EXECUTION COPY

POWER PURCHASE AND SALE AGREEMENT

between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

HFI BIOPOWER PROJECT LLC
(as "Seller")

Unit Firm Product Baseload

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POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Power Purchase and Sale Agreement (the "Agreement") is made as of the following date: _____ ("Execution Date"). The Agreement includes this Cover Sheet, the General Terms and Conditions attached hereto, and all exhibits, appendices, schedules and any written supplements hereto between the Parties, the Party A Tariff, if any, and the Party B Tariff, if any. The Parties to this Agreement are the following:

Name: HFI BioPower Project LLC ("Party A" or "Seller")

All Notices:

Delivery Address:

1183 NW Wall Street, Suite G
Bend, OR 97701
Attn: Steve Munson

Mail Address:

Same

Phone: (541) 317-1984
Facsimile: (541) 317-2879

Duns: Seller will provide the Duns number to Buyer prior to the Commercial Operation Date (as defined below).
Federal Tax ID [redacted]

Invoices:

Attn: Frank Cariglia
Phone: (541) 317-1984
Facsimile: (541) 317-2879

Scheduling: Seller will provide to Buyer SC 30 days prior to synchronizing the generator to the BPA grid

Attn: _____

Name: Pacific Gas and Electric Company ("Party B," "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) 973-0070
Facsimile: (415) 973-9176

Duns: 556650034
Federal Tax ID Number: [redacted]

Invoices:

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

Scheduling:

Attn: Kevin F. Coffee (kfc1@pge.com)

Phone: (541) 317-1984
Facsimile: (541) 317-2879

Payments:

Attn: Frank Cariglia
Phone: (541) 317-1984
Facsimile: (541) 317-2879

Wire Transfer:

[redacted]

BNK: [redacted]
ABA: [redacted]
Acct: [redacted]

Credit and Collections:

Attn: Frank Cariglia
Phone: (541) 317-1984
Facsimile: (541) 317-2879

With additional Notices of an Event of Default to Contract Manager:

Attn: Steve Munson
Phone: (541) 317-2879
Facsimile: (541) 317-2879

Phone: (415) 973-7631
Facsimile: (415) 973-0400

Payments:

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

Wire Transfer:

BNK: [redacted]
ABA: [redacted]
Acct: [redacted]

Credit and Collections:

Attn: Azar Shakeri (a0s7@pge.com)
Manager, Credit Risk Management
Phone: (415) 972-5244
Facsimile: (415) 973-7301

With additional Notices of an Event of Default to Contract Manager:

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

and a copy to

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

The Parties hereby agree to the following provisions:

Tariff:	Dated:	Docket Number:

Party A Tariff [to be provided by Seller to Buyer prior to the Initial Energy Delivery Date (as defined below)]

Article Three

New Generation Facility

☒ Add Section 3.9.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

☐ Cross Default for Party A:

☐ Party A: Applicable

☐ Other Entity:

☐ Cross Default for Party B:

☐ Party B: Applicable

☐ Other Entity:

If not checked, inapplicable.

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

☐ Option A
☐ Option B Specify:
☒ Option C

(b) Credit Assurances:

☒ Not Applicable
☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable
☐ Applicable

(d) Downgrade Event:

☒ Not Applicable
☐ Applicable.

(e) Guarantor for Party B: Not Applicable

8.2 Party B Credit Protection:

(a) Financial Information:
☐ Option A
☒ Option B Specify:
HFI BioPower Project LLC
☐ Option C Specify:

(b) Credit Assurances:

☒ Not Applicable

☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable

☐ Applicable

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

(e) Guarantor for Party A: Not applicable as of Execution Date

Guarantee Amount: Not applicable as of Execution Date

8.4 Project Development Security; Delivery Term Security

☒ Applicable
☐ Not Applicable

If Applicable:

The following is the "Project Development Security"

8.4 (a)(i) Project Development Security Amount: $800,000.00 (product of (1) 40,000 kW, and (2) $20.00 per kW), subject to a prorata reduction if Seller reduces the Declared Contract Capacity as permitted in Section 3.1(f)(ii).

8.4 (a)(ii) Project Development Security Amount: $800,000.00 (product of (1) 40,000 kW, and (2) $20.00 per kW), subject to a prorata reduction if Seller reduces the Declared Contract Capacity as permitted in Section 3.1(f)(ii).

Type of Project Development Security:

<u>Cash or Letter of Credit</u>

The following is the "Delivery Term Security"

8.4(a)(iii) Delivery Term Security Amount: the dollar amount determined by multiplying (1) the Declared Contract Capacity, by (2) 4,380 hours, by (3) $75.50 per MWh, by (4) 80% Capacity Factor. If the Declared Contract Capacity is 40MW,

the Delivery Term Security Amount shall be $10,582,080.

Type of Delivery Term Security:

Cash, Letter of Credit or, subject to Section 8.5(c) of Agreement, Guaranty

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Article 10

10.1 No Fault Termination

(a) Seller Termination Right

☒ Not Applicable

☐ Applicable

(b) PGC Funding Termination

☒ Not Applicable

☐ Applicable

10.11 Confidentiality

☒ Confidentiality Applicable
If not checked, inapplicable.

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

☒Option C: Confidentiality Notification: If Option C is checked on the Cover Sheet, Seller has waived its right to notification in accordance with Section 10.10 (v).

The following Exhibits are included as follows:

Exhibit A, Form of Letter of Credit.

Exhibit B, Initial Energy Delivery Date Confirmation Letter

Exhibit C, Milestones

Exhibit D, Project and Site Description

Exhibit E, Form of Certification

The following Appendices are included as follows:

Appendix I, Commercial Operation Certification Procedure, attached hereto and made a part hereof.

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

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

Appendix IV, Resource Adequacy

Agreement Execution

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

HFI BIOPOWER PROJECT, LLC	PACIFIC GAS AND ELECTRIC COMPANY
By: Stephen Munson	By:
Name: Steve Munson	Name: Roy M Kuga
Title: CEO	Title: VP Energy Supply
Date: 4/21/06	Date: 5/3/06

ADDENDUM TO
POWER PURCHASE AND SALE AGREEMENT

ARTICLE ONE: GENERAL DEFINITIONS

Capitalized terms used but not defined below shall have the meaning set forth in the ISO Tariff (as defined below).

1.1 "Additional Project Development Security" has the meaning set forth in Section 3.9(c)(iv).

