

Execution Version

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

GENESIS SOLAR, LLC
(as "Seller")

POWER PURCHASE AGREEMENT

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POWER PURCHASE AGREEMENT

PREAMBLE

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

- 1.1 “AAA” means the American Arbitration Association.
- 1.2 “Actual Availability Report” has the meaning set forth in Section 3.1(m)(i).
- 1.3 “Adjustments” has the meaning set forth in Section 3.1(d).
- 1.4 “After-Tax Basis” for purposes of Section 5.5(d), means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment (the “Base Payment”) supplemented by a further payment (the “Additional Payment”) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.
- 1.5 “Affiliate” means, with respect to any person, any other person (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person, or (b) is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.6 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 11.11, the word “agreement” shall have the meaning set forth in this definition.
- 1.7 “Amended Agreement” has the meaning set forth in Section 3.9(c)(iv)(B).

1.8 “Arbitration” has the meaning set forth in Section 13.4(a).

1.9 “As-Available Product” means a Product for which, subject to the terms of this Agreement (a) Seller is obligated to sell and deliver, and (b) Buyer is obligated to purchase and receive from the Project whenever the Product is capable of being generated from the Project.

1.10 “Available Capacity” means the mechanical capacity of the Project that is available to generate Product, expressed in whole megawatts.

1.11 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such proceeding or cause of action remains undismissed after sixty (60) days, (b) makes an assignment or any general arrangement for the benefit of creditors (but excluding any collateral assignments to Lenders in the normal course of business), (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

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

1.13 “Buyer” has the meaning set forth in the Preamble.

1.14 “Buyer Excuses” has the meaning set forth in Section 3.1(i)(ii).

1.15 “Buyer’s Notice” has the meaning set forth in Section 3.9(c)(iv)(D)(II).

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

1.17 “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO revenue meter.

1.18 “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

1.19 “CAISO Penalties” means any fees, liabilities, assessments, debits, costs, interest or similar charges that are directly assigned by the CAISO to the CAISO Global Resource ID for the Project related to (a) a violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders, or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case “CAISO Penalties” do not include the costs and charges addressed in Section 4.5(c) of this Agreement.

1.20 “CAISO Revenues” means (a) the credits and other payments received by Buyer, as Seller’s Scheduling Coordinator, as a result of test energy from the Project delivered to the real-time market by Seller during the Test Period, including revenues associated with CAISO dispatches, and (b) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Project for, or attributable to, scheduling and deliveries from the Project under this Agreement.

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

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

1.23 “California Solar Property Tax Exemption” means the property tax exemption for new construction of “active solar energy systems” set out in California Revenue and Taxation Code, Section 73 as in effect on the Execution Date.

1.24 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

1.25 “CEC” means the California Energy Commission or its successor agency.

1.26 “CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has been constructed, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

1.27 “Change of Control” means any transfer, sale, assignment, pledge or other disposition of shares of or equity interests in a Party having the result (directly or indirectly and either immediately or subject to the happening of any contingency) of changing the entity or entities which possess the power (directly or indirectly and either immediately or subject to the happening of any contingency) to direct or cause the direction of the management or policies of such Party (from the entity or entities possessing such power as to such Party as of the Execution Date), whether such change is voluntary or involuntary on the part of such Party.

1.28 “Claims” means all third-party claims, loss, actions or suits, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and

court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination or expiration of this Agreement.

1.29 “Colorado River Substation” means the Southern California Edison Company’s 500 kV Colorado River Substation.

1.30 “Commercially Reasonable” or “Commercially Reasonable Efforts” means efforts which are reasonably within the contemplation of the Parties at the time of executing this Agreement and which do not require the performing Party to expend any funds other than expenditures which are customary and reasonable in transactions of the kind and nature contemplated by this Agreement in order for the performing Party to satisfy its obligations hereunder. “Commercially Reasonable Efforts,” or “Commercially Reasonable” shall be consistent with Good Utility Practices, including electric system reliability and stability, federal, state or other regulatory mandates relating to renewable energy portfolio requirements, and shall take into consideration the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. “Commercially Reasonable” or “Commercially Reasonable Efforts” shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time. For purposes of Section 10.2, the words “commercially reasonable efforts” shall have the meaning set forth in this definition and in Section 10.2(a).

1.31 “Commercial Operation” means, with respect to a Unit or a Replacement Unit, that such Unit or Replacement Unit is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement.

1.32 “Commercial Operation Date” means, with respect to a Unit or a Replacement Unit, the date on which Seller (a) notifies Buyer that Commercial Operation has commenced, and (b) provides an officer’s certificate substantially in the form attached hereto as Appendix VI.

1.33 “Compliance Cap” has the meaning set forth in Section 3.1(k)(ii).

1.34 “Condition(s) Precedent” has the meaning set forth in Section 12.1.

1.35 “Congestion Revenue Rights” or “CRR” has the meaning set forth in Section 3.1(d).

1.36 “Construction Start Date” means the date on which Seller delivers to Buyer a copy of the Notice to Proceed that Seller has delivered to the Engineering and Construction Contractor for the Project.

1.37 “Contingent Project Size Adjustment” means a permitted reduction of the Project’s Contract Capacity pursuant to Section 3.9(c)(iv)(B).

1.38 “Contingent Project Size Adjustment Date” shall mean the date on which the Contract Capacity shall be reduced to 125 MW pursuant to Section 3.9(c)(iv)(B).

1.39 “Contract Capacity” has the meaning set forth in Section 3.1(f).

1.40 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in Sections 4.1(a), 4.1(b), 4.1(c), 4.3, 4.4 and Appendix I.

1.41 “Contract Quantity” means the quantity of Delivered Energy expected to be delivered by Seller during each Contract Year net of all Electrical Losses, as set forth in Appendix I and as may be adjusted pursuant to Sections 3.1(e)(ii) and 3.9(c)(iv).

1.42 “Contract Quantity Amendment” has the meaning set forth in Section 3.1(e)(ii)(D).

1.43 “Contract Quantity Reset” has the meaning set forth in Section 3.1(e)(ii)(D).

1.44 “Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on that day immediately following the First Unit Initial Energy Delivery Date and each subsequent Contract Year shall commence on the anniversary thereof.

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

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

1.47 “CPUC Amendment Filing” has the meaning set forth in Section 4.1(c)(iii)(B).

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

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

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

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

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

1.50 “Cure” has the meaning set forth in Section 8.5(a).

1.51 “Day-Ahead Availability Notice” has the meaning set forth in Section 3.4(c)(iii)(C).

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

1.53 “Defaulting Party” means the Party that is subject to an Event of Default.

1.54 “Delivered Energy” means all Energy produced from the Project as measured in MWh at the CAISO revenue meter at the Colorado River Substation based on a power factor of precisely one (1).

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

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

1.57 “Delivery Term Security” means the Performance Assurance that Seller is required to maintain, as specified in Section 8.4(a)(iv), to secure performance of its obligations during the Delivery Term.

1.58 “Disclosing Party” has the meaning set forth in Section 11.6.

1.59 “Disclosure Order” has the meaning set forth in Section 11.6.

1.60 “Dispatch Down Period” means the period of time during which there is any of the following (a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, (i) any system emergency, as defined in the CAISO Tariff (“System Emergency”) or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected, (b) a curtailment directed by the CAISO due to over generation as defined in the CAISO Tariff, or a forecast or expectation of over generation, including a request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time, (c) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including: (i) any situation that affects normal function of the electric system including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions; or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected, (d) scheduled or unscheduled

maintenance on the Participating Transmission Owner's transmission facilities that prevents: (i) Buyer from receiving; or (ii) Seller from delivering Delivered Energy at the Delivery Point, or (e) a curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

1.61 "Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

1.62 "Downgrade Event" shall refer to any point in time when either (a) Seller's Guarantor's Credit Rating (or Qualified Replacement Guarantor's Credit Rating, if applicable) falls below BBB- from S&P or Baa3 from Moody's, if rated by one or more Ratings Agencies, or (b) both S&P and Moody's no longer rate Seller's Guarantor (or Seller's Qualified Replacement Guarantor, if applicable).

1.63 "Dry Cooling Technology" refers to the cooling process for solar power electric generating facilities which utilizes air-cooling technology through means of air-cooled condensers.

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

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

1.66 "Effective Date" means the date on which all of the Conditions Precedent set forth in Section 12.1 have been satisfied or waived in writing by both Parties.

1.67 "Electrical Losses" means all applicable losses, including any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

1.68 "Electric System Upgrades" means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner (as applicable) to physically and electrically interconnect the Project to the Participating Transmission Owner's electric system for receipt of Energy at the Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if the Participating TO's electric system is not part of the CAISO Grid.

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

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

1.71 "Energy" means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 1.106, "Green Attributes", the word "energy" shall have the meaning set forth in this definition.

1.72 “Energy Deviations” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the Final Hour Ahead Schedule (as defined in the CAISO Tariff) for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour, and (b) Delivered Energy for the Settlement Interval.

1.73 “Energy Investment Tax Credit” or “ITC” means the tax credit for “energy property” described in Sections 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.74 “Engineering and Construction Contractors” means the engineering and construction contractors selected and engaged by Seller, to design and construct the Project.

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

1.76 “Event of Default” has the meaning set forth in Sections 5.1(a) and (b).

1.77 “Exclusivity Period” has the meaning set forth in Section 3.9(c)(iv)(D).

1.78 “Exempt Wholesale Generator” has the meaning provided in 18 CFR Section 366.1.

1.79 “Execution Date” means the latest signature date found on the signature page of this Agreement.

1.80 “Executive(s)” has the meaning set forth in Section 13.2(a).

1.81 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.82 “First Offer” has the meaning set forth in Section 3.9(c)(iv)(D).

1.83 “First Unit” means the first of the two Units to achieve Commercial Operation.

1.84 “First Unit Cure Period” has the meaning set forth in Section 3.9(c)(iv)(A)(III).

1.85 “First Unit Daily Delay Damages” means, with respect to the First Unit Guaranteed Commercial Operation Date, an amount equal to (a) the amount of First Unit Development Security specified in Section 8.4(a)(iii), divided by (b) 365.

1.86 “First Unit Delivery Term Security” has the meaning set forth in Section 8.4(a)(iv)(A).

1.87 “First Unit Development Security” has the meaning set forth in Section 8.4(a)(iii).

1.88 “First Unit Guaranteed Commercial Operation Date” has the meaning set forth in Section 3.9(c)(ii).

1.89 “First Unit Initial Energy Delivery Date” has the meaning set forth in Section 3.1(c)(ii).

1.90 “Forced Outage” means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in an amount of at least 10 MW or 5% of the Project’s Contract Capacity, whichever is greater, in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction, or any other unavailability of the Project for maintenance or repair that is not a Planned Outage or the result of Force Majeure.

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

(a) Subject to the foregoing, events that could qualify as Force Majeure include the following:

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

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

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

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

(b) Force Majeure shall not be based on:

- (i) Buyer's inability economically to use or resell the Product purchased hereunder;
- (ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;
- (iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project, except if Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;
- (iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;
- (v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
- (vi) a Forced Outage, except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;
- (vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller or Seller's Affiliates, or strikes directed exclusively at the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project with respect to labor at the Project; or
- (viii) any equipment failure, except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above.

1.92 "Force Majeure Construction Delay" has the meaning set forth in Section 3.9(c)(ii)(C).

1.93 "Force Majeure Exclusivity Period" has the meaning set forth in Section 5.10(f).

1.94 "Force Majeure Notice" has the meaning set forth in Section 5.10(a).

1.95 "Forecasting Penalty" has the meaning set forth in Section 4.5(d)(iii), and "Forecasting Penalties" means more than one Forecasting Penalty.

1.96 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a Commercially Reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may

include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term and include the value of Green Attributes.

1.97 “GEP Cure” has the meaning set forth in Section 3.1(e)(ii)(B).

1.98 “GEP Failure” has the meaning set forth in Section 3.1(e)(ii)(B).

1.99 “GEP LD Cap” has the meaning set forth in Section 3.1(e)(ii)(C).

1.100 “GEP Liquidated Damages” has the meaning set forth in Section 3.1(e)(ii)(B).

1.101 “GEP Shortfall” has the meaning set forth in Section 3.1(e)(ii)(B).

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

1.103 “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 Project.

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

1.105 “Governmental Charges” has the meaning set forth in Section 9.2.

1.106 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as

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

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

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

1.108 "Guarantor" means [REDACTED]

1.109 "Guaranty" means a guaranty, security agreement, or any other document containing an obligation of the Guarantor in favor of, and supporting any obligations of, Seller to Buyer, in substantially the form attached as Appendix XII hereto.

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

1.111 "Initial Energy Delivery Date Confirmation Letter" has the meaning set forth in Section 3.1(c)(v).

1.112 "Initial Negotiation End Date" has the meaning set forth in Section 13.2(a).

1.113 "Interconnection Customer's Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

1.114 "Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

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

1.116 "Interest Amount" means, with respect to an Interest Period, the amount of interest is calculated as follows (a) the sum of: (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period, (b) multiplied by

the Interest Rate in effect for that Interest Period, (c) multiplied by the number of days in that Interest Period, (d) divided by 360.

1.117 “Interest Payment Date” means the last Business Day of each month.

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

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

1.120 “Law” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Section 1.48 “CPUC Approval,” Section 1.106 “Green Attributes,” Section 10.2, Seller Representations and Warranties, and Section 11.11, Governing Law, the term “law” shall have the meaning set forth in this definition.

1.121 “Lender” or “Lenders” means any and all persons or successors in interest thereof (a) lending money or extending credit (including any financing lease, monetization of tax benefits, backleverage financing or credit derivative arrangement) to Seller or to an Affiliate of Seller including: (i) for the construction, permanent, or interim financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and related rights from Seller, and/or (b) participating (directly or indirectly) as an equity investor in the Project primarily in connection with the utilization of ITCs or tax depreciation benefits associated with holding an ownership interest in the Project, or (c) participating as a lessor under a lease finance arrangement relating to the Project (which person or persons shall not include Seller or any of its Affiliates).

1.122 “Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by (a) a U.S. commercial bank or (b) a U.S. branch of a foreign commercial bank with at least \$10 billion in assets, with either such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, substantially in the form as contained in Appendix II to this Agreement.

1.123 “LGIP” means the Large Generator Interconnection Procedures set forth in the CAISO Tariff and associated documents; provided that, if the LGIP is replaced by such other successor procedures approved by FERC governing interconnection (a) to the Participating TO’s Transmission System, or (b) of generating facilities with an expected net capacity equal to or

greater than the Project's Contract Capacity, the term "LGIP" shall then apply to such successor procedure.

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

1.125 "Locational Marginal Price" or "LMP" has the meaning set forth in the CAISO Tariff.

1.126 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product. If the Non-Defaulting Party is Seller, then "Losses" shall exclude any loss of federal, state or local tax credits or benefits and other benefits related to the Project or generation therefrom; except, that Losses may include loss of Tax Benefits for a Unit if the Early Termination Date occurs after the Construction Start Date of such Unit and prior to the Guaranteed Commercial Operation Date of such Unit, subject to the provisions of Section 5.5.

1.127 "Manager" has the meaning set forth in Section 13.2(a).

1.128 "Mediation Period" has the meaning set forth in Section 13.4(a).

1.129 "Megawatt" means megawatt.

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

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

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

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

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

1.135 "MWh" means megawatt-hour.

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

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

1.138 "Network Upgrades" has the meaning set forth in the CAISO Tariff.

1.139 "Net Worth" means means the dollar value calculated by subtracting liabilities from total assets (excluding goodwill and other intangible assets described in FASB Statement 142) as such terms are determined in accordance with GAAP.

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

1.141 "NextEra" means NextEra Energy Resources, LLC.

1.142 "NOAA" means the National Oceanic and Atmospheric Administration or any successor thereto.

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

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

1.145 "Notice to Proceed" means the notice provided by Seller to an Engineering and Construction Contractor following execution of the applicable engineering and construction contract between Seller and such Engineering and Construction Contractor, by which Seller authorizes such Engineering and Construction Contractor to begin work on the Project without any delay or waiting periods.

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

1.147 "Outage Notification Form" means the notice form attached hereto as Appendix X, which shall be submitted by Seller to Buyer in accordance with the relevant provisions of Section 3.7. Buyer reserves the right to revise or change the form upon prior written Notice to Seller.

1.148 "Outage Notification Procedures" has the meaning set forth in Section 3.4(c)(iii)(D).

1.149 “Participating Intermittent Resource” or “PIRP” has the meaning set forth in the CAISO Tariff.

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

1.151 “Party” means Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 11.11, Governing Law, the word “party” or “parties” shall have the meaning set forth in this definition.

1.152 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security.

1.153 “Performance Measurement Period” has the meaning set forth in Section 3.1(e)(ii)(A).

1.154 “Permitting Delay” has the meaning set forth in Section 3.9(c)(ii)(A).

1.155 “Permitted Extensions” means extensions to the Guaranteed Commercial Operation Date due to Permitting Delay, Transmission Delay, or Force Majeure Construction Extension.

1.156 “Person,” as used in Section 11.3(b), means any legal or natural person, including any partnership, corporation, limited liability company, business trust, joint stock company, association, joint venture, or any other entity of whatever nature.

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

1.158 “PNode” has the meaning set forth in the CAISO Tariff.

1.159 “Preamble” means the paragraph that preceded Article One: General Definitions to this Agreement.

1.160 “Pricing Adjustment” has the meaning set forth in Section 4.1(c)(iii).

1.161 “Pricing Adjustment Amendment” has the meaning set forth in Section 4.1(c)(iii)(A).

1.162 “Pricing Adjustment Offer Acceptance Notice” has the meaning set forth in Section 4.1(c)(iii)(A).

1.163 “Pricing Adjustment Option” has the meaning set forth in Section 4.1(c)(iii)(A).

1.164 “Pricing Adjustment Option Approval” has the meaning set forth in Section 4.1(c)(iii)(B).

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

1.166 “Progress Report” means the report similar in form and content attached hereto as Appendix VIII.

1.167 “Project” means the Units, the Site at which the Units are located, the other assets, tangible and intangible, that compose the Units and the transmission and interconnection facilities connecting the Project to the Colorado River Substation, as more particularly described in Appendix V. For purposes of Section 3.2, Green Attributes, the word “project” shall have the meaning set forth in this definition.

1.168 “Project Commercial Operation Date” means the date on which both Units have achieved Commercial Operation and the Project is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement.

1.169 “Project Development Security” means the collateral required of Seller referred to in Section 8.4(a)(i)-(iii).

1.170 “Project Size Adjustment LD” has the meaning set forth in Section 3.9(c)(iv)(B).

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

1.172 “Qualified Replacement Guarantor” means an entity which at the time it is to provide a replacement Guaranty (a)(i) has a Credit Rating equal to or greater than Guarantor, but in no event lower than BBB- from S&P or Baa3 from Moody’s; (ii) has a consolidated Net Worth of at least one billion dollars (\$1,000,000,000.00); and (iii) (A) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, or (B) is a foreign Qualified Replacement Guarantor organized in a jurisdiction reasonably acceptable to Buyer and, with respect to such foreign Qualified Replacement Guarantor, Seller has furnished to Buyer a legal opinion, in form, substance and from a law firm reasonably satisfactory to Buyer and from counsel reasonably acceptable to Buyer, regarding the enforceability of the Guaranty to be issued by such foreign Qualified Replacement Guarantor, or (b) is acceptable to Buyer in its sole discretion as having a verifiable creditworthiness and Net Worth sufficient to secure the Qualified Replacement Guarantor’s obligations under the Guaranty.

- 1.173 “Qualifying Protocols” has the meaning set forth in Section 3.4(b).
- 1.174 “RA Capacity” means the maximum megawatt amount that the CAISO recognizes from a Project that qualifies for Buyer’s Resource Adequacy Requirements and is associated with the Project’s Capacity Attributes.
- 1.175 “Ratings Agency” means either of S&P or Moody’s.
- 1.176 “Recording” has the meaning set forth in Section 2.6.
- 1.177 “Referral Date” has the meaning set forth in Section 13.2(a).
- 1.178 “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as may be amended or as further defined or supplemented by Law.
- 1.179 “Replacement Unit” has the meaning set forth in Section 3.9(c)(iv)(C).
- 1.180 “Replacement Unit Commercial Operation Date” has the meaning set forth in Section 3.9(c)(iv)(C).
- 1.181 “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D. 05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.
- 1.182 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.
- 1.183 “Revised Offer” has the meaning set forth in Section 3.9(c)(iv)(D)(III).
- 1.184 “Rules” has the meaning set forth in Section 13.4(a).
- 1.185 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.186 “Satisfaction Date” has the meaning set forth in Section 2.4(a).
- 1.187 “Schedule” has the meaning set forth in the CAISO Tariff.
- 1.188 “Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time-to-time.
- 1.189 “SEC” means the U.S. Securities and Exchange Commission.

- 1.190 “Second Unit” shall mean the second of the Units to achieve Commercial Operation.
- 1.191 “Second Unit Cure Period” has the meaning set forth in Section 3.9(c)(iv)(A)(III).
- 1.192 “Second Unit Daily Delay Damages” means, with respect to the Second Unit Guaranteed Commercial Operation Date, an amount equal to (a) the amount of Second Unit Development Security specified in Section 8.4(a)(iii), divided by (b) 365.
- 1.193 “Second Unit Delivery Term Security” has the meaning set forth in Section 8.4(a)(iv)(B).
- 1.194 “Second Unit Development Security” has the meaning set forth in Section 8.4(a)(iii).
- 1.195 “Second Unit Force Majeure Event” has the meaning set forth in Section 3.9(c)(iv)(B).
- 1.196 “Second Unit Guaranteed Commercial Operation Date” has the meaning set forth in Section 3.9(c)(ii).
- 1.197 “Second Unit Initial Energy Delivery Date” means the first date that Seller delivers Product to Buyer from the Second Unit after the Second Unit Commercial Operation Date.
- 1.198 “Selection Notice” has the meaning set forth in Section 13.4(c)(i).
- 1.199 “Self-Insurer” has the meaning set forth in Section 11.9(h).
- 1.200 “Seller” has the meaning set forth in the Preamble.
- 1.201 “Seller Excuse Hours” means those hours during which Seller is unable to schedule or deliver Delivered Energy to Buyer as a result of Seller Excuses.
- 1.202 “Seller Excuses” has the meaning set forth in Section 3.1(i)(i).
- 1.203 “Settlement Amount” has the meaning set forth in Section 5.4.
- 1.204 “Settlement Interval” means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
- 1.205 “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of the Units that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.
- 1.206 “Site” means the location of the Project as described in Appendix V.
- 1.207 “Solar Grant” means the federal grant in lieu of ITC pursuant to the American Reinvestment and Recovery Act of 2009, Section 1603.

- 1.208 “System Emergency” has the meaning set forth in Section 1.60.
- 1.209 “Tax Benefits” means the present value (using a discount rate of six and one half percent (6.5%)) of the expected economic benefit associated with the Energy Investment Tax Credits related to the Project.
- 1.210 “Tax Exemption Adjustment” has the meaning set forth in Section 4.1(c)(ii).
- 1.211 “Term” has the meaning set forth in Section 2.4.
- 1.212 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2 of this Agreement.
- 1.213 “Termination Payment” has the meaning set forth in Section 5.4.
- 1.214 “Test Period” means, with respect to a Unit, the period of not more than ninety (90) consecutive days commencing on the first date that the CAISO informs Seller in writing that Seller may deliver Energy from such Unit to the CAISO Grid and ending when Seller advises Buyer of the occurrence of the Initial Energy Delivery Date for such Unit; provided, however, that the Test Period shall not extend beyond five (5) consecutive days after such Unit’s Commercial Operation Date.
- 1.215 “Third-Party SC” means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement.
- 1.216 “TOD” means time of delivery of Delivered Energy from Seller to Buyer.
- 1.217 “TOD Factors” has the meaning set forth in Section 4.3(a).
- 1.218 “TOD Periods” has the meaning set forth in Section 4.2.
- 1.219 “Transaction” means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.
- 1.220 “Transmission Delay” has the meaning set forth in Section 3.9(c)(ii)(B).
- 1.221 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point. For purposes of this Agreement the Transmission Provider is Southern California Edison.
- 1.222 “Unit” means each of, and “Units” shall mean collectively, the two (2) 125 MW parabolic solar trough facilities that produce the Product and which, collectively, form part of the Project and which are identified in Appendix V.
- 1.223 “WECC” means the Western Electricity Coordinating Council or successor agency.

