual Capacity Test, Seller shall have the right, but not the obligation, to elect to perform such re-test, not more than two (2) times total in any Contract Year, using identical protocol and criteria as the original Annual Capacity Test, ("Re-Test"). Seller shall bear all costs for any Re-Test.

APPENDIX II

**FORM OF MONTHLY
CONSTRUCTION PROGRESS REPORT**

**Monthly Progress Report
of
[_____]
("Seller")**

**provided to
Pacific Gas & Electric Company
("Buyer")**

[Date]

1.0 Instructions.

Any capitalized terms used in this report which are not defined herein shall have the means ascribed to them in the Master Power Purchase and Sale Agreement by and between _____ ("Seller") and Pacific Gas & Electric Company dated _____, 2004 (the "Agreement").

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

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

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

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

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

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

Seller shall complete, certify, and deliver this form of Monthly Construction Progress Report to _____, together with all attachments and exhibits, with three (3) copies of this report delivered to _____ and _____.

2.0 Executive Summary.

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

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

- 2.1.1 Design
- 2.1.2 Property Acquisition
- 2.1.3 Engineering
- 2.1.3 Major Equipment procurement
- 2.1.4 Construction and Interconnection
- 2.1.5 Milestone report
- 2.1.6 Permitting (See Section 3.0 below)
- 2.1.7 Startup Testing and Commissioning

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

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

- 2.2.1 Design
- 2.2.2 Property Acquisition
- 2.2.3 Engineering
- 2.2.3 Major Equipment procurement
- 2.2.4 Construction and Interconnection
- 2.2.5 Milestone report
- 2.2.6 Permitting

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

2.2.7 Startup Testing and Commissioning

3.0 Permitting.

The following describes each of the Major Governmental Approvals required for the construction of the Unit(s) and the status thereof:

3.1 State and/or Federal Governmental Approvals.

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

<u>DESCRIPTION</u>	<u>STATUS</u>

3.2 Local and/or county Governmental Approvals.

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

<u>DESCRIPTION</u>	<u>STATUS</u>

3.3. Permitting activities that occurred during the previous calendar month.

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

3.4 Permitting activities occurring during the current calendar month.

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

3.5 Permitting Notices received from EPC Contractor.

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

4.0 Design Activities.

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

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

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

4.2 Design activities to be performed during the current calendar month.

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

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

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

5.0 Property Acquisition Activities.

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

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

ACTIVITY	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

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

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

6.0 Engineering Activities.

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

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

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

6.2 Engineering activities to be performed during the current calendar month.

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

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

8.3 Construction and interconnection activities completed during the previous calendar month.

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

8.4 EPC Contractor Monthly Construction Progress Report.

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

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

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

9.0 Milestones.

9.1 Milestone schedule.

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

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

Please explain in detail each of the following aspects of Seller's Remedial Action Plan, as provided in Section 3.8 of the Agreement:

9.2.1 Missed Milestone

9.2.2 Plans to achieve missed Milestone

9.2.3 Plans to achieve subsequent Milestone

9.2.4 Delays in engineering schedule

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

9.2.5 Delays in Major Equipment procurement

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

9.2.6 Delays in construction and interconnection schedule

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

10.0 Safety and Health Reports

10.1 Please list all accidents from the previous calendar month:

10.2 Any work stoppage from the previous calendar month:

10.3 Work stoppage impact on construction of the Unit(s):

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

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX III

DO NOT ALTER FORM



OUTAGE NOTIFICATION FORM

SEND VIA U.S. MAIL OR FAX

DATE: _____

MAILING ADDRESS:
Pacific Gas & Electric Company
Attention: Marc Renson
Mail Code N12F
P. O. Box 770000
San Francisco, CA 94177

FAX NUMBER: (415) 973-2151

PG&E LOG NUMBER: _____

This Outage Notification Form is being submitted pursuant to the terms of that certain Master Power Purchase Agreement, dated _____, 20[] ("Agreement") entered into by _____ and Pacific Gas and Electric Company. All capitalized terms not defined herein shall have the meaning provided in the Agreement.

Unit Name: _____

Unit Mailing Address: _____

NOTIFICATION OF PLANNED OUTAGE FORCED OUTAGE PROLONGED OUTAGE

The Unit will shut down for **PLANNED OUTAGE** from:

_____ to _____
(Date and Time) (Date and Time)

The Unit experienced a **FORCED OUTAGE/PROLONGED OUTAGE** (circle applicable outage) from: _____

(Date and Time)

to: _____ due to _____
(Date and Time)

The **FORCED OUTAGE** was confirmed via telephone on _____
(Date and Time)

by _____
(Designated Control Center/Switching Center and Operator)

COMMENTS: Description and Cause of Forced Outage/Planned Outage (circle applicable outage)

Outage Notification Form submitted by: _____ **Title:** _____

(Signature) _____
(Date)

Notification Requirements:

This notice shall be delivered in compliance with Section 3.6 of the Agreement, including the timeframes, which shall be the estimated duration of such outage.

The above notification requirements will be strictly enforced by PG&E.

(Rev. 7/04)