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

1.3 "Agreement" has the meaning set forth in the Cover Sheet.

1.4 "Bankrupt" means with respect to any entity, such entity (i) 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, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

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

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

1.7 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. 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.

1.8 "Buyer" means Pacific Gas and Electric Company.

1.9 "Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, 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 but not limited to 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 ISO, the FERC, or any other entity invested with the authority under federal or state law, to require PG&E to procure, or to procure on PG&E's expense, Resource Adequacy or other such products. Examples of Capacity Attribute include "Net Qualifying Capacity" and "Local Capacity" as defined in the ISO's Market Redesign & Technology Upgrade Tariff which focuses on Resource Adequacy credit.

1.10 "Capacity Factor" shall have the meaning set forth in Section 4.3.

1.11 . "Capacity Test" shall have the meaning set forth in Appendix I attached hereto.

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

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

1.14 "Commercial Operation" means the Project is operating and able to produce and deliver energy to Buyer pursuant to the terms of this Agreement.

1.15 "Commercial Operation Date" means the date on which Seller notifies Buyer that Commercial Operation has occurred and Buyer accepts in writing the results of Seller's initial Capacity Test report with respect to a Project providing a Unit Firm Product in compliance with the Commercial Operation Certification Procedure, as provided in Appendix I hereto, which approval shall not be unreasonably withheld by Buyer.

1.16 "Construction Cure Period" shall have the meaning set forth in Section 3.9(c)(iv).

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

1.18 "Contract Capacity" shall have the meaning set forth in Section 3.1(f).

1.19 "Contract Capacity Increase Effective Date" has the meaning set forth in Section 3.1(f).

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

1.21 "Contract Quantity" has the meaning set forth in Section 3.1(e).

1.22 "Contract Year" means the twelve (12) consecutive months starting with the first day of the month following the Initial Energy Delivery Date and each consecutive twelve (12) month period thereafter during the Delivery Term.

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

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

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

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

(1) Approves this Agreement in its entirety, including payments to be made by Buyer, subject to CPUC review of Buyer's administration of the Agreement.

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

(3) finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by Buyer from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC Decision 03-06-071, or other applicable law.

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

1.27 "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, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.28 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.29 "Daily Delay Damages" means an amount equal to the result of (a) Contract Quantity stated in megawatt hours (MWh) multiplied by (b) the Contract Price specified in Section 4.1 for the first Contract Year divided by (c) one-hundred eighty (180).

1.30 "DCC Reduction Notice" shall have the meaning set forth in Section 3.1(f)(ii).

1.31 "Declared Contract Capacity" or "DCC" shall have the meaning provided in Section 3.1(f).

1.32 "Defaulting Party" has the meaning set forth in Section 5.1.

1.33 "Delivered Energy" (or "Energy Delivered" as used in Section 3.1(j)(i)) means all energy produced from the Project as measured in megawatt hours (MWh) at the Revenue Meter of the Project, based on a power factor of precisely one (1) and net of all applicable losses, including, but not limited to the following: (a) any transmission or transformation losses between the Revenue Meter and the Delivery Point, (b) the applicable GMM or any successor method to account for losses or congestion established by the Transmission Provider (or successor organization), and (c) the applicable Distribution Loss Factor, if applicable.

1.34 "Delivery Point" has the Meaning set forth in Section 3.1(d).

1.35 "Delivery Term" has the meaning set forth in Section 3.1(c).

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

1.37 "Dispatch Down Period" means (a) curtailments ordered from the ISO as a result of a System Emergency, as defined in the ISO Tariff, or (b) scheduled or unscheduled maintenance on Buyer's transmission facilities that prevents Buyer from receiving Delivered Energy at the Delivery Point.

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

1.39 "Distribution Owner" means PG&E or other applicable entity owning distribution facilities or having firm contractual rights to use distribution facilities.

1.40 "Downgrade Event" has the meaning set forth on the Cover Sheet.

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

1.42 "Electrical Losses" means all applicable losses, including, but not limited to, the following: (a) any transmission or transformation losses between the Revenue Meter and the Delivery Point; (b) the applicable GMM or any successor method to account for losses or congestion established by the Transmission Provider (or successor organization) and assigned to the Delivery Point for the Project; and (c) the applicable Distribution Loss Factor.

1.43 "Eligible Renewable Resource Facilities" or "ERR" has the meaning set forth in Public Utilities Code Section 399.12 or Section 399.16 as of the date of this Agreement.

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

1.45 "Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

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

1.47 "EPC Contractor" shall mean a biomass engineering, procurement and construction contractor selected by Seller with substantial experience in the engineering, procurement and construction of biomass power plants of the same type of facility.

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

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

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

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

1.52 "Force Majeure" means any occurrence beyond the reasonable control of a Party, which causes that Party to be unable to perform, in whole or in part, an obligation under this Agreement, and which was not anticipated as of the date the particular transaction was agreed to, and which could not have been avoided by the exercise of due diligence. Force Majeure includes, but is not limited to: (i) acts of God and natural catastrophes; (ii) actual or threatened civil disturbance, terrorism, war, or riot; (iii) strike or other labor dispute in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable; (iv) emergencies declared by or forced curtailment required by the ISO or any other authorized successor or regional transmission organization or any state or federal regulator or legislature making it impossible to transmit Energy under this Agreement.

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

1.54 "Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner, 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 referent prices for renewable power set by the CPUC, market prices for comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of the applicable Transaction and include the value of Environmental Attributes.

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

1.56 "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.

1.57 "Guaranteed Commercial Operation Date" shall have the meaning set forth in Section 3.9(c)(iii)(B).

1.58 "Guaranteed Construction Start Date" shall have the meaning set forth in 3.9(c)(iii)(A).

1.59 "Guaranteed Project Milestones" shall have the meaning set forth in 3.9(c)(iii).

1.60 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party.

1.61 "Imbalance Energy" shall have the meaning set forth in Section 4.7.

1.62 "Imbalance Price" shall have the meaning set forth in Section 4.7(a).

1.63 "Initial Energy Delivery Date" shall have the meaning set forth in Section 3.1(c).