1.224 “Wet Cooling Technology” refers to the cooling process used by solar powered electric generating facilities which utilizes an evaporation process and wet-recirculating cooling technology through means of a wet cooling tower and water-cooled condensers.

1.225 “WREGIS” means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

1.226 “WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

1.227 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of June 4, 2007, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties. Nothing herein modifies, alters or affects in any way the Parties’ obligations under the Confidentiality Agreement, dated August 8, 2007, entered into between the Parties in connection with the solicitation from which this Agreement is a result.

2.2 Interpretation. The following rules of interpretation shall apply in addition to those set forth in Section 11.12:

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

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

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

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

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

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

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

(h) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way a limitation.

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

2.4 Term.

(a) The Term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 12.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Sections 3.9(c)(iv)(A)(III), 4.1(c)(iii), 5.2, 5.10(e), or 12.3 of this Agreement (the “Term”); provided, however, this Agreement shall remain in effect until: (i) the Parties have fulfilled all obligations under the Agreement, including with respect to payment in full of amounts due for the Products delivered prior to the end of the Term, the Termination Payment (if applicable) or other damages (whether directly or indirectly such as through set-off or netting); and (ii) the undrawn portion of the Project Development Security or Delivery Term Security (as applicable) is released and/or returned, as applicable (the “Satisfaction Date”).

(b) Notwithstanding anything to the contrary in this Agreement, all rights under Section 11.2, Indemnities, and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; all rights and obligations under Section 11.6, Confidentiality, shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years; and the Right of First Offer under Section 3.9(c)(iv)(D), Section 4.1(c)(iii)(D) and the Force Majeure Right of First Offer under Section 5.10(f) shall survive pursuant to such terms.

2.5 Binding Nature.

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

- (i) Sections 3.9(a)(v), 5.1(a)(iv), 5.1(a)(v), 5.1(b)(ii);
- (ii) Section 5.1(a)(ii) only with respect to Section 10.1, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.5;
- (iii) Sections 5.2 through 5.9;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), 8.4(c), 8.4(d), and 8.5(a);
- (v) Section 11.2(a)(iii), Section 11.2(b)(iii), Sections 11.3 through 11.7, and Sections 11.10 through 11.16; and
- (vi) Articles One, Two, Seven, Twelve, Thirteen, and Fourteen.

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

2.6 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between Buyer's employees or representatives performing a Scheduling Coordinator function as provided in Section 3.4(b) and 3.4(c) or Seller's employees or representatives performing the data access functions as set forth in Section 3.1(m)(i) and the forecasting functions set forth in Section 3.4(c)(iii). The Parties agree that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or Recording, and agrees to notify its officers and employees of such monitoring or Recording and to obtain any necessary consent of such officers and employees.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is an As-Available Product.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or sell and cause to be delivered, and Buyer shall purchase and receive, or purchase and cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement. Buyer shall

have no obligation to receive Product from Seller prior to or after the Delivery Term or to purchase from Seller Product delivered prior to or after the Delivery Term. Subject to the other terms and conditions of this Agreement, Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point and Buyer shall be responsible for any costs or charges imposed on or associated with the Product at and from the Delivery Point. The Parties agree that Seller shall arrange and pay independently for any and all necessary costs under any interconnection agreement with the Participating Transmission Owner. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(c) Delivery Term.

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

- Delivery shall be for a period of ten (10) Contract Years.
- Delivery shall be for a period of fifteen (15) Contract Years.
- Delivery shall be for a period of twenty (20) Contract Years.
- Non-standard delivery for the period described in the paragraph below.

(ii) As used herein, the "Delivery Term" shall begin on the first date that Seller delivers Product to Buyer from the First Unit after the First Unit's Commercial Operation Date ("First Unit Initial Energy Delivery Date") and continue until either (A) the end of the twenty-fifth (25th) anniversary of the Second Unit Initial Energy Delivery Date, or (B) the end of the twenty-fifth (25th) anniversary of the Contingent Project Size Adjustment Date, unless terminated earlier as provided by the terms of this Agreement. Notwithstanding the foregoing, in no event shall the Delivery Term be more than twenty-eight (28) Contract Years.

(iii) The First Unit Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (A) the Commercial Operation Date for the First Unit has occurred; (B) Buyer shall have received the First Unit Delivery Term Security in accordance with Section 8.4(a)(iv)(A); (C) Seller shall have obtained the requisite CEC Certification and Verification for the Project; and (D) all of the applicable Conditions Precedent in Article Twelve of the Agreement have been satisfied or waived in writing.

(iv) The Second Unit Initial Energy Delivery Date shall occur as soon as practicable after the First Unit Commercial Operation Date and once all of the following have been satisfied: (A) the Project Commercial Operation Date has occurred; (B) Buyer shall have received the Delivery Term Security in accordance with Section 8.4(a)(iv)(B); (C) Seller shall have obtained the requisite CEC Certification and Verification for the Project; and (D) all of the applicable Conditions Precedent in Article Twelve of the Agreement have been satisfied or waived in writing.

(v) As evidence of each of the First Unit Initial Energy Delivery Date and the Second Unit Initial Energy Delivery Date, the Parties shall execute and exchange the

“Initial Energy Delivery Date Confirmation Letter” attached hereto as Appendix III on the Initial Energy Delivery Date.

(d) Delivery Point. The Delivery Point shall be the PNode designated by the CAISO for the Project. At any time during the Term, pursuant to CAISO’s MRTU, to the extent that Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for, or receives any refunds, credits, adjustments, charges or benefits from CAISO for congestion charges or losses (“Congestion Revenue Rights” or “CRRs”), whether due to CRRs or any Locational Marginal Price (“LMP”) adjustments (as defined or required for MRTU under the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the delivery of Product in accordance with the terms of this Agreement (collectively, any such refunds, credits, adjustments, charges or benefits are referred to as “Adjustments”), then, at Buyer’s option, either (i) Seller shall transfer any such Adjustments and their related rights to Buyer, or (ii) Buyer shall reduce or increase (as applicable) payments due to Seller under this Agreement in amounts equal to the Adjustments and Seller shall retain the Adjustments.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity. The Contract Quantity during each Contract Year shall be as set forth in Appendix I, as may be adjusted pursuant to Sections 3.1(e)(ii)(D) and 3.9(c)(iv)(B).

(ii) Guaranteed Energy Production.

(A) The Parties agree that the actual amount of Delivered Energy may vary from the Contract Quantity. Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production over any two (2) consecutive Contract Years during the Delivery Term beginning on either the Second Unit Initial Energy Delivery Date or the Contingent Project Size Adjustment Date (a “Performance Measurement Period”). “Guaranteed Energy Production” means an amount of Energy, as measured in MWh, equal to the product of (x) and (y), where (x) is one hundred and thirty percent (130%) of the Contract Quantity with respect to the first Performance Measurement Period only and thereafter one hundred and fifty percent (150%) of the Contract Quantity, and (y) is the quotient of the difference between (I) and (II), divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. An example of the calculation of the Guaranteed Energy Production is set forth in Appendix XVI.

(B) If Seller delivers less than the Guaranteed Energy Production in any Performance Measurement Period (a “GEP Failure”) then, within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall provide Notice of such GEP Failure to Seller. Seller shall be entitled to cure the GEP Failure by delivering to Buyer no less than ninety percent (90%) of the Contract Quantity over the Contract Year immediately following the Performance Measurement Period in which the GEP Failure occurred (a “GEP Cure”). If Seller does not achieve the GEP Cure for a given Performance Measurement Period, Seller shall pay

liquidated damages (“GEP Liquidated Damages”), not as a penalty, calculated based on the amount of Energy equal to the Guaranteed Energy Production minus the Delivered Energy generated in the applicable Performance Measurement Period (the “GEP Shortfall”); provided, if Seller achieves the GEP Cure, Seller shall not be liable to Buyer for GEP Liquidated Damages related to the GEP Failure. In the event Seller fails to achieve the GEP Cure and within forty-five (45) days of the end of the GEP Cure period, Buyer shall provide Notice to Seller of the amount of the GEP Shortfall and a calculation of the GEP Liquidated Damages. Seller shall pay such GEP Liquidated Damages within sixty (60) days of receipt of such Notice. Any disputes with respect to GEP Shortfall amounts or GEP Liquidated Damages shall be resolved in accordance with Section 6.2 and Article 13 hereof. An example of the calculation of the GEP Liquidated Damages is set forth in Appendix XVI.

(C) The GEP Liquidated Damages payment shall be equal to Fifty Dollars (\$50) per MWh of the GEP Shortfall for the applicable Performance Measurement Period; provided, however, in no event shall Seller’s aggregate liability for GEP Liquidated Damages exceed Fifty Million Dollars (\$50,000,000) (the “GEP LD Cap”). Payment of GEP Liquidated Damages shall be Buyer’s sole and exclusive remedy for a GEP Shortfall. Subject to Section 3.1(e)(ii)(D), in the event that a GEP Failure or combination of GEP Failures causes Seller to pay GEP Liquidated Damages to Buyer in an amount equal to the GEP LD Cap then Seller shall no longer be subject to the GEP Failure, GEP Cure, GEP Liquidated Damages (in excess of the GEP LD Cap) and GEP Shortfall provisions as set forth in Sections 3.1(e)(ii)(A) and (B).

(D) In the event a GEP Failure or combination of GEP Failures causes Seller to become liable to Buyer for GEP Liquidated Damages in an amount in excess of the GEP LD Cap, Buyer shall have the right, but not the obligation, to amend this Agreement (a “Contract Quantity Amendment”) to reduce the Contract Quantity to an amount equal to the average amount of Delivered Energy produced by the Project in the three (3) Contract Years prior to the effective date of the Contract Quantity Amendment. The effective date of the Contract Quantity Amendment shall be the commencement date of the Performance Measurement Period following the Performance Measurement Period in which Seller’s total obligations for GEP Liquidated Damages exceeded the GEP LD Cap and such amendment shall be effective for the remainder of the Term, subject to the Contract Quantity Reset (defined below). If Buyer elects to make a Contract Quantity Amendment then, at least thirty (30) days prior to the Contract Quantity Amendment’s effective date, Buyer shall provide to Seller a form of the Contract Quantity Amendment and written Notice explaining in reasonable detail the calculation of the new Contract Quantity. Upon receipt of such Notice, Seller shall promptly execute and return the Contract Quantity Amendment to Buyer or dispute Buyer’s calculation of the new Contract Quantity. Any such dispute regarding the new Contract Quantity shall be resolved in accordance with Article 13 hereof and the Contract Quantity shall be deemed to be the Contract Quantity calculated by Buyer (as reflected in the form of Contract Quantity Amendment provided by Buyer) during the period in which any dispute over the new Contract Quantity is pending. Following the effective date of a Contract Quantity Amendment, if at any time Seller is able to produce Energy from the Project in excess of one hundred and twenty percent (120%) of the Contract Quantity set forth in a Contract Quantity Amendment over any future Performance Measurement Period, Seller may reset the Contract Quantity to such level of production (a “Contract Quantity

Reset”) and the Parties shall amend further the Agreement to reflect the higher Contract Quantity, such Contract Quantity Reset not to exceed the original Contract Quantity. If Seller elects to institute a Contract Quantity Reset, at least thirty (30) days prior to the Contract Reset’s effective date, Seller shall provide to Buyer a form of amendment to the Agreement documenting the Contract Quantity Reset and written Notice explaining in reasonable detail the calculation of the Contract Quantity Reset. Upon receipt of such Notice, Buyer shall promptly execute and return the amendment to Seller or dispute Seller’s calculation of the Contract Quantity Reset. Any such dispute regarding the Contract Quantity Reset shall be resolved in accordance with Article 13 hereof and the amount of the Contract Quantity Reset shall be deemed to be the amount calculated by Seller (as reflected in the form of Contract Quantity Reset amendment provided by Seller) during the period in which any dispute over the Contract Quantity Reset amount is pending.

(f) Contract Capacity. The generation capability designated for the Project shall be the MW amount set forth in Appendix I under the heading “Contract Capacity”, net of all auxiliary loads, station electrical uses, and Electrical Losses (as adjusted pursuant to Section 3.9(c)(iv), the “Contract Capacity”). Subject to Section 3.1(j) and Section 5.10(c)(ii), throughout the Delivery Term, Seller shall sell all Product generated by the Project solely to Buyer and in no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy, that exceeds the Contract Capacity.

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied exclusively from the Project. Seller shall not make any alteration or modification to the Project outside of normal, customary and prudent planned maintenance consistent with Good Utility Practice which results in a change to the Project’s Contract Capacity in excess of five percent (5%) without Buyer’s prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. The Project is further described in Appendix V.

(ii) As of the First Unit Initial Energy Delivery Date and throughout the Delivery Term, Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Sections 11.3(a), Section 11.3(b) and 11.3(c). Seller shall be deemed to have relinquished possession of the Project if the Project has totally ceased (i.e., zero (0) output) to generate, produce and deliver Product for a consecutive one hundred eighty (180) day period and such cessation is not a result of a Force Majeure event, a Dispatch Down Period, or action of Buyer, in each case directly impacting the Project or this Agreement; provided, if a Licensed Professional Engineer determines in writing provided to Buyer that the cessation cannot be remedied within the one hundred eighty (180) day period, including an explanation for the cause and remediation process for the cessation, Seller shall not be deemed to have relinquished possession or control of the Project under this Section 3.1(g)(ii) for such additional time as is reasonably necessary to remedy such cessation up to a total of twenty-four (24) months in the aggregate, so long as Seller advises Buyer of its plan for such remediation and promptly commences and diligently and continuously pursues remediation.

(h) Interconnection Facilities.

(i) Interconnection Point. The Interconnection Point is Southern California Edison Company's bus bar at the Colorado River Substation.

(ii) Seller Obligations. Seller shall, at its sole expense, be obligated to (A) maintain the Interconnection Customer's Interconnection Facilities (as defined in the CAISO Tariff), including metering facilities, (B) comply with the procedures set forth in the LGIP and applicable agreements or procedures provided under the LGIP in order to obtain the applicable Electric System Upgrades, and (C) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project during the times at which such delivery is anticipated under this Agreement.

(i) Performance Excuses.

(i) Seller Excuses. The performance of Seller to deliver the Product shall be excused to the extent of and only (A) during periods of Force Majeure, (B) by Buyer's failure to perform, or (C) during Dispatch Down Periods ("Seller Excuses").

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

(iii) Dispatch Down/Curtailment. Seller shall curtail the generation or delivery of Energy as directed by CAISO or the Participating Transmission Owner, or as such reductions or curtailments are communicated to Seller by Buyer at the direction of CAISO or the Participating Transmission Owner, during any Dispatch Down Period.

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

(j) Third-Party Sales. Seller may sell to third parties any Product that Buyer does not purchase and is excused from purchasing or receiving due to Force Majeure; provided that Buyer shall be relieved from all costs and liability associated with the scheduling of such Product to the third party, including functioning as the Scheduling Coordinator.

(k) Greenhouse Gas Emissions Reporting.

(i) During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including reporting, registering, tracking, allocating for or accounting for such emissions.

(ii) Seller agrees to take all Commercially Reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any; provided that, if Seller determines that its costs and expenses to comply with the requirements of

this Section 3.1(k) or Section 3.3 (Resource Adequacy) will exceed in the aggregate one hundred thousand dollars (\$100,000) per calendar year (the "Compliance Cap"), Seller shall notify Buyer of the amount by which Seller anticipates exceeding the Compliance Cap and provide documentation and calculations to support the expected exceedence ("Compliance Cap Notice"). Buyer shall then have thirty (30) days after receipt of the Compliance Cap Notice to:

(A) notify Seller that Buyer will pay the Compliance Cap exceedence, subject to CPUC Approval (if required), and if Buyer so elects, Seller shall, upon receipt of payment from Buyer, implement the additional compliance requirements; or

(B) notify Seller that Buyer will not pay the Compliance Cap exceedence, in which case this Agreement shall continue in full force and effect and Seller shall not be required to take any further action pursuant to this Section 3.1(k) or Section 3.3 (Resource Adequacy) which would result in the Seller incurring amounts in excess of the Compliance Cap. If Buyer fails to respond to the Compliance Cap Notice in the time period set forth in Section 3.1(k)(ii), then Buyer shall be deemed to have elected not to pay the Compliance Cap exceedence.

(l) WREGIS. Seller shall, at its expense, take those actions and execute those documents or instruments necessary to register the Project with WREGIS. Seller shall establish and maintain Seller's WREGIS Account and shall ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Energy generated by the Project are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard. Seller shall comply with the WREGIS Operating Rules related to the certification and transfer of such WREGIS Certificates to Buyer and shall convey to Buyer sole title to all such WREGIS Certificates. All costs related to registering the Project with WREGIS and all ongoing costs of compliance with WREGIS, including WREGIS Certificate issuance costs, shall be for the account of Seller.

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

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall use Commercially Reasonable Efforts to provide to Buyer, in a form reasonably acceptable to Buyer, the following data on a real-time and on a historical basis consistent with Section 3.1(m)(ii): (A) read-only access to meteorological measurements, and transformer availability, Project availability information, all parameters necessary for use in the equation under item (H) of this list, and energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project; (B) read-only access to the Project's CAISO revenue meter and all Project revenue meter data at the Site; (C) full, real time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application; (D) electrical output of each electrical generator; (E) auxiliary power consumption, by Unit and Project; (F) net plant electrical output at each electric revenue meter; (G) time-average data including 10-minute and hourly values of direct normal irradiance, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, barometric pressure by Project; and (H) an equation updated on an ongoing basis to reflect the potential generation of the Project as a function of solar isolation; provided, such equation shall be developed and

updated jointly by the Parties and shall not be the basis for the incurrence by Seller of any Forecasting Penalties. Such equation shall take into account the expected availability of the Project. For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall, upon Buyer's request, prepare and provide to Buyer a report with the Settlement Interval Actual Available Capacity of the Project for such month(s) in the form set forth in Appendix XV ("Actual Availability Report"). Upon Buyer's written request, Seller shall promptly provide to Buyer any additional and supporting documentation reasonably necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. Buyer shall exercise Commercially Reasonable Efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(m)(i); provided that, any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement. Seller agrees that once EIRP Qualifying Protocols have been adopted, Seller shall thereafter provide such additional data as may be required in accordance with the Qualifying Protocols if required by Buyer pursuant to Section 3.4(b).

(ii) Buyer reserves the right to validate the data provided pursuant to Section 3.1(m)(i) with information publicly available from NOAA and nearby weather stations and substitute such data for settlement purposes only in the event that the data is not provided or if Seller's data is inconsistent with the publicly available data; provided that, Buyer shall substitute data only for those periods during which Seller's data is missing or inconsistent.

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

(iv) Installation, Maintenance and Repair.

(A) Seller shall, at its own expense, install and maintain no less than three (3) stand-alone meteorological stations at the Site to monitor and report the meteorological data required in Section 3.1(m)(i) of this Agreement. Seller shall, at its own expense, install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(m)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide quality data to Buyer or Third-Party SC (as applicable). Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer promptly after Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(C) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software,

Seller shall use Commercially Reasonable Efforts to maintain, repair or replace such equipment as necessary within five (5) Business Days of receipt of such Notice.

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

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

(vi) No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide a minimum of one (1) year of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Seller shall provide, via remote access to Buyer, all meteorological data relating to (A) direct normal irradiance, air temperature, wind speed and direction, barometric pressure, and humidity at the Site, as well as time-average data including 10-minute and hourly values of insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, barometric pressure; (B) elevation, latitude and longitude of the weather station; and (C) any other data that would be required for participation in the EIRP.

(n) Obtaining and Maintaining CEC Certification and Verification. Seller shall file an application for pre-certification with the CEC no later than the Construction Start Date and shall take all necessary steps, including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

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

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

its efforts to meet Buyer's Resource Adequacy Requirements; provided, however, that Seller shall not be required to undertake any actions pursuant to this Section 3.3 unless Buyer complies with the reimbursement obligations set forth in Section 3.1(k)(ii).

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller's Transmission Service Obligations. As of the Test Period and during the Delivery Term:

(A) Seller shall arrange and pay independently for any and all electrical interconnection, distribution and/or transmission facilities and service (and any regulatory approvals required for the foregoing) necessary for Seller to deliver the Product to the Interconnection Point for sale pursuant to the terms of this Agreement.

(B) Seller shall bear the risk and be responsible for those costs and expenses associated with arranging for the transmission service described in Section 3.4(a)(i)(A), and any transmission outages related to the transmission service up to the Interconnection Point.

(C) Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, including executing applicable interconnection agreements, Participating Generator Agreement, Meter Service Agreement and PTO Generator Special Facilities Agreements, if applicable, so as to be able to deliver Energy to the CAISO Grid.

(ii) Buyer's Transmission Service Obligations. As of the Test Period and during the Delivery Term:

(A) Buyer shall arrange for transmission service and be responsible for the costs and expenses of such transmission service (including risk of transmission outage) at and from the Interconnection Point including any transmission outages or curtailment.

(B) Buyer shall Schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Point.

(C) Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point.

(b) EIRP Requirements. The Parties acknowledge that, as of the Execution Date, the CAISO has not established protocols for scheduling solar power to permit solar projects to participate in EIRP ("Qualifying Protocols"). If Qualifying Protocols are finalized and made effective by the CAISO and as soon as reasonably practicable after the Project is permitted to apply for certification under the Qualifying Protocols, Seller shall apply to have the

Project certified as a Participating Intermittent Resource and shall thereafter use Commercially Reasonable Efforts to pursue such certification until issued, including negotiating and executing all necessary documents to become a Participating Intermittent Resource. Seller shall provide Buyer with a copy of the notice from CAISO certifying the Project as a Participating Intermittent Resource as soon as reasonably practicable after Seller's receipt of such notice of certification. Following certification and whenever applicable, Seller shall participate in and comply with EIRP and all additional protocols issued by the CAISO relating to Participating Intermittent Resources as directed by Buyer during all hours of the Delivery Term, and Buyer, as Scheduling Coordinator, shall facilitate communication with the CAISO and provide other administrative materials to CAISO as required to assist Seller's participation in and compliance with EIRP and such additional protocols, to the extent such actions are at *de minimis* cost to Buyer. All costs of compliance with Qualifying Protocols and certification as a Participating Intermittent Resource shall be for the account of Seller. Ongoing costs for scheduling the Project's output through EIRP shall be for the account of Buyer.

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

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the beginning of the Test Period for the First Unit, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller's Scheduling Coordinator, and Buyer or Third-Party SC (as applicable), shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller's Scheduling Coordinator. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Period and Delivery Term.

(ii) Buyer's Responsibilities as Scheduling Coordinator. During the Delivery Term, Buyer or Third-Party SC (as applicable) shall comply with all obligations as Seller's Scheduling Coordinator under the CAISO Tariff and shall conduct all scheduling in full compliance with the terms and conditions of this Agreement, the applicable CAISO Tariff, all requirements of EIRP (if applicable), and protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff.

(iii) Available Capacity. Seller shall provide the forecasts described below. Seller's availability forecasts shall include the Project's Available Capacity and updates

related to the status of transformers and other equipment that impact the Project's Available Capacity. Seller shall use Commercially Reasonable Efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format mutually agreed to by Buyer and Seller. In order to comply with CAISO Tariff changes, Buyer and Seller shall agree to cooperate reasonably to: (X) effect changes to the forecasting requirements and procedures set forth below as necessary to comply with CAISO Tariff changes; (Y) to accommodate changes to their respective generation technology and organizational structure; and (Z) to address changes in the operating and scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including automated forecast and outage submissions; provided, such changes shall not increase materially the costs Seller incurs in complying with the EIRP Qualifying Protocols or providing to Buyer the notice of Available Capacity (as applicable).

(A) Annual Forecast of Available Capacity. No later than (i) the earlier of September 1 of the first Contract Year or forty-five (45) days before the first day of the first Contract Year of the Delivery Term, if applicable, and (ii) September 1 of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding estimate of Available Capacity and a non-binding forecast of Energy expected to be produced each on an hourly basis for an average day in each month of the following calendar year in a format mutually agreed to by Buyer and Seller.

(B) Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding estimate of Available Capacity and a non-binding forecast of Energy each to be produced on an hourly basis for each day of the following month in a format mutually agreed to by Buyer and Seller.