1.64 "Interconnection Facilities" means all apparatus installed and means required pursuant to which Seller shall be able to interconnect and deliver power from the Project to the Delivery Point, whether directly or, if the Project is located outside of California, through one or more Transmission Providers, by means of either the PG&E electric system, the ISO Grid, or with respect to a Project located outside of the ISO Grid, the system to which one or more Transmission Providers connects to the Delivery Point, including, but not limited to, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required pursuant to Prudent Utility Practices and in accordance with any agreements entered into by Seller necessary for interconnection to protect (a) the PG&E electric system (or other systems to which the PG&E electric system is connected, including the ISO Grid, and with respect to a Project located outside of California, the electric system of one or more Transmission Providers) and PG&E's or such Transmission Providers' customers from faults occurring at the Project, and (b) the Project from faults occurring on the PG&E electric system or on the systems of Transmission Providers to which the PG&E electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements by PG&E or other Transmission Providers to the PG&E electric system or other systems required as a result of the interconnection of the Project to the PG&E electric system, the ISO Grid, or electric systems of others to which the PG&E electric system is directly or indirectly connected.

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

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

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

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

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

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

1.71 "ISO Tariff" means the ISO FERC Electric Tariff, First Replacement Volume No. 1, as amended or replaced from time to time.

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

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

1.74 "Losses" means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner, 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 referent prices for renewable power set by the CPUC, market prices for comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the applicable Transaction and include value of Environmental Attributes. If the Non-Defaulting Party is the Seller, then "Losses" shall exclude any loss of PTCs.

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

1.76 "Milestones" shall have the meaning set forth in Section 3.9(c)(i).

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

1.78 "Monthly TOD Payment" shall have the meaning set forth in Section 4.4.

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

1.80 "MRTU" means the Market Redesign and Technology Upgrade filed in FERC Docket ER 02-1656.

1.81 "Must Offer Obligation" means the requirements that apply to all Must Offer Generators in Section 5.11 of the California Independent System Operator Corporation FERC Electric Tariff First Replacement Volume No. 1 Second Revised Sheet No. 184A Superseding First Revised Sheet No. 184A effective June 21, 2001 or as defined in subsequent amendments or tariffs.

1.82 "Negative Imbalance Energy" shall have the meaning set forth in Section 4.7.

1.83 "Net Rated Output Capacity" means the Project's power production capability as measured in any Capacity Test after deducting auxiliary loads, station electrical uses, and all applicable Electrical Losses.

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

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

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

1.87 "Outage Notification Form" means the notice form attached hereto as Appendix III, which shall be submitted by Seller to Buyer in accordance with the relevant provisions of Section 3.8. PG&E reserves the right to revise or change the form upon written notice to Seller.

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

1.89 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.90 "Party A Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.91 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.92 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.93 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.94 "Party B Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.95 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.96 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

1.97 "Performance Assurance" means collateral in the form of cash, Letter(s) of Credit, or other security acceptable to the Requesting Party, including Project Development Security and Delivery Term Security.

1.98 "Performance Requirements" shall have the meaning set forth in Section 4.5.

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

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

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

1.102 "Positive Imbalance Energy" shall the meaning set forth in Section 4.7.

1.103 "Product" means each of energy, capacity and all products, services or attributes similar to the foregoing which can be produced by or associated with the Project, including without limitation Energy, Capacity Attributes and Environmental Attributes.

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

1.105 "Project" shall mean all of the Unit(s), the Site at which the Project is located and the other assets, tangible and intangible, that compose the generation facility at which the Project is located, as more particularly described on Exhibit D, which Exhibit D includes a map of the Site.

1.106 "Project Cure Period" shall have the meaning set forth in Section 3.9(c)(iv).

1.107 "Project Development Security" is the collateral required of Seller, as specified in the Cover Sheet, and referred to in Section 8.4(a), together with any Additional Project Development Security delivered by Seller to Buyer pursuant to Section 3.9(c)(iv).

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

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

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

1.111 "Resource Adequacy" (or "Resource Adequacy Capacity Product" or "RA Capacity") means the qualified and deliverable capacity from Unit(s) that can be counted toward Buyer's Resource Adequacy Requirements as described in D.04-10-035, and as may be amended from time to time by the CPUC in the Resource Adequacy phases of Rulemaking 04-04-003 or by any successor proceeding, and all other resource adequacy requirements established by any other regional entity responsible for Resource Adequacy Requirements.

1.112 "Resource Adequacy Requirements" shall have the meaning set forth in Section 3.1(i)(A).

1.113 "Revenue Meter" shall refer to the Settlement Quality Meter Data upon which the Buyer can accurately read the actual deliveries from the Unit(s) as agreed to by Buyer and Seller. The Revenue Meter shall also be capable of providing real time data to Buyer.

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

1.115 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives or Scheduling Coordinator, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.

1.116 "Scheduled Energy" has the meaning set forth in Section 3.4(c).

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

1.118 "Seller" means HFI BioPower Project LLC.

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

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

1.121 "Site" shall mean the location of the Project as described in Exhibit D.

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

1.123 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.124 "Termination Payment" has the meaning set forth in Section 5.3.

1.125 "TOD Factors" shall have the meaning set forth in Section 4.4.

1.126 "TOD Period" has the meaning set forth in Article 4.

1.127 "Transaction" means a particular transaction agreed to by the Parties relating to the sale by Seller and the purchase by Buyer of a Product pursuant to this Agreement.

1.128 1.113 "Transmission Owner" means PG&E or other applicable entity owning transmission facilities or having firm contractual rights to use transmission facilities.

1.129 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction, including, but not limited to, the ISO, Bonneville Power Administration and PacifiCorp, in any case as applicable.

1.130 "Unit" means the turbine-generator and appurtenant equipment used to produce the Products, which are identified in Exhibit D for the Transaction entered into under this Agreement.

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

1.132 "Waiver Denial Period" has the meaning set forth in Section 5.11 of the FERC Tariff.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

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

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

(b) Transaction. Except as provided in Section 3.1(j), during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product of the Project at the Delivery Point, and Buyer shall pay Seller the Contract Price. In no event shall Seller have the right to procure the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Imbalance Energy pursuant to Section 4.7. Except as otherwise provided under a written agreement, Buyer shall have no obligation to receive or purchase Product from Seller before or after the Delivery Term, nor from any source other than the Project. During the Delivery Term, Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to and at the Delivery Point. During the Delivery Term, Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt from the Delivery Point. The Parties intend that Seller will arrange and pay independently for any and all

necessary costs under any interconnection agreement with the Transmission Owner. In accordance with Section 3.5, the Parties intend that Seller will arrange and pay independently for any and all necessary electrical interconnection, Scheduling, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Seller shall not make any alteration or modification to the Project that results in a change to the Net Rated Output Capacity of the Project without Buyer's prior written consent.

(c) Delivery Term. The period of Product delivery pursuant to this Agreement shall be for ten (10) Contract Years. As used herein, "Delivery Term" shall mean the period of Contract Years specified in the immediately preceding sentence, beginning on the first date that Seller delivers the Product to Buyer from the Project pursuant to the terms of this Agreement ("Initial Energy Delivery Date") and continuing through the end of the tenth (10th) Contract Year. The Initial Energy Delivery Date shall not occur until all of the following have occurred: (i) the Commercial Operation Date; (ii) Buyer shall have received the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; and (iii) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing. As evidence of the Initial Energy Delivery Date, the Parties shall execute the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Exhibit B.

(d) Delivery Point. The Delivery Point shall be NP-15 If the current NP-15 zonal delivery point is materially modified or replaced with an alternate trading hub or the zonal market structure established by the ISO, which exists as of the date of this Agreement, is reconfigured to a nodal or alternative structure by the ISO ("Restructuring Event"), then the delivery point shall be the high side of PG&E's Round Mountain Substation busbar; provided however, that if the Seller is exempt from payment of congestion charges or allocated congestion revenue rights at no cost to Seller, the delivery point shall be the E-Z Gen Hub, as defined by the ISO, or Buyer's load aggregation point, as defined and identified by the ISO, whichever exists at the time of the Restructuring Event and is recognized by the ISO for delivery to Buyer through an SC-to-SC trade, in accordance with Section 3.4(c) below.

(e) Contract Quantity. The quantity of Delivered Energy to be delivered by Seller during each Contract Year shall be at least 280,320 megawatt hours (MWh), subject to a prorata reduction if the Declared Contract Capacity is reduced pursuant to Section 3.1(f).

(f) Contract Capacity/Net Rated Output Capacity.

(i) Contract Capacity; Declared Contract Capacity. The contract capacity of the Project at any time shall be the lower of the following (the "Contract Capacity"): (A) 40 MW net of all Electrical Losses (the "Declared Contract Capacity"), subject to adjustment as set forth in Section 3.1(f)(ii), or (B) the Net Rated Output Capacity of the Project. Throughout the Delivery Term, Seller shall sell and schedule all Energy produced by the Project or on the Site solely to Buyer and in no event shall Buyer be obligated to receive or

pay for, in any hour, any Delivered Energy or Scheduled Energy, that exceeds the Contract Capacity by more than (A) one (1) MW in each hour except for each hour that is a Super-Peak hour during the months of June through September, and (B) two (2) MW in each hour that is a Super-Peak hour during the months of June through September. Over-deliveries as permitted in (A) and (B) immediately above shall be counted in calculating Capacity Factors for the TOD Periods in Section 4.5.

(ii) Reduction in Declared Contract Capacity Prior to Construction Start Date. At any time prior to the Construction Start Date, Seller shall have the right to reduce the Declared Contract Capacity by up to 20MW. In no event shall the Declared Contract Capacity be less than 20MW. In order for such a reduction to be effective, Seller shall deliver to Buyer by the day immediately preceding the Construction Start Date, a written notice ("DCC Reduction Notice") indicating the Declared Contract Capacity for the Project, which Declared Contract Capacity shall be neither less than 20 nor greater than 40. Failure of Seller to deliver a DCC Reduction Notice to Buyer on or before the day immediately preceding the Construction Start Date shall constitute a waiver of Seller's right to reduce the Declared Contract Capacity. If Seller delivers a DCC Reduction Notice to Buyer within the time provided in this Section 3.1(f)(ii), Buyer shall return to Seller a prorata share of the Project Development Security.

(iii) Buyer Right of First Offer If Reduction in Declared Contract Capacity. If Seller reduces the Declared Contract Capacity as set forth in Section 3.1(f)(ii) and is thereafter able to produce and sell Energy in excess of the Declared Contract Capacity from the Unit(s) or the Site, then Seller agrees to offer to sell and schedule the Energy produced on the Site, and all capacity (including Capacity Attributes) and Environmental Attributes to Buyer pursuant to the terms set forth in this Agreement, including the Contract Price and Contract Quantity provided herein, and Buyer, in its sole discretion, shall have the right, but not the obligation to purchase such Energy and related capacity and Environmental Attributes ("Option"). Buyer shall have sixty (60) days from its receipt of written notice of Seller's offer, as described above, to exercise the Option by notifying Seller in writing of its acceptance of such offer. The Option shall terminate upon the occurrence of either of the following events: (a) Buyer provides written notice to Seller rejecting the exercise of the Option, or (b) the Option expires without being exercised. Upon such termination of the Option, Seller shall no longer be restricted by the terms of this Agreement from selling or scheduling any of the Energy produced from the Unit(s) or the Site.

(g) Project. All Products provided by Seller pursuant to this Agreement shall be supplied from the Project only.

(h) Interconnection. The interconnection point is LaPine Station (BPA).

(i) Resource Adequacy.

(i) Resource Adequacy Requirements. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer the Project's full Contract Capacity and all Capacity Attributes from the Project in order to help Buyer meet its Resource Adequacy or successor program requirements, as prescribed by the CPUC, the ISO or any other regional entity ("Resource Adequacy Requirements"). Seller recognizes that the Resource Adequacy Requirements have not been finalized by the CPUC and agrees that during the Delivery Term Seller shall, at a minimum, comply with the terms set forth in Appendix IV so that Buyer may be able to include this Transaction in meeting its Resource Adequacy Requirements. Seller and Buyer agree to the terms and make the representations and warranties set forth in Appendix IV.

(ii) Resource Adequacy Contract Obligation. In the event that Seller is compensated by the ISO as a result of a Resource Adequacy or Must Offer Obligation, Buyer shall be entitled to all revenue from the ISO.

(j) Performance Requirements/Performance Excuses.

(i) Net Rated Output Capacity. If the Net Rated Output Capacity (A) at the Commercial Operation Date is less than ninety percent (90%) of the Declared Contract Capacity, or (B) subject to Seller's right to re-test as set forth in Appendix I, at any time after the Commercial Operation Date is less than ninety percent (90%) of the Declared Contract Capacity, then in each such case Buyer shall have the right to declare an Event of Default. Buyer shall have the right to request a Capacity Test as set forth in Appendix I, to determine the Net Rated Output Capacity. The resulting Net Rated Output Capacity shall remain in effect until the next Capacity Test requested by Buyer. The Net Rated Output Capacity shall not exceed the Declared Contract Capacity. Except as set forth in Appendix I with respect to a re-test, after the Commercial Operation Date Seller shall not have the right to request Capacity Tests. Appendix I sets forth the protocols and agreements of Buyer and Seller with respect to performance of Capacity Tests.