(C) Forecast of Available Capacity. During each month of the Delivery Term, Seller shall provide an accurate day ahead estimate of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or Third-Party SC (as applicable) via Buyer's internet site, as provided in Appendix X, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. The current industry standard Preschedule Day timetable in the WECC is as follows:

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

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, "Prescheduling Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each

hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. In order to avoid CAISO scheduling and imbalance costs and charges (as addressed in Section 4.5), if the Available Capacity set forth in Seller's Day-Ahead Availability Notice changes by at least 5 MW as of a time that is more than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day-Ahead Schedules, then Seller shall notify Buyer of such change by telephone and shall send a revised Notice to Buyer's Internet site set forth in Appendix X. Such Notice shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event and the expected Available Capacity in MW.

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

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Buyer.

(D) Hourly Forecast of Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of 5 MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit Hour-Ahead schedules to the CAISO. Available Capacity changes after one (1) hour before the CAISO deadline for Hour-Ahead Schedules, but before the CAISO Hour-Ahead deadline, shall also be reported by Seller to Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer in furtherance of its Hour-Ahead requirements. With respect to any Forced Outage, Seller shall use Commercially Reasonable Efforts to notify Buyer of such outage immediately following Seller's Available Capacity notification to the CAISO via SLIC, and Seller shall follow the outage notification procedures in Appendix X of this Agreement (the "Outage Notification Procedures"). Seller shall keep Buyer informed of any developments that Seller knows will affect either the duration of such outage or the availability of the Project during or after the end of such outage. These notices and changes to Available Capacity shall be communicated by telephone to Buyer's Hour-Ahead Trading Desk and shall be sent to Buyer's internet site:

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

(iv) Replacement of Scheduling Coordinator.

(A) At least ninety (90) days prior to the end of the Delivery Term, or as soon as reasonably practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC (as applicable) as Seller's SC. These actions include

(I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(B) Buyer shall submit, or cause the Third-Party SC to submit (as applicable), a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (I) the date that is thirty (30) days prior to the end of the Delivery Term, or (II) the date of any early termination of this Agreement.

3.5 Standards of Care.

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

(b) CAISO and WECC Standards and Good Utility Practices. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable regulatory approved tariffs and reliability standards of WECC and CAISO and with Good Utility Practices.

(c) Reliability Standard. Seller agrees to (i) abide by applicable NERC, WECC and CAISO reliability requirements, and (ii) comply with all applicable reliability standards for its Interconnection Customer's Interconnection Facilities.

3.6 Metering. All output from the Project must be delivered through a single CAISO revenue meter dedicated exclusively to the Project. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed prior to the Delivery Point to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project site, provided that, any such access shall take place during normal business hours, and Buyer shall observe all applicable Project safety rules and shall indemnify Seller for the actions of its employees, contractors and other representatives for harm or liabilities caused by Buyer while its representatives are at the Project. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification.

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

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year no later than September 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld, conditioned or delayed. Seller shall also confirm or provide updates to Buyer regarding Planned Outages no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of June through September that impact electrical generation from the Project. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld, conditioned or delayed. Seller shall contact Buyer with any proposed changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage Schedule without Buyer's approval, which may not to be unreasonably withheld, conditioned or delayed. Seller shall not substitute Products from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail materially lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use Commercially Reasonable Efforts to accommodate Buyer's request. Unless Buyer is transmitting a CAISO order to Seller once a Planned Outage schedule has been finalized by Buyer and Seller, Buyer may not change Seller's Planned Outage schedule without Seller's approval.

(c) Reserved.

(d) Prolonged Outages; Force Majeure. Seller shall notify Buyer of a Prolonged Outage as soon as reasonably practicable in accordance with the Outage Notification Procedures, and provide with such notification an estimate of the duration of the outage therein. Seller shall notify Buyer in writing when the Project is again capable of delivering Energy pursuant to this Agreement. Seller shall not substitute Products from any other source for the output of the Project during a Prolonged Outage. Seller shall notify Buyer of a Force Majeure in a manner consistent with the procedures set forth in Section 5.10.

(e) Reserved.

(f) Communications with CAISO. Seller shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide Buyer with copies of all outage plans and clearance requests submitted to CAISO, and shall

promptly inform Buyer of all clearance approvals and disapprovals and other communications with CAISO pertaining to the status of planned or in-progress Project outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to Buyer and the Participating Transmission Owner promptly following request. If either Party receives information through CAISO or directly from the Participating Transmission Owner regarding maintenance that will directly affect the Project, it shall provide this information promptly to the other Party.

(g) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7, 3.8 or Appendix X, Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer; provided that, such change does not result in an increased cost of performance or allocates additional risk to Seller hereunder other than *de minimis* cost and risk.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include information on power production, fuel consumption, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project on reasonable advance Notice during normal business hours and for any purposes connected with this Agreement or the exercise of any and all rights secured to Buyer by Law, its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC, provided that, Buyer shall observe all applicable Project safety and security rules and shall indemnify Seller for the actions of its authorized agents, employees, and inspectors while they are at the Project. Buyer shall coordinate its emergency activities with the Seller (or Seller's operator) and Seller shall (and shall cause its operator to) inform and advise Buyer of the Project's safety and security procedures.

3.9 New Generation Facility.

(a) Seller's Responsibility. Seller, at no cost to Buyer, shall be responsible for:

- (i) designing and constructing the Project;

(ii) performing all studies, paying all fees, obtaining all necessary approvals and executing all necessary agreements with the CAISO and the Participating Transmission Owner for the Interconnection Facilities to Schedule and deliver the Product;

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

(iv) completing all environmental impact studies necessary for the construction, operation, and maintenance of the Project;

(v) providing, at Buyer's request, Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any material changes in the Project and provide to Buyer specifications and design drawings of any such changes; and

(vi) providing to Buyer Progress Reports as follows: (A) prior to the Construction Start Date, within thirty (30) days after the close of each calendar quarter from the first quarter following the Execution Date until six (6) months prior to Seller's anticipated Construction Start Date; and (B) starting six (6) months prior to Seller's anticipated Construction Start Date, within thirty (30) days after the close of each month until the Project Commercial Operation Date, and agreeing to regularly scheduled meetings between representatives of Buyer and Seller to review such Progress Reports and discuss Seller's construction progress. Progress Reports shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

(b) Buyer's Right to Inspect. Buyer shall have the right, but not the obligation, to inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable Notice, provided that, Buyer shall observe all applicable Project safety and security rules and shall indemnify Seller for the actions of its authorized agents, employees, and inspectors while they are at the Project. Buyer shall coordinate its inspection activities with the Seller (or the Seller's operator) and Seller shall (and shall cause its operator to) inform and advise Buyer of the Project's safety and security procedures.

(c) Construction Milestones.

(i) Milestones. Seller agrees to use Commercially Reasonable Efforts to achieve milestones related to the construction of the Project as such milestones are set forth in Appendix IV hereto ("Milestones"). Seller shall provide Buyer with any reasonably requested documentation to support the achievement of the Milestones within ten (10) Business Days of Seller's receipt of such request by Buyer.

(ii) Guaranteed Commercial Operation Dates. In a manner consistent with the certification procedures set forth in Appendix VI, Seller shall have demonstrated First Unit Commercial Operation no later than November 30, 2013 ("First Unit Guaranteed Commercial Operation Date"), and Second Unit Guaranteed Commercial Operation no later than November 30, 2014 ("Second Unit Guaranteed Commercial Operation Date"); provided that, the

First Unit Guaranteed Commercial Operation Date and the Second Unit Guaranteed Commercial Operation Date shall be extended on a day for day basis for not more than:

(A) three hundred sixty (360) days if Seller has used Commercially Reasonable Efforts (including Seller's timely filing of required documents and payment of all applicable fees) to obtain permits 1, 6, 10, 18, and 26 as listed in Appendix VII necessary for the construction and operation of the Project, but is unable to obtain such permits due to delays beyond Seller's reasonable control ("Permitting Delay");

(B) five hundred forty (540) days if Seller has used Commercially Reasonable Efforts (including Seller's timely filing of required documents and payment of all applicable fees) to have the Project physically interconnected to the CAISO Grid and to complete all Electric System Upgrades needed, if any, in order to interconnect the Project to the CAISO Grid, but fails to secure any necessary commitments from CAISO or the Participating Transmission Owner for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"); or

(C) three hundred sixty (360) days in the event of Force Majeure ("Force Majeure Construction Delay").

Notwithstanding the foregoing, if Seller claims Permitting Delay, Transmission Delay or Force Majeure Construction Delay with respect to either the First Unit Guaranteed Commercial Operation Date or Second Unit Guaranteed Commercial Operation Date, any such extensions cannot cumulatively exceed five hundred forty (540) days with regard to both such Commercial Operation Dates and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(iii) Permitted Extensions Notice. Notice of a Permitting Delay shall be provided to Buyer prior the Construction Start Date and Notice of a Transmission Delay or Force Majeure Construction Delay shall be provided to Buyer prior the First Unit Guaranteed Commercial Operation Date or Second Unit Guaranteed Commercial Operation Date (as applicable). Notwithstanding the foregoing, in the event that Seller extends a Guaranteed Commercial Operation Date due to a Permitted Extension, Seller shall use Commercially Reasonable Efforts to provide Buyer with no less than thirty (30) days' Notice prior to the applicable Notice date set forth above identifying clearly the Permitted Extension being claimed and providing Buyer reasonable background information and other information necessary for Buyer to verify the basis for the extension. In the case of Seller requesting a Permitted Extension due to a Transmission Delay or Permitting Delay, Seller shall specify the delay period in Appendix I. If the circumstance necessitating a Permitted Extension occurs less than thirty (30) days prior to the applicable Notice date, Seller shall provide Buyer with Notice as soon as reasonably practicable after Seller becomes aware of such circumstance.

(iv) Cure Period and Delay Damages.

(A) (I) Seller shall cause the First Unit to achieve its Commercial Operation Date by the First Unit Guaranteed Commercial Operation Date and shall cause the Second Unit to achieve its Commercial Operation Date by the Second Unit Guaranteed

Commercial Operation Date; provided that, a Unit's Commercial Operation Date shall not occur more than three hundred sixty (360) days prior to the applicable Guaranteed Commercial Operation Date. If the First Unit Commercial Operation Date occurs after the First Unit Guaranteed Commercial Operation Date (after giving effect to Permitted Extensions), then Seller shall pay to Buyer liquidated damages equal to First Unit Daily Delay Damages for each day that the First Unit's Commercial Operation Date occurs after the First Unit Guaranteed Commercial Operation Date. If the Second Unit Commercial Operation Date occurs after the Second Unit Guaranteed Commercial Operation Date (after giving effect to Permitted Extensions), then Seller shall pay to Buyer liquidated damages equal to Second Unit Daily Delay Damages for each day that the Second Unit's Commercial Operation Date occurs after the Second Unit Guaranteed Commercial Operation Date. In the event any liquidated damages are due pursuant to this Section 3.9(c)(iv)(A), Buyer shall provide Seller with a written invoice and a calculation of any amounts due, and Seller shall pay such liquidated damages within fifteen (15) days of receipt of the invoice. Any disputes with respect to such amounts shall be resolved in accordance with Section 6.2 and Article 13 hereof.

(II) In the event that Seller fails to make to Buyer a First Unit Daily Delay Damages payment or Second Unit Daily Delay Damages payment (as applicable), then Buyer shall be entitled to draw upon the First Unit Development Security or the Second Unit Development Security (as applicable) to satisfy the outstanding balance. In the event of such a draw, Seller shall, within seven (7) Business Days of any such draw, replenish (or cause to be replenished) the First Unit Development Security or Second Unit Development Security (as applicable) to the full amount required by Section 8.4(a)(iii). Seller shall pay Buyer First Unit Daily Delay Damages during the First Unit Cure Period (defined in (III) below) and such obligation shall expire on the date on which Seller achieves the First Unit Commercial Operation Date. Seller shall pay Buyer Second Unit Daily Delay Damages during the Second Unit Cure Period (defined in (III) below) and such obligation shall expire on the first to occur of the date on which Seller achieves the Second Unit Commercial Operation Date or the Contingent Project Adjustment Date.

(III) If Seller: (i) has not achieved the First Unit Commercial Operation Date within three (3) years of the first date upon which Seller becomes liable for First Unit Daily Delay Damages (the "First Unit Cure Period"); (ii) subject to Section 3.9(c)(iv)(B), has not achieved the Second Unit Commercial Operation Date within three (3) years of the first date upon which Seller becomes liable for Second Unit Daily Delay Damages (the "Second Unit Cure Period"); or, (iii) fails to replenish the First Unit Project Development Security or the Second Unit Project Development Security (as applicable), Buyer may terminate this Agreement in each case after thirty (30) days Notice of such failure, such termination being the sole and exclusive remedy of Buyer for failure to meet the First Unit Commercial Operation Date or Second Unit Commercial Operation Date, as applicable, and, except for obligations and liabilities arising prior to termination (including for First Unit Daily Delay Damages and Second Unit Daily Delay Damages) and the surviving provisions set forth in Section 2.4(b), neither Party shall have further obligations or liabilities to the other, including for a Termination Payment or otherwise, by reason of such termination.

(B) In the event that Seller fails to achieve the Second Unit Commercial Operation Date by the last day of the Second Unit Cure Period (after giving effect to

Permitted Extensions) but has achieved the First Unit Initial Energy Delivery Date (the “Contingent Project Size Adjustment Date”), the Parties acknowledge and agree that the Agreement shall be deemed to be amended, and Parties shall promptly amend the Agreement, (the “Amended Agreement”) so that the Contract Capacity and Seller’s sale and Buyer’s purchase obligation are based on the 125 MW installed capacity of the First Unit and by reducing the Contract Quantity, Guaranteed Energy Production and Delivery Term Security by fifty percent (50%) (the “Contingent Project Size Adjustment”), such Amended Agreement to be effective as of the Contingent Project Size Adjustment Date. In such event, Seller shall pay to Buyer liquidated damages in the amount equal to the original amount of Second Unit Development Security specified in Section 8.4(a)(iii) (the “Project Size Adjustment LD”) within thirty (30) days of the Contingent Project Size Adjustment Date. However, if Seller’s failure to achieve Commercial Operation for the Second Unit is due to the Second Unit being destroyed or rendered inoperable by a Force Majeure and a Licensed Professional Engineer determines in writing that the Second Unit cannot be repaired or replaced within three (3) years of the Contingent Project Size Adjustment Date (a “Second Unit Force Majeure Event”), Seller shall not be liable for the Project Size Adjustment LD. If there has been a Second Unit Force Majeure Event and Seller subsequently fails to achieve Commercial Operation for the Second Unit within three (3) years of the Contingent Project Size Adjustment Date (consistent with Section 3.9(c)(iv)(C)), Seller shall pay to Buyer the Project Size Adjustment LD and the Parties shall continue to perform pursuant to the Amended Agreement. The Project Size Adjustment LD shall be Buyer’s sole and exclusive remedy related to a Contingent Project Size Adjustment.

(C) If after a Second Unit Force Majeure Event, Seller achieves Commercial Operation of the Second Unit, or of a similar unit with a capacity of 125 MW, which unit is interconnected to the Interconnection Point (such unit or the Second Unit, a “Replacement Unit”) within three (3) years of the Contingent Project Size Adjustment Date (the “Replacement Unit Commercial Operation Date”), or such lesser period as would be necessary to construct such Replacement Unit, then the Parties acknowledge and agree that the Amended Agreement shall be deemed to be revised, and Parties shall promptly revise the Amended Agreement, so that the Contract Capacity and Seller’s and Buyer’s sale and purchase obligations are based on the aggregate installed capacity of the First Unit and the Replacement Unit, and the Contract Quantity and the Guaranteed Energy Production are increased by an amount equal to the pro rata increase in the Project’s capacity. No later than thirty (30) Days following execution of the revised Amended Agreement, Seller shall increase the Delivery Term Security by an amount equal to the pro rata increase in the Project’s capacity.

(D) Right of First Offer. If Seller (a) fails to achieve Commercial Operation of the First Unit within the First Unit Cure Period, or (b) subject to Section 3.9(a)(iv)(C), fails to achieve Commercial Operation of the Second Unit within the Second Unit Cure Period, then for a period of two (2) years from the expiration of the First Unit Cure Period, or the Second Unit Cure Period, as applicable (each an “Exclusivity Period”), Seller and Buyer shall be subject to the following restrictions and ongoing obligations set forth in subsections 3.9(c)(iv)(D)(I)-(III) below:

(I) During the Exclusivity Period (or the Price Adjustment Exclusivity Period or Force Majeure Exclusivity Period in the case of application of this subsection pursuant to Sections 4.1(c)(iii)(D) or 5.10(f)), neither Seller, its successors and

assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the First Unit, the Second Unit or from any similar unit at the Site or which unit is interconnected to the Interconnection Point (such unit, an "Eligible Replacement Unit") (as applicable) to any third party, unless Seller first provides to Buyer a one-time offer in writing to sell to Buyer the Product from the First Unit, the Second Unit or any Eligible Replacement Unit, as applicable, and up to 125 MW in the case of any Eligible Replacement Unit (the "First Offer"), and Buyer either accepts or rejects such First Offer in accordance with the provisions herein. The First Offer shall contain terms and conditions similar to this Agreement, an adjusted Contract Price reflecting in good faith the incremental additional costs incurred by Seller to complete the First Unit, the Second Unit or any Eligible Replacement Unit (or the incremental costs in overcoming the Force Majeure Event or due to not obtaining the Solar Grant or California Solar Property Tax Exemption in the case of application of this subsection pursuant to Section 4.1(c)(iii) or 5.10(f)), as applicable, and a summary in reasonable detail of the calculation of the adjusted Contract Price.

(II) If Buyer decides to accept the First Offer, Buyer shall accept the First Offer by providing Notice to Seller within sixty (60) days of receipt of the First Offer, subject to CPUC Approval ("Buyer's Notice"). Upon acceptance, the Parties shall have not more than sixty (60) days from the date of Buyer's Notice to either enter into a new power purchase agreement or amend this Agreement, consistent with the First Offer and subject to CPUC Approval, if necessary. Thereafter, if necessary, Buyer shall promptly file the new or amended power purchase agreement with the CPUC for CPUC Approval and shall diligently pursue any requisite CPUC Approval. Pending Buyer's decision to exercise the First Offer and, if Buyer timely exercises the First Offer, during the period thereafter until execution of a power purchase agreement or amendment to this Agreement and the receipt of any necessary approval from the CPUC, to the extent requested by Buyer, Seller shall sell to Buyer the Product from the Project on mutually agreeable terms and conditions. If Buyer is not able to purchase or is not interested in purchasing the Product on an interim basis, or if the Parties are unable to promptly reach agreement on the terms and conditions of such interim sale and purchase of the Product, Seller shall have the right to sell the Product to the CAISO on terms and conditions that will not prevent the sale of Product to Buyer upon CPUC approval. If (a) Buyer rejects or fails to accept Seller's First Offer within sixty (60) days of receipt of such offer, (b) Seller and Buyer are unable to agree to a new power purchase agreement or an amendment to this Agreement, or (c) if the new power purchase agreement or amendment is not approved by the CPUC within two hundred and ten (210) days of filing, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the First Unit, the Second Unit or any Eligible Replacement Unit to any third party, so long as the price paid by such third party for the Product is not more favorable to the third party than the price under the Agreement.

(III) If, during an Exclusivity Period (or the Price Adjustment Exclusivity Period or Force Majeure Exclusivity Period in the case of application of this subsection pursuant to Sections 4.1(c)(iii)(D) or 5.10(f)), Seller desires to enter into an obligation or agreement with a third party after (a) Buyer has rejected or failed to accept Seller's First Offer, or (b) after accepting the First Offer, Buyer and Seller were unable to agree to a new power purchase agreement or an amendment to this Agreement, or (c) such new power purchase agreement or amendment is not approved by the CPUC, Seller shall deliver to Buyer a certificate of an authorized officer of Seller substantially in the form of Appendix IX certifying that the

proposed agreement with the third party will not provide Seller a lower rate of return on its development and operation of the Project than the rate of return projected by Seller as a result of selling the Product produced by the Project to Buyer under this First Offer. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the First Unit, the Second Unit or any Eligible Replacement Unit without first offering to sell or otherwise transfer such Products to Buyer at the more favorable price (the "Revised Offer") in accordance with subpart (ii) above. If within sixty (60) days of receipt of Seller's Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the First Unit, the Second Unit or any Eligible Replacement Unit to any third party.

(E) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving the First Unit Guaranteed Commercial Operation Date or failure of the Second Unit to reach Commercial Operation, would be difficult or impossible to predict with certainty, and (ii) the First Unit Daily Delay Damages, Second Unit Daily Delay Damages and the Project Size Adjustment LD are an appropriate approximation of such damages.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price.

(a) Contract Price. The initial Contract Price, commencing on the First Unit Initial Energy Delivery Date, shall be as set forth in Appendix I. As set forth on Appendix I, there shall be one Contract Price if the Project uses Wet Cooling Technology, and a different Contract Price if the Project uses Dry Cooling Technology. The ultimate Contract Price shall be determined according to the process set out in Section 4.1(b)(ii).

(b) Contract Price Adjustments.

(i) If the First Unit Commercial Operation Date is delayed due to a Permitting Delay or Transmission Delay pursuant to and in accordance with Section 3.9(c), the Contract Price shall be adjusted up to, but not in excess of, the applicable amount in the appropriate "delay" column (i.e., 6 months, 12 months or 18 months) as set forth in Appendix I. The Contract Price adjustment shall apply solely in the event of a Permitting Delay or Transmission Delay and such adjustment shall reflect only the Seller's documented, incremental increased costs incurred in achieving the First Unit Commercial Operation Date due solely to the Permitting Delay or Transmission Delay. Seller shall provide Buyer such Contract Price adjustment cost information on a preliminary basis with Seller's Notice of Extension provided pursuant to Section 3.9(c)(iii). Seller shall provide to Buyer the final proposed Contract Price adjustment, cost information and accompanying documentation sixty (60) days prior to the First Unit Commercial Operation Date. No Contract Price adjustment shall be made under this Section 4.1(b)(i) for Transmission Delays if on or before April 30, 2011, CAISO or the Participating Transmission Owner (as applicable) has agreed in writing to complete the Electric System Upgrades necessary to interconnect the Project to the CAISO Grid and the CPUC has approved the California portion of the Palo Verde-Devers 2 Line. Furthermore, no Contract

Price adjustment shall be made under this Section 4.1(b)(i) for Permitting Delay if permits 1, 6, 10, 18 and 26 set out in Appendix VII have been obtained by the dates for such permits set out in Appendix VII. Before any Contract Price adjustment shall become effective, Seller shall demonstrate in writing to Buyer's reasonable satisfaction that the delay was caused by the Transmission Delay or Permitting Delay in question and that adjustment to the Contract Price accurately reflects the incremental increased costs attributable to the Transmission Delay or Permitting Delay in question incurred by Seller to achieve the First Unit Commercial Operation Date.

(ii) Seller shall use Commercially Reasonable Efforts to secure the required Governmental Approvals in order to operate the Project using Wet Cooling Technology. The Parties agree that, if, despite the Commercially Reasonable Efforts of Seller, Seller shall be unable to secure the required Governmental Approvals to operate the Project using Wet Cooling Technology, or if such Governmental Approvals would be subject to material conditions not acceptable to Seller in its sole reasonable discretion, but Seller shall be able to secure Governmental Approvals to operate the Project using Dry Cooling Technology, the Project shall be designed, constructed, and operated using Dry Cooling Technology and the Contract Capacity, Contract Quantity, and Contract Price shall be as set forth in the row entitled "Dry Cooling Technology" on Appendix I; otherwise, the Project shall be designed, constructed, and operated using Wet Cooling Technology and the Contract Capacity, Contract Quantity and Contract Price shall be as set for in the row entitled "Wet Cooling Technology" on Appendix I. Seller's Progress Reports shall include information regarding Seller's efforts to secure the required Governmental Approvals for using Wet Cooling Technology and any conditions placed on Seller or the Project by Governmental Authorities for use of Wet Cooling Technology or Dry Cooling Technology.

(c) Contract Price Assumptions.