(ii) Additional Event of Default. It shall be an additional Event of Default if (A) the Capacity Factor is less than eighty percent (80%) for twelve (12) consecutive months, or (B) subject to Seller's right to re-test as set forth in Appendix I, and as set forth in Section 3.1(j)(i), the Net Rated Output Capacity falls below ninety percent (90%) of the applicable Declared Contract Capacity. In no event shall Seller have the right to procure Energy from sources other than the Project for sale and delivery pursuant to this Agreement.

(iii) Seller Excuses: Capacity Factor. Seller shall be excused from achieving the Capacity Factor for the applicable time period during Seller Excuse Hours.

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

(v) Dispatch Down/Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(j), Seller shall reduce deliveries during any Dispatch Down Period.

(vi) 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 Transaction.

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

3.3 Reliability Must Run Contract Obligation. Seller with an existing Reliability Must Run ("RMR") contract will assign all of the proceeds of any RMR contract affecting the Project to Buyer, except as provided below. Buyer shall retain all revenues from said RMR contract, except for Monthly Surcharge Payments, the ISO Repair Share, and Motoring Charges for Ancillary Services Dispatch ("Retained Revenues"), as each is defined in the applicable RMR contract, all of which shall be remitted to Seller. If Seller thereafter enters into any new RMR contract affecting the Project, Seller shall assign the revenues from such RMR contract, except for Retained Revenues, to Buyer. If the ISO and/or Seller wish to negotiate an RMR contract that pertains to Unit(s) under this Agreement that are not covered by an RMR contract as of the Execution Date of this Agreement, Seller shall include PG&E in any such negotiations.

3.4 Transmission and Scheduling.

(a) Seller Obligations.

(i) Seller shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, to and at the Delivery Point and bear all risks and costs associated with any transmission outages or curtailment. Seller shall be responsible for all Transmission Provider costs and charges, including imbalance charges due to deviations from power schedules, regardless of the cause thereof, electric transmission losses and congestion to and at the Delivery Point.

(ii) Annual Forecast of Delivery Schedules. No later than forty-five (45) days before the beginning of each calendar year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day Scheduled Energy, by hour, for the following calendar year.

(iii) Monthly Forecast of Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average Scheduled Energy, by hour, for the following month ("Monthly Delivery Forecast").

(iv) Daily Delivery Schedules. During the Delivery Term, Seller shall provide the Day-Ahead delivery schedule to Buyer no later than fourteen (14) hours before the beginning of the Day-Ahead trading day (i.e., 38 hours in advance of the beginning of the trading day) in accordance with ISO scheduling protocols, Seller's SC shall provide Buyer with a binding hourly forecast of deliveries for each hour of the trading day; provided, however, that a schedule provided on a day before any non-Business Day shall include deliveries planned for each day to and including the next Business Day. Each delivery schedule shall clearly identify, for each hour, all amounts of Product to be delivered and sold to Buyer pursuant to this Agreement. Seller shall deliver Product in accordance with its Day-Ahead schedule, which shall accurately reflect the expected generation of the Project, and subject to the applicable Transmission Provider Tariff and may not change such schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or Transmission Provider. Seller shall promptly provide Buyer with a copy of any and all updates to such schedule indicating a change in Scheduled Energy from the then-current schedule which is provided to the ISO. These notices and schedules shall be sent to:

Day-Ahead Trading Desk
Phone: 415-973-6222
Fax: 415-973-0400
Email: daenergy@pge.com

(v) Hourly Delivery Schedules. In the event of a Forced Outage or a scheduling change imposed by Buyer or Transmission Provider, which results in a change to the Project's deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator to provide any and all changes to the Day-Ahead Schedule and to provide a revised schedule thereto as soon as possible, but in no event later than (1) hour before Buyer's Scheduling Coordinator is required to submit Hour-Ahead schedules to the ISO or other Transmission Provider. With respect to any Forced Outage, Seller shall (i) use commercially reasonable efforts to notify Buyer, orally, of such outage within 10 minutes of the occurrence of such outage, (ii) provide a written estimate of the expected duration of such outage within one hour after submittal of the initial notification pursuant to clause (i) of this Section, and (iii) submit an Outage Notification Form, as provided in Appendix III of the Agreement, to Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Unit during or after the end of such outage. These notices and schedule changes shall be sent to:

Hour-Ahead Trading Desk
Phone: 415-973-7900
Fax: 415-972-5340
Email: realtime@pge.com

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

(c) Scheduling and Scheduling Coordinator. Each of Seller and Buyer shall be its own Scheduling Coordinator ("SC"), as such term is defined in the Agreement, with respect to this Transaction or designate a qualified third party to fulfill such role. Throughout the Delivery Term, Seller shall designate a SC trade for up to the sum of (i) during all hours except Super-Peak hours during the months of June through September, the Contract Capacity plus one (1) MW, and (ii) during all Super-Peak hours during the months of June through September, the Contract Capacity plus two (2) MW, in each case solely to Buyer's SC ("Scheduled Energy"). Conduct of deliveries through SC-to-SC trades shall be in compliance with the Settlement and Billing Protocol of the ISO Tariff, including but not limited to Sections SBP2.14, Inter-Scheduling Coordinator Energy Trades, or its successor, as may be amended by FERC from time to time. If the ISO designates, under a revised market design, zones or nodes which replace the NP-15 zone and zonal delivery points with a trading hub for SC trades, then deliveries for inter-SC trades shall be at such a hub, or at such other location or deemed location which the then-revised market design and ISO Tariff provide for such SC-to-SC trades for delivery to the Delivery Point specified between Buyer and Seller by further agreement or by this Agreement. During the Delivery Term, Buyer or Buyer's SC shall conduct all scheduling in full compliance with the applicable ISO Tariff, protocols and scheduling practices for day-ahead or hour-ahead energy.