(i) Solar Grant. The Contract Price assumes that the Project is eligible for the Solar Grant. Seller shall use Commercially Reasonable Efforts to meet the criteria set forth in Section 1603 of the American Reinvestment and Recovery Act of 2009 and supplementing rules, guidance and regulations to qualify for and receive the Solar Grant for the qualified property included in the Project, and not subject itself or the Project to any recapture liability with respect to the Solar Grant. However, if Seller exercises Commercially Reasonable Efforts to obtain the Solar Grant, including submitting a complete application to the United States Treasury Department for the Solar Grant before October 1, 2011, and the United States Treasury Department determines that the Project is not eligible for the Solar Grant or rejects the application for reasons other than (A) the design or characteristics of the Project, (B) any failure of Seller to diligently prosecute its application (including failure to begin required construction activity in 2009 or 2010), or any other action or inaction of Seller detrimental to securing or maintaining the Solar Grant, or (C) any changes in ownership of Seller or the Project, then Seller shall have the option, in its sole discretion, to submit to Buyer a proposed adjustment to the Contract Price based on the value of the Solar Grant for which Seller applied to the United States Treasury Department ("Solar Grant Adjustment") within three (3) months of a determination of ineligibility or rejection of application by the United States Treasury Department. The proposed Solar Grant Adjustment shall include the methodology used by Seller in calculating the price adjustment, the effective tax basis and other assumptions, amounts and calculations used to

determine the value of the Solar Grant Adjustment and the justification for use of such assumptions and amounts, and any other documentation reasonably required by Buyer to evaluate the Solar Grant Adjustment.

(ii) Solar Property Tax Exemption. The Contract Price assumes that the Project is eligible for the California Solar Property Tax Exemption. If, as of the Effective Date, the Project is eligible for the California Solar Property Tax Exemption (as such exemption is in effect on the Execution Date), and, prior to the Project achieving the First Unit Commercial Operation Date, the Project becomes ineligible to receive the California Solar Property Tax Exemption (despite Seller's Commercially Reasonable Efforts to maintain eligibility and receive the exemption) due to a change in, or repeal of, the California Solar Property Tax Exemption and not due to (A) the design or characteristics of the Project, (B) any action, inaction, decision, or election of Seller, or (C) any changes in ownership related to Seller or the Project, then Seller shall submit to Buyer a revised Contract Price adjusted to account for the lost value of the California Solar Property Tax Exemption to the Project or Seller (the "Tax Exemption Adjustment") within three (3) months of becoming ineligible to receive the California Solar Property Tax Exemption. The Tax Exemption Adjustment shall include the methodology used by Seller in calculating the adjustment, the effective tax rate and other assumptions used to determine the value of the adjustment and the justification for use of such tax rate assumption and any other documentation reasonably required by Buyer to evaluate the Tax Exemption Adjustment.

(iii) Solar Grant Adjustment and Pricing Adjustment. In the event Seller submits a Solar Grant Adjustment or Tax Exemption Adjustment (each a "Pricing Adjustment", and collectively, the "Pricing Adjustments") to Buyer in accordance with Section 4.1(c)(i) or 4.1(c)(ii), the Parties shall proceed as follows:

(A) Buyer shall evaluate a Pricing Adjustment submitted by Seller using Commercially Reasonable Efforts and, within sixty (60) days after its receipt of the requested Pricing Adjustment, Buyer shall have the right (the "Pricing Adjustment Option"), but not the obligation, to accept Seller's Pricing Adjustment by delivering Notice ("Pricing Adjustment Offer Acceptance Notice") to Seller. Within sixty (60) days after Seller's receipt of a Pricing Adjustment Offer Acceptance Notice, the Parties shall amend this Agreement and, if necessary, other documents related to this Agreement to reflect the Pricing Adjustment and any changes mutually agreed upon by the Parties related to the Pricing Adjustment ("Pricing Adjustment Amendment"). The Pricing Adjustment Amendment must incorporate terms providing (i) a methodology and requirement to reduce the agreed upon Contract Price in the Pricing Adjustment Amendment in the event the Project or Seller later qualifies for the Solar Grant or the California Solar Property Tax Exemption (or an economic equivalent in each case), as applicable, and (ii) an express agreement to refund to Buyer or allow Buyer to offset any payments made to Seller under the Pricing Adjustment Amendment, (x) if Seller or the Project is later eligible for the Solar Grant or the California Solar Property Tax Exemption, as applicable, or the benefits of which are made available on a retroactive basis and the Project, Seller or any of Seller's Affiliates, if applicable, is eligible for such benefits (or economic equivalent), (y) to take into account the value of any Energy Investment Tax Credit and other tax benefits (including other cash grants) that the Project later receives, and (z) in the case of the Solar Grant, to the extent Seller would be subject to recapture liability if it had received the Solar Grant.

(B) If the Parties complete and execute a Pricing Adjustment Amendment, Buyer shall, within thirty (30) days of the date on which the Parties execute the Pricing Adjustment Amendment, submit it to the CPUC through an advice filing or other appropriate application (“CPUC Amendment Filing”) seeking CPUC approval of Buyer’s exercise of the Pricing Adjustment Option and the Pricing Adjustment Amendment, which must include Buyer’s recovery of all additional payments to be made by Buyer under the Pricing Amendment, as modified, subject to Buyer’s continued administration of the Agreement, as amended (“Pricing Adjustment Option Approval”). If such Pricing Adjustment Option Approval does not occur on or prior to two hundred and ten (210) days after the CPUC Amendment Filing, the Pricing Adjustment Option shall be deemed to have expired without being exercised, the Pricing Adjustment Amendment shall have no effect, and the provisions of Section 4.1(c)(iii)(C) shall apply.

(C) If (i) Buyer fails to deliver a Pricing Adjustment Offer Acceptance Notice during the sixty (60) day exercise period, (ii) Buyer timely delivers a Pricing Adjustment Offer Acceptance Notice but the Parties are unable to execute a Pricing Adjustment Amendment within the sixty (60) day period following Seller’s receipt of such Notice, or (iii) the Pricing Adjustment Option Approval is not issued by the CPUC within two hundred and ten (210) days after the CPUC Amendment Filing, then the Pricing Adjustment Option shall be deemed to have expired and Seller may, in its sole discretion, elect to terminate this Agreement after thirty (30) days’ Notice to Buyer. Upon such termination neither Party shall have any further obligations or liabilities to the other, including for a Termination Payment or otherwise, by reason of such termination, except for liabilities and obligations arising prior to termination and the surviving provisions set forth in Section 2.4(b) and except as set out in Section 4.1(c)(iii)(D) below. In the event of a termination pursuant to this Section 4.1(c)(iii)(C), Buyer shall promptly return to Seller any Project Development Security posted by Seller. If Seller does not exercise such termination option, the Agreement shall remain in effect without any modification contemplated in this Section 4.1(c)(iii).

(D) In the event Seller terminates the Agreement pursuant to Section 4.1(c)(iii)(C), then for a period of two (2) years from the effective date of such termination (the “Price Adjustment Exclusivity Period”), Seller and its successors, assigns and Affiliates shall be subject to the Right of First Offer in Section 3.9(c)(iv)(D)(i)-(iii) with respect to the sale of any Products from the First Unit, the Second Unit or any Eligible Replacement Unit.

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

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

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

- A. June – September;
- B. October, November, December, January and February; and
- C. March - May.

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

1. **Super-Peak (5x8)** = hours ending 13 – 20 (Pacific Prevailing Time (PPT)) Monday – Friday (*except* NERC Holidays) in the applicable Monthly Period.
2. **Shoulder** = hours ending 7 – 12, 21 and 22 PPT Monday – Friday (*except* NERC Holidays); and hours ending 7 – 22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.
3. **Night (7x8)** = hours ending 1 - 6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

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

4.3 TOD Factors and Monthly TOD Payment.

(a) TOD Factors. In accordance with all other terms of this Article Four, the Contract Price for Delivered Energy shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified TOD Periods in which Delivered Energy is generated:

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June – September	2.01	1.14	0.72
B. Oct. – Dec.; Jan. & Feb.	1.09	0.96	0.78
C. Mar. – May	1.13	0.86	0.63

(b) Monthly TOD Payment. For each month, Buyer shall pay Seller for Delivered Energy in each TOD Period (“Monthly TOD Payment”) the amount resulting from multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the Delivered Energy in each hour:

$$\text{Monthly TOD Payment} = \sum_{\text{hour}=1}^n \text{Contract Price } \$ * \text{TOD Factor} * \text{Delivered Energy MW}_{\text{hour}}$$

4.4 Excess Delivered Energy. In any Contract Year, if Seller delivers Delivered Energy in excess of one hundred twenty percent (120%) of the annual Contract Quantity amount, the Contract Price for such Energy in excess of such one hundred twenty percent 120% shall be adjusted to be seventy-five percent (75%) of the applicable Contract Price.

4.5 CAISO Charges.

(a) Subject to Sections 4.5(c) and (d), Seller shall assume all liability and be responsible for any and all CAISO Penalties incurred as a result of Seller’s actions or inactions and shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer as a result of Seller’s actions or inactions. Buyer shall assume all liability and be responsible for any and all CAISO Penalties incurred as a result of Buyer’s actions or inactions and shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer’s actions or inactions.

(b) Any invoice submitted by either Buyer or Seller related to CAISO Penalties shall include the related CAISO invoice and a written statement explaining in reasonable detail the calculation of the amount due. Any disputes with respect to such amounts shall be resolved in accordance with Section 6.2 and Article 13 hereof.

(c) Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling and imbalances except as provided in Section 4.5(d) below. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall use Commercially Reasonable Efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller’s and Buyer’s respective responsibilities for payment for imbalance and congestion charges and CAISO Penalties under this Agreement.

(d) Forecasting Penalties.

(i) Solely in the event (A) Seller fails to (I) provide the access and information required in Section 3.1(m)(i); (II) comply with the installation, maintenance and repair requirements of Section 3.1(m)(iv); or (III) provide the forecast of Available Capacity required in Section 3.4(c)(iii); (B) Buyer, as Seller’s Scheduling Coordinator, submitted a Schedule to the CAISO without the benefit of the information and obligations to have been provided or met by Seller in accordance the provision in subparts (I), (II), or (III) above; and (C) the sum of Energy Deviations for each of the six Settlement Intervals in the given hour

exceeded the Performance Tolerance Band defined below, then Seller shall be responsible for Forecasting Penalties as set forth below.

(ii) The Performance Tolerance Band is three percent (3%) multiplied by Contract Capacity multiplied by one (1) hour.

(iii) The Forecasting Penalty shall be equal to the Contract Price for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.5(d)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement. In the event any Forecasting Penalties are due pursuant to this Section 4.5(d), Buyer shall provide Seller with a written invoice and supporting documentation with respect to any amounts due, and Seller shall pay such Forecasting Penalties within fifteen (15) days of receipt of the invoice. Any disputes with respect to such amounts shall be resolved in accordance with Section 6.2 and Article 13 hereof.

(e) Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

4.6 Test Period Payments. Buyer shall forward to Seller all CAISO Revenues received by Buyer related to Delivered Energy during the Test Period. Such CAISO Revenues shall be Seller's full compensation for Energy generated by Seller during the Test Period.

4.7 Additional Compensation. Except as set forth in Section 3.1(k) and Section 5.10(c)(ii), in the event that Seller is compensated by a third party for any Products produced by the Project, including compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided, nothing herein precludes Seller from retaining credits from the CAISO related to Electric System Upgrades.

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES; FORCE MAJEURE

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

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

(i) subject to Section 6.2, the failure to make, when due, any payment required pursuant to this Agreement (including a payment for GEP Liquidated Damages) if such failure is not remedied within five (5) Business Days after Notice is received by the Party failing to make such payment;

(ii) any representation or warranty made by such Party herein is (A) false or incorrect in any material respect when made and the Non-Defaulting Party provides to other Party Notice of the same within one (1) year of the Execution Date, or (B) with respect to Sections 3.2 or 10.2 becomes false or incorrect in any material respect during the Delivery Term, if, in each case, (I) such misrepresentation or breach of warranty is not remedied within

twenty (20) Business Days after Notice is received by the Defaulting Party; or (II) such inaccuracy is not capable of being remedied, but the Non-Defaulting Party's damages resulting from such inaccuracy can be reasonably ascertained and the payment of such damages is not made within twenty (20) Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.2 to be materially false or incorrect, such breach of the representation or warranty in Section 10.2 shall not be an Event of Default;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), which failure has a material adverse effect on a Party's ability to perform its obligations under this Agreement, if such failure is not remedied within thirty (30) days after Notice of such failure, which Notice sets forth in reasonable detail the nature of the failure; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period specified above, the Party shall have such additional time (not exceeding an additional ninety (90) days) as is reasonably necessary to remedy such failure, so long as such Party advises the Non-Defaulting Party of its plan for such cure and promptly commences and diligently pursues such remedy;

(iv) such Party becomes Bankrupt; or

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

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

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

(ii) failure by Seller to satisfy the applicable creditworthiness and collateral requirements pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement; or

(iii) the failure of Guarantor or any Qualified Replacement Guarantor to make, when due, any payment required or to perform any other material covenant or obligation in the Guaranty, unless any of the foregoing is not remedied within five (5) Business Days of receipt of Notice of such failure.

5.2 Declaration of Early Termination Date. Subject to Section 7.1, 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 following rights:

- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”);
- (b) to accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;
- (c) to collect the Termination Payment;
- (d) to withhold any payments due to the Defaulting Party under this Agreement;
- (e) to suspend performance; and
- (f) if Buyer is the Non-Defaulting Party, to exercise its rights pursuant to Section 8.3 to draw upon and retain Performance Assurance.

5.3 Notice to Lenders; Opportunity to Cure. Notwithstanding anything in Section 5.2 to the contrary, in the case of an Event of Default by Seller, Buyer shall not terminate the Agreement unless it first complies with any notice or cure provisions set forth in any Consent to Assignment entered into between Buyer and any Lenders pursuant to Section 11.3(c).

5.4 Calculation of Termination Payment. The Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the “Settlement Amount” is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. Disputes regarding the Termination Payment shall be determined in accordance with Article Thirteen. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three (3), then the average of the three (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 to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount; (b) of the same Product; (c) at the same Delivery Point; and (d) for the remaining Delivery Term, or in any other commercially reasonable manner. In the event Seller is the Non-Defaulting Party and includes a loss of Tax Benefits in its calculation of the Settlement Amount, such calculation shall be set forth in reasonable detail for Buyer and shall have been verified to Buyer by a nationally recognized independent public accounting firm selected by Seller and reasonably acceptable to Buyer. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remaining Delivery Term of the Terminated Transaction and the equivalent quantities and relevant market prices for the same term that either are quoted by a

bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Transaction. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

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

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

(b) Any component of a Termination Payment based on lost Tax Benefits shall be the present value of the Tax Benefits that Seller would have received if Seller did not declare an Early Termination Date less the present value of any Tax Benefits (or the economic equivalent thereof) expected to be received by Seller notwithstanding the Event of Default;

(c) To the extent that Buyer compensates Seller for any Tax Benefits as part of a Loss in a Termination Payment, Seller shall promptly refund to Buyer that portion of any Termination Payment made to Seller that is attributable to lost Tax Benefits (or the economic equivalent thereof) that Seller subsequently obtains or for which the Project or Seller is eligible or qualifies and could have obtained or sought to obtain using Commercially Reasonable Efforts and that was not otherwise taken into account in determining the Termination Payment under Section 5.4. Seller shall provide Buyer with prompt Notice if it or the Project obtains or becomes eligible or qualifies for, Tax Benefits for which Buyer has compensated Seller hereunder; and

(d) Payments by Buyer to Seller for Tax Benefits shall be made on an After-Tax Basis.

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

5.7 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 twenty (20) Business Days of receipt of the Non-Defaulting

Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Any dispute with respect to the Termination Payment shall be resolved in accordance with Article Thirteen.

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

5.9 Rights And Remedies Are Cumulative. Subject to Section 7.1, the rights and remedies of a Party pursuant to this Article Five shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.10 Force Majeure.

(a) If, as a result of a Force Majeure, the Party claiming the Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, such non-performing Party shall be excused from only that portion of its performance that is prevented by such Force Majeure event to the extent so prevented; provided that: (i) within seventy-two (72) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure and within two (2) weeks of such oral notice the non-performing Party shall provide the other Party with Notice (a "Force Majeure Notice") in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim; (ii) 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 event; and (iii) the Party claiming Force Majeure shall exercise Commercially Reasonable Efforts to eliminate or mitigate the effects of the Force Majeure condition. Seller shall not substitute Products from any other source for the output of the Project during an outage resulting from Force Majeure and Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure. Failure to provide timely Force Majeure Notice constitutes a waiver of a Force Majeure claim.

(b) Except as a result of a Force Majeure Construction Delay as provided for in Section 3.9(c)(iv) or as set forth in Section 5.10(e), in no event shall a condition of Force Majeure be grounds for termination of the Agreement, or extend the Term of this Agreement; provided, however, if at any time during the period of Force Majeure the non-performing Party fails to undertake or ceases undertaking its Commercially Reasonable Efforts to remedy its inability to perform, then the non-performing Party shall no longer be excused from its performance by reason of Force Majeure.

(c) Notwithstanding anything in this Agreement to the contrary: (i) no payment obligation arising under this Agreement prior to the date of an event of Force Majeure, and no obligation to provide Performance Assurances shall be excused by such event of Force Majeure; and, (ii) if, as a result of an event of Force Majeure, Buyer is rendered wholly or partly unable to perform its obligations under this Agreement, Seller may offer and sell the Product from the Project to any third party until such time as the Buyer can resume performance under this Agreement. In the event the Buyer is the Party claiming Force Majeure, Buyer shall, at

Seller's expense, use Commercially Reasonable Efforts to perform its duties as the Project's Scheduling Coordinator during the pendency of such Force Majeure event.

(d) In addition to the Notice requirements set forth in Section 5.10(a), the non-performing Party shall, within sixty (60) days of the occurrence of a Force Majeure affecting its performance under this Agreement that the non-performing Party reasonably anticipates will last more than six (6) months after the commencement thereof, deliver to the other Party a detailed plan for the remedy of the Force Majeure condition, which plan shall include a detailed specification of the non-performing Party's proposal (including a timetable) to remedy the Force Majeure condition and, in the case of Seller, restore the Project to maximum attainable operating status.

(e) Force Majeure Termination.

(i) Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following:

(A) if after the Commercial Operation Date, the Project fails to deliver at least forty percent (40%) of the Contract Quantity with respect to the Project to the Delivery Point for a period of eighteen (18) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project, subject to the following sentence. The Parties agree (such agreement by Buyer not unreasonably withheld, delayed or conditioned) that if the Project may be capable of resuming normal production, then Seller shall be entitled to an additional period of time (up to six (6) months to the extent such time is required) to remedy the Force Majeure if within forty-five (45) days of receipt of Notice from Buyer that a Force Majeure has occurred, Seller presents Buyer with a written plan for mitigating the effect of the Force Majeure which plan is commercially reasonable and reasonably satisfactory to Buyer, as evidenced by Buyer's written acknowledgement of such plan (such acknowledgment not to be unreasonably withheld, delayed or conditioned), and Seller diligently pursues such mitigation plan throughout the additional mitigation period described in this Section 5.10(e)(i)(A); or

(B) if, after the Commercial Operation Date, the Project is destroyed or rendered inoperable by a Force Majeure caused by a catastrophic natural disaster, then upon Buyer's written request, or at Seller's election, Seller shall, at its own expense, within ninety (90) days from the later of Buyer's request or the occurrence of the Force Majeure event, obtain a report from a Licensed Professional Engineer stating whether the Project is capable of being repaired or replaced within twenty-four (24) additional months of the date of such report. Seller shall be entitled to up to twenty-four (24) months from the issuance of such Licensed Professional Engineer's report (and to the extent such time is required) to remedy the Force Majeure; provided that (i) the report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period, (ii) Seller has provided to Buyer a written plan for mitigating the effect of the Force Majeure which plan is commercially reasonable and reasonably satisfactory to Buyer, as evidenced by Buyer's written acknowledgement of such plan (such acknowledgment not to be unreasonably withheld, delayed or conditioned), and (iii) Seller diligently pursues such mitigation plan throughout the additional mitigation period described in this Section 5.10(e)(i)(B).

(ii) If Buyer elects to terminate this Agreement in connection with a Force Majeure under this Section 5.10(e) (including for Seller's failure to mitigate a Force Majeure as described in Section 5.10(e)(i)(A) and (B)), such termination shall be effective after thirty (30) days' prior Notice to Seller. Upon such termination neither Party shall have any further obligations or liabilities to the other, including for a Termination Payment or otherwise, by reason of such termination, except for liabilities and obligations arising prior to the termination and the surviving provisions set forth in Section 2.4(b) and Section 5.10(f). In the event of a termination pursuant to this Section 5.10(e), Buyer shall promptly return to Seller any Project Development Security or Delivery Term Security posted by Seller, except for any amounts drawn or to be drawn by Buyer in satisfaction of Seller's obligations arising prior to the termination for Force Majeure.

(f) Force Majeure Right of First Offer. If Buyer exercises its termination right in connection with a Force Majeure under Section 5.10(e), then for a period of two (2) years from the effective date of such termination (the "Force Majeure Exclusivity Period"), Seller and its successors, assigns and Affiliates shall be subject to the Right of First Offer in Section 3.9(c)(iv)(D)(i)-(iii) with respect to the sale of any Products from the First Unit, the Second Unit or any Eligible Replacement Unit.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies.

(a) On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (i) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (ii) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Adjustments, upon reasonable Notice and during normal business hours; and (iii) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Section 4.3 as adjusted pursuant to Section 4.5 (CAISO Charges) (which may include charges incurred in preceding months). Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice.

(b) If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

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

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11.2 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE

MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year, and (b) within sixty (60) days after the end of each of PG&E Corporation's first three (3) fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com or on the SEC EDGAR information retrieval system; provided, however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

8.2 Seller Financial Information. If requested by Buyer, Seller shall deliver within one hundred twenty days (120) following the end of each fiscal year, a copy [REDACTED] annual report containing audited consolidated and summary financial statements for such fiscal year and the audited consolidated and summary financial statements for such fiscal year for the Guarantor if the Guarantor is not an Affiliate [REDACTED]. Seller shall be deemed to have satisfied such delivery requirement with respect to [REDACTED] if the applicable report is publicly available on [REDACTED] or on the SEC EDGAR information retrieval system; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such statements are provided to Buyer upon their completion and filing with the SEC.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security (as applicable) hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Consistent with the terms hereof and upon or any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise

any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security (as applicable) including any such rights and remedies under the Law then in effect; (b) draw on any outstanding Letter of Credit issued for its benefit; and (c) liquidate all Project Development Security or Delivery Term Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Seller Performance Assurance.

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

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of One Million Dollars (\$1,000,000) and in the form of cash or a Letter of Credit within five (5) Business Days following the Execution Date of this Agreement until Seller posts Project Development Security pursuant to Section 8.4(a)(ii) below with Buyer;

(ii) Project Development Security pursuant to this Section 8.4(a)(ii) in the amount of Two Million Dollars (\$2,000,000) and in the form of cash or a Letter of Credit from a date not later than thirty (30) days following the occurrence of the earlier of (A) CPUC Approval of the Agreement, or (B) CPUC approval of the California portion of the Palo Verde – Devers 2 Line and receipt of a determination by the CAISO related to Electric System Upgrades both in terms of cost to Seller and timing of completion of the Electric System Upgrades developed through the final binding LGIP, until Seller posts Project Development Security pursuant to Section 8.4(a)(iii) below with Buyer;

(iii) Project Development Security pursuant to this Section 8.4(a)(iii) in the amount of Twelve Million Five Hundred Thousand Dollars (\$12,500,000) related to the First Unit (the "First Unit Development Security") and Twelve Million Five Hundred Thousand Dollars (\$12,500,000) related to the Second Unit (the "Second Unit Development Security") in the form of cash or a Letter of Credit from a date not later than thirty (30) days following the occurrence of the later of (A) CPUC Approval of the Agreement, or (B) CPUC approval of the California portion of the Palo Verde – Devers 2 Line and receipt of a determination by the CAISO related to Electric System Upgrades both in terms of cost to Seller and timing of completion of the Electric System Upgrades developed through the final binding LGIP, until Seller posts Delivery Term Security pursuant to Section 8.4(a)(iv) below with Buyer.

For the avoidance of doubt, the maximum amount of Project Development Security required to be posted by Seller for the benefit of Buyer hereunder shall not exceed Twenty-Five Million Dollars (\$25,000,000).

(iv) Delivery Term Security pursuant to this Section 8.4(a)(iv) as follows:

(A) in the amount of Thirty-Two Million Five Hundred Thousand Dollars (\$32,500,000) from and after the Commercial Operation Date of the First Unit until the end of the Term (the "First Unit Delivery Term Security"). Twenty Million Dollars (\$20,000,000) of the First Unit Delivery Term Security may be provided in the form of a Guaranty from the Guarantor or a Qualified Replacement Guarantor, and the remainder of the First Unit Delivery Term Security shall be provided in the form of cash or a Letter of Credit; and

(B) in the amount of an additional Thirty-Two Million Five Hundred Thousand Dollars (\$32,500,000), as adjusted pursuant to Section 3.9(c)(iv)(B) (if applicable), from the Project Commercial Operation Date until the end of the Term (the "Second Unit Delivery Term Security"). Twenty Million Dollars (\$20,000,000) of the Second Unit Delivery Term Security may be provided in the form of a Guaranty from the Guarantor or a Qualified Replacement Guarantor, and the remainder of the Second Unit Delivery Term Security shall be provided in the form of cash or a Letter of Credit.

For the avoidance of doubt, the maximum amount of Delivery Term Security required to be posted by Seller for the benefit of Buyer hereunder shall not exceed Sixty-Five Million Dollars (\$65,000,000). Any such Performance Assurance shall not be deemed a limitation of damages, unless otherwise specifically provided by the terms set forth in this Agreement.

(b) Use of Project Development Security.

(i) Consistent with Section 3.9(c)(iv)(A), in the event Seller fails to make a payment to Buyer related to First Unit Daily Delay Damages, Buyer shall be entitled to draw upon the First Unit Development Security posted by Seller for First Unit Daily Delay Damages. Seller shall cause the First Unit Development Security to be replenished in a manner consistent with Section 3.9(c)(iv)(A)(II), hereof.

(ii) Consistent with Section 3.9(c)(iv)(A), in the event Seller fails to make a payment to Buyer related to Second Unit Daily Delay Damages, Buyer shall be entitled to draw upon the Second Unit Development Security posted by Seller for Second Unit Daily Delay Damages. Seller shall cause the Second Unit Development Security to be replenished in a manner consistent with Section 3.9(c)(iv)(A)(II), hereof.

(iii) Consistent with Section 3.9(c)(iv)(B), in the event Seller fails to make the Project Size Adjustment LD payment to Buyer, Buyer shall be entitled to draw upon the Second Unit Development Security posted by Seller for the Project Size Adjustment LD.

(iv) Buyer shall also be entitled to draw upon the Project Development Security posted by Seller in the event an Early Termination Date has occurred and may retain the Project Development Security until all payment obligations of Seller arising under this Agreement, including compensation for the Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) until such time as the Project Development Security is exhausted.

(c) Termination of Project Development Security.

(i) Upon achieving the First Unit Commercial Operation Date, Seller shall no longer be required to maintain the First Unit Project Development Security less the amounts drawn in accordance with Section 8.4(b) (i) and (iv). The First Unit Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the First Unit Delivery Term Security.

(ii) Upon achieving the Second Unit Commercial Operation Date or Contingent Project Size Adjustment Date, Seller shall no longer be required to maintain the Second Unit Development Security less the amounts drawn in accordance with Section 8.4(b) (ii), (iii) and (iv). The Second Unit Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the full amount of the Delivery Term Security, as adjusted pursuant to Section 3.9(c)(iv)(B) (if applicable).

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Performance Assurance (if any) at the Interest Rate, provided that, such interest shall be retained by Buyer until Seller posts the First Unit Delivery Term Security pursuant to Section 8.4(a)(iv). Upon Seller's posting of the First Unit Delivery Term Security, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix XIII. After Seller posts the First Unit Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for the applicable Delivery Term Security (if any).

(e) Seller Downgrade Event. If, at any time during the Delivery Term, there shall occur a Downgrade Event in respect of Seller's Guarantor, then Seller shall deliver to Buyer replacement Delivery Term Security in the form of a Letter of Credit, cash, or, at Seller's option, a replacement Guaranty from a Qualified Replacement Guarantor in lieu thereof in an amount equal to the applicable amount of Delivery Term Security as determined in Section 8.4(a)(iv). In the event Seller shall fail to provide Buyer with such Letter of Credit, cash or replacement Guaranty within seven (7) Business Days of the Downgrade Event, Buyer may declare an Event of Default pursuant to Section 5.1(b)(ii) by providing Notice thereof to Seller. In the event that a Downgrade Event subsequently occurs with respect to a Qualified Replacement Guarantor providing a Guaranty hereunder, such Guaranty shall be promptly replaced as described in this Section 8.4(e).

(f) Use of Delivery Term Security. In the event Seller fails to make a payment to Buyer under this Agreement, including payments related to undisputed CAISO Charges pursuant to Section 4.5, indemnification payments and any damages arising out of a Seller's Event of Default, and upon Buyer's declaration of an Early Termination Date, Buyer shall be entitled to draw upon the Delivery Term Security posted by Seller until such time as the Delivery Term Security is exhausted; provided, Buyer shall not draw on Delivery Term Security for payment of GEP Liquidated Damages unless Buyer is doing so in connection with the exercise of its rights pursuant to Section 5.2. The Delivery Term Security shall not be subject to replenishment.

(g) Termination of Delivery Term Security. Seller's obligation to maintain the Delivery Term Security shall terminate upon the occurrence of the following: (a) the Term

of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred (as applicable); and (b) all payment obligations of Seller arising under this Agreement, including any Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). The Delivery Term Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of the satisfaction of (a) and (b) above if in the form of cash or a Letter of Credit.

8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit to Buyer pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least an A3 by Moody's and at least an A- by S&P, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall (A) provide a substitute Letter of Credit, other than from the bank failing to honor the outstanding Letter of Credit, or (B) post cash or a Guaranty (for Delivery Term Security, and subject to the limitations on amounts of Guarantees set forth in Section 8.4(a)(iv)) in each case in an amount equal to the outstanding Letter of Credit within seven (7) Business Days after the Seller receives Notice of such refusal (all of which is considered the "Cure"). If Seller fails to Cure, or if such Letter of Credit expires or terminates without full draw thereon by the 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 the Seller.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. 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 and at the Delivery Point, including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse

Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. Subject to Section 4.1(c), a Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party's exemption is lost or reduced, each Party's responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

ARTICLE TEN: REPRESENTATIONS, WARRANTIES, AND COVENANTS

10.1 Representations and Warranties of the Parties. On the Execution Date, each Party represents and warrants to the other Party that:

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

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

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

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

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

(f) 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;

(g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

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

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

(a) Seller shall be deemed to have made Commercially Reasonable Efforts if Seller takes actions to implement any change or improvement to the Project to maintain such certification or qualification ("RPS Qualification Improvement") which would require Seller to incur, in the aggregate, administrative or capital costs up to One Million Dollars (\$1,000,000) over the Term of this Agreement ("RPS Qualification Expenditure Maximum"). If after such change in Law has occurred, Seller determines that it will exceed the RPS Qualification Expenditure Maximum to implement the RPS Qualification Improvement, Seller shall notify Buyer and provide documentation and calculations to support the expected exceedence ("RPS Qualification Improvement Notice"). Buyer shall then have thirty (30) days after receipt of the RPS Qualification Improvement Notice to verify or dispute Seller's documentation and calculation. The Parties shall then have ten (10) days to agree in writing (such agreement not to be unreasonably withheld, conditioned or delayed) on the amount by which Seller will exceed the RPS Qualification Expenditure Maximum in order to satisfy the RPS Qualification Improvement ("RPS Qualification Improvement Amount Agreement"). Buyer may then:

(i) elect to pay Seller the amount set forth in the RPS Qualification Improvement Amount Agreement and notify Seller of such election, subject to CPUC Approval (if required), within ten (10) Business Days of the effective date of the RPS Qualification Improvement Amount Agreement. If Buyer so elects, Seller shall, upon receipt of payment from Buyer, implement the RPS Qualification Improvement; or

(ii) elect not to pay Seller for the amount set forth in the RPS Qualification Improvement Amount Agreement and notify Seller of such decision within ten (10) Business Days of the effective date of the RPS Qualification Improvement Amount Agreement, in which case this Agreement shall continue in full force and effect and Seller shall not be required to implement any further or additional RPS Qualification Improvement.

10.3 Covenants.

(a) General Covenants. Each Party covenants that as of the Test Period and 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 ensure that this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(iv) it shall provide the other Party prompt Notice in the event there is pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

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

(vi) 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 applicable to it; and

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

(b) Seller Covenants.

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

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements applicable to an Interconnection Customer (as defined in the CAISO Tariff) and shall take any other necessary action, including payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the Commercial Operation date or as soon as practicable thereafter.

(iii) Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns (including Lenders in connection with a permitted collateral assignment), have or will have ownership of, or a demonstrable exclusive right to control, the Project.

ARTICLE ELEVEN: MISCELLANEOUS

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

11.2 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer, its Affiliates, or Buyer's and Affiliates' respective directors, officers, agents, and representatives against and from any and all Claims, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, (ii) Seller's operation and/or maintenance of the Project, or (iii) Seller's actions or inactions with respect to this Agreement, including any Claims, for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyer's and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its Affiliates, or Seller's and Affiliates' respective directors, officers, agents, and representatives against and from any and all Claims, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered by Seller under this Agreement at and after the Delivery Point, (ii) Buyer's actions or inactions as Scheduling Coordinator except as otherwise set forth herein, or (iii) Buyer's actions or inactions with respect to this Agreement, including any Claims, for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 11.2(a) and 11.2(b) herein, 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 entity.

11.3 Assignment.

(a) General Assignment. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. Except as set forth in Sections 11.3(b) and 11.3(c), 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, conditioned or delayed so long as (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence reasonably satisfactory to the other Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing and subject to Section 11.3(c), consent shall not be required for an assignment of this Agreement, provided that (i) the assignee assumes the assigning Party's

payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior Notice of the assignment, and (iv) the assigning Party agrees in writing to be remain bound by the terms and conditions of the Agreement.

(b) Assignment in Connection with a Change of Control. Except as provided for in subsections (i) – (iv) of this Section 11.3(b), any direct or indirect Change of Control of Buyer or Seller (whether voluntary or by operation of Law) shall be deemed an assignment and shall require the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

(i) With respect to a Change of Control of Seller, Buyer's consent shall not be required for a sale, assignment, pledge or other transfer of any of the following: (A) all or substantially all of the assets of NextEra or its ultimate parent company, (B) all or substantially all of NextEra's or its ultimate parent company's renewable energy generation portfolio, or (C) all or substantially all of NextEra's or its ultimate parent company's solar generation portfolio; provided that, in the case of (C), the Project is not the sole utility scale solar generation power plant being acquired.

(ii) Buyer's consent shall not be required for any direct or indirect Change of Control of Seller if, immediately following the Change of Control: (A) the operator of the Project or the new entity which controls Seller has demonstrable experience as an operator of other solar power electric generating facilities reasonably satisfactory to Buyer; and (B) the assignee or new owner of the Project provides the Delivery Term Security in accordance with the requirements of Article 8; provided, however, in the event the assignee or the new entity which controls Seller has a Credit Rating below BBB- from S&P or Baa3 from Moody's (or no Credit Rating), then the Delivery Term Security must be provided in the form of a Letter of Credit, cash or, at Seller's option, a replacement guaranty from a Qualified Replacement Guarantor in lieu thereof up to the amount permitted to be provided in the form of a Guaranty under Section 8.4(a)(iv) and in a total amount equal to the applicable amount of Delivery Term Security as determined in Section 8.4(a)(iv).

(iii) In the case of Seller, any following "Change of Control" also shall not require Buyer's consent: (A) any direct or indirect sale, assignment, pledge or other transfer of shares of or equity interests in Seller if, after giving effect thereto, NextEra or NextEra's ultimate parent company, remains the direct or indirect owner of a majority of the shares of or equity interests in Seller and maintains the power (directly or indirectly and either immediately or subject to the happening of any contingency) to direct or cause the direction of the management or policies of the Seller; (B) a merger, consolidation, amalgamation, reorganization or similar transaction of a Person with or into NextEra or its ultimate parent company, or (C) sale, assignment, pledge or other transfer of all or substantially all of the shares or equity interests of NextEra or its ultimate parent company.

(iv) With respect to a Change of Control of Buyer, Seller's consent shall not be required for any sale, assignment, pledge or other transfer of this Agreement to any person or entity by Change of Control or acquisition of all or substantially all of the assets or ownership interests of Buyer; provided that, such person or entity can substantiate to Seller's

reasonable satisfaction that such person or entity has the financial capability to perform its payment obligations under the Agreement. Seller and Buyer shall provide Notice of any Change of Control of such Party within thirty (30) days of such Change of Control with correct Notice information for such Party following the Change of Control.

(c) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement to its Lenders as collateral for any financing or refinancing of the Project; provided, Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including reasonable attorneys' fees. Buyer's consent to assignment by Seller to its Lenders shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix XVII; provided, however, if requested by the Lenders, Buyer shall, at Seller's sole cost, cooperate reasonably with Seller to revise the Form of Consent to Assignment solely to reflect market terms and conditions prevailing at the time of such financing that the Parties agree differ from those in the Form of Consent to Assignment. Buyer shall not be required to modify the Form of Consent to Assignment in a manner that would give rise to any additional expense or unreasonable risk being accepted by Buyer. Buyer shall, upon request by Seller or any Lender and at Seller's sole expense, cooperate reasonably to execute, or arrange for the delivery of, within thirty (30) days of such request, those normal, reasonable and customary certificates, opinions and other documents and to provide such other normal and customary representations or warranties (all in a form reasonably acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof), as may be necessary to assist Seller in consummating any financing or refinancing of the Project or any part thereof (including for Financing Liens as set forth in Section 11.4).

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 11.3 is void.

11.4 Financing Liens. Consistent with Section 11.3(c), Seller, without approval of Buyer, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project; provided that all obligations of Buyer with respect to such encumbrances shall be set forth in Section 11.3(c) and any Consent to Assignment contemplated in Appendix XVII that is entered into by Buyer. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

11.5 Reserved.

11.6 Confidentiality. Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (a) the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such

terms confidential, (b) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement, (c) to the CPUC under seal for purposes of review, (d) disclosure of terms specified in and pursuant to Section 11.7 of this Agreement; (e) in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (f); or (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, SEC or the FERC. In connection with requests made pursuant to clause (e) of this Section 11.6 ("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.

11.7 RPS Confidentiality. Notwithstanding Section 11.6 of this Agreement, at any time on or after the date on which Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, Delivery Term, Project location, Contract Capacity, anticipated Commercial Operation Dates, Contract Quantity, and Delivery Point.

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

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

(a) Workers' Compensation and Employers' Liability.

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

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

(b) Commercial General Liability.

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

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

(iii) Coverage shall:

(A) include "Additional Insured" endorsement and add as additional insureds Buyer, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for Seller (Insurance Services Office Form G2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for Seller has been endorsed by blanket endorsement;"

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

(C) include a severability of interest clause.

(c) Business Auto.

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

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

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

(d) Seller's Pollution Liability.

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

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

(iii) The policy shall endorse Buyer as additional insured.

(e) Professional Liability Insurance. Seller shall cause each of its Engineering and Construction Contractors to procure and maintain the following:

(i) Errors and Omissions Liability insurance appropriate to such Engineering and Construction Contractor's profession and the Project. Coverage shall be for a professional error, act or omission arising out of the scope of services set forth in the applicable engineering and construction contract for the design and construction of the Project (as applicable) including coverage for bodily injury, property damage, and consequential financial loss.

(ii) The limit shall not be less than \$10,000,000 per claim.

(iii) Coverage shall:

(A) be endorsed to specify that Seller's insurance is primary and that any Insurance or self-insurance maintained by Buyer shall not contribute with it; and

(B) be endorsed to specify that the selection of counsel, paid for by the insurer, to defend Buyer and its officers, directors, agents, and employees against covered or potentially covered claims shall be by mutual consent of Buyer and insurer.

(f) All Risk Property Insurance.

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

(ii) Coverage shall be written to cover the maximum foreseeable loss of the property.

(g) Additional Insurance Provisions.

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

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

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

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

(iv) Reviews of such insurance may be conducted by Buyer on an annual basis and, in addition, Buyer may, upon reasonable Notice, inspect the original policies at the offices of Seller.

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

(h) Self Insurance.

(i) Notwithstanding any other requirement set forth in this Section 11.9, Seller may self-insure to the extent Seller or an Affiliate of Seller (as applicable, the “Self-Insurer”), maintains a self-insurance program under which Seller may be insured; provided that, (A) the Self-Insurer’s Credit Rating is rated at BBB- or better by Standard & Poor’s, and Baa3 or better by Moody’s, (B) the amounts set aside by the Self-Insurer for the self-insurance program to cover losses and costs related to the Project and the Seller are consistent with Good Utility Practice, and (C) Seller has provided Buyer with Notice of its election to self-insure pursuant to this Section 11.9(h)(i).

(ii) For any period of time that the Self-Insurer is unrated by Standard & Poor’s or the Self-Insurer’s Credit Rating is rated at less than investment grade by Standard & Poor’s, Seller shall comply with the insurance requirements applicable to it under this Section 11.9.

(iii) In the event that Seller is permitted to self-insure pursuant to this Section 11.9(h), it shall not be required to comply with the insurance requirements under the applicable sections of Section 11.9, provided that any use of self-insurance hereunder shall not relieve Seller of its obligations under this Section 11.9 with respect to its subcontractors, including its Engineering and Construction Contractors.

(iv) The Parties acknowledge that if Seller had maintained such insurance coverages as are required under this Section 11.9, any insurance proceeds that would have been made available to Buyer or its directors, officers, agent and employees as a result of such coverages would have been paid when due without counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Therefore, any payments that would have been made to Buyer, its directors, officers, employees and agents had such coverages been maintained shall be made as provided in this Section 11.9, regardless of Seller’s lack of such coverage by third-party insurers.

(i) Form and Content.

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

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

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

11.10 Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Financial Accounting Standard Boards Interpretation No. 46(R), "Consolidation of Variable Interest Entities" or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the Agreement. If, as a result of this review (or subsequent reviews as Buyer deems necessary), Buyer determines that such consolidation is required for a given period then the Parties agree to the following provisions for such period:

(a) Within one hundred twenty (120) days following the end of each calendar year, Seller shall deliver to Buyer (i) unaudited financial statements together with related footnotes as necessary to comply with generally accepted accounting principles in the United States, and (ii) a completed annual disclosure checklist with supporting financial schedules necessary for Buyer to prepare its annual filing with the SEC. Buyer will provide to Seller such checklist prior to the end of each year and include only items considered material to Buyer. If audited financial statements are prepared for the calendar year, Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(b) Within ninety (90) days following the end of each calendar quarter, Seller shall deliver to Buyer (i) an unaudited condensed statement of income for the calendar quarter and year-to-date, (ii) an unaudited condensed statement of cash flows for the calendar quarter and year-to-date, (iii) an unaudited condensed balance sheet at the end of such calendar quarter, and (iv) a completed quarterly disclosure checklist with supporting financial schedules necessary for Buyer to prepare its quarterly filing with the SEC. Buyer will provide to Seller such checklist prior to the end of each quarter and include only items considered material to Buyer.

(c) Seller shall prepare its financial statements to be delivered under the terms of this Section in accordance with accounting principles generally accepted in the United States.

(d) Promptly upon Notice from Buyer, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer's internal auditors and an independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control

audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002 (as applicable). Within thirty (30) days of Seller's receipt of Notice from Buyer, Seller shall remediate any deficiency in Seller's internal controls of financial reporting identified by Buyer or Buyer's independent registered public accounting firm during. All reasonable expenses for the foregoing shall be borne by Buyer.

(e) As soon as possible, but in no event later than two (2) Business Days following the occurrence of any items affecting Seller which, during the term of this Agreement, Seller understands that Buyer would be required to disclose in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing. Such items include, but are not limited to, the following:

- (i) Acquisition or disposition of a material amount of assets;
- (ii) Creation of a material direct financial obligation or off-balance sheet financing arrangement;
- (iii) Existence of material litigation; and
- (iv) Entry into, or termination of, a material contract not made in the ordinary course of Seller's business.

(f) Buyer shall treat Seller's financial statements or other financial information provided under the terms of this Section in strict confidence and, accordingly shall:

- (i) Utilize such Seller financial information only for purposes of preparing, reviewing or certifying Buyer's financial statements, for making regulatory, tax or other filings required by Law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain Credit Ratings; and
- (ii) Make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's financial statements and to those persons or entities who are entitled to receive confidential information as identified in Section 11.6.

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

11.12 General.

(a) 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. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement and as provided for in Section 11.3(c) and 11.4). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that, at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 11.14. This Agreement shall be binding on each Party's successors and permitted assigns.

(b) It is the express intent of the Parties that the rates and all other terms and conditions of the services provided hereunder shall remain in effect for the Term and that such rates, terms and conditions shall not be subject to change under Sections 205 or 206 of the Federal Power Act of 1935, 16 U.S.C. § 791 et seq., (or any successor legislation) without the written consent of both Parties, notwithstanding any subsequent changes in applicable Law or market conditions that may occur. Each Party agrees that, except with the prior written consent of the other Party, neither it nor its Affiliates, successors and permitted assigns will institute or voluntarily cooperate, directly or indirectly (through complaint, investigation or otherwise), in the institution or conduct of any action or proceeding of the FERC under Section 205, Section 206 or any other portion of the Federal Power Act, which action or proceeding is intended to change the rates, terms and conditions of this Agreement then in effect. Absent agreement of all Parties to a proposed change, the standard of review for changes to any rate, term or condition of this Agreement proposed by a non-Party or the FERC or any other Governing Authority acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. ___ (2008). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to bind FERC, third parties and themselves to a public interest standard of review, the Parties hereby incorporate such language herein by reference. The Parties agree that except as expressly set forth in this Section 11.12(b), the rights of either Party under Sections 205 and 206 of the Federal Power Act shall not be limited.

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

11.14 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart,

but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

11.15 Cooperation. The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. Each Party shall use all Commercially Reasonable Efforts to obtain all authorizations, consents, orders, and approvals of, and to give all notices to and make all filings with, all Governmental Authorities and third parties that may be or become necessary for its performance of its obligations under this Agreement and will cooperate fully with the other Party in promptly seeking to obtain all such authorizations, consents, orders, and approvals, giving such notices, and making such filings.

11.16 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 11.16.

ARTICLE TWELVE: CONDITIONS PRECEDENT

12.1 Conditions Precedent. Subject to Section 2.5 hereof, the Term shall not commence until the occurrence of all of the following:

- (a) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;
- (b) CPUC Approval has been obtained;
- (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; and
- (d) Buyer receives from Seller the documentation listed in Appendix XIV (such occurrences in Sections 12.1(a) through 12.1(d) shall be referred to collectively as "Conditions Precedent").

12.2 CPUC Approval Filing. Buyer shall file the Agreement for CPUC Approval within sixty (60) days of the Execution Date and shall use Commercially Reasonable Efforts to obtain CPUC Approval; provided that, Seller provides all such documentation and data requested by Buyer, which Buyer finds necessary to satisfy the then-current filing requirements of the CPUC.

12.3 Failure to Meet All Conditions Precedent. If the Condition Precedents set forth in Sections 12.1(b) and 12.1(c) are not satisfied or waived in writing by both Parties on or before three hundred sixty (360) days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

ARTICLE THIRTEEN: DISPUTE RESOLUTION

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

13.2 Management Negotiations.

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

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

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

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 13.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 13.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 13.3.

13.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 13.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the AAA. As the first step, the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the

mediation. The mediator shall have no affiliation with, financial or other interest in, or prior employment with either Party or their Affiliates and shall be knowledgeable in the field of the dispute.

13.4 Arbitration.

(a) Arbitration. If within sixty (60) days after service of a written demand for mediation (“Mediation Period”), the mediation does not result in resolution of the dispute, then the controversy shall be settled by Arbitration conducted in the English language in New York, New York, administered by and in accordance with AAA’s Commercial Arbitration Rules (“Rules”) through “Last-offer (Baseball) Arbitration” (the “Arbitration”).

(b) Initiation. Either Buyer or Seller (the “Arbitration Invoking Party”) may by notice (the “Arbitration Notice”) to the other (the “Arbitration Noticed Party”) submit the dispute to Arbitration in accordance with the provisions of this Section 13.4. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the Mediation Period. Either Party may initiate Arbitration by filing with the AAA a notice of intent to arbitrate within the Mediation Period.

(c) Procedure.

(i) Any such Arbitration proceeding shall be before a tribunal of three (3) arbitrators, one (1) designated by the Arbitration Invoking Party, one (1) designated by the Arbitration Noticed Party and one (1) by the two (2) arbitrators so designated. The Arbitration Invoking Party and the Arbitration Noticed Party shall each name their arbitrator by notice (the “Selection Notice”) given within five (5) Business Days after the date of the Arbitration Notice, and the two (2) arbitrators so appointed shall agree upon the third member of the tribunal within five (5) Business Days after the date of the Selection Notice. Any member of the tribunal not appointed within the period required, whether by one of the Parties or by the two (2) arbitrators chosen by the Parties, shall be appointed by the AAA. The arbitrators shall have no affiliation with, financial or other interest in, or prior employment with either Party or their Affiliates and shall be knowledgeable in the field of the dispute.