3.5 Standard of Care. All generation, scheduling and transmission services shall be performed in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs of the ISO or other Transmission Provider and Prudent Electrical Practices. Seller, at its own expense, shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in Participating Transmission Owner's ("PTO") or other Transmissions Provider's applicable tariffs, the ISO Tariff implementing ISO standards and requirements, including but not limited to, demonstrating to the ISO or other Transmission Provider sufficient capacity for the Project to permit delivery of the Contract Capacity to Buyer, 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 ISO Grid or other Transmission Owner's grid and bear all costs relating to all metering equipment installed to accommodate the Project. Seller will exercise best efforts to comport and comply with conditions, and any modifications, amendments or additions to the applicable ISO or other Transmission

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

3.6 Metering. All output from the Project for the Transaction must be delivered through a single ISO or other Transmission Provider Revenue Meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under the Transaction must be measured by the Project's ISO or other Transmission Provider Revenue Meter to be eligible for payment under this Agreement. In addition, Seller hereby agrees to provide all Revenue Meter data to Buyer, in a form acceptable to the Buyer, and consents to Buyer obtaining from the ISO or other Transmission Provider the Revenue Meter data applicable to the Project and all inspection, testing and calibration data and reports. If the ISO or any other Transmission Provider makes any adjustment to any Revenue 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 Revenue Meter data. Seller shall submit any such revised monthly invoice no later than thirty (30) days from the date on which the ISO or other Transmission Provider provides to Seller such binding adjustment to the Revenue Meter data.

3.7 Outage Notification.

(a) Transmission Provider Approval of Outage(s). Seller is responsible for securing Transmission Provider approvals for Project outages, including securing changes in its outage schedules when the Transmission Provider disapproves Seller's schedules or cancels previously approved outages. Seller shall communicate any Transmission Provider-required changes to Buyer in a timely manner, in accordance with the provisions set forth in Section 3.7(f) below.

(b) Planned Outages. Seller shall notify PG&E by submitting a completed Outage Notification Form in accordance with the provisions set forth in Section 3.7(f) below no later than December 1 of each year during the Delivery Term of its proposed Planned Outage schedule for the Project for the following calendar year, subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Notwithstanding the submission of the Outage Notification Form described in the previous sentence, Seller shall also submit a completed Outage Notification Form in accordance with the provisions set forth in Section 3.7(f) below no later than seven (7) days prior to each Planned Outage. Seller shall not schedule Planned Outages during the months of June through February without the written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Electrical Practices. Seller shall not change its Planned Outage Schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute power 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 start of work, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with the schedule change and an alternative

schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request. However, unless it is transmitting to Seller a Transmission Provider order, Buyer may not change Seller's Planned Outage schedule without Seller's approval.

(c) Forced Outages. Seller shall, in accordance with the provisions set forth in Section 3.7(f) below, (i) use commercially reasonable efforts to notify Buyer of any Forced Outage within 10 minutes of the occurrence of such outage, (ii) provide a written estimate of its expected duration of the outage within one (1) hour thereafter, and (iii) submit a completed Outage Notification Form to Buyer in accordance with the instructions provided therein. Seller shall not substitute power from any other source for the output of the Project during a Forced Outage.

(d) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable under the circumstances by submitting a completed Outage Notification Form in accordance with the provisions set forth in Section 3.7(f) below, and provide an estimate of the duration of the outage therein. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a pro rata basis. Seller shall not substitute power from any other source for the output of the Project during a Prolonged Outage.

(e) Force Majeure. Within twenty-four (24) hours of commencement of an event of Force Majeure the non-performing Party shall provide the other Party oral notice of the event of Force Majeure and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party written notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely notice constitutes a waiver of a Force Majeure claim. An outage resulting from an event of Force Majeure that prevents the Project from delivering at least 60% of the Contract Quantity for a period of twelve (12) consecutive month (rolling) period shall, at the election of Buyer, constitute an Event of Default. Seller shall not substitute power from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for capacity or Energy not delivered or provided as a result of Force Majeure during the term of a Force Majeure. A Force Majeure shall not result in a breach or Event of Default hereunder except as provided in this Section 3.7(e) or Section 3.9(c)(iv).

Force Majeure shall not be based on: (i) Buyer's inability economically to use or resell the Product purchased hereunder; (ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement, (iii) Seller's inability to obtain regulatory approvals for the construction, operation, or maintenance of the Project; (iv) Seller's inability to obtain sufficient fuel to operate the Project, except if Seller's inability to obtain sufficient fuel is caused by an event of Force Majeure of the specific type described in any of subsections (i) through (iv) of the definition of Force Majeure; (v) Seller's failure to obtain funds from the California Energy Commission to supplement the payments made pursuant to this Agreement; (vi) a Forced Outage

except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (i) through (iv) of the definition of Force Majeure; (vii) a strike or labor dispute limited only to Seller or its Affiliates, including contractors or agents thereof, or (viii) any equipment failure not caused by an event of Force Majeure of the specific type described in any of subsections (i) through (iv) of the definition of Force Majeure.

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

(i) [INTENTIONALLY OMITTED]

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

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

(iii) Bilateral Settlements Department: Send the Outage Notification Form by one of these methods:

(A) Internet site: **http://www.pge.com/suppliers_purchasing/power_procurement /index.html**. Contact your PG&E Contract Manager to get permission and your password to access this web site. This is the preferred method of reporting outages.

(B) If the Internet site is unavailable, use either of the following methods:

Email: BilateralSchedules@pge.com. Data is to be submitted in an MS-Excel spreadsheet in the following format: assigned log # of unit, date and time (i.e., Hour Ending), and generation level in kW.

Facsimile: (415) 973-2151, Attention: Manager, Bilateral Settlements; and

Facsimile: (415) 973-5333, Attention: Outage Coordinator

The time and date must be on the facsimile as well as the name and phone number of the person providing the information. This method is discouraged.

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

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

(g) Testing the Project During an Outage. Seller shall notify the Bilateral Settlements Department as provided elsewhere in this Agreement before testing the Project during an outage. Seller shall indicate on the original Outage Notification Form if testing will be conducted during an outage.

(h) [INTENTIONALLY OMITTED]

(i) Communications with Transmission Provider. Seller shall be responsible for all outage coordination communications with Transmission Provider outage coordination personnel and Transmission Provider operations management, including submission to Transmission Provider of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide PG&E with copies of all outage plans and clearance requests submitted to Transmission Provider, and shall promptly inform PG&E of all clearance approvals and disapprovals and other communications with Transmission Provider 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 PG&E upon request. If either Party receives information through Transmission Provider or directly from the Transmission Owner or the Distribution Owner regarding maintenance that will directly affect the Project, it will provide this information promptly to the other Party.

3.8 Operations Logs and Access Rights.

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

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by law, or its tariff schedules, and rules on file with the CPUC. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

3.9 New Generation Facility.

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

(i) Design and construct the Project.

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

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

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

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review 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 written notice of any changes in the Project and provide to Buyer specifications and design drawings of any such changes.

(vi) Within fifteen (15) days after the close of each calendar month until the Commercial Operation Date, provide to Buyer a Monthly Construction Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The Monthly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

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

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

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

(c) Construction Milestones.

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

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

(iii) "Guaranteed Project Milestones" are as follows, each of which may be extended as set forth in subsection (iii) below:

(A) By June 30, 2007 (the "Guaranteed Construction Start Date"), each of the deliveries required by the definition of Construction Start Date shall have been received by Buyer.

(B) By June 30, 2008 (the "Guaranteed Commercial Operation Date"), Seller shall have demonstrated Commercial Operations.

(iv) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date or the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, (as may be delayed on a day by day basis by one or more events of Force Majeure up to one hundred eighty (180) days in the aggregate for either Guaranteed Project Milestone), Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of sixty (60) days ("Project Cure Period"); or (II) the Construction commences after the Guaranteed Construction Start Date, as applicable, up to a total of sixty (60) days ("Construction Cure Period"). Each Party agrees and acknowledges that (a)

the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone, would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the Guaranteed Construction Start Date, if Seller meets the Guaranteed Commercial Operation Date (including the applicable cure period). Such Daily Delay Damages shall be returned in accordance with Section 8.4(c) of this Agreement.

Notwithstanding the limitations set forth in the prior paragraph, Seller may, at its option, and by notice to Buyer no later than (5) five Business Days prior to the expiration of the Project Cure Period or the Construction Cure Period, elect to extend the Project Cure Period or the Construction Cure Period, as the case may be, for up to sixty (60) days; provided, that, prior to the expiration of the original Project Cure Period or the original Construction Cure Period, as the case may be, Seller posts additional security in the form of a letter of credit or cash sufficient to cover the maximum amount of Daily Delay Damages that Buyer would be entitled to draw during such extended period ("Additional Project Development Security"). There shall be only one extension permitted to each of the Project Cure Period and the Construction Cure Period, and no extension shall be effective unless Buyer receives the Additional Project Development Security before expiration of the original Project Cure Period or the original Construction Cure Period, as the case may be.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price. The Contract Price for each megawatt hour (MWh) of Scheduled Energy in each Contract Year shall be as follows:

Table 1
Contract Price

Contract Years	Contract Price ($/MWh)
1	$69.00
2	$69.70
3	$70.40
4	$71.10
5	$71.80
6	$72.50
7	$73.20
8	$74.00
9	$74.70
10	$75.50

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

	TOD PERIOD		
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

Period Definitions. The 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) = HE (Hours Ending) 13 – 20 (Pacific Prevailing Time (PPT)) Monday – Friday (*except* NERC Holidays).

2. **Shoulder** = HE 7 – 12, 21 and 22 PPT Monday – Friday (*except* NERC Holidays); and HE 7 – 22 PPT Saturday, Sunday and all NERC holidays.

3. **Night** (7x8) = HE 1 - 6, 23 and 24 PPT all days (including NERC Holidays).

As used herein, "NERC Holidays" include: 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 last 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.

4.3 Capacity Factors. The Capacity Factor shall be calculated by TOD Period and defined as the percentage amount resulting from Delivered Energy in the applicable TOD Period divided by the product resulting from multiplying the Contract Capacity times the number of hours in the applicable TOD Period minus Seller Excuse Hours in the applicable TOD Period ("Capacity Factor"):

Capacity Factor = Delivered Energy / (Contract Capacity x (Hours in TOD Period less Seller Excuse Hours)).

The annual Capacity Factor shall be the weighted average of the Capacity Factors for each TOD Period, such weighting to be an adjustment for the number of hours in the applicable TOD Period.

4.4 TOD Factors and Monthly TOD Payment.

(a) TOD Factors. In accordance with all other terms of this Article 4, the Contract Price for Scheduled Energy shall be adjusted by the following Time of Delivery Factors ("TOD Factors") for each of the specified TOD Periods in which Scheduled Energy is delivered:

	TOD PERIOD		
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	1.543	1.024	0.747
B. Oct. – Dec., Jan. & Feb.	1.310	1.065	0.787
C. Mar. – May	1.104	0.920	0.673

(b) Monthly TOD Payment. For each month, Buyer shall pay Seller for Scheduled 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 Scheduled Energy in each hour:

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

4.5 Performance Requirements. To avoid incurring any Performance Adjustments, as defined below herein, Seller shall cause the Unit(s) to deliver no less than the following Capacity Factors over all the hours comprising each of the TOD Periods ("Performance Requirements"):

	TOD PERIOD		
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	95%	90%	80%
B. Oct. – Dec., Jan. & Feb.	90%	85%	65%
C. Mar. – May	80%	75%	65%

Performance Requirements not withstanding, Seller shall cause the Unit(s) to be available for Resource Adequacy Requirements in accordance with Appendix IV.

4.6 Performance Adjustments. For each TOD Period, if the Capacity Factor were assumed to be precisely 100.00 percent, then the Maximum Monthly TOD Payment shall be defined as follows:

Maximum Monthly TOD Payment = Contract Price x TOD Factor x 1.0000 x Contract Capacity x (Hours in applicable TOD Period less Seller Excuse Hours).

This calculation shall be rounded to the nearest $0.01.

To the extent that Seller fails to satisfy the Performance Requirements specified above in Section 4.5, Seller shall be liable for and pay to Buyer "Performance Adjustments", as defined herein. For each one percent (1%) by which the Capacity Factor in each TOD Period is less than the Performance Requirement for such TOD Period, Seller shall incur and pay to Buyer the following percentages of the applicable Maximum Monthly TOD Payment ("Performance Adjustment Factors"):

	TOD PERIOD		
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	3.00	2.00	1.25
B. Oct. – Dec., Jan. & Feb.	2.50	1.75	1.25
C. Mar. – May	1.50	1.25	1.00

For each TOD Period, if the applicable Capacity Factor is less than the applicable Performance Requirement, then the Performance Adjustment for such TOD Period shall be calculated as follows:

Performance Adjustment = (Performance Requirement - Capacity Factor) x Performance Adjustment Factor x Maximum Monthly TOD Payment.

For the purpose of calculating the Performance Adjustment for any month in Period A, the Performance Requirement for Period A will be measured and calculated for each month in Period A. For the purpose of calculating the Performance Adjustment for each month in Periods B and C, the Performance Requirement shall be measured and calculated once on an aggregate basis for the entire period in the month immediately following the last month of the completed Period B or C, as applicable, which shall include all months constituting the applicable period. Buyer shall calculate the Period B or C Performance Requirements on a calendar year basis. The Performance Adjustment for each month in Periods B and C shall be reflected in an invoice provided by Buyer to Seller no later than March 31st of the following calendar year or if the Transaction has been terminated or the last year of the Delivery Term has occurred, then the last month prior to the expiration or termination of the Transaction. The Party owing payment as a result of such true-up shall pay the other Party the undisputed amount no later than fifteen (15) calendar days after receipt of such invoice; subject to the payment provisions in Section 6.1 of the Agreement. All disputes shall be subject to Section 6.2 of the Agreement.

In no event shall the applicable Performance Adjustment exceed the amount of the applicable Maximum Monthly TOD Payment. For the purposes of illustration, the Performance Requirement in Period A2 is 90 percent Capacity Factor and the Performance Adjustment Factor for Period A2 is 2.0. If the actual Capacity Factor in Period A2 were 88.5 percent, then Seller would pay Buyer the following Performance Adjustment = (90% – 88.5%) x 2.0 = 1.5% x 2.0 = 3.0 percent of the Maximum Monthly TOD Payment for TOD Period A2.

4.7 Imbalance Energy. On or about the fifth (5th) day of each month, beginning with the second month of the Delivery Term and continuing through and including the first month following the end of the Delivery Term, Seller will provide to Buyer complete records

for the applicable settlement interval of Delivered Energy and Scheduled Energy for the preceding month. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. "Imbalance Energy" means the amount of energy, in any given hour, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered "Positive Imbalance Energy;" when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the "Negative Imbalance Energy."

(a) Imbalance Price.

(i) For each ISO settlement time interval in any month in which there is Positive Imbalance Energy, the Imbalance Price shall be the Hourly Average- Energy Price as published by the ISO with respect to positive uninstructed imbalance energy charges for the applicable ISO settlement time interval and zone. For each ISO settlement time interval in any month in which there is Negative Imbalance Energy, the Imbalance Price shall be the Hourly Average-Energy Price as published by the ISO with respect to negative uninstructed imbalance energy charges for the applicable ISO settlement time interval and zone.

(ii) Seller and Buyer agree to retrieve and use the ISO Hourly Average Energy Prices available on the fifth (5th) day of the month following the month to be settled, and if the fifth (5th) day is not a Business Day, then on the immediately following Business Day, and no additional true-up will be performed should those prices be revised by the ISO at a later date. In the event that the ISO fails to post the "Hourly Average-Energy Price," the Imbalance Prices shall be the straight average of the (10-minute) settlement interval prices for the applicable hour and Delivery Point zone; provided that if the applicable settlement interval is modified to a 5-minute or other interval by the ISO, such new time interval shall apply.

(b) True Up Adjustment for Positive Imbalance Energy (Over Deliveries). For each ISO settlement time interval in which there is Positive Imbalance Energy and the Imbalance Price is higher than the Contract Price times TOD Factor, Seller shall pay Buyer an amount equal to the quantity of Positive Imbalance Energy multiplied by the difference between the Imbalance Price and the applicable Contract Price times TOD Factor. Buyer shall receive all Environmental Attributes for all Delivered Energy, regardless of whether any or all of it was sold into the ISO.

(c) True Up Adjustment for Negative Imbalance Energy (Under Deliveries). For each ISO Settlement time interval in which there is Negative Imbalance Energy and the Imbalance Price is lower than the Contract Price times TOD Factor, Buyer shall deduct from Monthly TOD Payment to Seller the amount equal to the quantity of the Negative Imbalance Energy multiplied by the difference between the Imbalance Price and the Contract Price times TOD Factor.

(d) Billing. Monthly billing for Imbalance Energy, as defined above, shall be accomplished using the Imbalance Price, as defined above. Beginning in the first month in which the Imbalance Price becomes available for the applicable month, there shall be a true-up adjustment for the Imbalance Price payable for the Imbalance Energy, as provided herein, in the monthly invoice, provided pursuant to Section 6.1 of the Agreement.

4.8 Transmission Provider Charges. Seller shall assume all liability and pay for all congestion charges up to and at the Delivery Point. Seller shall also assume all liability and reimburse Buyer for any penalties, as defined below, incurred by Buyer as a result of Seller's failure to abide by the Transmission Provider Tariff and all applicable protocols of the Transmission Provider. Seller shall cooperate to minimize imbalances and Penalties to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller's responsibilities for payment for all imbalance and congestion charges and Adjustments under this Agreement. As used herein, "Penalties" means any fees, liabilities, assessments, or similar charges assessed by the Transmission Provider.

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice is received by the Party failing to make such payment;

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

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after written notice; provided, that, if such failure is not capable of a cure within thirty (30) days but is capable of cure within one-hundred and twenty (120) days, then a reasonable period of time to cure such failure not to exceed one hundred and twenty (120) days, provided, further, that any right to cure that is granted to Seller's lenders as set forth in Section 5.6 shall be co-terminus with, and not extend beyond, such one hundred and twenty (120) day period;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;

(f) 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;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party's Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty;

(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 Imbalance Energy;

(j) subject to Seller's right to conduct a Re-Test as set forth in Appendix I, failure to meet the Net Rated Output Capacity requirement set forth in Section 3.1(j);

(k) failure to meet the performance requirements agreed to pursuant to Section 3.1(j), other than failure to meet the Net Rated Output Capacity covered by Section 5.1(j);

(l) a default pursuant to the Force Majeure provision set forth in Section 3.7(e) hereof; or

(m) failure by Seller to meet either of the Guaranteed Project Milestones set forth in Section 3.9(c)(iv) hereof after the applicable Construction Cure Period or Project Cure Period has expired.

5.2 Declaration of Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate the Transaction (the "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for 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 five or more bona fide unaffiliated market participants. If five or more quotes are obtained, the high and low quotations shall be excluded and a simple average of the other three quotations shall be used for this purpose. If the number of available quotes is 3, then the average of the 3 quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be for: (a) a like amount, (b) of the same Product, (c) at the same Delivery Point, and (d) for the remaining Delivery Term, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remaining Delivery Term of the Terminated Transaction and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Transaction. 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.

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