(ii) Each of the Arbitration Invoking Party and the Arbitration Noticed Party shall have twenty (20) Business Days, commencing on the date the Arbitration Notice is given, to prepare and submit a proposal for the resolution of the dispute to the tribunal, including a description of how such Party arrived at its proposal and the arguments therefor, as it deems appropriate. Each of the Arbitration Invoking Party and the Arbitration Noticed Party shall deliver a copy of its proposal, including any such supplemental information, to the other Party at the same time it delivers the proposal to the tribunal.

(iii) Each of the Arbitration Invoking Party and the Arbitration Noticed Party shall have five (5) Business Days after the receipt of the other Party’s proposal to revise its respective proposal and submit a final proposal to the tribunal, including supporting arguments for its own and against the other Party’s proposal.

(iv) Each of the Arbitration Invoking Party and the Arbitration Noticed Party shall present oral arguments supporting its final proposal to the tribunal at a proceeding

held five (5) Business Days after the deadline for submission of final proposals to the tribunal. Each of the Arbitration Invoking Party and the Arbitration Noticed Party shall have three (3) hours to make its oral presentation to the tribunal.

(v) The tribunal shall, within ten (10) Business Days after presentation of the oral arguments, render a decision that selects the Arbitration Invoking Party's final proposal or the Arbitration Noticed Party's final proposal, and no other proposal. The award rendered pursuant to the foregoing shall be final and binding on the Parties, shall not be subject to appeal, and judgment thereon may be entered or enforcement thereof sought by either Party in any court of competent jurisdiction.

(d) Costs. Each Party shall bear the costs of its appointed arbitrator and its own attorneys' fees, and the costs of the third arbitrator incurred in accordance with the foregoing shall be shared equally by the Parties. Additional incidental costs of the Arbitration shall be paid for by the non-prevailing Party in the Arbitration.

(e) Arbitration Act. The agreement to arbitrate set forth in this Section 13.4 shall be enforceable in either federal or state court, and such agreement to arbitrate and all procedural aspects thereof, including the construction and interpretation of such agreement to arbitrate, the scope of the arbitrable issues, allegations of waiver, delay or defenses as to arbitrability, and the Rules (except as otherwise expressly provided herein) governing the conduct of the Arbitration, shall be governed by and construed pursuant to the United States Arbitration Act, 9 U.S.C. §§1-11.

(f) Pendency of Dispute. The existence of a dispute or the pendency of the dispute settlement or resolution procedures set forth in this Section 13.4 shall not in and of themselves relieve or excuse any Party from its ongoing duties and obligations under the Agreement.

(g) Limitation on Damages. It is further agreed that the arbitrators shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any Law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages.

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

ARTICLE FOURTEEN: NOTICES

Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified in herein; provided, however, that notices of outages or other scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant Section of this Agreement. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be

deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.

SIGNATURES

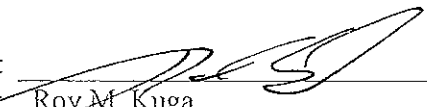
Agreement Execution

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

GENESIS SOLAR, LLC, a Delaware limited liability company

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

Signature: _____
Name: Michael O'Sullivan
Title: Senior Vice President
Date: September 28, 2009

Signature:  _____
Name: Roy M. Kuga
Title: Vice President, Energy Supply mgmt.
Date: September 28, 2009

deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.


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Date: September 28, 2009

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Name: Roy M. Kuga
Title: Vice President, Energy Supply
Date: September 28, 2009

055

APPENDIX I

CONTRACT CAPACITY, CONTRACT QUANTITY, AND CONTRACT PRICE

	CONTRACT CAPACITY	CONTRACT QUANTITY	CONTRACT PRICE * (\$/MWh)	CONTRACT PRICE INCREASED TO ACCOUNT FOR TRANSMISSION DELAY OR PERMITTING DELAY OF AT LEAST 6 MONTHS BEYOND FIRST UNIT GUARANTEED COMMERCIAL OPERATION DATE (\$/MWh)	CONTRACT PRICE INCREASED TO ACCOUNT FOR TRANSMISSION DELAY OR PERMITTING DELAY OF AT LEAST 12 MONTHS BEYOND FIRST UNIT GUARANTEED COMMERCIAL OPERATION DATE (\$/MWh)	CONTRACT PRICE INCREASED TO ACCOUNT FOR TRANSMISSION DELAY OR PERMITTING DELAY OF AT LEAST 18 MONTHS BEYOND FIRST UNIT GUARANTEED COMMERCIAL OPERATION DATE (\$/MWh)
WET COOLING TECHNOLOGY	250 MW	560,000 MWh	\$162.50	Up to \$174.00	Up to \$177.50	Up to \$180.50
DRY COOLING TECHNOLOGY	250 MW	524,000 MWh	\$182.50	Up to \$195.50	Up to \$197.50	Up to \$202.50

* Contract Price is before TOD adjustment contemplated in Sections 4.2 and 4.3 of the Agreement.

APPENDIX II

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary: Pacific Gas and Electric Company

77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

Applicants: [REDACTED]

and
Genesis Solar, LLC
700 Universe Blvd.
Juno Beach, FL 33408
Attention: Treasury

Letter of Credit Amount: [insert amount]

Expiry Date: [insert date that is one (1) year from offer date]

Ladies and Gentlemen:

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

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

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

A. “Pursuant to the terms of that certain Power Purchase Agreement (“PPA”), dated _____, between Beneficiary and Genesis Solar, LLC, Beneficiary is entitled to draw

under Letter of Credit No. [insert number] amounts owed by Genesis Solar, LLC, or its assignee(s), under the PPA; or

B. "Letter of Credit No. [insert number] will expire in twenty (20) business days or less and Genesis Solar, LLC, or its assignee(s), has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicants;
3. The Expiry Date of this Letter of Credit shall be automatically extended (without an amendment hereto) for a period of one (1) year from the Expiry Date or any future Expiry Date, unless (i) replacement security acceptable to Beneficiary has been provided or (ii) at least sixty (60) days prior to any such expiration date we send Beneficiary notice by registered mail or overnight courier at Beneficiary's address first shown (or such other address as may be designated by Beneficiary) that this Letter of Credit will not be extended for any such additional one year period; and
4. Upon receipt of replacement security acceptable to Beneficiary, this Letter of Credit will be cancelled and Beneficiary shall return this Letter of Credit to Genesis Solar, LLC, or its assignee(s) and indicate that this Letter of Credit is cancelled.

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

All demands for payment shall be made by facsimile or copies of original documents sent by overnight delivery or courier to [insert issuing bank] at our address set forth above, *Attention:* Standby Letter of Credit Unit (or at such other address as may be designated by written notice delivered to you). In the event of a presentation by facsimile transmission, drawings must be presented by telefacsimile to _____, under telephone pre-advice to _____.

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

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

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP

600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

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

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

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

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

Title: _____

Exhibit A

SIGHT DRAFT

TO: [INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

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

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

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY:

NAME AND TITLE:

APPENDIX III

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“Agreement”) by and between Pacific Gas and Electric Company (“Buyer”) and Genesis Solar, LLC (“Seller”), this letter (“Initial Energy Delivery Date Confirmation Letter”) serves to document the parties further agreement that (i) the Conditions Precedent to the occurrence of the [First Unit][Second Unit] Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and Buyer has received the Product, as specified in the Agreement, as of this ____ day of _____, _____ (the “[First Unit][Second Unit] Initial Energy Delivery Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

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

Tariff: Dated: Docket Number:

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

GENESIS SOLAR, LLC
Signature: _____
Name: _____
Title: _____
Date: _____

PACIFIC GAS AND ELECTRIC COMPANY
Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX IV
MILESTONES SCHEDULE

Milestone	Unit 1	Unit 2
Steam Turbine Generator ("STG") Letter of Intent executed by turbine vendor and Seller	November 2010	July 2011
Receipt of CEC and Bureau of Land Management Permits	December 2010	December 2010
Notification to Buyer whether Wet Cooling or Dry Cooling Technology will be used	December 2010	December 2010
Award Contract for Initial Engineering and Design Work	March 2011	March 2011
Begin Initial Site Development and Roadwork	May 2011	May 2011
Order Heat Collection Elements	June 2011	February 2012
Limited Notice to Proceed under Engineering and Construction Contract	June 2011	June 2011
STG Limited Notice to Proceed issued	July 2011	March 2012
Order Mirrors	August 2011	March 2012
Full Notice to Proceed issued for STG	October 2011	June 2012
Seller receives Solar Grant Notice from DOE	October 2011	October 2011
Interconnection to CAISO Grid complete	October 2011	October 2011
Construction Start Date	November 2011	November 2012
Begin Field Foundations	February 2012	February 2013
STG delivered to Site	January 2013	January 2014
Begin Commissioning	August 2013	August 2014
Unit Commercial Operation Dates	November 2013	November 2014

APPENDIX V

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

FACILITY DESCRIPTION

Facility name: Genesis Solar Energy Project

Facility Site name: Project Genesis

Facility physical address: On Bureau of Land Management land, approximately 25 miles west of Blythe, CA in Riverside County

Technology Type: Concentrating solar thermal (CST) technology

Substation: Southern California Edison's 500 kV Colorado River Substation

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

Revised Requested ROW for Genesis Solar Energy Project, Ford Dry Lake Site		
Section	Aliquot	Estimated Acres
Township 6S, Range 19E, San Bernardino Base & Meridian		
4	S ½ except wilderness	260
5	All except wilderness	550
6	SE ¼	160
7	N ½ NE ¼	80
8	NE ¼, N ½ NW ¼	240
9	N ½	320
10	All except wilderness	580
11	SW ¼	160
13	NW ¼ except wilderness; SW ¼	280
14	N ¾, NW ¼, N ¾, NE ¼	240
15	N ½ NW ¼, N ½ NE ¼	160
24	W ½ N ½	160
Subtotal, T 6 S, R 19 E:		3,190
Township 6S, Range 18E, San Bernardino Base & Meridian		
1	S ½ except wilderness	290
2	S ½ except wilderness	260
3	S ½	320
4	All except wilderness	580
Subtotal, T 6S, R18 E:		1,450
Total, Modified ROW, 1/4/08		4,640

The Genesis Solar Energy Project will consist of two independent concentrated solar electric generating facilities with a nominal net electrical output of 125 megawatts (MW) each, for a total net electrical output of 250 MW.

The units utilized as generation assets as part of the Project is described below:

All facilities associated with the Genesis Solar Energy Project will be utilized as generation assets per the stipulations of this Agreement.

Transmission and Interconnection Facilities:

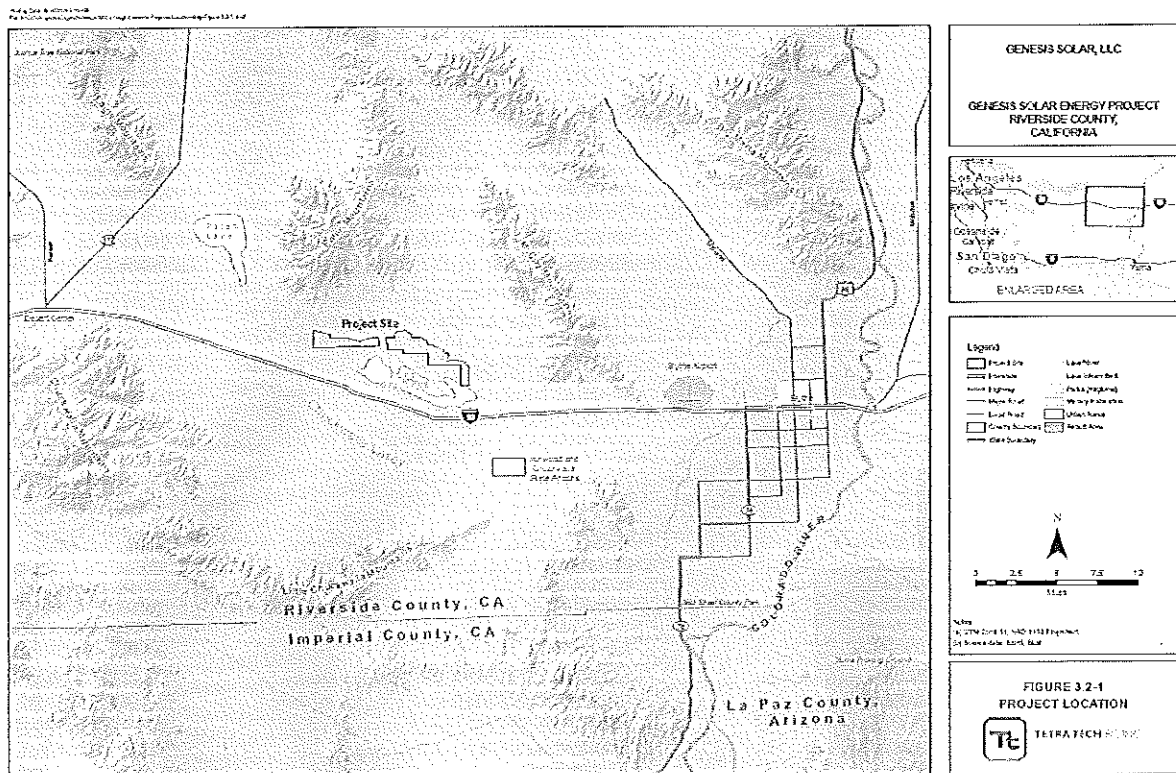
The generated electric power from the Project switchyard will be transmitted through a generation-tie (gen-tie) line that will be routed in a southeasterly right-of-way eventually connecting to the proposed Southern California Edison (SCE) 500-230 kV Colorado River substation. The gen-tie will be constructed for operation at 230 kV, the nominal operating voltage of the regional transmission system. The line will travel in the southeast direction to a point where it will cross the existing Imperial Irrigation District (IID) Blythe to Eagle Mountain 161 kV transmission line and the Interstate-10. From the I-10 crossing, the gen-tie line will continue south where it will eventually meet the Blythe Energy Project Transmission Line (BEPTL). From that location, the gen-tie will travel east and share a length of double-circuit transmission poles with the BEPTL where it will ultimately terminate at the interconnection point with the Colorado River substation. The Blythe-to-Eagle Mountain 161 kV transmission line and I-10 crossings will be designed in accordance with the most current revision of the IEEE National Electric Safety Code (NESC) and the California Public Utilities Commission's Rules for Overhead Line Construction, GO-95.

Generation Profile: Assumes new and clean generation

Month	Wet Cooled (Pacific Coast Prevailing Time)												365
	Jan 31	Feb 28	Mar 31	April 30	May 31	June 30	July 31	Aug 31	Sep 30	Oct 31	Nov 30	Dec 31	
1	-	-	-	-	-	-	-	-	-	-	-	-	-
2	-	-	-	-	-	-	-	-	-	-	-	-	-
3	-	-	-	-	-	-	-	-	-	-	-	-	-
4	-	-	-	-	-	-	-	-	-	-	-	-	-
5	-	-	-	-	-	-	-	-	-	-	-	-	-
6	-	-	-	-	-	-	-	-	-	-	-	-	-
7	-	-	-	-	-	-	-	-	-	-	-	-	-
8	-	-	10.9	11.8	51.2	88.6	33.1	11.4	-	-	7.7	-	5,884
9	16.0	34.1	58.6	79.5	111.2	125.3	93.0	82.6	75.7	42.6	52.3	15.9	24,047
10	45.1	55.3	96.2	109.4	116.6	125.5	103.3	100.5	107.2	84.4	57.3	42.3	31,919
11	47.7	50.6	96.3	111.7	121.6	125.4	107.6	109.0	111.3	88.5	55.8	43.6	32,516
12	47.8	45.5	95.6	110.7	116.9	125.5	120.1	106.7	109.7	83.2	53.2	38.5	32,118
13	50.6	39.8	92.4	112.8	118.3	123.5	118.3	104.6	107.8	81.6	57.8	44.2	32,073
14	55.2	47.4	93.6	118.4	119.0	126.1	111.6	111.3	103.3	89.2	63.0	52.4	33,221
15	64.4	60.5	96.7	118.4	117.0	126.3	118.0	112.0	104.0	95.9	68.3	61.5	34,768
16	58.9	77.0	91.5	100.9	115.9	125.8	112.9	112.1	100.3	97.2	38.7	45.7	32,848
17	-	21.8	83.9	96.7	114.2	121.5	116.4	110.4	102.6	85.8	-	-	26,065
18	-	-	60.5	78.3	96.2	106.8	101.5	69.8	69.4	5.0	-	-	18,269
19	-	-	-	-	27.6	59.3	50.9	22.4	-	-	-	-	4,881
20	-	-	-	-	-	-	-	-	-	-	-	-	-
21	-	-	-	-	-	-	-	-	-	-	-	-	-
22	-	-	-	-	-	-	-	-	-	-	-	-	-
23	-	-	-	-	-	-	-	-	-	-	-	-	-
24	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Monthly MWh	11,955	12,095	26,789	31,154	38,000	40,692	37,031	33,255	29,735	23,259	13,647	10,697	308,610

Dry Cooled (Pacific Coast Prevailing Time)													
Month	Jan 31	Feb 28	Mar 31	April 30	May 31	June 30	July 31	Aug 31	Sep 30	Oct 31	Nov 30	Dec 31	365
1	-	-	-	-	-	-	-	-	-	-	-	-	-
2	-	-	-	-	-	-	-	-	-	-	-	-	-
3	-	-	-	-	-	-	-	-	-	-	-	-	-
4	-	-	-	-	-	-	-	-	-	-	-	-	-
5	-	-	-	-	-	-	-	-	-	-	-	-	-
6	-	-	-	-	-	-	-	-	-	-	-	-	-
7	-	-	-	-	-	-	-	-	-	-	-	-	-
8	-	-	53	49	25.9	45.7	28.0	27	-	-	-	-	3,434
9	0.7	26.1	33.5	78.6	89.2	105.5	90.3	76.7	65.4	21.3	26.2	2.2	18,765
10	39.5	52.3	74.6	106.6	106.4	120.9	105.1	105.6	106.4	69.3	59.7	28.5	29,155
11	39.7	55.3	66.8	115.6	110.5	123.4	113.6	114.6	109.9	73.0	51.0	32.7	31,198
12	36.6	53.3	66.5	116.8	112.4	124.2	114.7	111.9	104.9	72.8	46.2	29.0	30,732
13	37.6	52.9	63.2	117.3	117.6	124.2	115.0	111.5	99.1	67.7	45.3	30.8	30,523
14	46.1	57.1	63.7	112.1	116.7	118.5	118.3	109.8	97.4	66.8	49.0	43.0	30,905
15	53.0	61.9	64.7	113.4	115.2	123.1	116.7	109.1	96.8	75.3	52.6	44.6	31,867
16	47.9	63.1	64.9	115.2	110.7	114.8	118.0	105.6	97.3	60.7	39.2	26.7	30,539
17	4.7	33.5	77.5	104.9	105.8	111.6	111.6	95.9	83.5	72.7	-	-	24,452
18	-	-	48.1	95.9	93.8	97.6	96.3	81.3	59.6	20.9	-	-	18,147
19	-	-	4.1	35.1	44.5	63.1	62.3	36.4	7.1	-	-	-	7,727
20	-	-	-	-	-	3.9	2.0	-	-	-	-	-	180
21	-	-	-	-	-	-	-	-	-	-	-	-	-
22	-	-	-	-	-	-	-	-	-	-	-	-	-
23	-	-	-	-	-	-	-	-	-	-	-	-	-
24	-	-	-	-	-	-	-	-	-	-	-	-	-
25	-	-	-	-	-	-	-	-	-	-	-	-	-
26	-	-	-	-	-	-	-	-	-	-	-	-	-
27	-	-	-	-	-	-	-	-	-	-	-	-	-
28	-	-	-	-	-	-	-	-	-	-	-	-	-
29	-	-	-	-	-	-	-	-	-	-	-	-	-
30	-	-	-	-	-	-	-	-	-	-	-	-	-
31	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Monthly MWh:	9,173	12,752	23,339	33,495	35,610	38,324	36,990	32,904	27,794	19,200	10,743	7,302	287,625

Site map



Power Plant Generation Facility

The Project power block and solar arrays will occupy approximately 1,360 acres of the 1,800-acre Site. Additionally, evaporation ponds, access road, administration buildings and other support facilities, a land treatment unit (LTU), and some open areas will be fenced for a total of 1,800 acres.

The major components of the Project include:

- Solar steam generator (SSG) heat exchangers
- Two Steam Turbine Generators (STGs) and condenser
- Two wet cooling towers
- Two natural gas-fired auxiliary boilers
- Steam-fed heat transfer fluid (HTF) freeze protection heat exchangers
- HTF surge volume tanks
- Two firewater pumps and pump house with associated diesel fuel tank
- Emergency diesel generators
- Two raw water storage tanks
- Two treated water storage tanks
- Two demineralized water storage tanks
- Ancillary equipment

Process Description

This section describes the power generation process and thermodynamic cycle employed by the Project. Each 125 MW Unit consists of:

- STG
- SSG heat exchangers
- Surface condenser
- Feedwater pumps
- Deaerator
- Feedwater heaters
- Wet cooling tower
- Evaporation ponds
- Natural gas-fired boilers
- Solar thermal collection field

The Project's power cycle is the Rankine-with-reheat thermodynamic cycle. Thermal input is via heated HTF from the parabolic trough solar field at a temperature of approximately 740 °F. Each 125 MW Unit will use the Rankine thermodynamic cycle with reheat described as follows:

Process 1: The working fluid (water) is pumped from low to high pressure. During this process, steam extracted from the STG is used to preheat the water prior to entering the SSG system, which increases overall cycle efficiency.

Process 2: The high pressure liquid enters the SSG system where it is heated theoretically at constant pressure by the HTF to become superheated steam.

Process 3: The superheated steam expands through the high pressure section of the steam turbine, turning the generator to produce electricity. This steam is then reheated in different vessels that are part of the SSG system and sent to the reheat section of the steam turbine. The reheat exhausts into the low pressure (LP) section of the steam turbine.

Process 4: The wet steam from the LP section then enters the surface condenser where it is cooled at a constant low pressure to become a saturated liquid. The condensed liquid returns to Process 1.

As the HTF is circulated from the SSG to the solar field, it absorbs solar energy and provides a high temperature (740°F) energy source for the Rankine cycle. Waste heat is rejected in Process 4. As the turbine exhaust is condensed, the heat is transferred to the cool circulating water. The warm circulating water carries the heat to the wet cooling tower to be rejected.

Steam Turbine-Generator (STG)

As described earlier, steam from the SSG is sent to the STG. The steam expands through the STG turbine blades to drive the steam turbine, which in turn drives the generator. The Project's STG is expected to be a two casing reheat type with six to seven feedwater heater extraction points and down axial flow LP exhaust. The STG is equipped with accessories required to provide efficient, safe, and reliable operation, including the following:

- Governor system
- Steam admission system
- Gland seal system
- Lubrication oil system including oil coolers and filters
- Generator coolers
- Metal enclosures designed for outdoor service for STG auxiliary systems

Energy Conversion Facilities Description

This section describes the major energy conversion components of the Project including the STG, SSG, HTF heater, and solar collection system.

Description of Technology

The collector field is made up of multiple single-axis-tracking parabolic trough solar collectors aligned on a north-south axis. Each solar collector has a parabolic-shaped reflector that focuses the sun's direct normal radiation on a receiver known as a heat collection element (HCE) located at the focal point of the parabola. The collectors track the sun from east to west during the diurnal cycle to ensure the sun is continuously focused on the HCE. The HTF is heated up to approximately 740 °F as it circulates through the HCEs and returns to the SSG where the fluid is used to generate high-pressure steam.

Major Solar Equipment

The major pieces of equipment for the solar portion of the Project, each of which is discussed below, are as follows:

- Heat collection element (HCE)
- Solar collector assembly (SCA)
- HTF
- Mirrors
- Connectors
- SSG heat exchangers
- HTF heater
- HTF expansion tanks
- HTF ullage/flash system
- HTF piping headers
- Heat Collection Elements (HCE)

The HCE consists of a steel tube with a selective coating, surrounded by an evacuated glass tube insulator. The coating gives it excellent selective heat transfer properties. The evacuated glass tube enclosure protects the selective surface and reduces heat loss by insulating it.

The outer glass cylinder has anti-reflective coating on the inner and outer surfaces to reduce reflective losses (increasing the transmissivity). Typically, getters (metallic substances that are designed to absorb gas molecules) are installed in the vacuum space to absorb hydrogen and other gases that permeate into the vacuum annulus over time to maintain its insulating properties.

Solar Collector Assemblies

The SCAs are dynamic structures that rotate around the north/south axis to track the sun as it moves through the sky. The axis of rotation is located at the collector center of mass to minimize the required tracking power. The tracking is controlled by a local controller on each SCA.

Heat Transfer Fluid

Therminol™ (VP-1), an aromatic hydrocarbon, biphenyl-diphenyl oxide manufactured by Solutia, is currently being considered as the HTF for the Project. Therminol is a special high-temperature oil that has an excellent operating history and is used in many heat transfer processes. Dowtherm A, an essentially chemically identical product manufactured by Dow, is being considered as an alternative to Therminol™ (VP-1).

Mirrors

Low-iron glass mirrors are mounted on the SCA. These mirrors are reliable components that have shown no long-term degradation in reflective quality. Twenty-year-old mirrors can be cleaned and brought back to like-new reflectivity. Long-term endurance of the mirror, as measured by the experience at Solar Electric Generating Station (SEGS), indicates mirror life of 30 years or more can be expected for the Project.

Flexible mirror reflectivity monitoring procedures using demineralized water for mirror washing is critical. The periodic monitoring of mirror reflectivity provides a valuable quality control tool for mirror washing and helps to optimize wash labor.

Solar Steam Generator System

The SSG system design is similar to any “kettle boiler” shell and tube heat exchanger in that the hot HTF is circulated through tubes and the steam is produced on the shell side. The SSG system includes heat exchangers for preheating the condensate, superheating the steam, and reheating steam, in addition to the boiler vessels.

HTF Freeze Protection Heat Exchanger

The HTF freezes at temperatures below 54 °F. To eliminate the problem of HTF freezing, steam-fed shell and tube heat exchangers will be used to keep the HTF above 100 °F whenever the facility is offline. As discussed above, the auxiliary boilers will supply the heat for this process as well as performing the function of a startup boiler. This dual-use configuration reduces the number of individual emission sources.

HTF Expansion Tank

Expansion tanks are required to accommodate the volumetric change that occurs when heating the HTF to the operating temperature. Nitrogen will be used to blanket the headspace of the tanks. The nitrogen purge prevents oxidation or contamination of the HTF by reducing its exposure to atmospheric air.

HTF Ullage/Flash System

During Project operation, HTF will degrade into components of high and low boilers (substances with boiling points higher and lower than the HTF). The low boilers are removed from the process as vapors through the ullage system. The high boilers are removed from the process as liquid and sediment through the HTF flash system.

HTF Piping Header

Supply and return piping is routed to allow for balanced flow through all the HCEs. Expansion loops will be located as required to maintain the composite pipe stress within American Society of Mechanical Engineers (ASME) B31.1 Power Piping code allowable limits. The steel piping in the mirrored trough sections of the array will be connected with ball joints and will not be rigidly mounted to foundations or other structures.

Major Ancillary Systems

Other major components of the Project described below are as follows:

- Water treatment system
- Cooling system
- Evaporation ponds

Water Treatment Systems

The raw water, circulating water, process water, and mirror washing water all require on-site treatment and this treatment varies according to the quality required for each of these uses. The Project's design consists of a pre-treatment system upstream of the cooling tower, and a post-treatment system downstream of the cooling tower.

Cooling Systems

Each Unit includes two cooling systems: 1) the steam cycle heat rejection system (*e.g.*, cooling tower); and 2) the closed cooling water system (equipment cooling), each of which is discussed below.

Steam Cycle Heat Rejection System

The cooling system for heat rejection from the steam cycle consists of a surface condenser, circulating water system, and wet cooling tower. The surface condenser receives exhaust steam from the LP section of the STG and condenses it to liquid for return to the SSG. The surface condenser is a shell-and-tube heat exchanger with wet, saturated steam condensing on the shell side and circulating water flowing through the tubes to provide cooling. The warmed circulating water exits the condenser and flows to the cooling tower to be cooled and reused.

The circulating water is distributed among multiple cells of the cooling tower, where it cascades downward through each cell and then collects in the cooling tower basin. The mechanical draft cooling tower employs electric motor-driven fans to move air through each cooling tower cell. The cascading circulating water is partially evaporated, and the evaporated water is dispersed to the atmosphere as part of the moist air leaving each cooling tower cell. Because of climatic conditions at the site, visible moisture plumes are expected to occur relatively infrequently and largely in winter months, and no need is expected for a plume-abated cooling tower.

The circulating water is cooled primarily through partial evaporation and secondarily through heat transfer with the air. The cooled circulating water is pumped from the cooling tower basin back to the surface condenser and auxiliary cooling water system.

Auxiliary Cooling Water System

The auxiliary cooling water system uses water from the cooling tower for the purpose of cooling equipment including the STG lubrication oil cooler, the STG generator cooler, steam cycle sample coolers, large pumps, etc. The water picks up heat from the various equipment items being cooled and rejects the heat to the cooling tower.

Evaporation Ponds

As noted above, it is expected each 125 MW Unit will have three double-lined evaporation ponds. Each pond will have a nominal surface area of eight acres resulting in a total of 24 acres of evaporation ponds for each unit or a total of 48 acres of ponds for both 125 MW units. Multiple ponds are planned to allow plant operations to continue in the event a pond needs to be

taken out of service for some reason, *e.g.*, needed maintenance. Each pond will have enough surface area so the evaporation rate exceeds the cooling tower blowdown rate at maximum design conditions and annual average conditions.

APPENDIX VI

FORM OF CERTIFICATION

This certification ("Certification") is delivered by Genesis Solar, LLC ("Seller") to Pacific Gas and Electric Company ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following with respect to Unit [1][2] of the Project:

(a) Seller has successfully completed completion testing of Unit [1][2] of the Project which is required by the Project's Governmental Approvals, the Interconnection Agreement, CEC Eligible Renewable Energy Resource certification requirements, and Seller's construction and operating agreements;

(b) all relevant manufacturers' warranties for the commencement of Commercial Operation are in place and valid;

(c) Seller has executed all agreements and made all arrangements necessary to deliver the Product from the Project to the Delivery Point safely and reliably in compliance with the provisions of the Agreement;

(d) all Delivery Term Security arrangements have been established in a form and in the amounts sufficient to meet the requirements of Section 8.4(a)(iv) of the Agreement;

(e) the insurance coverage requirements of Section 11.9 of the Agreement have been satisfied;

(f) all Governmental Approvals required to be obtained from any Governmental Authority to operate the Project in compliance with applicable law and this Agreement have been obtained and are in full force and effect; and

(g) Commercial Operation has occurred.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on behalf of the Company as of the ___ day of _____ 200_.

GENESIS SOLAR, LLC

By: _____
Name: _____
Title: _____

APPENDIX VII
REQUIRED PERMITS

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
FEDERAL					
Bureau of Land Management, Palm Springs Field Office	1	National Environmental Policy Act /EIS/Record of Decision (ROD)	Major federal action; Decision to issue or deny a ROW grant	18 to 24 months from Notice of Intent (NOI) to ROD. Permit to be obtained by December 1, 2010	The National Environmental Policy Act (NEPA) requires federal agencies to reveal the environmental consequences of their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions through the NEPA process. The timeline for NEPA review depends on site-specific factors and the ability to mitigate significant impacts.
	2	Application for ROW Grant on Federal Lands (SF-299) for solar energy project	Commercial solar energy facility development on BLM land	2 to 4 months from ROD to grant of ROW	Temporary ROW Application has been received by BLM with the application number CACA-48880 for the main facility. The ROW Grant/Long-Term Use Permit (Form 2800-14) is used for development of thermal power plants, including solar plants. The usual maximum for this grant is 30 years, but it is renewable under terms in place at time of renewal. This application requires full NEPA review at an EIS level.
	3	Cultural Resources Use Permit and Field Authorization	Recovery of cultural resources on federal land	Up to two months	Would apply if cultural resources discovered during construction.

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
FEDERAL					
U.S. Department of Defense (DOD)	4	Department of Defense R-2508 Complex Sustainability Office review and approval	Any potential impact to overhead aircraft	Varies	A letter from the DOD, stating that construction and operation of the arrays would not adversely affect DOD operations will be sufficient to meet this requirement; such a letter would be included in the EIS and submitted to the Riverside County Planning Department.
U.S. Army Corps of Engineers (USACE)	5	Nationwide Permit 12 under Section 404 of the Clean Water Act	Discharge of dredged or fill material into waters of the United States, including their adjacent wetlands	Permit not likely to be needed	The waters survey for the Project concluded that there are no wetlands meeting the definition found in the USACE Wetlands Delineation Manual traversed by the Project. Determination to be made by the USACE.
US Fish and Wildlife Service, (USFWS), Region 1, Pacific Region	6	Section 7 of the Endangered Species Act (ESA)/Consultation/Biological Opinion (BO)	Potential impacts to federally listed species	Service has 30 days after Biological Assessment (BA) and consultation request are filed to find BA complete, and 135 days after complete BA accepted to deliver a BO. Permit to be obtained by April 14, 2010	USFWS is required to assist other federal agencies to ensure that any action they authorize, implement or fund, including solar energy developments, will not jeopardize the continued existence or recovery of any federally endangered or threatened species. Under Section 7 of the ESA, the BLM must consult with the USFWS regarding the proposed project if, in BLM's opinion, the project "may affect" any listed species. BLM will probably want to consult regarding desert tortoise, though the consultation is "unlikely to adversely affect" the species and the USFWS concurs.

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
FEDERAL					
U.S. Environmental Protection Agency (EPA)	7	New Source Review (NSR) for new and modified major stationary sources	Any new permit unit which emits 25 pounds or more per day of non-attainment air pollutants	Varies	The facility will be subject to the local air district NSR rules and review process, including but not limited to, Best Available Control Technology (BACT) determination, offset analysis, air quality impact assessment, etc. The air quality analysis presented in the AFC air section and Appendices B.1 through B.9 fulfill the filing and analysis requirements of NSR. The MDAQMD will issue a Determination of Compliance (DOC) with conditions insuring compliance with all provisions of the NSR rule. See under local permits below.
	8	Title V Federal Operating Permit under National Ambient Air Quality Standards (NAAQS) and the Federal Clean Air Act (CAA)	Emissions potential from a new facility	The facility will file the required applications for a Title V permit within 12 months of the start of the facility, if the Title V program is determined to apply to the facility per the MDAQMD DOC	May not be needed; depends on a review of Project's emissions by MDAQMD. Authority for air quality compliance delegated to MDAQMD.
	9	EPA Identification Number	Generation of hazardous waste	7-10 businesses days once the application form has been received	As a generator of hazardous waste, the Project will be required to obtain an EPA identification number from the Department of Toxic Substances Control (DTSC). DTSC delegates some authority to local fire department hazardous materials divisions.

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
STATE					
California Energy Commission (CEC)	10	Certification	Thermal power plant over 50 MW	AFC; expect commission decision within 1 year of application being deemed complete. Permit to be obtained by December 1, 2010	CEC will take jurisdiction over the state permitting of the solar facility and will be the state lead agency under CEQA. The CEC's certification process is the equivalent, in this case, of a CEQA Environmental Impact Report (EIR).
California Independent System Operators (CAISO)	11	Participating Generator (PG) Certification	Development of transmission project	1 year	The prospective PG must complete two contractual agreements, the Participating Generator Agreement and the Meter Service Agreement for the ISO Metered Entities (MSA-ISOME), install requisite CAISO-certified revenue quality metering, establish or verify SCADA visibility with the CAISO Energy Management System (EMS), and arrange to have the specific generation unit(s) scheduled with the CAISO by a certified Scheduling Coordinator.
California Department of Parks and Recreation, State Office of Historic Preservation (SHPO)	12	Section 106 of the National Historic Preservation Act/Consultation	Construction activities and subsurface work with a federal nexus	6 months	BLM will require consultation with SHPO as part of their NEPA process.

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
STATE					
California Department of Fish and Game (CDFG)	13	Lake or Streambed Alteration Agreement	Temporary or permanent disturbance to bed and bank of any stream, including dry washes	60 days after application deemed complete, which includes proof of completing CEQA process	The CDFG will take jurisdiction and will issue a permit for any activity that impacts the bed and bank of a wash and all its tributaries. The permit will include mitigation requirements that may include compensatory payments.
	14	State Endangered Species Act Take Permit or Concurrence with Federal Take Permit	Potential for adverse impact to individual animals of species listed under CESA	No time limit on processing, can take up to a year. Requires completion of CEQA to issue.	The CDFG has the authority to issue a permit allowing the "take" of individuals of listed species provided the "take" is incidental to otherwise lawful activities and has been fully compensated for.
California Environmental Protection Agency; Regional Water Quality Control Board	15	Water Quality Certification under Section 401 of the CWA	Any work that may result in a discharge to waters of the U.S.	90 days- Not likely to be needed	Section 401 of the CWA requires that any applicant for a federal license or permit, who conducts any activity that may result in a discharge to waters of the state, must provide the licensing or permitting agency a certification that the activity complies with water quality requirements and standards. If a nationwide or individual permit 404 is required, a 401 certification is also required in California.

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
STATE					
California Environmental Protection Agency; Colorado River Regional Water Quality Control Board (RWQCB), NPDES General Permits, Section 402, CWA	16	General Permit for Stormwater Discharges, Construction (General Construction Permit CAS 000002)	Ground disturbance greater than 1 acre (no permit is needed if less than 1 acre)	3 months or less	Discharges associated with construction activities, including clearing, grading, and excavation, that disturb 1 or more acres of land must obtain an NPDES Stormwater Discharge General permit. This permit is issued under authority of the Federal Water Pollution Control Act and requires a Stormwater Pollution Prevention Plan, Best Management Practices, and a Notice of Intent.
	17	General Permit for Discharges of Stormwater from Industrial Activities (General Industrial Permit CAS 000001)	Certain industrial activities and the use or storage of certain amounts of hazardous substances	3 months or less; submit Notice of Intent at least 1 month prior to construction	EPA stormwater regulations are delegated to the state and require that certain stormwater discharges associated with industrial activity must obtain an NPDES Stormwater Discharge General Permit. It is possible that hazardous materials stored on site during operations and maintenance (e.g., lubricants, oils, greases, antifreeze, cleaners, degreasers, hydraulic fluids) may trigger NPDES Stormwater Discharge General Permit requirements.
	18	Waste Discharge Requirement (WDR)	Construction and operation of evaporation ponds	12 months. Takes approximately 6 months for approval once application has been received. Permit to be obtained by August 20, 2010	Permit required to establish and operate evaporation ponds or bioremediation facility, file form 200 with RWQCB, ensure RWQCB involvement in CEQA process with the CEC.

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
STATE					
RWQCB cont'd	19	Report of Waste Discharge (ROWD) under Section 13260 et. seq. of California Water Code	Discharges that may affect water quality	3 months	ROWD required for discharges that might affect water quality of the state, unless the requirement is waived pursuant to Water Code section 13269(a).
California Department of Transportation (CalTrans),	20	ROW Encroachment Permit (Form TR-0100)	Disturbance or use of state highway ROW	2 months	Requirements are a plan sheet(s) and full description of the encroachment on state ROW.
District 8	21	Single Trip Transportation Permit	Use of oversize and/or overweight vehicles	Typically 1 day	Transportation of loads on state highways that exceed established size and/or weight limits (14 feet tall, 65 feet long, 8.6 feet wide, and/or over 80,000 pounds) requires a permit from California Department of Transportation. A Variance Permit is required (i.e., must be approved by special processing) if established size and weight limits are over 17 feet tall, 135 feet long, 15 feet wide, and/or includes special hauling equipment. The construction or transportation contractor typically obtains this permit.
California Highway Patrol	22	Notification of Transportation of Oversize/Overweight Loads	Use of oversize and/or overweight vehicles	Notification at least 7 working days prior to travel of oversize load on state highway	If a permit for the transportation of loads on state highways exceeds established size and/or weight limit requirements, the California Highway Patrol may need to escort the vehicle. This is dependent on chosen routes and highways. The construction or transportation contractor typically obtains this permit.

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
STATE					
California Division of Motor Vehicles	23	License for Transport of Hazardous Materials and Wastes	Transport of Hazardous Materials	1 month	License needed for transport of hazardous materials on California roads and highways.
California Occupational and Safety Administration, (Cal-OSHA), San Bernardino Office	24	Trenching, Excavation, and Erection or Demolition Permit	Trenches/excavations > 5 feet before ground surface where personnel enter; construction or demolition greater than 3 stories	Permit received within 24 hours	
	25	Erection of Fixed Tower Crane Permit	Erection, climbing, and dismantling fixed tower cranes	Notify 24 hours prior	

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
LOCAL					
Mojave Desert Air Quality Management District (MDAQMD)	26	Authority to Construct (ATC) and Permit to Operate (PTO)	Activities that generate air pollutants at a regulated level	Prior to Construction and Prior to Operation. Permit to be obtained by July 2, 2010	Air emissions associated with the construction and operation of the project requires permits from the MDAPCD. Air permitting will focus on cooling tower emissions and the very small amounts of emissions from freeze protection.
	27	Determination of Compliance (DOC)	AFC to the CEC	An application will be submitted to the MDAQMD at about the same time as the AFC is submitted. Decision approximately 180 days after AFC submittal.	The MDAQMD will work within the timeframes of the CEC's AFC process to issue the DOC. In most cases, California regulations that apply to stationary sources have been adopted as rules by the MDAQMD.
	28	Fugitive Dust Control Permit	Intent to construct	1 month	Part of the construction phase of the Project; may be encompassed in the DOC. Management of particulates generated by construction at the site is required; primarily typical Best Management Practices are employed and will be documented in the permit application.

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
LOCAL					
MDAQMD Cont'd	29	Stationary Source Operating Permit for Concrete Batch Plant	Intent to develop concrete batch plant	2 months	The Project's operating permits, with emissions limitations, will mostly likely be issued by the State of California under the Portable Equipment Registration Program. If the plant does not have a state permit, then a permit issued by MDAQMD will be required. In either case, MDAQMD will be responsible for ensuring that each plant is operated in accordance with the permit. Assumes need for 1 year or longer for an onsite concrete batch plant to construct the facility.
Riverside County Planning and Building Departments	30	Construction, Grading, and Building Permits	Construction permit to install structure in county. Grading permit required for earth moving activities exceeding 50 cubic yards.	Construction permits cannot be issued until CUP approved. Application must be submitted six weeks prior to start of construction.	Local land use-related permits will be required prior to initiation of the Project. Site construction and drainage plans will be required to apply for permits.
	31	County Encroachment Permits for the Transmission Line	Development of new transmission line	Application must be submitted six weeks prior to start of construction	Requires Project plans to document the encroachment. Needed for connection from the solar generating facility to the existing transmission lines.

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
LOCAL					
Riverside County Department of Environmental Health	32	Groundwater Supply Well Permit	Installation of new wells in Riverside County	1 month	Well permits will be needed for the construction of supply or monitor wells. These permits are ministerial and obtaining them is not a lengthy or complicated process. This will be done after AFC submittal. Wells not used for supply or to monitor pumping will be constructed consistent with Riverside County and DWR requirements.
	33	Hazardous Materials Handler and Hazardous Waste Generator Permit	Use of hazardous materials at any facility in Riverside County	Approx 30 days for approval once complete submittal received	Required by the Riverside County, Department of Environmental Health (reviewed by Riverside County Fire Department). Will need MSDS data for all hazardous materials used at Project site, plans for disposal, and contingency plans for release/spill.
	34	Aboveground Storage Tank (AST) Permit and Hazardous Materials Business Plan (HMBP)	Installation of above ground storage tanks at any facility	File HMBP 30 days prior to start of Project operations; Risk Management Plan 90 days prior to operations	The Project is required to file written hazardous material handling plans with the Riverside County Fire Department, including a Hazardous Materials Business Plan and the California Accidental Release Prevention (CalARP) Risk Management Plan (RMP).
	35	Septic Permit	Installation of septic tank at any facility	1 to 2 months to complete permitting of septic system	An onsite water treatment system (OWTS) means any individual or community onsite wastewater treatment, pretreatment, and dispersal system.

Summary of Environmental Permits Required or Potentially Required for the Genesis Solar Energy Project

Permitting Agency	Reference Number	Permit/ Approval/ Consultation	Trigger	Processing Timeline	Comments
LOCAL					
Riverside County Fire Department	36	Fire Protection Permit	Building of commercial or industrial facility	2 months	Will require information on fire detection and prevention systems installed at each facility. Also will likely need to consult with fire departments who have reviewed similar facilities.
Riverside County, Public Works Department	37	Application to Use ROW	Utility lines crossing the county ROW	7 to 30 days	An Application to Use ROW is needed to trench or bore a county road ROW, or to permanently cross it with overhead transmission lines. The process requires submission of an application and an engineering drawing showing the exact location of the crossing. This permit can typically be issued the same day as the application is made. Extra processing time would be required for pole line crossings of the ROW.
County of Riverside Transportation Department	38	Oversize and Overweight Vehicle and Highway Encroachment Permit	Oversize equipment traveling on county/state roads or if county ROW impacts are anticipated	Apply at least 5 working days prior to oversize load on county roadways	Requirements similar to state permit described above.
Riverside County Transportation Department	39	Drainage Plan Approval	Intent to construct	2 months for review process	Approval of drainage plan required prior to starting construction. The drainage and storm water plans will be required to obtain this permit.

APPENDIX VIII
FORM OF
PROGRESS REPORT

Progress Report
of
Genesis Solar, LLC
("Seller")

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

[Date]

1.0 Instructions.

Any capitalized terms used in this report which are not defined herein shall have the meanings ascribed to them in the Power Purchase Agreement by and between _____ (“Seller”) and Pacific Gas and Electric Company dated _____, 200__ (the “Agreement”).

Seller shall review the status of each significant Milestone of the construction schedule (the “Schedule”) for the Project 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 Project or related project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.

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

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

(iv) Any material change in 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 Progress Report and any material change in Seller’s proposed actions to remedy or overcome such matter or issue.

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

2.0 Executive Summary.

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

Please provide a brief summary of the Major¹ activities to be performed for each of the following aspects of the Project during the current month:

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

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

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

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

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

3.3 Permitting activities that occurred during the previous month.

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

3.4 Permitting activities occurring during the current month.

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

3.5 Permitting Notices received from Engineering and Construction Contractors.

Please attach to this Progress Report copies of any notices related to permitting activities received from Engineering and Construction Contractors (including its subcontractors) during the previous month.

4.0 Design Activities.

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

The following table lists the design schedule to be followed by Seller and the Engineering and Construction Contractors (including its subcontractors).

ACTIVITY	Engineering and Construction CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

4.2 Design activities to be performed during the current month.

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

4.3 Table of design activities completed during the previous month.

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

5.0 Property Acquisition Activities.

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

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

ACTIVITY	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

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

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

6.0 Engineering Activities.

6.1 Table of engineering schedule to be followed by Seller and the Engineering and Construction Contractors (including its subcontractors).

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

ACTIVITY	Engineering and Construction CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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6.2 Engineering activities to be performed during the current month.

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

6.3 Engineering activities completed during the previous month.

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

6.4 Three-month look-ahead engineering schedule.

Please provide a three-month look ahead engineering schedule.

7.0 Major Equipment Procurement.

7.1 Table of major equipment to be procured by Seller or the Engineering and Construction Contractors (including its subcontractors).

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

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

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

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

7.3 Major Equipment procurement activities completed during the previous month.

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

8.0 Construction and Interconnection Activities.

8.1 Table of construction and interconnection activities to be performed by Seller or Engineering and Construction Contractors (including its subcontractors).

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

ACTIVITY	ENGINEERING AND CONSTRUCTION CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

8.3 Construction and interconnection activities completed during the previous month.

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

8.4 Engineering and Construction Contractor Progress Report.

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

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

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

9.0 Milestones.

9.1 Milestone schedule.

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

10.0 Safety and Health Reports.

10.1 Please list all accidents from the previous month:

10.2 Any work stoppage from the previous month:

10.3 Work stoppage impact on construction of the Project:

I, _____, on behalf of and as an authorized representative of Genesis Solar, LLC, do hereby certify that any and all information contained in this Seller's Progress Report is true and accurate in all material respects, and reflects the current status of the construction of the Project as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IX

CERTIFICATION OF THIRD PARTY AGREEMENT

The following certification is delivered by Genesis Solar, LLC ("Seller") to Pacific Gas and Electric Company ("Buyer") in accordance with Section 3.9(c)(iv)(D) of that certain Power Purchase Agreement, dated September 28, 2009, between Seller and Buyer (as amended, the "PPA"). Based on Seller's analysis of the key contract terms listed below in the PPA (the "Contract Terms"), and the similar terms and conditions in [describe third party agreement] (the "Proposed Third Party Agreement"), I [insert name, company, and title] certify that under the terms and conditions of the Proposed Third Party Agreement Seller does not expect to receive a lower rate of return on its development and operation of the Project than the rate of return projected by Seller as a result of selling the Product produced by the Project to Buyer under the First Offer pursuant to Section 3.9(c)(iv)(D)(i) of the PPA.

Capitalized terms not defined herein shall have the meaning set forth in the PPA.

Contract Terms:

1. MW amount of Contract Capacity
2. Product
3. Guaranteed Commercial Operation Date
4. Delivery Term
5. Delivery Point
6. Contract Price (including escalation)
7. Contract Quantity - expected annual volume of deliveries inclusive of outages
8. Guaranteed Energy Production target - minimum volume of delivery on an annual basis
9. Security Requirements applicable to Seller
10. Other key contract terms identified at the election of Genesis Solar, LLC

IN WITNESS WHEREOF, the undersigned has executed this certificate this __ day of [_____].

By: _____

Name:

Title:

APPENDIX X

OUTAGE NOTIFICATION FORM

A. NOTIFICATION REQUIREMENTS FOR START-UP AND SHUTDOWN

Prior to paralleling to or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify your designated balancing authority control center as follows:

- Call the balancing authority control center to parallel before any start-up.
- Call the balancing authority control center again with parallel time after start-up.
- Call the balancing authority control center after any separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PROJECT OUTAGES

1. Submit information by posting to PG&E's Power Procurement Information Center, which is located at www.pge.com under "For My Business." After selecting "Wholesale Power" on the right side of the page, select "Electric Procurement" along the left banner. After selecting the Power Procurement Information Center icon in the middle of the page, you will be required to enter a username and password, which will be assigned to you by PG&E's Bilateral Settlements Group.
2. If the website is unavailable, implement the procedures set forth below:
 - a. For all email correspondence, enter the following in the email subject field: **Delivery Date Range, Contract Name, Email Purpose (For example: "dd/mm/yyyy - dd/mm/yyyy XYZ Company Project #2 Daily Forecast of Available Capacity")**
 - b. For Annual Forecasts of Available Capacity, email to DAenergy@pge.com and Bilat_Settlements@pge.com.
 - c. For Monthly and WECC Preschedule Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
 - d. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Day-Ahead Schedules, call primary phone 415.973.6222 or backup phone 415.973.4500. Also send email to DAenergy@pge.com.
 - e. For Hourly Forecasts of Available Capacity, call PG&E's Hour-ahead Trading Desk at 415.973.4500 and email to RealTime@pge.com.

- f. For project outages, complete the specifics below and submit by email to DAenergy@pge.com and Billat_Settlements@pge.com
- i. *Email subject Field: dd/mm/yyyy – dd/mm/yyyy XYZ Company Project #2 Outage Notification*
 - ii. *Email body:*
 - 1. *Type of Outage: Planned Outage, Forced Outage, Prolonged Outage*
 - 2. *Start Date and Start Time*
 - 3. *Estimated or Actual End Date and End Time*
 - 4. *Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted*
 - 5. *Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage required by the CAISO.*

APPENDIX XI
RESOURCE ADEQUACY

1. Subject to Section 3.3 of the Agreement, Seller and Buyer agree that throughout the Delivery Term the Parties shall take commercially reasonable action and execute those documents or instruments and take such actions as are reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Subject to Section 3.3 of the Agreement, such commercially reasonable actions may include, but are not limited to, the following:
 - A. Cooperating with the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes using Commercially Reasonable Efforts to comply with the requirements CAISO and/or CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the CAISO Interconnection Point; and
 - B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.

2. Subject to Section 3.3 of the Agreement, Seller shall comply with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff as may be changed from time to time, including but not limited to the following:
 - A. Taking all actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity.
 - B. Coordinating with Buyer on the submission to the CAISO of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff.
 - C. Complying with the dispatch requirements applicable to the Project's resource type, as set forth in Section 40 of the CAISO Tariff; and
 - D. Complying with the applicable reporting requirements, such as submitting Supply Plans to the CAISO.

3. RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Interconnection Point for the Project.

APPENDIX XII
FORM OF GUARANTY

GUARANTY

This Guaranty (this "Guaranty"), dated effective as of _____, 20__ (the "Effective Date"), is made and entered into by _____ ("Guarantor").

WITNESSETH:

WHEREAS, PACIFIC GAS & ELECTRIC COMPANY, a California corporation ("Counterparty") and GENESIS SOLAR, LLC, a limited liability company organized under the laws of the State of Delaware ("GENESIS") and an indirect, wholly-owned subsidiary of Guarantor, have entered into that certain Power Purchase Agreement, dated as of _____, (the "Agreement"); and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreement entered into between GENESIS and Counterparty;

NOW THEREFORE, in consideration of Counterparty performing obligations and receiving benefits from the Agreement, Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of GENESIS (the "Obligations") to Counterparty under the Agreement. This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) The aggregate amount covered by this Guaranty shall not exceed U.S. \$[40,000,000.00 (FORTY MILLION U.S. DOLLARS)].

(b) Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages) as well as costs of collection and enforcement of this Guaranty (including attorney's fees) to the extent reasonably and actually incurred by the Counterparty (all of which such liability in the aggregate will be subject to the limitation set forth in Section 1(a) above) but in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive or tort damages, or, except to the extent specifically provided in the Agreement, any other damages.

2. DEMANDS AND NOTICE. Upon the occurrence and during the continuance of an Event of Default, as defined in the Agreement, if GENESIS fails or refuses to pay any Obligations and Counterparty has elected to exercise its rights under this Guaranty, Counterparty shall make a demand upon Guarantor (hereinafter referred to as a "Payment Demand"). A

Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount GENESIS has failed to pay and an explanation of why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. A Payment Demand satisfying the foregoing requirements shall be required with respect to Obligations before Guarantor is required to pay such Obligations hereunder and shall be deemed sufficient notice to Guarantor that it must pay the Obligations within five (5) Business Days after its receipt of the Payment Demand. A single written Payment Demand shall be effective as to any specific default during the continuance of such default, until GENESIS or Guarantor has cured such default, and additional written demands concerning such default shall not be required until such default is cured. As used herein, the term "Business Day" shall mean a day on which commercial banks or financial institutions are open for business in the States of [Florida] and New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of [Florida] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty, when executed and delivered, will constitute a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. SETOFFS AND COUNTERCLAIMS. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which GENESIS is entitled to arising out of the Agreement, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of GENESIS or the lack of power or authority of GENESIS to enter into and/or perform the Agreement.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVER; TERMINATION. Except as required in Section 2 above, Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment and demand concerning the liabilities of Guarantor; and (c) any right to require that any action or proceeding be brought against GENESIS or any other person, or to require that Counterparty seek enforcement of any performance against GENESIS or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of Counterparty in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreement.

Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy of GENESIS, or otherwise, all as though such payments had not been made.

This Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the date all Obligations have been paid in full by GENESIS or the Guarantor, or (ii) the twenty-eighth anniversary of the Effective Date.

7. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or telecopier, as follows:

<u>To Counterparty:</u> Pacific Gas & Electric Company 77 Beale Street, Mail Code B28L San Francisco, California 94105 Attn: Manager of Credit Risk Management Unit Fax No.: (415) 973-4071	<u>To Guarantor:</u> [REDACTED] [REDACTED] [REDACTED] Attn: [REDACTED] Fax No. [REDACTED]
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Copies of Notices sent to Guarantor shall also be sent via facsimile to ATTN: [REDACTED] [REDACTED] Legal, Fax No. [REDACTED] and ATTN: [REDACTED], Fax No. [REDACTED].

Copies of Notices sent to Counterparty shall also be sent via facsimile to ATTN: Trading/Scheduling Fax No. (415) 973-5333; ATTN: Law Fax No. (415) 973-5520; and ATTN: Credit Risk Management Unit Fax No. (415) 973-4071.

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if not received during the recipient's normal business hours. All Notices by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. MISCELLANEOUS. This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws (other than Section 5-1401 of the New York General Obligations Law). Any

legal action or proceeding by or against Guarantor with respect to or arising out of this guaranty shall only be brought in or removed to the courts of the State of New York, in and for borough of Manhattan, or of the United States of America for the Southern District of New York. Guarantor by its delivery of this Guaranty, and Counterparty by its acceptance of this Guaranty, each hereby agrees to waive any right to stay or dismiss any action or proceeding under or in connection with this Guaranty brought before the foregoing courts on the basis of lack of jurisdiction or *forum non-conveniens*, and each hereby further agrees to waive the right to a trial by jury.

This Guaranty shall be binding upon Guarantor and its permitted successors and assigns and inure to the benefit of and be enforceable by Counterparty and its permitted successors and assigns. The Guarantor may not assign this Guaranty in part or in whole without the prior written consent of the Counterparty. The Counterparty may not assign its rights or benefits under this Guaranty in part or in whole except (i) with the prior written consent of the Guarantor, or (ii) pursuant to a permitted assignment of the Agreement ("Assigned Agreement"), in which case the assignee will succeed to the rights of Counterparty hereunder only with respect to such Assigned Agreement. The Guarantor's liability hereunder with respect to any and all such Assigned Agreement, together with any other liability of the Guarantor hereunder, will in all cases be subject to the Guarantor's maximum aggregate liability set forth in Section 1(a) herein. Neither the Guarantor nor the Counterparty will unreasonably withhold or delay consent to assignment.

This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

Time is of the essence of this Guaranty. The remedies provided to Counterparty in this Guaranty are cumulative and not exclusive of any other remedies provided by law.

Words importing the singular number hereunder shall include the plural number and vice versa and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

[Signature on next page]

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__
but it is effective as of the Effective Date.

████████████████████

By: _____
Name: _____
Title: _____

APPENDIX XIII

NOTICES LIST

Name: Genesis Solar, LLC, a Delaware limited liability company ("Seller")

All Notices:

Delivery Address:

Street: 700 Universe Boulevard
City: Juno Beach State: FL Zip: 33408

Mail Address: (if different from above)
c/o NextEra Energy Resources, LLC
P O Box 14000
Juno Beach FL 33408

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

DUNS: [REDACTED]
Federal Tax ID Number: 35-2303285

Invoices:

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

Scheduling:

Attn:
Phone:
Facsimile:

Payments:

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

Wire Transfer:

BNK: [REDACTED]

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

All Notices:

Delivery Address:

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

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

Attn: Kelly A. Everidge (kabd@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-2055
Facsimile: (415) 973-5507

DUNS: [REDACTED]
Federal Tax ID Number: 94-0742640

Invoices:

Attn: Amol Patel (AxPx@pge.com)
Manager, Bilateral Settlements
Phone: (415) 973-6510
Facsimile: (415) 973-2151

Scheduling:

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

Payments:

Attn: Amol Patel (AxPx@pge.com)
Manager, Bilateral Settlements
Phone: (415) 973-6510
Facsimile: (415) 973-2151

Wire Transfer:

BNK: [REDACTED]
[REDACTED]

ABA:
ACCT:

ABA: [REDACTED]
ACCT: [REDACTED]

Credit and Collections:

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

Credit and Collections:

Attn: David Medrano (D6MD@pge.com)
Manager, Credit Risk Management
Phone: (415) 973-9099
Facsimile: (415) 973-4071

Contract Manager:

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

Contract Manager:

Attn: Ted Yura (THY1@pge.com)
Manager, Contract Management
Phone: (415) 973-8660
Facsimile: (415) 973-2207

With additional Notices of an Event of Default to:

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

With additional Notices of an Event of Default to:

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

APPENDIX XIV

SELLER DOCUMENTATION CONDITIONS PRECEDENT

Seller shall provide to Buyer, pursuant to the terms of Section 12.1 of the Agreement, all of the following documentation at least two (2) Business Days prior to the Execution Date:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, "Charter Documents") as in effect on the Execution Date.
2. A certificate signed by an authorized officer of Seller, dated the Execution Date, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms) satisfactory to Buyer.
5. Evidence of CEC Certification and Verification satisfactory to Buyer.
6. A copy of the most recent financial statements (which may be unaudited) from Seller together with a certificate from the Chief Financial or equivalent officer of Seller, dated the Execution Date, to the effect that, to the best of such officer's knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.

APPENDIX XV

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix XV.

- (a) Availability Workbook. Seller shall (i) collect the measurement data, listed in (b) below, in one (1) or more Microsoft Excel Workbooks (the "Availability Workbook") provided in a form and naming convention approved by Buyer and (ii) electronically send the Availability Workbook to an address provided by Buyer. The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all generators as measured by such generator's internal turbine controller.
- (b) Log of Availability. The Availability Workbook shall be created on a single, dedicated Excel worksheet and shall be in the form of Attachment 1 to this Appendix XV. The data presented in the Availability Workbook shall not reflect any Electrical Losses that occur between the CAISO revenue meter and the Delivery Point.

APPENDIX XVI

**GUARANTEED ENERGY PRODUCTION (GEP) AND
GEP LIQUIDATED DAMAGES CALCULATION**

In accordance with the provisions in Section 3.1(e)(ii), the following examples of the calculations for Guaranteed Energy Production (GEP) and GEP Liquidated Damages are provided for illustrative purposes only.

GEP is calculated as follows:

$$\text{GEP} = [(A \times B) \times ((C - D)/C)]$$

Where:

A = 130% in the first Performance Measurement Period and 150% in all subsequent Performance Measurement Periods

B = Contract Quantity of 560,000 MWh (Wet Cooling Technology) or 524,000 MWh (Dry Cooling Technology)

C = Number of Hours in the 2-year Performance Measurement Period (17,520)

D = Number of Seller Excuse Hours in the 2-year Performance Measurement Period

GEP Liquidated Damages are calculated as follows:

$$[(E - F) \times (C)]$$

Where:

E = the Guaranteed Energy Production for the Performance Measurement Period, in MWh

F = Sum of Delivered Energy over the applicable Performance Measurement Period, in MWh

C = \$50 per MWh

SAMPLE CALCULATION for illustrative purposes only:

1st Performance Measurement Period

$$\text{GEP} = (130\% \times 560,000 \text{ MWh}) \times ((17,520 - 100)/17,520) = 723,845 \text{ MWh}$$

Where:

The number of Seller Excuse Hours in the Performance Measurement Period = 100

GEP Liquidated Damages = $(723,845 \text{ MWh} - 700,000 \text{ MWh}) \times \$50 \text{ per MWh} = \$1,192,250$

Where:

Delivered Energy in the Performance Measurement Period is 700,000 MWh

Assumptions:

- Calculation is for first Performance Measurement Period
- Project uses Wet Cooling Technology
- Project did not deliver 90% of GEP in Contract Year 3

APPENDIX XVII

FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2___], between PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”), and [_____] , as collateral agent¹ (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”). PG&E, Seller, and the Financing Provider shall each individually be referred to a “Party” and collectively as the “Parties”.

Recitals

- A. Pursuant to that certain Power Purchase Agreement dated as of [_____, 2___] (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between PG&E and Seller, PG&E has agreed to purchase Product from Seller.
- B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the Assigned Agreement, in connection with such financing.
- C. In consideration for the execution and delivery of the Assigned Agreement, PG&E has agreed to enter into this Consent and Agreement for the benefit of Seller.

Agreement

1. **Definitions.** Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. **Consent.** Subject to the terms and conditions of this Consent and Agreement: (a) PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Financing Documents of all right, title and interest of Seller in, to and under the Assigned Agreement; (b) Financing Provider shall be entitled to

¹ This form assumes that a collateral agent will hold the security on behalf of a syndicate of lenders and therefore, the consent would be signed by the collateral agent in such capacity for the benefit of the secured parties. The parties acknowledge that Seller may elect to use a different type of financing. In the event that Seller chooses an alternate type of financing (e.g., a lease), this form of Consent and Agreement will be revised to reflect the alternate form of financing in a manner reasonably satisfactory to PG&E and Seller consistent with the rights and obligations under the PPA.

exercise all rights to cure any defaults of Borrower under the Assigned Agreement and PG&E agrees to accept such cure by Financing Provider subject to the limitations and other provisions in the Assigned Agreement (in the event such limitations and provisions of the Assigned Agreement conflict with this Consent and Agreement, the terms of this Consent and Agreement shall be deemed to control); and (c) PG&E agrees to make all payments to be made by it under the Assigned Agreement directly to Financing Provider for the benefit of the Secured Parties in accordance with the instructions set forth in Section 8 below.

3. Assignment.

(a) Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, neither Financing Provider nor its designee (a "Designee") shall assume, sell or otherwise transfer the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or transfer, Financing Provider or such Designee, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (i) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (ii) executes and delivers to PG&E a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (iii) provides such enforceability assurance as PG&E may reasonably request, and (iv) is a Permitted Transferee (as defined below). PG&E agrees that it shall thereupon acknowledge such party as "Seller" under the Assigned Agreement for all purposes of the Assigned Agreement.

"Permitted Transferee" shall mean any person or entity which: (i) satisfies the criteria pertaining to, or causes to be posted Performance Assurances on its behalf from, a Qualified Guarantor; and (ii) in the reasonable opinion of PG&E, has the technical expertise and capability (or has retained such technical expertise and capability) to perform Seller's obligations under the Assigned Agreement.

(b) Financing Provider further acknowledges that the assignment of the Assigned Agreement is for security purposes only and that Financing Provider has no rights under the Assigned Agreement to enforce the provisions of the Assigned Agreement unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a "Financing Default"), in which case, Financing Provider or its Designee, as the case may be, shall, subject to the provisions of Section 3(a), be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

4. Cure Rights.

(a) Notice to Financing Provider by PG&E. PG&E shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each an

“Event of Default”) to Seller (a “Default Notice”), provide a copy of such Default Notice to Financing Provider pursuant to Section 9 herein. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a), PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Consent and Agreement “Additional Cure Period” means (i) with respect to a monetary default, twenty (20) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, a reasonable period of time, but not more than thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, to cure such Event of Default; provided, however, if such non-monetary Event of Default cannot be cured within such thirty (30) day period and the Financing Provider or its Designee shall have commenced to cure the Event of Default within such thirty-day period and thereafter diligently pursues such cure to completion (as documented or demonstrated to PG&E’s reasonable satisfaction) and continues to perform all monetary obligations under the Assigned Agreement, then the Additional Cure Period for non-monetary Events of Default may be extended for a period of up to one hundred twenty (120) days if such extended period of time is needed to cure the particular non-monetary Event of Default.

(c) Failure by PG&E to Deliver Default Notice. If neither PG&E nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider’s applicable cure period shall begin on the date on which notice of an Event of Default is delivered to Financing Provider by either PG&E or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in PG&E’s ability to terminate the Assigned Agreement (in each case only if both PG&E and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of PG&E to deliver any Default Notice shall not waive PG&E’s right to take any action under the Assigned Agreement and will not subject PG&E to any damages or liability for failure to provide such notice.

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for the Financing Provider or its Designee to cure an Event of Default under the Assigned Agreement, and Financing Provider declares a default under the Financing Documents, Financing Provider will be allowed a reasonable period of time in addition to the Additional Cure Period if such extra time is needed to complete such proceedings to obtain possession of the Project; provided, that Financing Provider shall provide a written notice to PG&E (a “Foreclosure Notice”) that it intends to commence or has commenced such proceedings with respect to Seller (including a good faith estimate of the time necessary to complete such proceedings and cure the Event of Default) within sixty (60) days of receiving a Default Notice from PG&E or Seller, whichever is received first and, provided, further, that

Financing Provider or its designee(s) or assignee(s) is diligently pursuing completion of such proceedings. Such extra time period to complete such proceedings shall not exceed one hundred twenty (120) days from the date the Foreclosure Notice is received by PG&E. If Financing Provider or its Designee(s) are prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, Financing Provider shall provide a written notice to PG&E (an "Extension Notice") within ten (10) days of such prohibition documenting the prohibition (including a good faith estimate of the time necessary to complete such proceeding and cure the Event of Default) and the foregoing additional time period described above in this Section 4(d) may be extended by Seller for the period of such prohibition not to exceed one hundred eighty (180) days from the date the Extension Notice is received by PG&E if Financing Provider or its designee(s) or assignee(s) is diligently pursuing the removal or cessation of any such prohibition through commercially reasonable steps in the bankruptcy or insolvency proceedings. In the event Financing Provider or its Designee succeeds to Seller's interest in the Project as a result of a foreclosure proceeding, the Financing Provider or its Designee succeeding to Seller's interest in the Project shall be subject to the requirements of Section 3 of this Consent and Agreement.

(e) Rejection in Bankruptcy. In the event that the Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the Assigned Agreement is terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding for any reason other than an Event of Default which could have been but was not cured by the Financing Provider as provided in Section 4, and if, within forty-five (45) days after such rejection or termination, Financing Provider or its Designee shall so request, PG&E will execute and deliver to such person a new power purchase agreement, subject to CPUC Approval (if necessary) and on the same terms and conditions as the original Assigned Agreement for the remaining term of the Assigned Agreement before giving effect to such termination (the "New Contract"). Thereafter, PG&E shall file the New Contract for CPUC Approval if it is necessary to do so within a time period commensurate with other similar power purchase agreements for renewable energy being entered into by PG&E at the time and shall diligently pursue any requisite CPUC Approval thereafter.

5. Setoffs and Deductions. All payments required to be made by either party under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than as expressly allowed by the terms of the Assigned Agreement.

6. Representations and Warrantees.

(a) Seller and Financing Provider each recognizes and acknowledges that PG&E makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the

Assigned Agreement, and Financing Provider releases PG&E from any liability resulting from the assignment for security purposes of the Assigned Agreement.

(b) PG&E represents and warrants as follows:

(i) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(ii) No Previous Assignments. [Except as described in Schedule II hereto,] PG&E affirms that it has no notice of any assignment relating to the right, title and interest of Seller in, to and under the Assigned Agreement other than the pledge and assignment to the Financing Provider referred to in Section 2 above.

(iii) No Termination Event; No Disputes. [Except as described in Schedule III hereto,] and to the knowledge of PG&E without any investigation, after giving effect to the pledge and assignment referred to in Section 2, and after giving effect to the consent to such pledge and assignment by PG&E, (i) there exists no Event of Default that would, either immediately or with the passage of time or giving of notice, or both, entitle PG&E or, to PG&E's knowledge, Seller to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement, (ii) there are no unresolved disputes between the Parties under the Assigned Agreement, and (iii) all amounts due under the Assigned Agreement as of the date hereof have been paid in full.

7. Amendment to Assigned Agreement. PG&E shall not, without prior written notice to the Financing Provider, amend or modify the Assigned Agreement.

8. Payments under Assigned Agreement. Unless directed otherwise by the Financing Party in a written notice delivered pursuant to Section 9, PG&E shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [____], as depositary agent, to ABA No. [____], Account No. [____], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, PG&E and Financing Provider agrees that each such payment by PG&E to such depositary agent of amounts due to Seller from PG&E under the Assigned Agreement shall satisfy PG&E's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

(a) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile or other electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties, at the address set forth below:

If to Financing Provider:

Name:

Address:

Attn:

Telephone:

Facsimile:

Email:

If to PG&E:

Name:

Address:

Attn:

Telephone:

Facsimile:

Email:

If to Seller:

Name:

Address:

Attn: _____

Telephone: _____

Facsimile: _____

Email: _____

(b) Successors and Assigns. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of PG&E, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under the Financing Documents.

(c) No Modification. This Consent and Agreement is neither a modification of nor an amendment to the Assigned Agreement.

(d) Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of New York without regard to its conflicts of laws principles (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

(e) No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

(f) Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement other than the Secured Parties.

(h) Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

(i) Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all parties hereto.

IN WITNESS WHEREOF, each of PG&E and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

**PACIFIC GAS AND ELECTRIC
COMPANY (PG&E)**

By:

Name:

Title:

_____] (Financing Provider), as collateral
agent

By:

Name:

Title:

ACKNOWLEDGEMENT

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from PG&E to Financing Provider the next business day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned.

_____] [name of
Seller]

By:

Name:

Title:
