

**POWER PURCHASE AND SALE AGREEMENT**

**Between**

**PACIFIC GAS AND ELECTRIC COMPANY**  
(as “Buyer”)

and

**HATCHET RIDGE WIND, LLC**  
(as “Seller”)

**POWER PURCHASE AND SALE AGREEMENT**

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**POWER PURCHASE AND SALE AGREEMENT**

COVER SHEET

This Power Purchase and Sale Agreement is made as of the Execution Date set forth on the signature page hereof.

Name: Hatchet Ridge Wind, LLC  
(“Seller”)

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

All Notices: *[Seller to complete]*

All Notices:

Delivery Address:  
Hatchet Ridge Wind, LLC  
c/o Babcock & Brown  
One Letterman Drive, Building D  
San Francisco, CA 94129  
Attn: [REDACTED]

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

Mail Address: (if different from above)

Mail Address:  
P.O. Box 770000, Mail Code N12E  
San Francisco, CA 94177  
Attn: Kelly A. Everidge ([kabd@pge.com](mailto:kabd@pge.com))  
Director, Contract Mgmt & Settlements  
Phone: (415) 973-2055  
Facsimile: (415) 972-5507

Attn: [REDACTED]

Phone: [REDACTED]  
Facsimile: [REDACTED]

Duns:  
Federal Tax ID Number:

Duns:  
Federal Tax ID Number:

**Invoices:**

**Invoices:**

Hatchet Ridge Wind, LLC  
c/o Babcock & Brown  
One Letterman Drive, Building D  
San Francisco, CA 94129

Attn: [REDACTED]

Phone: [REDACTED]  
Facsimile: [REDACTED]

Attn: Amol Patel ([axpx@pge.com](mailto:axpx@pge.com))  
Manager, Bilateral Settlements

Phone: (415) 973-6510  
Facsimile: (415) 973-2151

**Scheduling:**

Attn:  
Phone:

**Scheduling:**

Attn: Kevin F. Coffee ([kfc1@pge.com](mailto:kfc1@pge.com))  
Phone: (415) 973-7631

Facsimile:

Facsimile: (415) 973-0400

**Payments:**

Hatchet Ridge Wind, LLC  
c/o Babcock & Brown  
One Letterman Drive, Building D  
San Francisco, CA 94129

Attn: [REDACTED]

Phone: [REDACTED]

Facsimile: [REDACTED]

**Payments:**

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

**Wire Transfer: : [TO BE PROVIDED]**

BNK:

ABA:

ACCT:

**Wire Transfer:**

BNK:

ABA:

Acct:

**Credit and Collections:**

Hatchet Ridge Wind, LLC  
c/o Babcock & Brown  
One Letterman Drive, Building D  
San Francisco, CA 94129

Attn: [REDACTED]

Phone: [REDACTED]

Facsimile: [REDACTED]

**Credit and Collections:**

Attn: Jack Foley  
Credit Risk Management  
Phone: (415) 973-0004  
Facsimile: (415) 973-7301

With additional Notices of an Event of Default to:

Hatchet Ridge Wind, LLC  
c/o Babcock & Brown  
One Letterman Drive, Building D  
San Francisco, CA 94129

Attn: [REDACTED]

Phone: [REDACTED]

Facsimile: [REDACTED]

**Contract Manager:**

Attn: Ted Yura  
Manager, Contract Management  
Phone: (415) 973-8660  
Facsimile: (415) 972-5507

With additional Notices of an Event of Default to:

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

The Parties agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

---

**Article Three**

New Generation Facility

- Add Section 3.9.  
If not checked, inapplicable.
- 

**Article Eight**

Credit and Collateral Requirements

8.2 Seller Financial Information:

- Option A  
 Option B Specify:

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: **\$ 0.00**

8.4 (a)(ii)(A) Project Development Security Amount: **\$1,000,000.00**

8.4 (a)(ii)(B) Project Development Security Amount: **\$2,475,000.00**  
**(which amount shall be subject to a pro rata upward adjustment if Seller exercises its option to sell to PG&E the 25 MW gross excess capacity of the Project pursuant to Section 3.1(n)).**

Type of Project Development Security: **Cash or Letter of Credit at Seller’s option.**

The following is the “Delivery Term Security”

8.4(a)(iii) Delivery Term Security Amount: \$ 16,100,000.00 **(which amount shall be subject to a pro rata upward adjustment if Seller exercises its option to sell to PG&E the 25 MW gross excess capacity of the Project pursuant to Section 3.1(n) or a pro rata adjustment**

*downward if Contract Quantity is adjusted downward pursuant to Section 10.18).*

Type of Delivery Term Security: *Parent Guaranty (subject to the requirements of 8.5(c)), Cash or Letter of Credit at Seller's option.*

---



**Article 10**

10.1 No Fault Termination

(a) Seller Termination Right

Not Applicable

Applicable

(b) PGC Funding Termination

Not Applicable

Applicable

(c) Production Tax Credit

Not Applicable

Applicable

10.7 Confidentiality

Confidentiality Applicable  
If not checked, inapplicable.

Confidentiality Notification: If checked on the Cover Sheet, Seller has waived its right to notification in accordance with Section 10.7 (v).

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The following Appendices are attached hereto and made a part of this Agreement:

- Appendix I Form of Letter of Credit
- Appendix II Initial Energy Delivery Date Confirmation Letter
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- Appendix IX Counterparty Notification Requirements for Outages and Generation Schedules
- Appendix X Resource Adequacy
- Appendix XI Examples

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**Agreement Execution**

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

HATCHET RIDGE WIND, LLC

PACIFIC GAS AND ELECTRIC COMPANY

Signature

e: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

The following Appendices are attached hereto and made a part of this Agreement:

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**Agreement Execution**

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

HATCHET RIDGE WIND, LLC

PACIFIC GAS AND ELECTRIC COMPANY

Signature:  \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Daniel Elkert

Name: \_\_\_\_\_

Title: Vice President

Title: \_\_\_\_\_

Date: 11/20/08

Date: \_\_\_\_\_

The following Appendices are attached hereto and made a part of this Agreement:

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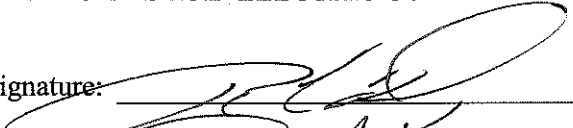
**Agreement Execution**

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

HATCHET RIDGE WIND, LLC

PACIFIC GAS AND ELECTRIC COMPANY

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature:   
Name: Roy M. Kuga  
Title: VP Energy Supply  
Date: 11/20/08

## **GENERAL TERMS AND CONDITIONS**

### **ARTICLE ONE: GENERAL DEFINITIONS**

1.1 “10-Minute Settlement Interval Average Price” means the Imbalance Price as published by the CAISO every ten (10) minutes in order to reflect the prices for Imbalance Energy.

1.2 “AAA” means the American Arbitration Association.

1.3 “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.

1.4 “Aggregate Monthly Positive Imbalance Amount” has the meaning set forth in Section 4.6(b).

1.5 “Aggregate Monthly Negative Imbalance Amount” has the meaning set forth in Section 4.6(c).

1.6 “Agreement” means this Power Purchase and Sale Agreement between Buyer and Seller, which is comprised of the Cover Sheet, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto.

1.7 “Arbitration” has the meaning set forth in Section 12.3.

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

1.9 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (b) has any such petition filed or commenced against it (which petition is not dismissed within ninety (90) days), (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

1.10 “Baseline EIRP Costs” means the costs that would have been incurred by Seller under the Eligible Intermittent Resource Program, in any given Contract Year during the Delivery Term, if the rules that were in effect for the Eligible Intermittent Resource Program as of the Execution Date of the Agreement were applied during such Contract Year.

1.11 “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.

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

1.13 “Buyer” has the meaning set forth on the Cover Sheet.

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

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

1.16 Intentionally deleted.

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

1.18 “California Renewables Portfolio Standard” means the renewable energy program and policies established by Senate Bill 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time; provided that for purposes of Section 10.2(b), the code provisions referenced above in this definition shall not be as amended or supplemented from time to time.

1.19 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, that is 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 related thereto so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state law, to require Buyer to procure, or to be procured at Buyer’s expense, Resource Adequacy or other similar products.

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

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

1.22 “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 or expiration of this Agreement.

1.23 “Commercial Operation” means at least ninety percent (90%) of the gross capacity of the Project is operating and able to produce and deliver Buyer's share of the Energy generated by the Project to Buyer pursuant to the terms of this Agreement.

1.24 “Commercial Operation Date” means the date on which Seller (a) notifies Buyer that Commercial Operation has occurred and (b) provides a certification of Licensed Professional Engineer, substantially in the form attached hereto as Appendix V(a), demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix VI hereto.

1.25 “Condition(s) Precedent” has the meaning set forth in Section 11.1.

1.26 “Construction Cure Period” has the meaning set forth in Section 3.9(c)(iv).

1.27 “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 Appendix V(b).

1.28 “Contract Capacity” means the generation capacity designated for the Project in Section 3.1(f), net of all auxiliary loads, station electrical uses, and Electrical Losses.

1.29 “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.

1.30 “Contract Quantity” means the quantity of Delivered Energy expected to be delivered by Seller during each Contract Year as set forth in Section 3.1(e) net of all Electrical Losses.

1.31 “Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Initial Energy Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Energy Delivery Date.

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

1.33 “Cover Sheet” means the multi-page document that precedes Article One: General Definitions to this Agreement.

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

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

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

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

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

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

1.37 "Cure" has the meaning set forth in Section 8.5.

1.38 "Cure Delivery" has the meaning set forth in Section 3.1(e).

1.39 "Cure Delivery Cap" has the meaning set forth in Section 3.1(e).

1.40 "Cure Delivery Cap Notice Period" has the meaning set forth in Section 3.1(e).

1.41 "Daily Delay Damages" means with respect to a Guaranteed Project Milestone, an amount equal to (a) the Project Development Security Amount posted as of the first date that Daily Delay Damages are payable under this Agreement with respect to such Guaranteed Project Milestone, divided by (b) 180.

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

1.43 "Delivered Energy" means, subject to Section 3.1(n), seventy-five and eight-tenths percent (75.8%) of all Energy produced from the Project as measured in MWh at the CAISO revenue meter of the Project.

1.44 "Delivery Point" means the point at which Buyer receives Seller's Product, as set forth in Section 3.1(d).

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

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

1.47 "Disclosing Party" has the meaning set forth in Section 10.7.

1.48 "Disclosure Order" has the meaning set forth in Section 10.7.

1.49 "Dispatch Down Period" means the period of time during which (a) curtailments ordered from the CAISO in accordance with the CAISO Tariff, for reasons including but not

{00072472.DOC;1}



limited to any system emergency, as defined in the CAISO Tariff (“System Emergency”), (b) curtailments ordered by Buyer based on an imminent condition or situation, which jeopardizes Buyer’s electric system integrity or the integrity of other systems to which Buyer is connected, as determined by Buyer in Buyer’s reasonable discretion, (c) duly authorized curtailments ordered by the Participating Transmission Owner for circumstances including scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving, or (ii) Seller from delivering, Delivered Energy at the Delivery Point, but not including curtailments for economic reasons.

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

1.51 “Early Termination Date” has the meaning set forth in Section 5.2.

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

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

1.54 “Electrical Losses” means (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the applicable GMM assigned to the Project. Upon implementation of MRTU, there will be no Electrical Losses downstream of the Delivery Point.

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

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

1.57 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

1.58 “EPC Contractor” means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller’s.

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

1.60 “Established Cost Cap” has the meaning set forth in Section 3.1(o).

1.61 “Event of Default” has the meaning set forth in Section 5.1.

1.62 "Exempt Wholesale Generator" has the meaning provided in 18 CFR Section 366.1.

1.63 “Execution Date” means the latest signature date found on the Cover Sheet.

1.64 "Executive(s)" has the meaning set forth in Section 12.2(a).

1.65 “Exercise Date” has the meaning set forth in Section 10.1(b)(ii)(B).

1.66 “Exercise Period” has the meaning set forth in Section 10.1(b)(ii)(A).

1.67 “External Costs” means all out-of-pocket costs and expenses incurred by Seller and paid directly to third parties, and any revenues (including revenues from PTCs on an after tax basis) lost by Seller, in connection with any of the obligations under Sections 3.1(j) (Climate Action Registry), 3.1(k) (WREGIS), 3.3 (Resource Adequacy), 3.5(c) (Reliability Standard), 3.7(h) (Changes in Operating Procedures), 3.8(a) (Operating Logs), and 10.2(b) (ERR), and under Appendix X, including registration fees, volumetric fees, license renewal fees, external consultant fees necessary for compliance, but excluding Seller's internal administrative and staffing costs.

1.68 "External Costs Sections" means Sections 3.1(j) (Climate Action Registry), 3.1(k) (WREGIS), 3.3 (Resource Adequacy), 3.5(c) (Reliability Standard), 3.7(h) (Changes in Operating Procedures), 3.8(a) (Operating Logs), or 10.2(b) (ERR), or Appendix X.

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

1.70 “Financing Notice” has the meaning set forth in Section 3.9(c)(vii)(C).

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

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

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

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

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

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

(v) Serial Defects, but only within the first three (3) years following the Commercial Operation Date.

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project;

(iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

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

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

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

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

(ix) any inability of Buyer to pay for the Product, or any decision of the CPUC affecting Buyer's ability to purchase or pay for the Project or recover in rates payments made to Seller hereunder which occurs subsequent to CPUC Approval.

1.72 "Forced Outage" means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part from a Unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a Unit for operation, in whole

or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

1.73 "Funding Termination Deadline" has the meaning set forth in Section 10.1(a)(i).

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

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

1.76 "Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the independent 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 the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

1.77 "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 construction and operation of the Project.

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

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

1.80 "Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been

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

1.81 "Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(iii)(B).

1.82 "Guaranteed Construction Start Date" has the meaning set forth in Section 3.9(c)(iii)(A).

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

1.84 "Guaranteed Project Milestones" are the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date set forth in 3.9(c)(iii).

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

1.86 "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.

1.87 "Imbalance Price" has the meaning set forth in Section 4.7(a).

1.88 Intentionally deleted.

1.89 "Initial Energy Delivery Date" has the meaning set forth in Section 3.1(c).

1.90 "Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

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

1.91 “Interconnecting Transmission Provider” means the Transmission Provider that is the first to sequentially interconnect with the Project.

1.92 “Interconnection Facilities” means the facilities, which include all apparatus installed pursuant to the Interconnecting Transmission Provider’s facility connection requirements, required to enable Seller to interconnect and deliver Energy from the Project to the Delivery Point.

1.93 “Interconnection Trigger Date” has the meaning set forth in Section 3.9(c)(v).

1.94 “Interest Amount” means, with respect to an Interest Period, the amount of interest derived from: (w) 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 (x) the Interest Rate in effect for that day; multiplied by (y) the number of days in that Interest Period; (z) divided by 360.

1.95 “Interest Payment Date” means the last Business Day of each calendar year.

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

1.97 “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.

1.98 “Large Generator Interconnection Agreement” or “LGIA” means the agreement and associated documents between Seller, the Participating Transmission Owner and CAISO governing the terms and conditions of Seller’s interconnection with the Participating Transmission Owner’s transmission lines, including, without limitation, any description of the proposed plan for interconnecting to the Participating Transmission Owner’s transmission lines.

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

1.100 “Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A from S&P or A2 from Moody’s, substantially in the form as contained in Appendix I to this Agreement, or in such other form reasonably acceptable to Buyer.

1.101 “Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in California, (ii) has training and experience in the power industry specific to the technology of the Project, (iii) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (iv) is not a representative of a consultant, engineer, contractor,

designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (v) is licensed in an appropriate engineering discipline for the required certification being made, including Garrad Hassan and R.W. Beck.

1.102 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product. If the Non-Defaulting Party is the Seller and the Transaction is terminated on or after the Commercial Operation Date, then “Losses” shall exclude any loss of PTCs or other federal or state tax credits related to the Project or generation therefrom. If the Non-Defaulting Party is the Seller and the Transaction is terminated before the Commercial Operation Date, then “Losses” shall include any loss of PTCs or other federal or state tax credits related to the Project or generation therefrom to the extent not available to Seller as a result of the delay or failure to achieve commissioning of the Units due to the Buyer’s default; provided that (a) such Losses from any loss of PTCs or other federal or state tax credits shall not exceed \$10 million; and (b) to the extent that Seller actually obtains any PTCs or other federal or state tax credits associated with the Project or its output following termination of the Transaction, where such PTCs or other federal or state tax credits are identical or financially equivalent to the lost PTCs or other federal or state tax credits, Seller shall refund to Buyer that portion of any Termination Payment made to Seller that is attributable to such lost PTCs or other tax credits that are subsequently obtained by Seller; provided, further, that if Seller obtains any PTCs or other federal or state tax credits associated with the Project or its output following termination of the Transaction that were originally included in the calculation of Losses, then Buyer shall be entitled to reimbursement of that portion of the Losses that were attributable to the such PTCs or other federal or state tax credits. The quantity of Product employed in any forecast of the losses to be realized from the termination of the Transaction in the determination of Losses shall not exceed the Guaranteed Energy Production on an annualized basis.

1.103 “Lost PGC Funds” has the meaning set forth in Section 10.1(b)(ii).

1.104 “Manager” has the meaning set forth in Section 12.2(a).

1.105 “Market Energy Index Price” means the weighted average of the on-peak and off-peak price for Energy generated from non-renewable sources as reported by the Intercontinental Exchange day-ahead power index at NP-15 or, if not available, the Dow Jones day-ahead power index at NP-15, or if both indexes cease publication, a successor index reasonably acceptable to both Parties.

1.106 “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).

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- 1.107 “Milestones” has the meaning set forth in Section 3.9(c)(i).
- 1.108 “Monthly Net Amount” has the meaning set forth in Section 4.6(d).
- 1.109 “Monthly Netting” has the meaning set forth in section 4.6(d).
- 1.110 “Monthly Progress Report” means the report similar in form and content attached hereto as Appendix VII.
- 1.111 "Monthly Period" has the meaning set forth in Section 4.2.
- 1.112 “Monthly TOD Payment” has the meaning set forth in Section 4.3.
- 1.113 “Moody’s” means Moody’s Investor Services, Inc., or its successor.
- 1.114 “MRTU” or “Market Redesign and Technology Upgrade” means the locational marginal pricing market system to be governed by the CAISO MRTU Tariff approved by FERC.
- 1.115 “MWh” means megawatt-hour.
- 1.116 “Negative Imbalance Energy” has the meaning set forth in Section 4.5.
- 1.117 “Negative Imbalance Settlement” has the meaning set forth in Section 4.6(a).
- 1.118 “Negative Imbalance Settlement Negative Amount has the meaning set forth in Section 4.6(c).
- 1.119 “Negative Imbalance Settlement Positive Amount has the meaning set forth in Section 4.6(c).
- 1.120 “NERC” means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.
- 1.121 “NERC Holiday” has the meaning set forth in Section 4.2.
- 1.122 “New Generation Facility” means a project that (a) has not previously been operational and able to produce and deliver Energy to another entity or (b) must be re-powered or expanded in order to deliver the Product pursuant to the terms set forth in this Agreement.
- 1.123 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.124 Intentionally deleted.
- 1.125 “Notice” shall, unless otherwise specified in the Agreement, mean written communications required or permitted to be delivered hereunder by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).
- 1.126 “Notice to Proceed” means the Notice provided by Seller to the EPC Contractor following execution of the EPC 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.

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- 1.127 "Obligor" means the Party breaching the terms of this Agreement.
- 1.128 "Option" has the meaning set forth in Section 10.1(b)(ii).
- 1.129 "Option Approval" has the meaning set forth in Section 10.1(b)(ii).
- 1.130 "Outage Notification Form" means the notice form attached hereto as Appendix VIII, which shall be submitted by Seller to Buyer in accordance with the relevant provisions of Section 3.7. PG&E reserves the right to revise or change the form upon written Notice to Seller.
- 1.131 "Participating Intermittent Resource" or "PIRP" shall have the meaning set forth in the CAISO Tariff.
- 1.132 "Participating Transmission Owner" or "Participating TO" means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.
- 1.133 "Party" or "Parties" means the Buyer or Seller individually, or to both collectively.
- 1.134 "Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations hereunder and includes Project Development Security and Delivery Term Security.
- 1.135 "Performance Measurement Period" has the meaning set forth in Section 3.1(e).
- 1.136 "Permit" has the meaning set forth in Section 3.9(c)(vi).
- 1.137 "PGC Fund Amount" has the meaning set forth in Section 10.1(a)(i).
- 1.138 "PGC Funding Award" means the final award of allocated PGC Funds from the CEC to Seller, pursuant to Section 25743(a) of the California Public Resource Code, as shall be modified or amended from time to time.
- 1.139 "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.
- 1.140 "Planned Outage" means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller's sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.
- 1.141 "Positive Imbalance Energy" has the meaning set forth in Section 4.5.
- 1.142 "Positive Imbalance Settlement" has the meaning set forth in Section 4.6(a).

1.143 “Positive Imbalance Settlement Negative Amount” has the meaning set forth in Section 4.6(b).

1.144 “Positive Imbalance Settlement Positive Amount” has the meaning set forth in Section 4.6(b).

1.145 “Product” means seventy-five and eight-tenths percent (75.8%), subject to adjustment pursuant to Sections 3.1(n) and 10.18, of all the Energy, capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project, including, without limitation, renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

1.146 “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 it may be amended from time to time.

1.147 “Project” means the Unit(s) at the Site at which the generating facility is located and the other assets, tangible and intangible, that comprise the generation facility as more particularly described on Appendix IV.

1.148 “Project Cure Period” has the meaning set forth in Section 3.9(c)(iv).

1.149 “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).

1.150 Intentionally deleted.

1.151 “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.

1.152 Intentionally deleted.

1.153 “RA Capacity” means the maximum megawatt amount that the CAISO recognizes from a Project that qualifies for Buyer’s Resource Adequacy Requirements and is associated with the Project’s Capacity Attributes.

1.154 “Recording” has the meaning set forth in Section 2.4.

1.155 “REC Value” means the greater of (a) the average market price, over the relevant time period, for Green Attributes in PG&E's retail service territory, if such a value may be determined by reference to verifiable and publicly available sources, or (b) \$30/MWh, if the average market price for Green Attributes cannot be determined as provided in subsection (a). With respect to the determination of value in subsection (a) above, each of the Parties acknowledges that the REC Value is intended to represent the economic value of the Green Attributes associated with the generation of Product from the Project and that these Green Attributes constitute a requirement for California Renewables Portfolio Standard eligibility.

1.156 Intentionally deleted.

- 1.157 "Referral Date" has the meaning set forth in Section 12.2(a).
- 1.158 "Remedial Action Plan" has the meaning provided in Section 3.9(c)(ii).
- 1.159 "Renewable Energy Credit" has the meaning set forth in the California Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Law.
- 1.160 "Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D. 05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding and all other Resource Adequacy obligations established by either the CPUC or CAISO.
- 1.161 Intentionally deleted.
- 1.162 "Resource Adequacy Requirements" has the meaning set forth in Section 3.3.
- 1.163 Intentionally deleted.
- 1.164 "RFP" means the solicitation from which this Agreement is the result.
- 1.165 "Revocation Notice" has the meaning set forth in Section 10.1(b)(i).
- 1.166 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.167 "Schedule" 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.
- 1.168 "Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time-to-time.
- 1.169 "Scheduled Energy" shall have the meaning set forth in Section 3.4(c).
- 1.170 "SEC" means the U.S. Securities and Exchange Commission.
- 1.171 "Seller" shall have the meaning set forth on the Cover Sheet.
- 1.172 "Seller Excuse Hours" means those hours during which Seller is unable to generate, schedule or deliver some or all Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer's negligence or failure to perform its obligations under this Agreement, (c) Dispatch Down Period, or (d) compliance with Seller's obligations under Sections 3.1(j) (Climate Action Registry), 3.1(k) (WREGIS), 3.3 (Resource Adequacy), 3.5(c) (Reliability Standard), 3.7(h) (Changes in Operating Procedures) and 3.8(a) (Operating Logs), and under Appendix X.

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

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

1.175 "Site" shall mean the location of the Project as described in Appendix IV.

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

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

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

1.179 "TOD" means time of delivery of Scheduled Energy from Seller to Buyer.

1.180 "TOD Factors" shall have the meaning set forth in Section 4.3(a).

1.181 "TOD Period" has the meaning set forth in Section 4.2.

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

1.183 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point. For purposes of this Agreement the Transmission Provider is the CAISO.

1.184 "Transmission Upgrades" means any additions and/or reinforcements to an electric transmission system that are required in accordance with a Transmission Provider's approved tariff as the result of the interconnection of the Project to the Transmission Provider's electric system and to permit delivery of the Product to Buyer's Load, as defined in the CAISO Tariff, safely and reliably, in the quantities and at the times at which delivery of such Product may be required under this Agreement, up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project.

1.185 "Unit" means each of the turbine generators and appurtenant equipment used to produce the Products, which are identified in Appendix IV for the Transaction entered into under this Agreement.

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

1.187 "WREGIS" means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

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

## **ARTICLE TWO: GOVERNING TERMS AND TERM**

2.1 Entire Agreement. This Agreement, together with the Cover Sheet and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire agreement between the Parties.

2.2. Interpretation. The following rules of interpretation shall apply:

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

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

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

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

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

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

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

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. In the event of any dispute between the Parties, a Party in possession of any Recording shall furnish a copy of such Recording to the other Party upon request and at the requesting Party’s cost.

2.5 Term. The Term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 11.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to Section 3.7(e), Sections 3.9(c)(v)-(vii), Section 5.2, Section 10.1(c), Section 10.18 or Section 11.2 of this Agreement (the “Term”); provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for twelve (12) months.

2.6 Binding Nature. This Agreement shall be effective and binding as of the Execution Date to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under Articles 1, 2, 5, 7, 8, 9, 10 (other than Sections 10.3, 10.4, 10.5, 10.9, 10.10, 10.11) 11,12 and 13.

### **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

#### **3.1 Seller’s and Buyer’s Obligations.**

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is an As-Available Product. Except as set forth in Section 3.1(i) of this Agreement, Buyer shall have no right to dispatch or curtail the Project, or the Energy generated from the Project, whether in connection with the provision ancillary services or otherwise. Buyer has no right to require Seller to provide ancillary services.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver to, or cause to be delivered to, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Imbalance Energy pursuant to Section 4.6. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term; provided that if Seller provides Notice to Buyer at least thirty (30) days prior to the date on which the Project, or any portion thereof, is synchronized with the CAISO

Grid that Seller desires to sell the Product, if any, to Buyer prior to the Delivery Term, Buyer shall purchase such Product in accordance with the terms of this Agreement but at a price equal to seventy-five percent (75%) of the Contract Price; provided, however, that to the extent it is determined, by no later than second anniversary of the Initial Energy Delivery Date, that any Product sold to Buyer prior to the Delivery Term does not, for any reason, count towards satisfying Buyer's California Renewables Portfolio Standard requirements, then (i) the price for such Product shall be the recalculated to equal the lesser of either (A) seventy-five percent (75%) of the Contract Price or (B) ninety percent (90%) of the then applicable Market Energy Index Price; and (ii) to the extent necessary there will be a true-up adjustment reflecting the price recalculation in the next monthly invoice. Seller shall only provide the Notice referred to above to avoid deviation, or similar, charges in conjunction with the sale of Energy from the Project prior to the Delivery Term, and Buyer shall only be obligated to purchase the Product prior to the Delivery Term (a) for up to an aggregate of one hundred and eighty (180) days and (b) if such Product qualifies as generation from an Eligible Renewable Energy Resource. Notwithstanding the foregoing, prior to the Delivery Term, Seller shall be solely responsible for any costs, expenses, charges or penalties incurred with respect to any Product delivered to Buyer pursuant to this Section 3.1(b), including those associated with Imbalance Energy, and the provisions of Section 3.4(b)(ii) and Section 4.6 shall not apply prior to the Initial Energy Delivery Date. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product at and after its receipt from the Delivery Point. The Parties agree that Seller shall arrange and pay independently for any and all necessary costs under any interconnection agreement with the Interconnecting Transmission Provider. In accordance with Section 3.4, the Parties agree that Seller shall arrange and pay independently for any and all necessary 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. Buyer shall arrange and bear all costs associated with the Scheduling, distribution and transmission (and any regulatory approvals required for the foregoing) sufficient to allow Buyer to receive the Product at, and transmit the Product from, the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

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

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

As used herein, "Delivery Term" shall mean the period of Contract Years specified above beginning on the first date that Seller delivers Product to Buyer from the Project ("Initial Energy Delivery Date") in connection with this Agreement and continuing until the end of the fifteenth (15th) Contract Year unless terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall not occur until all of the following have been satisfied: (i) the Commercial Operation Date has occurred; (ii) Buyer shall have received and accepted the

Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable, (iii) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing by the Party benefiting from such Condition Precedent, and (iv) Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the “Initial Energy Delivery Date Confirmation Letter” attached hereto as Appendix II on the Initial Energy Delivery Date. Without the prior written consent of Buyer, the Initial Energy Delivery Date shall not be earlier than six (6) months prior to the Guaranteed Commercial Operation Date as such date is established pursuant to this Agreement.

(d) Delivery Point. The Delivery Point shall be the Interconnection Point as specified in Section 3.1(h)(i) herein.

(e) Contract Quantity and Guaranteed Energy Production. Subject to Sections 3.1(n) and 10.18, the Contract Quantity during each Contract Year is 227,250 MWh. The Parties agree that the actual amount of Delivered Energy in any Contract Year may be greater or less than the amount set forth above. Throughout the Delivery Term, Seller shall be required, subject to the adjustment described below for Seller Excuse Hours, to produce Delivered Energy in an amount no less than the Guaranteed Energy Production in one of each two consecutive Contract Years (“Performance Measurement Period”). Subject to the adjustment described below for Seller Excuse Hours, Guaranteed Energy Production means, for a given Contract Year, an amount of Energy, as measured in MWh, equal to the product of (i) 0.70 and (ii) the Contract Quantity. In any Contract Year in which a Seller Excuse Hour occurs the following adjustments to the Guaranteed Energy Production determination shall apply: (A) For all Seller Excuse Hours in a given Contract Year that are Events of Force Majeure affecting Seller, the Contract Quantity shall be reduced by the amount of Delivered Energy that Seller could have been expected to deliver to Buyer during such Seller Excuse Hours during such Contract Year, as determined by Seller based upon the most recent forecast of Energy production for such Seller Excuse Hours provided pursuant to Section 3.4(c); and (B) For all Seller Excuse Hours in a given Contract Year that are not Events of Force Majeure affecting Seller, Seller shall be deemed to have produced, in addition to the amount of Delivered Energy actually produced in the relevant Contract Year, the amount of Delivered Energy that Seller could have been expected to deliver to Buyer during such Seller Excuse Hours during such Contract Year, as determined by Seller based upon the most recent forecast of Energy production for such Seller Excuse Hours provided pursuant to Section 3.4(c). If, subject to the adjustments described above, as applicable, Seller delivers less than the Guaranteed Energy Production in both Contract Years within any Performance Measurement Period, then within one hundred and twenty (120) days after the last day of the last month of such Performance Measurement Period, Buyer shall provide Notice to Seller of such failure. Following Seller’s receipt of Notice of such failure, Seller may fully satisfy its obligations with respect to the Guaranteed Energy Production requirement if Seller pays to Buyer, within fourteen (14) days after Notice to Seller of the failure, liquidated damages equal to product of (i) the difference between (A) the Guaranteed Energy Production and (B) the higher of the two annual amounts of Delivered Energy produced during the Contract Years in the Performance Measurement Period, and (ii) the positive difference, if any, between (X) the average Market Energy Index Price over the Performance Measurement Period plus the REC Value and (Y) the Contract Price (“Cure Delivery”). If the amount set forth in (ii) above is zero or less, then the liquidated damages payment for the Cure Delivery shall be zero. Seller's Cure Delivery during any Performance Measurement Period shall fully satisfy Seller's Guaranteed Energy Production obligations with respect to both Contract Years in such Performance Measurement Period; the

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next Contract Year shall be considered the first Contract Year of a new Performance Measurement and shall not, combined with the prior year, constitute the second year of a new Performance Measurement Period. If the aggregate maximum volume of Cure Deliveries during the Delivery Term exceeds 150,000 MWh ("Cure Delivery Cap"), Buyer may upon written Notice to Seller within one hundred and twenty (120) days of the date upon which the Cure Deliveries exceeded the Cure Delivery Cap (the "Cure Delivery Cap Notice Period"), either (A) terminate this Agreement without further liability to either Party and return any Performance Assurance to Seller; or (B) allow Seller to satisfy its obligations with respect to the Guaranteed Energy Production requirement by paying the applicable Cure Delivery amount for such Performance Measurement Period. If Buyer decides not to terminate the Agreement with respect to Seller's failure to meet the Guaranteed Energy Production requirement within such Cure Delivery Cap Notice Period, then Buyer shall waive its right to terminate the Agreement based on Seller's failure to meet the Guaranteed Energy Production requirements with respect to the Performance Measurement Period which served as the basis for the right to terminate. For sake of certainty, in the event that Buyer waives its right to terminate this Agreement with respect to the applicable Performance Measurement Period, Buyer shall again have the right to terminate this Agreement, subject to the conditions set forth in this subpart (e) above, if as of the end of the next Performance Measurement Period, Seller again fails to achieve the Guaranteed Energy Production requirement in two consecutive Contract Years. Notwithstanding the foregoing, if Seller fails to make a required Cure Delivery payment within fourteen (14) days of receipt of a Notice from Buyer that such payment is due, then Buyer may declare an Event of Default with respect to Seller's failure to make a Cure Delivery payment when due. For purposes of clarification, illustrative examples of how this Section 3.1(e) is intended to work are included in Appendix XI attached hereto.

(f) Contract Capacity. Subject to Sections 3.1(n) and 10.18, the nameplate capacity of the Project, net of all auxiliary loads, station electrical uses, transformation and line losses to the CAISO revenue meter, and Electrical Losses, shall be within three percent (3%) of 75 MW ("Contract Capacity"); provided, however, that if Seller declares Commercial Operation with less than 100% of the Project capacity installed, then Seller shall have one (1) year from the Commercial Operation Date to complete the Project and demonstrate Contract Capacity. If Seller is unable to demonstrate Contract Capacity within one (1) year of the Commercial Operation Date, then Buyer may declare an Event of Default with respect to Seller's failure to provide Contract Capacity; provided, however, that if Seller is able to reasonably demonstrate that it is actively pursuing the installation of additional capacity, then Seller shall have eighteen (18) months from the Commercial Operation Date to complete the Project and demonstrate Contract Capacity. If Seller is unable to demonstrate Contract Capacity within either twelve (12) or eighteen (18) months, as applicable, of the Commercial Operation Date, then Buyer may by written Notice declare an Event of Default within sixty (60) days after the end of such twelfth (12<sup>th</sup>) or eighteenth (18<sup>th</sup>) month. If Buyer does not provide Notice of an Event of Default within the specified period, then Buyer shall be deemed to have waived its right to declare an Event of Default with respect to Seller's failure to be able to demonstrate Contract Capacity within either twelve (12) or (18) months, as applicable, of the Commercial Operation Date. Subject to Section 3.1(n) and Section 5.2, throughout the Delivery Term, Seller shall sell and Schedule all Product produced by the Project solely to Buyer and in no event shall Buyer be obligated to receive or pay for, in any hour Scheduled Energy that exceeds the Contract Capacity by more than five percent (5%).

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only (other than Imbalance Energy). Seller shall not make any

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alteration or modification to the Project which results in a change to the Contract Capacity of the Project without Buyer's prior written consent; provided, however, that if Seller declares Commercial Operation with less than one hundred percent (100%) of the Project capacity installed, then Seller shall have additional time to complete the Project as provided in Section 3.1(f). Notwithstanding the foregoing, Buyer's consent shall not be required for maintenance, repair or replacement of facilities or equipment in accordance with Good Utility Practice and Seller may add new units at the Site so long as it (i) employs physical or other reliable means to separate the capacity and output of the new units from the original units, and (ii) does not sell any output from such new units to Buyer without Buyer's consent. The Project is further described in Appendix IV.

(h) Interconnection Facilities.

(i) Interconnection Point. The Interconnection Point is the point where the Project's gentie interconnects with PG&E's Pit River #3 – Round Mountain 230 kV transmission line.

(ii) Seller Obligations. Seller shall, at its sole expense, be obligated to (A) maintain the Interconnection Facilities, including metering facilities up to the Delivery Point; and (B) perform all of its obligations as set forth under the Large Generator Interconnection Agreement.

(i) Performance Excuses.

(i) Seller Excuses. Seller shall be excused from achieving the Guaranteed Energy Production for the applicable time period during Seller Excuse Hours.

(ii) Buyer Excuses. The performance of Buyer to receive or pay for the Product shall be excused only (A) during periods of Force Majeure, (B) by Seller's failure to perform or (C) during Dispatch Down Periods; provided that for a Dispatch Down Period as described in Section 1.49(b), such Dispatch Down Period shall be no more than fifty (50) hours during any Contract Year.

(iii) Dispatch Down/Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce delivery amounts as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Dispatch Down Period; provided that for a Dispatch Down Period as described in Section 1.49(b), such Dispatch Down Period shall be no more than fifty (50) hours during any Contract Year.

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

(j) Climate Action Registry. Seller shall register the Project with the California Climate Action Registry as may be required by the CPUC pursuant to Decision 06-02-032 and any subsequent order, but, in no event, later than ninety (90) days following the Commercial Operation Date.

(k) WREGIS. Prior to the Commercial Operation Date, Seller shall register the Project in the WREGIS, and take all other actions necessary to ensure that the Energy or

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Green Attributes produced from the Project are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer. In the event that WREGIS is not in operation as of the Commercial Operation Date, Seller shall perform its obligations, as required per this subsection, as soon as WREGIS is in operation.

(l) Prevailing Wage. To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.14, subdivision (h).

(m) Obtaining and Maintaining CEC Certification and Verification. Seller shall take all reasonable and appropriate steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

(n) Excess Product. Notwithstanding anything herein to the contrary, Buyer acknowledges that Seller intends that the Project shall be a wind generating facility with a nameplate capacity of 103.2 MW gross, and Seller reserves to itself the right to sell or otherwise utilize that portion of the capacity and output of the generating facility in excess of the Contract Capacity (i.e. 25 MW gross), including all Green Attributes, Capacity Attributes, Renewable Energy Credits and other attributes of such excess capacity or energy production ("Excess Product") outside of and without limitation under this Agreement. Seller shall provide written Notice to Buyer, not later than June 30, 2009, informing Buyer whether or not Seller is exercising Seller's option to sell the Excess Product to Buyer under the terms of this Agreement. If Seller timely exercises its option, the Agreement will be automatically amended to increase the Delivered Energy to one hundred percent (100%) of the net Energy produced from the Project, and, subject to Section 10.18, the Contract Quantity shall be set at 303,000 MWh, the Cure Delivery Cap shall be set at 200,000 MWh and the Contract Capacity, Guaranteed Energy Production, the Project Development Security and Delivery Term Security shall be increased pro rata, and the remaining terms and conditions contained in the Agreement shall remain in full force and effect. If Seller does not timely exercise its option to sell the Excess Product to Buyer and the Excess Product is sold outside of this Agreement, the Delivered Energy shall be 75.8% (78.2/103.2) of the Energy produced from the Project at any given time. In the event Seller then offers to sell some or all Excess Product (which can never exceed 25 MW gross by the terms of this Agreement) to Buyer, that would otherwise be sold outside of this Agreement Buyer may, at its option, agree to purchase such Excess Product according to the terms and conditions of this Agreement.

(o) Established Cost Cap. Each of the Buyer and Seller agree that during the Delivery Term, the External Costs that Seller is obligated to bear under the External Cost Sections shall be capped (the "Established Cost Cap") at One Hundred Thousand Dollars (\$100,000) per Contract Year; provided, however, that such External Costs shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000) during the Delivery Term. In the event and to the extent that the External Costs exceed the Established Cost Cap in a Contract Year or One Million Five Hundred Thousand Dollars (\$1,500,000) during the Delivery Term, Seller shall be excused from performing any obligation created by the External Cost Sections that causes, or would cause, Seller to incur such External Costs in excess of the Established Cost Cap; provided, however, that if Buyer elects to reimburse Seller for such excess External Costs or other amount mutually agreed to by the Parties, or if Seller would otherwise be obligated to perform such obligation in order to operate the Project irrespective of the External Costs Sections, then Seller shall be required to continue to perform the relevant obligations.

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

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

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller Obligations. During the Delivery Term, Seller shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, to the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment. Except as otherwise set forth in this Agreement, Seller shall be responsible for all CAISO costs and charges, including imbalance charges, due to deviations from the "Schedule" (as such term is defined in the CAISO Tariff), regardless of the cause thereof (unless the deviation from the Schedule was caused by Buyer or its representative), electric transmission losses and congestion to the Delivery Point. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including, if applicable, those set forth in the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, to the extent applicable, executing applicable interconnection agreements, Participating Generator Agreement and Meter Service Agreement so as to be able to deliver Energy to the CAISO Grid.

(ii) Buyer Obligations. During the Delivery Term, Buyer shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, at and from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment. During the Delivery Term, Buyer shall Schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Point, and shall be responsible for all CAISO costs and charges, including imbalance energy charges due to its negligence or misconduct, in this respect. During the Delivery Term, Buyer shall be responsible for all CAISO costs and charges (including those related to congestion) and electric transmission losses at and from the Delivery Point.

(b) EIRP Requirements.

(i) Participating Intermittent Resource. Seller shall cause the Project to become a Participating Intermittent Resource including executing all necessary documents to become a Participating Intermittent Resource (each as defined in the CAISO Tariff and collectively, the "Program Agreements"). Seller and Buyer shall comply with EIRP, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the EIRP, for the Delivery Term. Seller shall provide Buyer with a copy of the notice from the ISO certifying the Project as a Participating Intermittent Resource prior to the Initial Energy Delivery Date.

(ii) Material Changes to EIRP. If (a) EIRP is no longer in effect, or (b) EIRP is materially changed and the change results in a net annual increase in costs to Seller in excess of \$100,000 for the current Contract Year compared to the Baseline EIRP Costs for such Contract Year, then Seller shall not be required to be a Participating Intermittent Resource and may withdraw from EIRP, and whether or not Seller remains in EIRP the Parties shall use commercially reasonable efforts to negotiate a mutually acceptable successor arrangement and modify this Agreement, as necessary, to arrive at a mutually agreeable amendment that will provide a scheduling or other arrangement for the delivery of Energy from the Project to Buyer during the Delivery Term. Unless and until such mutually agreeable amendment is executed and effective, Buyer shall reimburse to Seller fifty percent (50%) of any deviation charges or penalties, or other CAISO costs that result in a net annual increase of such costs in excess of \$100,000 for the current Contract Year compared to the Baseline EIRP Costs for such Contract Year. For purposes of clarification, illustrative examples of how this Section 3.4(b)(ii) is intended to work are included in Appendix XI attached hereto.

(c) Scheduling

(i) Scheduling Coordinator. Each of Seller and Buyer shall be its own Scheduling Coordinator with respect to this Transaction or designate a qualified third party to fulfill such role. Beginning with the implementation of MRTU and throughout the Delivery Term, Seller shall designate Inter-SC Trades ("IST") at the Project's PNode for delivery of the Energy to be provided to Buyer under this Agreement and associated Integrated Forward Market ("IFM") Load Uplift Obligation credit, generated from the Project, up to the Contract Capacity plus five percent (5%), solely to Buyer's SC. During the Delivery Term, each Party or each Party's SC shall conduct all Scheduling in full compliance with the applicable CAISO Tariff, protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead Scheduling Process ("HASP") basis, as such terms are defined in the CAISO Tariff. Buyer may elect to receive energy ISTs in the Day Ahead and/or HASP CAISO scheduling process with associated timelines; provided that Buyer must provide Seller with written notice of its election, which shall apply consistently to each day until Buyer changes its election, which Buyer may do effective upon two (2) Business Days prior written notice. If Buyer elects Day-Ahead scheduling of Energy ISTs ("DA Energy IST"), Seller will submit DA Energy ISTs in conformance with the EIRP Day-Ahead forecast, if applicable and available, as provided by the CAISO. Under circumstances where the EIRP day-ahead forecast has not been established by the CAISO or is otherwise unavailable, Seller will establish a best estimate forecast using a methodology that is mutually agreed to by Seller and Buyer. In conjunction with the execution of any DA Energy IST, Seller will also submit a day-ahead IST for IFM Load Uplift Obligation credit ("DA Uplift IST") at the same values used in the DA Energy ISTs. Seller shall submit HASP Energy ISTs ("HASP Energy IST") in conformance with the EIRP Hour-Ahead forecast, if available, as

provided by the CAISO ("Scheduled Energy"); provided that, in the event of a Buyer Dispatch Down Period, Seller shall reduce its Schedule to the extent Seller is able to do so and remain compliant with EIRP and the CAISO Tariff. Under circumstances where the EIRP Hour-Ahead forecast has not been established by the CAISO, Seller will establish a best estimate forecast using a methodology that is mutually agreed to by Seller and Buyer.

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

(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. Daily during the Delivery Term, within fifteen (15) minutes of receipt of a day-ahead EIRP forecast, if applicable, Seller's SC will provide Buyer with a copy of such EIRP forecast and the resulting Schedule. Other than as required as part of Seller's participation in EIRP, in the event that Seller changes its Schedule on the actual date of delivery of Energy for any reason, including a Forced Outage or a scheduling change imposed by CAISO, 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 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 CAISO. With respect to any Forced Outage affecting at least five percent (5%) of the Contract Capacity, Seller shall (a) use commercially reasonable efforts to notify Buyer, orally, of such outage within ten (10) minutes of the occurrence of such outage, (b) provide a written estimate of the expected duration of such outage within one (1) hour after submittal of the initial notification pursuant to clause (a) of this Section, and (c) submit an Outage Notification Form, as provided in Appendix VIII of this Agreement, to Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Unit during or after the end of such outage. These notices and changes to the Schedule shall be sent to both Buyer's internet site and Hour-Ahead Trading Desk email notification address:

Day-Ahead Trading Desk  
Phone: 415-973-6222  
Fax: 415-973-0400  
Email: [daenergy@pge.com](mailto:daenergy@pge.com)

(v) Hourly Delivery Schedules. During the Delivery Term, within fifteen (15) minutes of receipt of an EIRP forecast, if applicable, Seller's SC will provide Buyer with a copy of such EIRP forecast and the resulting Schedule. Other than as required as part of Seller's participation in EIRP, in the event that Seller changes its Schedule on the actual date of delivery of Energy for any reason, including a Forced Outage or a scheduling change imposed by CAISO, 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 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 CAISO. With respect to any Forced Outage affecting at least five percent (5%) of the Contract Capacity, Seller shall (a) use commercially reasonable efforts to notify Buyer, orally, of such outage within ten (10) minutes of the occurrence of such outage, (b) provide a written estimate of the expected duration of such outage within one (1) hour after submittal of the initial notification pursuant to clause (a) of this Section, and (c) submit an Outage Notification Form, as provided in Appendix VIII of this Agreement, to Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Unit during or after the end of such outage. These notices and changes to the Schedule shall be sent to both Buyer's internet site and Hour-Ahead Trading Desk email notification address:

Hour-Ahead Trading Desk  
Phone: 415-973-7900  
Fax: 415-972-5340  
Email: [realtime@pge.com](mailto:realtime@pge.com)

### 3.5 Standards of Care.

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

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

(c) Reliability Standard. Seller agrees to abide by (i) all NERC, WECC and CAISO reliability requirements, including Resource Adequacy Requirements and, if applicable, CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities", if and to the extent applicable, and (ii) all applicable requirements regarding interconnection of the Project.

3.6 Metering. All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Delivered Energy must be measured by the Project's CAISO revenue meter. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall provide updated meter data to Buyer and submit revised monthly invoices, if necessary, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice

no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

### 3.7 Outage Notification.

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

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a completed Outage Notification Form in accordance with the provisions set forth in Appendix IX no later than August 1<sup>st</sup> of each year during the Delivery Term. The Planned Outage schedule is 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 Appendix IX no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of June through September. 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 Good Utility Practices. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs or foregone revenues (including the reduction or loss of PTCs on an after tax basis) associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs or foregone revenues (including the reduction or loss of PTCs on an after tax basis). If Buyer agrees to pay the incremental costs or foregone revenues (including the reduction or loss of PTCs on an after tax basis), if any, Seller shall use commercially reasonable efforts to accommodate Buyer's request. However, unless it is transmitting to Seller a CAISO order, Buyer may not change Seller's Planned Outage schedule without Seller's approval. Nothing contained in this Section shall be deemed to limit Seller's ability to perform maintenance on the Units comprising the Project during periods when wind speeds are below minimum levels required for the generation of energy.

(c) Forced Outages. Seller shall, in accordance with the provisions set forth in Appendix IX, (i) use commercially reasonable efforts to notify Buyer of any Forced Outage affecting at least 5 MW of the Contract Capacity within ten (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 Energy from any other source for the output of the Project during a Forced Outage.

(e) Force Majeure. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with 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 with 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. Seller shall not substitute Products 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. If, at any time after execution of this Agreement, there exists an event of Force Majeure that prevents substantial performance by either Party and lasts for more than eighteen (18) consecutive months, the unaffected Party may terminate this Agreement by written Notice. Any such termination shall be without liability or penalty to either Party, and Buyer shall return to Seller the full amount of the Project Development Security or Delivery Term Security, as applicable, provided by Seller to Buyer; provided, however, that in the event that Buyer terminates the Agreement pursuant to a Force Majeure event affecting Seller within thirty-six (36) months of the commencement of the event of Force Majeure, but Seller subsequently intends to commence or recommence energy production or commercial operations of the Project within thirty-six (36) months of the commencement of the event of Force Majeure, then Seller shall provide advance Notice to Buyer of such intent to recommence, and Buyer and Seller shall, for a period of ninety (90) days from Seller's Notice, engage in the negotiation of a revised agreement, including designating (I) a new Contract Price, (II) a new Financing Milestone Date, if applicable, (III) new Guaranteed Project Milestones, if applicable, and (IV) Project Development Security or Delivery Term Security, as applicable. In addition to the foregoing, the Parties also agree that they shall make any necessary adjustments to the revised agreement to account for any reduced output of the generating facility as a result of such Force Majeure event. If the Parties are unable to agree upon a revised agreement within ninety (90) days of commencing negotiations, neither Party shall have any further obligation under this Section 3.7(e). If Buyer is the unaffected Party and does not exercise its right to terminate this Agreement due to an event of Force Majeure within thirty-six (36) months of the commencement of such event of Force Majeure, then this Agreement shall automatically terminate at the conclusion of the thirty-sixth (36<sup>th</sup>) month. Such automatic termination shall be without liability or penalty to either Party and Buyer shall return to Seller the full amount of the Project Development Security or Delivery Term Security, as applicable, provided by Seller to Buyer.

(f) Outage Procedures. The agreement of the Parties with respect to the procedures for (i) providing notice (ii) communicating during an Outage and (iii) testing of the Project during an Outage shall be set forth in Appendix VIII and Appendix IX.

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

(h) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7 or 3.8 or Appendix IX, Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering

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requirements, outage notification procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer; provided that Seller would not be required to reduce the amount of Energy that it can generate and/or Schedule under this Agreement or otherwise.

### 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, 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. Buyer shall make reasonable efforts to coordinate its emergency activities with the safety and security departments, if any, of the Project operator and shall at all times comply with Seller's safety and security requirements when on the Site. 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 CAISO and the Participating 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 any 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 and comment (but not approval) prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any 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 month following the satisfaction of all of the conditions precedent set forth in Section 11.1, until the Commercial

Operation Date, provide to Buyer a Monthly 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) 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 in Appendix III hereto ("Milestones") must be achieved in a timely fashion or Buyer may suffer damages. Seller shall provide Buyer with any reasonably 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 (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) by more than ninety (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 ("Remedial Action Plan"), 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 Remedial Action Plan 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. If the missed Milestone(s) is not a Guaranteed Project Milestone, and so long as Seller complies with its Remedial Action Plan obligations in Section 3.9(c)(i) and (ii), Seller shall not be considered in default of its obligations under this Agreement.

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

(A) By April 30, 2009, (the "Guaranteed Construction Start Date") the Construction Start Date shall have occurred; and

(B) By December 31, 2009 (the "Guaranteed Commercial Operation Date"), the Commercial Operation Date shall have occurred.

(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

Force Majeure 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 (A) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of one hundred twenty (120) days ("Project Cure Period"); or (B) the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, up to a total of one hundred twenty (120) days ("Construction Cure Period"). Each Party agrees and acknowledges that (I) 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 (II) the Daily Delay Damages are an appropriate approximation of such damages. Such Daily Delay Damages shall be Buyer's sole remedy for any failure by Seller to meet the Guaranteed Project Milestones by up to one hundred twenty (120) days. If Buyer draws upon the Project Development Security for any failure to meet the Guaranteed Construction Start Date, the Guaranteed Commercial Operation Date shall automatically be extended, day for day, for each day of Daily Delay Damages paid by Seller. 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, only if Seller meets the original Guaranteed Commercial Operation Date (as such original date may be extended by Force Majeure, but not by the payment of Daily Delay Damages, as described above), as provided further in Section 8.4(c) of this Agreement. For the sake of certainty, Buyer shall retain all Daily Delay Damages drawn as a result of Seller's failure to meet the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date (as each may be extended by Force Majeure and the payment of Daily Delay Damages, as described above), if Seller fails to meet the Guaranteed Commercial Operation Date (as may be extended by Force Majeure and the payment of Daily Delay Damages, as described above).

(v) Interconnection.

(A) Notwithstanding subsection (iv) above, if Seller cannot obtain interconnection to the CAISO Grid by the date that is at least three (3) months prior to the Guaranteed Commercial Operation Date ("Interconnection Trigger Date"), the Guaranteed Commercial Operation Date shall automatically be extended, day for day, for each day of delay in obtaining interconnection after the Interconnection Trigger Date; provided that Seller's inability to obtain interconnection is not caused by Seller's gross negligence or willful misconduct, and provided that such delay did not result from Seller's failure to comply with its obligations under its Large Generator Interconnection Agreement. If the Guaranteed Commercial Operation Date is extended for a period of eighteen (18) months, either Seller or Buyer may, upon written Notice to the other Party, terminate the Agreement without liability to either Party. Upon such termination, Buyer shall return any Project Development Security (including, if applicable, the payment of any interest due thereon pursuant to Section 8.4(d)) to Seller within twenty (20) days after Buyer receives Seller's Notice of termination.

(B) If within eighteen (18) months of a termination of the Agreement under this subsection (v) Seller obtains interconnection to the CAISO Grid, and resumes its efforts to complete the Project, then Seller shall provide advance Notice to Buyer of such recommencement and Buyer may, upon written Notice to Seller within ninety (90) days from its receipt of Seller's Notice, reinstate the terminated Agreement; provided that the terminated Agreement shall only be reinstated if Buyer and Seller mutually agree, within sixty (60) days of Buyer's reinstatement Notice, upon a revised Contract Price, which shall fully protect Seller against any adverse change in Seller's costs or revenues (including without limitation, increased construction, operating or ownership costs, cost or revenue effects associated with operational limitations, increased financing costs, and the reduction or loss of any tax benefits, including

PTCs, on an after-tax basis, but not to include any lost revenues based upon the then prevailing market price for a like product) associated with the Project. Upon reinstatement of the Agreement, the Parties agree to make any necessary administrative adjustments to the Agreement related to dates and timing (including with respect to Milestones), as necessary. If the Parties are unable to agree upon a revised Contract Price within ninety (90) days of commencing negotiations, neither Party shall have any further obligation under this Section 3.9(c)(v).

(vi) Permitting.

(A) Seller shall take all reasonable action to obtain a final and non-appealable conditional-use permit on terms reasonably acceptable to Seller (the "Permit") by March 31, 2009. If Seller does not receive a Permit from Shasta County by March 31, 2009 ("Permit Milestone Date"), then Seller may terminate this Agreement without liability by providing Notice of termination to Buyer on or before April 30, 2009. Upon such termination, Buyer shall return any Project Development Security (including, if applicable, the payment of any interest due thereon pursuant to Section 8.4(d)) to Seller within twenty (20) days after Buyer receives Seller's Notice of termination.

(B) Notwithstanding the foregoing, if, at any time within three (3) years of Seller's termination of the Agreement pursuant to subpart (A), Seller obtains a Permit from Shasta County and intends to resume its efforts to complete the Project, then Seller shall provide Notice to Buyer of its receipt of such Permit, and Buyer and Seller shall, for a period of ninety (90) days from Seller's Notice, engage in the negotiation of a revised agreement, including designating (I) a new Contract Price, (II) a new Financing Milestone Date, if applicable, (III) new Guaranteed Project Milestones, if applicable, and (IV) Project Development Security or Delivery Term Security, as applicable. If the Parties are unable to agree upon a revised agreement within ninety (90) days of commencing negotiations, neither Party shall have any further obligation under this Section 3.9(c)(vi).

(vii) Financing.

(A) Seller shall take all commercially reasonable action to obtain construction financing for the Project on terms reasonably acceptable to Seller (the "Financing") by March 31, 2009. If Seller does not receive Financing by March 31, 2009 ("Financing Milestone Date"), then Seller may terminate this Agreement without liability by providing Notice of termination to Buyer on or before April 30, 2009 along with documentation and an affidavit executed by an authorized signatory of Seller attesting that Seller used commercially reasonable efforts to obtain Financing but was unable to secure it. Upon such termination, Buyer shall return any Project Development Security (including, if applicable, the payment of any interest due thereon pursuant to Section 8.4(d)) to Seller within twenty (20) days after Buyer receives Seller's Notice of termination.

(B) Notwithstanding the foregoing, if, at any time within three (3) years of Seller's termination of the Agreement pursuant to subpart (A), Seller intends to resume its efforts to obtain Financing and complete the Project, then Seller shall provide Notice to Buyer of such resumed efforts, and Buyer and Seller shall, for a period of ninety (90) days from Seller's Notice, engage in the negotiation of a revised agreement, including designating (I) a new Contract Price, (II) a new Financing Milestone Date, if applicable, (III) new Guaranteed Project Milestones, if applicable, and (IV) Project Development Security or Delivery Term Security, as applicable. If the Parties are unable to agree upon a revised agreement within ninety

(90) days of commencing negotiations, neither Party shall have any further obligation under this Section 3.9(c)(vii).

(C) Within five (5) Business Days of completing Financing, Seller shall provide written Notice of the same to Buyer (“Financing Notice”).

**ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS**

4.1 **Contract Price.** The Contract Price for each MWh of Scheduled Energy in each Contract Year shall be \$103.25/MWh.

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

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

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

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

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

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

“NERC Holidays” mean the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4<sup>th</sup>) 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 TOD Factors and Monthly TOD Payment.

(a) TOD Factors. In accordance with all other terms of this Article Four, 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:

<b>TOD FACTORS FOR EACH TOD PERIOD</b>			
<b>Period</b>	<b>1. Super-Peak</b>	<b>2. Shoulder</b>	<b>3. Night</b>
A. June – September	2.037	0.921	0.700
B. Oct. – Dec.; Jan. & Feb.	1.203	1.049	0.841
C. Mar. – May	1.030	0.855	0.656

(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.

4.4 Excess Scheduled Energy. In any Contract Year, if and after Seller delivers Scheduled Energy in excess of 120 percent (120%) of the annual Contract Quantity amount, the Contract Price for all Energy subsequently delivered in excess of such 120 percent (120%) shall be adjusted to be seventy five percent (75%) of the applicable Contract Price.

4.5 Imbalance Energy. Subject to Section 3.4(b)(ii), Seller shall be responsible for settlement of Imbalance Energy with the CAISO. Subject to Section 3.4(b)(ii), Seller shall also be responsible for any costs, penalties or other charges that CAISO may assess in connection with Imbalance Energy. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate 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.”

4.6 Treatment of Imbalance Energy When Seller is not eligible or does not participate in EIRP. For any CAISO settlement time interval that Seller is not eligible or does not participate in EIRP as a Participating Intermittent Resource, and there is an imbalance between Scheduled Energy and Delivered Energy, the following shall apply (subject to Section 3.4(b)(ii)):

(a) Imbalance Price. In any given month, for each settlement time interval in which there is Positive Imbalance Energy (each, a “Positive Imbalance Settlement”), the Imbalance Price for such Positive Imbalance Settlement shall be the 10-Minute Settlement Interval Average Price as published with respect to positive uninstructed imbalance energy charges for the applicable CAISO settlement time interval and pricing node that includes the Delivery Point. In any given month, for each settlement time interval in which there is Negative Imbalance Energy (each, a “Negative Imbalance Settlement”), the Imbalance Price for such Negative Imbalance Settlement shall be the 10-Minute Settlement Interval Average Price as

published with respect to negative uninstructed imbalance energy charges for the applicable time interval and pricing node that includes the Delivery Point.

(b) Calculation of Amount of Positive Imbalance Energy (Over Deliveries).

For each Positive Imbalance Settlement in the applicable calendar month during which the Imbalance Price is greater than the Contract Price (as adjusted by the applicable TOD Factor), Buyer shall calculate an amount (each such calculated amount, a “Positive Imbalance Settlement Positive Amount”) equal to the product of (i) the quantity of Positive Imbalance Energy for such Positive Imbalance Settlement and (ii) the difference between (A) the Imbalance Price and (B) the Contract Price (as adjusted by the applicable TOD Factor). For each Positive Imbalance Settlement in the applicable calendar month during which the Imbalance Price is less than the Contract Price (as adjusted by the applicable TOD Factor), Buyer shall calculate an amount (each such calculated amount, a “Positive Imbalance Settlement Negative Amount”) equal to the product of (i) the quantity of Positive Imbalance Energy for such Positive Imbalance Settlement and (ii) the difference between (X) the Contract Price (as adjusted by the applicable TOD Factor) and (Y) the Imbalance Price. The “Aggregate Monthly Positive Imbalance Amount” shall be equal to the difference between (I) the sum of all Positive Imbalance Settlement Positive Amounts in the applicable calendar month and (II) the sum of all Positive Imbalance Settlement Negative Amounts calculated in the applicable calendar month.

(c) Calculation of Amount of Negative Imbalance Energy (Under Deliveries). For each Negative Imbalance Settlement in the applicable calendar month during which the Imbalance Price is less than the Contract Price (as adjusted by the applicable TOD Factor), Buyer shall calculate an amount (each such calculated amount, a “Negative Imbalance Settlement Positive Amount”) equal to the absolute value of the product of (i) the quantity of Negative Imbalance Energy for such Negative Imbalance Settlement and (ii) the difference between (A) the Imbalance Price and (B) the Contract Price (as adjusted by the applicable TOD Factor). For each Negative Imbalance Settlement in the applicable calendar month during which the Imbalance Price is greater than the Contract Price (as adjusted by the applicable TOD Factor), Buyer shall calculate an amount (each such calculated amount, a “Negative Imbalance Settlement Negative Amount”) equal to the absolute value of the product of (i) the quantity of Negative Imbalance Energy for such Negative Imbalance Settlement and (ii) the difference between (X) the Contract Price (as adjusted by the applicable TOD Factor) and (Y) the Imbalance Price. The “Aggregate Monthly Negative Imbalance Amount” shall be equal to the difference between (I) the sum of all Negative Imbalance Settlement Positive Amounts calculated in the applicable calendar month and (II) the sum of all Negative Imbalance Settlement Negative Amounts calculated in the applicable calendar month.

(d) True Up Adjustment for Monthly Netting. A monthly settlement period will be used to net all Positive Imbalance Settlements and Negative Imbalance Settlements of Imbalance Energy within each calendar month (each, a “Monthly Netting”). The amount of each Monthly Netting (the “Monthly Net Amount”) will be equal to the sum of the Aggregate Monthly Positive Imbalance Amount and Aggregate Monthly Negative Imbalance Amount and, if such Monthly Net Amount is positive, the Buyer shall deduct the Monthly Net Amount from the monthly payment due to Seller. Notwithstanding the foregoing, if the Monthly Net Amount due from Seller after the Monthly Netting has occurred is less than or equal to \$5,000, then Buyer shall not deduct this amount from the monthly payment due to Seller. For purposes of clarification, illustrative examples of how this Section 4.6 is intended to work are included in Appendix XI attached hereto.



#### 4.7 Payment and Imbalance Energy Procedures.

(a) Records for Payments. On or about the tenth (10th) day of each month, beginning with the second month of the first Contract Year and continuing every month thereafter, including the first month following the end of the Delivery Term, Seller shall provide to Buyer complete records for the applicable settlement interval of Delivered Energy and Scheduled Energy for the preceding month, including, pursuant to Section 6.1 of this Agreement an invoice for all Scheduled Energy delivered to Buyer. For any CAISO settlement time interval where Seller is unable to participate in EIRP as a Participating Intermittent Resource, Seller and Buyer agree to use the Imbalances Energy prices that the CAISO has posted on the fifth (5th) day of the month, following the delivery month and to settle the Imbalance Energy calculations pursuant to Section 4.7(c) below, if such day is not a Business Day, then such prices posted on the next following Business Day. Buyer shall receive all Green Attributes for all Delivered Energy received by Buyer during the Delivery Term, regardless of whether any or all of such Product was sold to Buyer directly pursuant to an SC-to-SC trade or sold into the CAISO.

(b) Billing. Monthly billing for Imbalance Energy, as defined above, shall be accomplished using the Imbalance Price and formulae described in this Article Four. 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 this Agreement.

(c) Imbalance Energy Adjustments. Because the Parties recognize that the Imbalance Prices retrieved from the CAISO on or about the fifth (5th) day of each month, as provided in Sections 4.5 and 4.6 above, may not be the final posted price, either Party shall have the right to request a true-up on the Imbalance Energy calculations once the CAISO has posted the final price for that month, which shall not be more than ninety (90) days from the date on which the initial Imbalance Price was retrieved. Any such adjustment shall be netted against the next following invoice.

4.8 CAISO Charges. Seller shall assume all liability and pay for all congestion and loss charges up to the Delivery Point. Buyer shall assume all liability and pay for all congestion and loss charges at and after the Delivery Point. Subject to Section 3.4(b)(ii) each Party shall assume all liability and reimburse the other Party for any and all charges incurred by the other Party as a result of the first Party's failure to abide by the CAISO Tariff and all applicable protocols. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. Such notification shall not alter a Party's responsibilities for payment for all imbalance and congestion charges under this Agreement. In the event that Buyer elects DA Energy ISTs, all charges, benefits, refunds and credits assessed by the CAISO related to deviations between the DA Energy ISTs and the HASP Energy ISTs or real-time market, including without limitation energy charges, Grid Management Charges, and uplift charges, will be allocated to the Buyer; provided that, if the EIRP program is extended to include netting of deviations and special settlement treatment for the Day-Ahead scheduling process in substantially the same manner as the EIRP program nets and settles deviations as of the Execution Date, such deviations, if any, would be allocated to the Seller. Subject to Section 3.4(b)(ii), CAISO imbalance energy costs associated with deviations between the HASP Energy Schedules and metered actuals, as

established by EIRP, will be allocated to Seller. Buyer will pay directly or reimburse Seller for any additional ISO Grid Management Charge or other incremental charge incurred in connection with Seller scheduling a DA Energy IST or DA Uplift IST.

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

5.1 Events of Default. An “Event of Default” shall mean,

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

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

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

(iii) 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 Notice (provided that if the remedy may not be effected within such thirty (30) day period and the non-performing Party uses reasonable efforts to effect such remedy within sixty (60) days of the Notice, then the cure period shall be sixty (60) days);

(iv) such Party becomes Bankrupt; or

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

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

(i) if at any time during the Term of 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;

(ii) failure by Seller to meet either of the Guaranteed Project Milestones, set forth in Section 3.9(c)(iii), in each case after the applicable Project Cure Period or the Construction Cure Period has expired;

(iii) failure to pay Cure Delivery for failure to achieve the Guaranteed Energy Production requirement as set forth in Section 3.1(e) of this Agreement;

(iv) failure to meet the requirements for Contract Capacity as set forth in Section 3.1(f) of this Agreement; or

(v) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement.

5.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”), (b) to accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date and collect liquidated damages (“Termination Payment”), which shall be calculated in accordance with Section 5.3 below; (ii) withhold any payments due to the Defaulting Party under this Agreement; (c) suspend performance; and (d) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. The Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the “Settlement Amount” is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The foregoing shall not relieve the Non-Defaulting Party of the obligation to pay for performance rendered prior to termination. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.3 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Product, (c) at the same Delivery Point, and (d) for the remaining Delivery Term, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remaining Delivery Term of the Terminated Transaction and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Transaction. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

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

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calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

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

## **ARTICLE SIX: PAYMENT**

6.1 Billing and Payment; Remedies. On or about the tenth (10<sup>th</sup>) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, and (b) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Section 4.4, as adjusted for Imbalance Energy pursuant to Section 4.5 (which may include preceding months). Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty fifth (25<sup>th</sup>) day of each month and ten (10) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

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

Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

6.3 Credit Downgrade. Notwithstanding anything to the contrary contained herein, in the event that Buyer's Credit Rating falls below Baa3 by Moody's or BBB- by S&P, Seller may provide Buyer with written Notice requesting additional security in the form of a Letter of Credit. Such Letter of Credit shall be issued by a qualified bank acceptable to Seller and shall be made in an amount approximating estimated payments to Seller for Product for a sixty (60) day period. Upon receipt of such Notice, Buyer shall have ten (10) Business Days to remedy the situation by providing such letter of credit to Seller. In the event that Buyer fails to provide such letter of credit or other credit assurance acceptable to Seller within such time, then an Event of Default under Article Five will be deemed to have occurred and Seller will be entitled to the remedies set forth in Article Five of this Agreement.

## **ARTICLE SEVEN: LIMITATIONS**

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

8.2 Seller Financial Information. The applicable financial information shall be provided as specified on the Cover Sheet:

Option A: If requested by Buyer, Seller shall deliver (i) within one hundred twenty days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year; provided that if Seller does not prepare audited financial statements, Seller shall provide unaudited financial statements, and (ii) within sixty days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Buyer, Seller shall deliver to Buyer (i) within one hundred twenty days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within sixty days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and

right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever Seller, including any equity or right of purchase or redemption by the Seller. Buyer shall only exercise its rights and remedies hereunder to the extent of its reasonable expectation of damages, and shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

#### 8.4 Performance Assurance.

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

(i) Project Development Security in the amount and in the form set forth in the Cover Sheet with respect to this subpart (i) from the Execution Date of this Agreement until Seller posts Project Development Security pursuant to subpart (ii) below, with Buyer;

(ii) Project Development Security:

(A) in the amount and in the form set forth in the Cover Sheet with respect to this subpart (ii)(A) from the later of (x) a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Article Eleven are either satisfied or waived or (y) April 30, 2009, until Seller posts Project Development Security pursuant to subpart (ii)(B) below, with Buyer;

(B) in the amount and in the form set forth in the Cover Sheet with respect to this subpart (ii)(B) contemporaneously with the Financing Notice or at any other date prior to the Financing Notice, until Seller posts Delivery Term Security pursuant to subpart (iii) below, with Buyer; and

(iii) from the Commercial Operation Date until the end of the Term, the Delivery Term Security in the amount and in the form set forth in the Cover Sheet with respect to this subpart (iii).

Any such Performance Assurance shall not be deemed a limitation of damages., unless otherwise specifically provided by the terms set forth in this Agreement.

Notwithstanding anything herein to the contrary, commencing upon Seller's posting of Project Development Security pursuant to Section 8.4(a)(ii)(B) of this Agreement, drawing upon the Project Development Security and/or the Delivery Term Security, as applicable, shall be Buyer's

sole remedy for any breach of this Agreement by Seller (including in connection with any termination of the Agreement permitted herein by Buyer), and the Project Development Security and/or Delivery Term Security, as applicable, shall constitute the maximum amount of damages that Seller shall pay to Buyer hereunder, except when such breach of this Agreement by Seller is caused solely by the willful misconduct or gross negligence of Seller (including any sale of the Contract Capacity, or associated Product, to a third party in violation of this Agreement).

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

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are owed to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Project Development Security amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security; provided however, that with Buyer's consent, Seller may elect to apply the Project Development Security toward the Delivery Term Security, if any, provided pursuant to this Section 8.4.

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

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller within fourteen (14) days after the following has occurred: (a) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (b) all payment obligations of the Seller arising under this Agreement, including compensation for any Termination Payment, are paid in full (whether directly or indirectly such as through set-off or netting).

#### 8.5 Letter of Credit.

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



any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight; provided however, that if the Letter of Credit permits Buyer to draw on the Letter of Credit in the event of the circumstances identified in (x) or (y) above, as applicable, and if Seller fails to Cure, Buyer shall draw upon the Letter of Credit and apply all cash proceeds received as cash collateral towards satisfaction of Seller's creditworthiness/collateral requirements of Article Eight.

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

(c) If both Buyer and Seller, in their reasonable discretion, are able to mutually agree upon a form of guaranty ("Guaranty"), Seller shall be permitted to substitute such Guaranty, to be held by Buyer as Delivery Term Security, in lieu of cash or a Letter of Credit, upon satisfaction of all of the following conditions: the Guarantor must (a) be incorporated in a jurisdiction of the United States; and (b) have a Credit Rating that is not less than either BBB by S&P or Baa2 by Moody's. Buyer shall return such cash or Letter of Credit in its possession within ten (10) Business Days of Buyer's receipt and acceptance of such Guaranty. Seller shall notify Buyer immediately of a downgrade in Guarantor's Credit Rating below the requirements set forth above. In the event that the Guarantor ceases to meet the criteria set forth above as determined by Buyer in its sole discretion, then, within five (5) Business Days of notice from Buyer, Seller shall post Delivery Term Security in the form of cash or a Letter of Credit.

#### **ARTICLE NINE: GOVERNMENTAL CHARGES**

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

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

## ARTICLE TEN: MISCELLANEOUS

### 10.1 No Fault Termination.

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

(i) If Seller’s Bid Price exceeds the Market Price Referent, Seller may seek a PGC Funding Award from the CEC for an amount (in \$ per MWh) equal to the positive difference derived by subtracting (a) the Market Price Referent (in \$ per MWh) from (b) the Bid Price (in \$ per MWh) (“PGC Fund Amount”). To the extent that Seller seeks such PGC Fund Award, Seller shall use best efforts to comply with all funding criteria and obtain the PGC Fund Amount and Buyer shall reasonably support Seller’s efforts. If Seller does not obtain a PGC Funding Confirmation or PGC Funding Award by 11:59 p.m. Pacific Standard Time on the 120th day from the date on which Buyer files this Agreement for CPUC Approval (“Funding Termination Deadline”), then Seller may unilaterally terminate this Transaction prior to the Funding Termination Deadline effective as of the date on which Buyer receives Seller’s written notice of termination. If Seller exercises this termination right, neither Buyer nor Seller shall be subject to liability of any kind.

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

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

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

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

(ii) Right of First Refusal Option.

(A) Option. Buyer, in its sole discretion, shall have the right, but not the obligation, to pay to Seller the percentage of lost PGC funding specified in its Revocation Notice ("Lost PGC Funds") and Seller shall continue performing under the Transaction for the remaining term of the Transaction (the "Option"). Buyer shall have 30 days from its receipt of the Revocation Notice to exercise the Option ("Exercise Period"), subject to Option Approval, as defined below.

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

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

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

(iii) Reinstatement of PGC Funding. If the PGC Funding Award is reinstated in its entirety, including retroactive payments for Lost PGC Funds, at anytime before (A) Seller's termination of this Transaction or (B) Buyer's exercise of the Option, then Seller shall no longer be permitted to terminate this Transaction, pursuant to this Section 10.1(b)(i), and

both Parties shall continue to perform under this Transaction. If the PGC Funding Award is reinstated in whole or in part at anytime after Buyer has exercised the Option, then Buyer shall be relieved of all further obligations to pay any of Seller's Lost PGC Funds, which will be covered by the reinstated PGC Funding Award. If PGC Funding Award is reinstated in whole or in part on a retroactive basis after Buyer has exercised the Option, then Buyer shall have the right to offset against payments due to Seller that portion of such award amount equivalent to the Lost PGC Funds paid by Buyer to Seller between the period in which the PGC Funds were revoked and reinstated. Seller shall notify Buyer in writing of any such reinstatement of PGC Funds within ten days of receiving notice of such reinstatement from the CEC, CPUC, or other regulatory agency responsible for the PGC Funds program, which notice shall include a copy of such notice.

(c) Production Tax Credit. If federal legislation providing for an extension of Production Tax Credits provided in Section 45 of the Internal Revenue Code, on equivalent terms and conditions (including an escalation factor) as in effect on the Execution Date, for a wind facility placed in service on or before December 31, 2010 ("In-Service Date"), is not enacted by September 30, 2009, and the Guaranteed Commercial Operation Date is in the year 2010 due to an event of Force Majeure or due to a delay in obtaining interconnection service under Section 3.9(c)(v), then Seller may terminate this Agreement without liability by providing Notice of termination and including in such Notice Seller's determination of the amount of lost economic benefit, determined on an after-tax basis, of the Production Tax Credit, to Buyer on or before October 30, 2009; provided that Buyer may, at its option, override such Notice of termination by providing Notice to Seller within sixty (60) days of receipt of Seller's Notice to terminate and by agreeing in such Notice to compensate Seller for the amount of lost economic benefit, determined on an after-tax basis, of the Production Tax Credits, either in the amount specified by Seller in its termination Notice or as otherwise mutually agreed to by the Parties prior to Buyer's override Notice. If Buyer does not override the termination Notice provided by Seller to Buyer, then the Agreement shall terminate and Buyer shall return any Project Development Security (including, if applicable, the payment of any interest due thereon pursuant to Section 8.4(d)) to Seller within eighty (80) days after Buyer received Seller's Notice of termination. If, at any time within three (3) years of Seller's termination of the Agreement pursuant to this Section 10.1(c), Seller intends to resume its efforts to complete the Project, then Seller shall provide Notice to Buyer of its intent to complete the Project, and Buyer and Seller shall, for a period of ninety (90) days from Seller's Notice, engage in the negotiation of a revised agreement, including designating (I) a new Contract Price, (II) a new Financing Milestone Date, if applicable, (III) new Guaranteed Project Milestones, if applicable, and (IV) Project Development Security or Delivery Term Security, as applicable. If the Parties are unable to agree upon a revised agreement within ninety (90) days of commencing negotiations, neither Party shall have any further obligation under this Section 10.1(c).

## 10.2 Representations and Warranties.

(a) General Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

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

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

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

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

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

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

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

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

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

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

(c) The term "commercially reasonable efforts" as used in Section 10.2(b) of this Agreement, shall not require Seller to incur External Costs in excess of the Established Cost Cap.

### 10.3 Covenants.

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

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

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

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

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

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

(ii) Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns, have or will have ownership of, or a demonstrable exclusive right to control, the Project.

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

### 10.5 Indemnities.

(a) Indemnity by Seller. Except as set forth herein, Seller shall release, indemnify and hold harmless Buyer, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney’s fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, (ii) Seller’s operation and/or maintenance of the Project, or (iii) Seller’s actions or inactions with respect to this Agreement, including, without limitation, any loss, Claim, action or suit, for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss,

Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement at and after the Delivery Point, including, without limitation, any loss, Claim, action or suit, for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its agents, employees, directors or officers.

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

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

10.7 Confidentiality. Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party's employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 10.8 of this Agreement; (v) in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC. In connection with requests made pursuant to clause (v) of this Section 10.7 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

10.8. RPS Confidentiality. Notwithstanding Section 10.7 of this Agreement, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, Delivery Term, Project location,

Contract Capacity, anticipated Commercial Operation Date, Contract Quantity, and Delivery Point.

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

10.10. Insurance. From commencement of construction Work (unless another date is provided for herein as the date on which a particular coverage shall commence) to the end of the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and shall require its subcontractors, including Seller's EPC Contractors, to maintain sufficient limits of the appropriate insurance coverage.

(a) Workers' Compensation and Employers' Liability.

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

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

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form.

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

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller (Insurance Services Office Form CG2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;"



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

(C) include a severability of interest clause.

(c) Business Auto.

(i) Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability for hired and non-owned automobiles.

(ii) The limit shall not be less than \$5,000,000 each accident, and in the aggregate, for bodily injury and property damage and limits may be satisfied by endorsement under the limits provided under Section 10.10(b).

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

(d) Aircraft Liability.

(i) If aircraft are used by Seller in the course of performing Work, then, coverage for bodily injury, property damage, including injury sustained by any passenger, applying to all aircraft owned, furnished or used by the Seller in the performance of this Agreement shall be maintained. For the avoidance of doubt, Seller shall have no obligations under this subsection (d) unless and until it uses aircraft in the course of performing Work. Work that involves chemical spraying shall include coverage for pesticide and herbicide application.

(ii) The limit shall not be less than \$5,000,000 single limit for bodily injury and property damage including passenger liability.

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of Work performed by or for the Seller;

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

(C) all rights of subrogation against PG&E shall be waived with respect to all physical damage to any aircraft used during the performance of this Agreement.

(e) Watercraft Liability.

(i) If watercraft are used by Seller in the course of performing Work, then Marine protection and indemnity or other liability coverage, including coverage for injury sustained by any passenger, apply to all watercraft used in the performance of this

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Agreement. For the avoidance of doubt, Seller shall have no obligations under this subsection (d) unless and until it uses watercraft in the course of performing Work.

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

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work by or for the Seller;

(B) be endorsed to specify that the Seller's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it.

(f) Seller's Pollution Liability.

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

(ii) The limit shall not be less than \$1,000,000 each occurrence, and in the aggregate, for bodily injury and property damage and may be obtained by endorsement to Section 10.10(b).

(iii) The policy shall endorse PG&E as additional insured.

(g) All Risk Property Insurance. Notwithstanding anything in the first paragraph of this Section 10.10, Seller shall obtain and maintain all risk property insurance coverage as described below commencing on the earlier of (i) the date that it first bears the risk of loss with respect to any materials, parts or equipment that are intended to constitute the Project and (ii) the commencement of Construction Work.

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

(ii) Coverage shall be written to cover the full replacement cost of the property except earthquake and flood, which may be subject to sublimits available.

(h) Additional Insurance Provisions.

(i) Upon the commencement of the applicable period in which coverage is required hereunder, Seller shall furnish PG&E with certificates of insurance and endorsements of all required insurance as of such date for Seller.

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to PG&E, or ten (10) days for non-payment of premium.

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

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

(iv) Upon written request, reviews of such insurance may be conducted by PG&E on an annual basis and, in addition, PG&E may inspect the original policies.

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

(j) Form And Content.

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

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

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

10.11 Access to Financial Information. In the event that Seller is required by law (which includes SEC rules) to provide to Buyer access to financial records and personnel of Seller in connection with the potential for consolidated financial reporting, Seller shall provide to Buyer the following during every calendar quarter for the Term:

(a) Complete financial statements and notes to financial statements; and

(b) Financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter.

Any information provided to Buyer pursuant to this Section 10.11 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

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

10.13 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either party, the other party will confirm facsimile or PDF signatures by signing an original document. This Agreement shall be binding on each Party’s successors and permitted assigns. The standard of review the FERC shall apply when acting on proposed modifications to this Agreement, either on FERC’s own motion or on behalf of a signatory or a non-signatory, shall be the “public interest” standard of review. Except as set forth in the immediately preceding sentence, nothing in this Agreement shall in any way restrict or otherwise limit the rights of either Party under Sections 205 and 206 of the Federal Power Act.

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

10.15 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10.16 Survival. Any termination of this Agreement pursuant to Sections 3.7(e), 3.9(c)(v), 3.9(c)(vi), 3.9(c)(vii), or 10.1(c) shall be effective five (5) Business Days from the date on which the terminating Party delivers notice of termination. Upon such termination, neither Party shall have any obligation or liability to the other Party except as provided in Sections 3.7(e), 3.9(c)(v), 3.9(c)(vi), 3.9(c)(vii), or 10.1(c), which shall survive termination of this Agreement as provided therein.

10.17 CPUC Approval of Renegotiated Contract Price. Any execution of a revised agreement pursuant to Sections 3.7(e), 3.9(c)(v)(B), 3.9(c)(vi)(B), or 3.9(c)(vii)(B) shall be effective upon the date agreed to by the Parties. Any such revised agreement shall specify that (i)

Buyer shall file the revised agreement for CPUC Approval within thirty (30) days of execution of the revised agreement, and (ii) if CPUC Approval of the revised agreement is not received within six (6) months of the date the revised agreement was filed for CPUC Approval, or in the event that Buyer does not file the revised agreement for CPUC Approval within thirty (30) days of the execution of the revised agreement, Seller may terminate the revised agreement without any further liability to Buyer, and Buyer shall return to Seller the full amount of the Project Development Security or Delivery Term Security, if any, provided by Seller to Buyer.

10.18 Additional Seller PTC Termination Right. If federal legislation providing for an extension of Production Tax Credits provided in Section 45 of the Internal Revenue Code, on equivalent terms and conditions (including an escalation factor) as in effect on the Execution Date, for a wind facility placed in service on or before the December 31, 2010, is not enacted by September 30, 2009, then:

(i) if Seller reasonably expects to complete ninety percent (90%) or more of the Project capacity by December 31, 2009, then Seller shall have the option to either (A) complete the remainder of the Project after December 31, 2009, subject to the terms and conditions of this Agreement, or (B) upon written Notice to Buyer, elect to reduce, pro rata, the Contract Capacity, Contract Quantity, Delivered Energy, Cure Delivery Cap, Guaranteed Energy Production, the Project Development Security and Delivery Term Security to reflect the level of Project capacity placed in operation as of December 31, 2009; or

(ii) if Seller reasonably expects to complete less than ninety percent (90%) of the Project capacity by December 31, 2009, then Seller shall have the option to either (A) complete the remainder of the Project after December 31, 2009, subject to the terms and conditions of this Agreement, or (B) elect to terminate this Agreement and the Transaction entered into hereunder by written Notice to Buyer; provided that Seller shall be liable to Buyer for the full amount of the Project Development Security.

#### **ARTICLE ELEVEN: CONDITIONS PRECEDENT**

11.1 Conditions Precedent. Subject to Section 2.6 hereof, the Term shall not commence until the occurrence of all of the following:

(a) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;

(b) CPUC Approval has been obtained; and

(c) Buyer receives a final and non-appealable order of the CPUC that finds that Buyer's entry into this Agreement is reasonable and that payments to be made by Buyer hereunder are recoverable in rates (such occurrences shall be referred to as "Conditions Precedents").

Buyer shall submit this Agreement for CPUC Approval within sixty (60) days of the Execution Date and shall diligently pursue such approval thereafter.

11.2 Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied or waived in writing by both Parties on or before March 31, 2009, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party.

## ARTICLE TWELVE: DISPUTE RESOLUTION

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

### 12.2 Management Negotiations.

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

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

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

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to subpart (b) above, refuses or does not meet within the ten (10) Business Day period specified in subpart (b) above, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the AAA. As the first step, the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by Arbitration conducted by a retired judge or justice from the AAA panel conducted in San

Francisco, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration"). The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the AAA a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

12.4 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

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

(d) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

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

## **ARTICLE THIRTEEN: NOTICES**

Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified in herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, as provided in Appendix IX, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.



**APPENDIX I**

**FORM OF LETTER OF CREDIT**

*Issuing Bank Letterhead and Address*

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

**Date:** [insert issue date]

**Beneficiary:** Pacific Gas and Electric Company

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

**Applicant:** [Insert name and address of Applicant]

**Letter of Credit Amount:** [insert amount]

**Expiry Date:** [insert expiry date]

Ladies and Gentlemen:

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

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

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
  - A. “Pursuant to the terms of that certain Power Purchase Agreement (“PPA”), dated \_\_\_\_\_, between Beneficiary and **[insert name of Seller under the PPA]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the PPA]** under the PPA; or

B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the PPA]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended (without an amendment hereto) for a period of one (1) year from the Expiry Date or any future Expiry Date, unless at least sixty (60) days prior to any such expiration date [insert name of issuing bank] has sent you written notice by courier service or overnight mail that it elects not to permit this Letter of Credit to be so extended beyond, and will expire on its then current Expiry Date. In that event, no presentation made under this Letter of Credit after such Expiry Date will be honored.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below with respect to an interruption of our business as described in Article 36 of the UCP 600, as defined below) at our offices at [insert issuing bank’s address for drawings].

All demands for payment shall be made by presentation of original documents at the issuing bank’s office stated above.

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

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

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the “UCP 600”); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

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

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

Very truly yours,

**[insert name of issuing bank]**

By: \_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_  
[print or type name]

Title: \_\_\_\_\_

**Exhibit A SIGHT DRAFT**

TO  
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ \_\_\_\_\_ DATE:  
\_\_\_\_\_

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

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

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY:

\_\_\_\_\_

NAME AND TITLE

**APPENDIX II**

**INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER**

In accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“Agreement”) by and between \_\_\_\_\_ (“Buyer”) and \_\_\_\_\_ (“Seller”), this letter ("Initial Energy Delivery Date Confirmation Letter") serves to document the parties further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and Buyer has received the Product, as specified in the Agreement, as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the “Initial Energy Delivery Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Seller represents to Buyer that it has been granted status as an [Exempt Wholesale Generator] [Qualifying Facility].

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

[ **SELLER** ]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: \_\_\_\_\_  
e: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX III**

**MILESTONES SCHEDULE**

<b>Identify Milestone</b>	<b>Date for Completion</b>
<b>Construction Start Date</b>	<b>April 30, 2009</b>
<b>Commercial Operation Date</b>	<b>December 31, 2009</b>

## APPENDIX IV

### PROJECT AND SITE DESCRIPTION

#### PROJECT DESCRIPTION

Project name: Hatchet Ridge

Project Site name: Hatchet Ridge

Project physical address: Hwy 299, Burney, California 96013

Total number of Units at the Project (committed and not committed to Buyer):

Number of Units still to be determined by Seller, but, as is provided in the body of the PPA, Seller intends that Project will have approximately 103.2 MW of nameplate capacity, which may be rounded up to the nearest capacity to account for a whole number of turbines. Subject to Section 3.1(n) of the PPA, 78.2 MW gross of the Project's output will be delivered to Buyer, and the remaining 25 MW gross of the Project's output is subject to the provisions of Section 3.1(n) of the PPA.

Technology Type: Once Seller has determined the type of wind turbines to be used at the Project, Seller will include a description of the turbines in a Monthly Progress Report.

Substation: On site Hatchet Ridge Substation connecting into PGE's Pit River #3 – Round Mountain 230 kV Transmission Line

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

The nameplate capacity of the Project is intended to be approximately 100 MW.

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

Seller intends to use commercially available wind turbines, the identity and further description of which will be included in Monthly Progress Report, once determined by Seller, as well as necessary related equipment.

[INSERT MAP] See attached.

## Legal Description of Property

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SHASTA, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

~TRACT ONE:~

TOWNSHIP 35 NORTH, RANGE 1 EAST, M.D.B.&M.,

SECTION 1: SOUTHWEST QUARTER

APN: PORTION OF 027-120-004

SECTION 11: LOTS 1, 3, 4, 5, 6 AND 8;. THE SOUTH ONE-HALF OF THE NORTHWEST QUARTER; THE WEST ONE-HALF OF THE SOUTHWEST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER

APN: PORTION OF 027-120-007

SECTION 12: THE NORTH HALF; THE EAST ONE-HALF OF THE SOUTHEAST QUARTER; THE WEST ONE-HALF OF THE SOUTHWEST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER

APN: PORTION OF 027-120-008

TOWNSHIP 35 NORTH, RANGE 2 EAST, M.D.B.&M.

SECTION 7: LOTS 3 AND 4. THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER.

APN: 030-010-009, PORTION OF 030-010-008.

SECTION 18: LOTS 3, 4, 5, 6, 7, 12, 13, 14 AND 15

EXCEPTING FROM SAID LOTS 14 AND 15 1/16 INTEREST OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS AS RESERVED AND EXCEPTED IN THE PATENT DATED JULY 14, 1928 FROM THE STATE OF CALIFORNIA TO FREDA LAMSON, RECORDED JULY 30, 1928, IN BOOK 42 OF OFFICIAL RECORDS AT PAGE 485, SHASTA COUNTY RECORDS.



FURTHER EXCEPTING FROM SAID LOTS 14 AND 15, ALL ORES, METALS, FOSSILS, ELEMENTS, GASES, MINERALS, MINERAL-BEARING SUBSTANCES AND GEOTHERMAL RESOURCES OF EVERY KIND AND CHARACTER (HEREIN COLLECTIVELY CALLED "RESERVED MINERALS"), NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED IN SUCH REAL PROPERTY ONE HUNDRED (100) FEET OR MORE AS MEASURED VERTICALLY BELOW THE SURFACE OF THE EARTH, OR THAT MAY BE PRODUCED THEREFROM, INCLUDING BUT NOT LIMITED TO: ALL OIL, NATURAL GAS AND HYDROCARBON SUBSTANCES AND GEOTHERMAL RESOURCES (WHICH INCLUDE BUT ARE NOT LIMITED TO THE HEAT OF THE EARTH IN ANY FORM; THE RECOVERABLE THERMAL OR OTHER ENERGY DERIVED THEREFROM; THE STEAM, GAS OR FLUID TRANSPORTING THIS HEAT OR ENERGY AND ALL OTHER SUBSTANCES SUCH AS MINERALS, ELEMENTS AND GASES IN SOLUTION OR ASSOCIATION WITH, OR RECOVERABLE FROM THIS STEAM, GAS OR FLUID), AS RESERVED IN THE DEED DATED SEPTEMBER 7, 1979, EXECUTED BY KIMBERLY-CLARK CORPORATION, A DELAWARE CORPORATION, TO ROSEBURG LUMBER CO., AN OREGON CORPORATION, RECORDED SEPTEMBER 17, 1979, IN BOOK 1660 OF OFFICIAL RECORDS, AT PAGE 606, SHASTA COUNTY RECORDS.

APN: 030-030-001, 003, 004 AND 005

SECTION 19: THE NORTH ONE-HALF OF THE NORTHEAST QUARTER.

APN: PORTION 030-030-008

SECTION 20: THE NORTHWEST QUARTER. THE WEST ONE-HALF OF THE NORTHEAST QUARTER. THE SOUTHEAST QUARTER. THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER.

EXCEPTING FROM THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER, 1/16 INTEREST OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS AS RESERVED AND EXCEPTED IN THE PATENT DATED JULY 14, 1928 FROM THE STATE OF CALIFORNIA TO FREDA LAMSON, RECORDED JULY 30, 1928, IN BOOK 42 OF OFFICIAL RECORDS AT PAGE 485, SHASTA COUNTY RECORDS.

FURTHER EXCEPTING FROM SAID SECTIONS 18, 19, 20 AND 29 ALL ORES, METALS, FOSSILS, ELEMENTS, GASES, MINERALS, MINERAL-BEARING SUBSTANCES AND GEOTHERMAL RESOURCES OF EVERY KIND AND CHARACTER (HEREIN

COLLECTIVELY CALLED "RESERVED MINERALS"), NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED IN SUCH REAL PROPERTY ONE HUNDRED (100) FEET OR MORE AS MEASURED VERTICALLY BELOW THE SURFACE OF THE EARTH, OR THAT MAY BE PRODUCED THEREFROM, INCLUDING BUT NOT LIMITED TO: ALL OIL, NATURAL GAS AND HYDROCARBON SUBSTANCES AND GEOTHERMAL RESOURCES (WHICH INCLUDE BUT ARE NOT LIMITED TO THE HEAT OF THE EARTH IN ANY FORM; THE RECOVERABLE THERMAL OR OTHER ENERGY DERIVED THEREFROM; THE STEAM, GAS OR FLUID TRANSPORTING THIS HEAT OR ENERGY AND ALL OTHER SUBSTANCES SUCH AS MINERALS, ELEMENTS AND GASES IN SOLUTION OR ASSOCIATION WITH, OR RECOVERABLE FROM THIS STEAM, GAS OR FLUID), AS RESERVED IN THE DEED DATED SEPTEMBER 7, 1979, EXECUTED BY KIMBERLY-CLARK CORPORATION, A DELAWARE CORPORATION, TO ROSEBURG LUMBER CO., AN OREGON CORPORATION, RECORDED SEPTEMBER 17, 1979, IN BOOK 1660 OF OFFICIAL RECORDS, AT PAGE 606, SHASTA COUNTY RECORDS.

APN: 030-030-010 AND PORTION 030-030-011

SECTION 21: THE SOUTHWEST QUARTER. THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER. THE SOUTH HALF OF THE NORTHWEST QUARTER. THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER.

APN: PORTION 030-030-018, PORTION 030-030-011

SECTION 28: LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, AND 14

APN: PORTION OF 030-080-012

SECTION 33: LOTS 3 AND 4

EXCEPTING THEREFROM ALL THAT PORTION AS DESCRIBED IN THE DEED FROM THE RED RIVER LUMBER COMPANY, A CORPORATION TO THE STATE OF CALIFORNIA, DATED SEPTEMBER 9, 1936 AND RECORDED JANUARY 12, 1937 IN BOOK 64 AT PAGE 342, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING SOUTHERLY OF THE NORTHERLY LINE OF THAT PROPERTY AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED FEBRUARY 27, 1956, IN BOOK 485 AT PAGE 357, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING SOUTHERLY OF THE NORTHERLY LINE OF THAT PROPERTY AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED MAY 12, 1958 IN BOOK 565 AT PAGE 548, OFFICIAL RECORDS.

APN: PORTION OF 030-080-016

~TRACT TWO:~

TOWNSHIP 35 NORTH, RANGE 2 EAST, M.D.B.&M.

SECTION 17: THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER

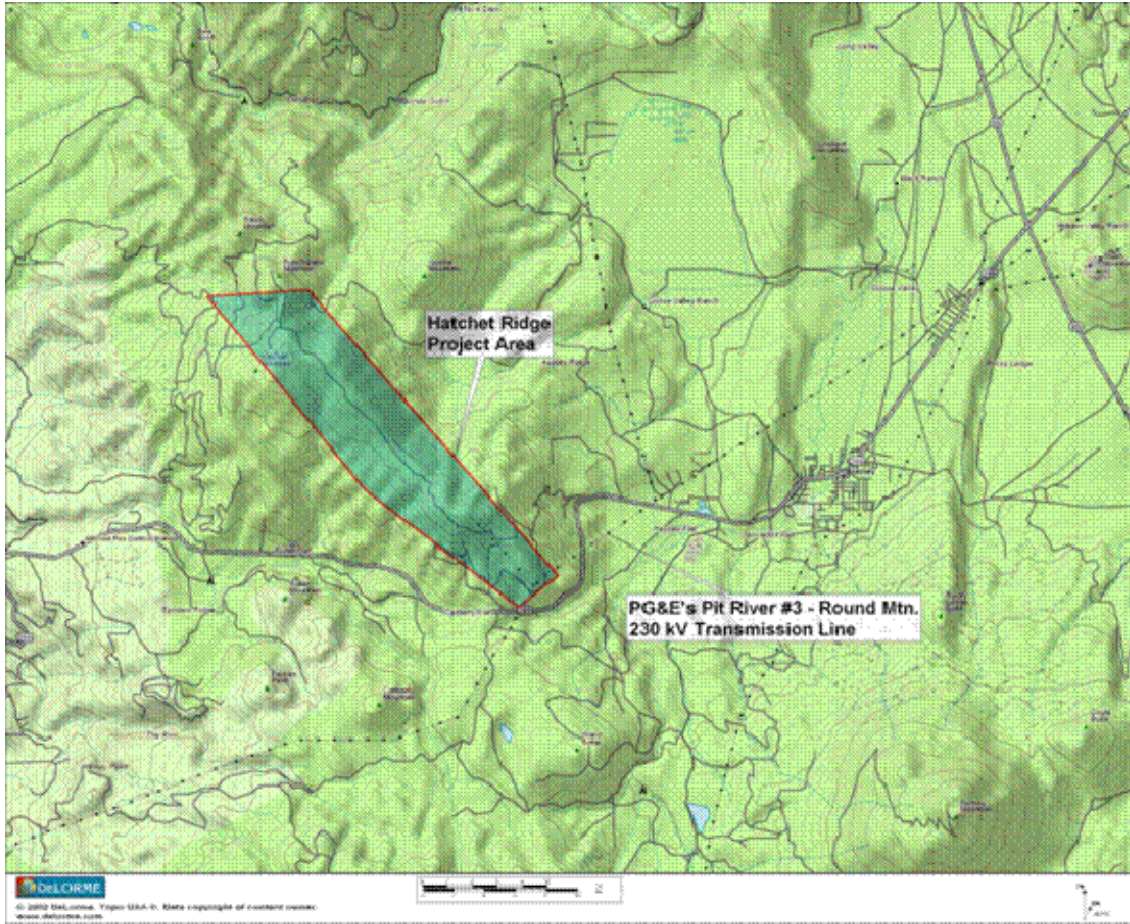
APN: 030-030-015

SECTION 18: LOTS 9, 10, 11 AND 16

EXCEPTING THEREFROM ALL OIL, GAS, OIL SHALE, COAL, PHOSPHATE, SODIUM, GOLD, SILVER AND ALL OTHER MINERAL DEPOSITS AS RESERVED IN THE PATENT FROM STATE OF CALIFORNIA TO CURTIS M. ROCCA DATED DECEMBER 27, 1957, RECORDED JANUARY 13, 1958, IN BOOK 544, OFFICIAL RECORDS, PAGE 464, SHASTA COUNTY RECORDS.

APN: 030-030-016

# SITE MAP



**APPENDIX V(a)**

**FORM OF CERTIFICATION  
(Commercial Operation Date)**

**[DATE]**

This certification (“Certification”) is delivered by Hatchet Ridge Wind, LLC (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

- a. The Unit(s) has achieved the following:
  - 1. Turbine installation and related civil and electrical infrastructure have been installed substantially in accordance with manufacturers’ requirements and with Good Utility Practices; and
  - 2. At least 90% of the Unit(s) have passed the applicable commissioning tests and have been accepted by the Seller for warranty purposes
  
- b. The wind generating facilities, to which the Unit(s) belong, are complete as follows:
  - 1. The electrical collection system is complete, functional, and energized; and
  - 2. The collector substation and point of interconnection facilities are complete and capable of unrestricted operations.
  
- c. The Unit(s) is capable of delivering Energy to the point of interconnection in accordance with all requirements of the Agreement.

Hatchet Ridge Wind, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and Agreed:

---

[Name of Licensed Professional Engineer]

**APPENDIX V(b)**

**FORM OF CERTIFICATION  
(Construction Start Date)**

**[DATE]**

This certification (“Certification”) is delivered by Hatchet Ridge Wind, LLC (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

1. The EPC Contract has been executed by each of Seller and EPC Contractor for the Project.
2. All conditions precedent to the performance of the EPC Contractor under the EPC Contract have been satisfied.
3. The Notice to Proceed has been delivered by Seller to EPC Contractor.
4. There are no delays or waiting periods in the EPC Contract or in the Notice to Proceed that permit the EPC Contractor to delay its performance of the EPC Contract.

## **APPENDIX VI**

### **COMMERCIAL OPERATION CERTIFICATION PROCEDURE**

Upon meeting the conditions set forth in Appendix V(a), as certified by a Licensed Professional Engineer, Seller shall deliver to Buyer a certificate (a “COD Certificate”) substantially in the form of Appendix V executed by Seller and by such Licensed Professional Engineer. Upon such delivery, the Commercial Operation Date shall be deemed to have occurred on the date such certificate is delivered to Buyer.



**APPENDIX VII - FORM OF MONTHLY  
CONSTRUCTION PROGRESS REPORT**

Monthly Progress Report

of

---

("Seller")

provided to

Pacific Gas & Electric Company

("Buyer")

[Submittal Date]

## 1 Instructions

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

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

- (i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Units or related Project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.
- (ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Units or related Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Monthly Construction Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form of Monthly Construction Progress Report to Buyer, together with all attachments and exhibits.

For the purpose of this report, “EPC Contractor” means the contractor responsible for engineering, procurement and construction of the Project, including Seller if acting as contractor, and including all subcontractors.

## **2 Executive Summary**

### **2.1 Major activities completed**

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Project (provide details in subsequent sections of this report):

- 2.1.1 Milestones
- 2.1.2 Financing
- 2.1.3 Governmental Approvals
- 2.1.4 Site Control
- 2.1.5 Design and Engineering
- 2.1.6 Major Equipment Procurement
- 2.1.7 Construction
- 2.1.8 Interconnection
- 2.1.9 Startup Testing and Commissioning

### **2.2 Major activities recently performed**

Please provide a summary of the major activities performed for each of the following aspects of the Project since the previous report (provide details in subsequent sections of this report):

- 2.2.1 Milestones
- 2.2.2 Financing
- 2.2.3 Governmental Approvals
- 2.2.4 Site Control
- 2.2.5 Design and Engineering
- 2.2.6 Major Equipment Procurement
- 2.2.7 Construction
- 2.2.8 Interconnection

2.2.9 Startup Testing and Commissioning

### **2.3 Major activities planned but not completed**

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Project:

2.3.1 Milestones

2.3.2 Financing

2.3.3 Governmental Approvals

2.3.4 Site Control

2.3.5 Design and Engineering

2.3.6 Major Equipment procurement

2.3.7 Construction

2.3.8 Interconnection

2.3.9 Startup Testing and Commissioning

### **2.4 Major activities expected during the current month**

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Project (provide details in subsequent sections of this report):

2.4.1 Milestones

2.4.2 Financing

2.4.3 Governmental Approvals

2.4.4 Site Control

2.4.5 Design and Engineering

2.4.6 Major Equipment procurement

2.4.7 Construction

2.4.8 Interconnection

2.4.9 Startup Testing and Commissioning

**3 Milestones**

**3.1 Milestone schedule**

Please list all Milestones specified in the Agreement and state the current status of each.

<b>Milestone</b>	<b>Milestone Date Specified in the Agreement</b>	<b>Status</b> (e.g., on schedule, delayed due to [ <i>specify reason</i> ]; current expected completion date)

**3.2 Remedial Action Plan (if applicable)**

If Seller has failed and/or expects to fail to achieve any Milestone by the Milestone Date, please explain in detail each of the following aspects of Seller’s Remedial Action Plan:

- 3.2.1 Missed Milestone
- 3.2.2 Plans to achieve missed Milestone
- 3.2.3 Plans to achieve subsequent Milestones
- 3.2.4 Delays in engineering schedule and plans to remedy delays
- 3.2.5 Delays in major equipment procurement and plans to remedy delays
- 3.2.6 Delays in construction and interconnection schedule and plans to remedy delays

**4 Financing**

Please provide the schedule Seller intends to follow to obtain financing for the project. Include information about each stage of financing.

<b>Activity</b> (e.g., obtain \$xx for yy stage from zz)	<b>Completion Date</b>
	/ / (expected / actual)
	/ / (expected / actual)

**5 Project Schedule**

Please provide a copy of the current version of the overall project schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for governmental approvals, design and engineering, procurement, construction, interconnection and testing.

**6 Governmental Approvals**

**6.1 Environmental Impact Review**

Please provide information about the primary environmental impact review for the Project. Indicate whether dates are expected or actual.

<b>Agency</b> [e.g., the lead agency as required under the California Environmental Quality Act (CEQA)]	
<b>Date of application/submission</b>	/ / (expected / actual)
<b>Date application/submission deemed complete by agency</b>	__ / __ / ____ (expected / actual)
<b>Date of initial study</b> (if applicable)	/ / (expected / actual)
<b>Process</b> (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report)	
<b>Date of Notice of Preparation</b>	/ / (expected / actual)
<b>Date of Draft ND/MND/EIR</b>	/ / (expected / actual)
<b>Date Notice of Determination filed at OPR or County Clerk</b>	__ / __ / ____ (expected / actual)

**6.2 Federal, State, Regional, County or Local Governmental Approvals**

Please describe each of the major Governmental Approvals to be obtained by Seller and the status of each:

<b>Agency / Approval</b> e.g., California Energy Commission (CEC) / Application for Certification (AFC)  [name] County / Conditional Use Permit (CUP)	<b>Status Summary</b> e.g., dates of application / hearing / notice / etc. (note whether dates are anticipated or actual); major activities (indicate whether planned, in progress and/or completed); primary reasons for possible delay, etc.

**6.3 Governmental Approval activities recently performed**

Please list all Governmental Approval activities that occurred since the previous report.

**6.4 Governmental Approval activities expected during the current month**

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

**6.5 Governmental Approval Notices received from EPC Contractor**

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from governmental agencies.

**7 Site Control**

**7.1 Table of site control schedule**

Please provide the schedule Seller intends to follow to obtain control of the project site (e.g., purchase, lease).

Activity	Completion Date
	/ / (expected / actual)
	/ / (expected / actual)

**7.2 Site Control activities recently performed**

Please explain in detail the property acquisition activities that were performed since the previous report.

**7.3 Site Control activities expected during the current month.**

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

**8 Design and Engineering**

**8.1 Design and engineering schedule**

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		/ / (expected / actual)

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		/ / (expected / actual)

**8.2 Design and engineering activities recently performed**

Please explain in detail the design and engineering activities that were performed since the previous report.

**8.3 Design and engineering activities expected during the current month**

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

**9 Major Equipment Procurement.**

**9.1 Major equipment to be procured**

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		_/_/____ (expected / actual)	_/_/____ (expected / actual)
		_/_/____ (expected / actual)	_/_/____ (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

**9.2 Major Equipment procurement activities recently performed**

Please explain in detail the major equipment procurement activities that were performed since the previous report.

**9.3 Major Equipment procurement activities expected during the current month.**

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



## 10 Construction

### 10.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		/ / (expected / actual)
		/ / (expected / actual)

### 10.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

### 10.3 Construction activities expected during the current month

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

### 10.4 EPC Contractor Monthly Construction Progress Report.

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

## 11 Interconnection

### 11.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		/ / (expected / actual)
		/ / (expected / actual)

### 11.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

### 11.3 Interconnection activities expected during the current month

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

## 12 Startup Testing and Commissioning

### 12.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		/ / (expected / actual)
		/ / (expected / actual)

### 12.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

### 12.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

## 13 Safety and Health Reports

### 13.1 Accidents

Please describe all project-related accidents reported since the previous report.

### 13.2 Work stoppages

Please describe all project-related work stoppages from that occurred since the previous report.

Please describe the effect of work stoppages on the project schedule.

## 14 Certification

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**PLEASE DO NOT ALTER THIS**

**APPENDIX VIII**

**OUTAGE NOTIFICATION FORM**  
**(To be faxed to two groups at PG&E)**

SEND VIA FAX  
To Pacific Gas & Electric Company

DATE: \_\_\_\_\_

Attention: Manager Electric Settlements  
Attention: Outage Coordinator

FAX NUMBER: (415) 973-2151  
FAX NUMBER: (415) 973-5333

PG&E LOG NUMBER: \_\_\_\_\_

Unit/ProjectName: \_\_\_\_\_

**NOTIFICATION OF:**

SCHEDULED OUTAGE / FORCED OUTAGE / CURTAILMENT / PROLONGED OUTAGE

The Unit will shut down for SCHEDULED OUTAGE from:

\_\_\_\_\_ to \_\_\_\_\_

(Date and Time)

(Date and Time)

The Unit experienced a FORCED OUTAGE/CURTAILMENT/PROLONGED OUTAGE (circle applicable outage) from: \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

(Date and Time)

(Date and Time)

The FORCED OUTAGE/CURTAILMENT /CHANGE IN AVAILABILITY was confirmed via telephone on \_\_\_\_\_ with \_\_\_\_\_

(Date and Time)

(Name of PG&E Individual)

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Outage Notification Form submitted by: \_\_\_\_\_ Phone #: \_\_\_\_\_  
(Print Name)

**APPENDIX IX**  
**COUNTERPARTY NOTIFICATION REQUIREMENTS FOR**  
**OUTAGES AND GENERATION SCHEDULES**

**A. NOTIFICATION REQUIREMENTS FOR START-UP AND SHUTDOWN**

Prior to paralleling to or after disconnecting from the electric system, ALWAYS notify your designated Area Control Center as follows:

- Call for permission to parallel before any start-up at the appropriate Area Control Centers **[Buyer to insert phone number.]**
- Call your Area Control Center again after start-up with parallel time.
- Call your Area Control Center after any separation and report separation time as well as date and time estimate for return to service.

**B. NOTIFICATION REQUIREMENTS FOR SCHEDULES AND CHANGES TO SCHEDULES**

1. Send day ahead schedule by the following method:

- a. Internet site. Access and your password to this web site to be provided upon execution of the related power purchase and sale agreement; or
- b. E-mail. If the Internet site is not available, then send data via e-mail with an attached Excel spreadsheet in the format provided by PG&E. The spreadsheet must contain the following information: assigned log # of unit in first column; date and time (i.e., Hour Ending) in second column; and, generation level in kW in third column. Contact your designated PG&E Settlement Analyst or the Manager of Electric Settlements if you encounter any issue; or
- c. Via Facsimile, Attention: Manager of Electric Settlements. If e-mail is not available, then the send via facsimile, a spreadsheet in the format specified above in subpart (b), submit your Project schedules and be sure to include the name and phone number of the individual that is providing this information. This method is discouraged as it involves additional steps, one of which may be manual data entry if the document cannot be scanned and read properly.

2. Send Hour Ahead notification of changes to day ahead schedules by both of the following methods:

- 2.1 Internet site. Access and your password to this web site to be provided upon execution of the power purchase and sale agreement; and
- 2.2 Phone: Call PG&E's Hour-Ahead Trading Desk with any changes to the schedule or notifications at least 30 minutes prior to the ISO scheduling hour-ahead deadline for that delivery hour.

3. Send the Outage Notification Form by the following method:
  - 3.1 Internet site. Access and your password to this web site to be provided upon execution of the power purchase and sale agreement; or
  - 3.2 Email. If the Internet site is not available, then send via e-mail, a completed Outage Notification Form and be sure to include the name and phone number of the individual that is providing this information. Contact your designated PG&E Settlement Analyst or the Manager of Electric Settlements if you encounter any issue; or
  - 3.3 Via Facsimile, Attention: Manager of Electric Settlements. If e-mail is not available, then send via facsimile a completed Outage Notification Form and be sure to include the name and phone number of the individual that is providing this information. This method is discouraged as it involves additional steps, one of which may be manual data entry if the document cannot be scanned and read properly.

### **C. REASONS TO SEND NOTIFICATION AND TIMING REQUIREMENTS**

This subpart C addresses (I) instructions for submitting generation and outage information to PG&E for each Unit and (II) the cut off times that determine when certain of these notifications need to be communicated directly (i.e., called in) to PG&E's Short-Term Electric Supply.

**I. Submission of Outages, Generation** Whenever the Unit experiences an outage, plans to schedule maintenance, or is subject to a curtailment, PG&E's web site which contains the Outage Notification Form or its equivalent, is to be used to comply with the notification requirements under the contract. The Outage Notification Form or its equivalent shall be used when reporting outages or curtailment. The Outage Notification Form or its equivalent must be completely filled out, including date and start time of event, cause of the outage or curtailment, expected duration, expected time and date of return to service or full output and transmitted to Power Trading and Power Settlements.

1. Testing the Unit(s) During an Outage. Notify the designated PG&E Control Center by telephone and the Power Settlements Department as provided above before testing the Unit(s) during an Outage. Indicate on the original Outage Notification Form if testing will be conducted during an Outage.
2. Communication with PG&E Control Center. Seller shall maintain operating communications with the PG&E Control Center at \_\_\_\_\_. The operating communications shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled Outages, equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.
3. Logs of Communication Records with PG&E's Area Control Center and Electric Settlements personnel: Seller shall maintain written records of all communiqués with PG&E which will be available for audit at PG&E's request. These records shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled outages, equipment

clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.

## **II. Cut Off Times for Notifications to Electric Settlements Versus Having to Contact Short-Term Electric Supply Directly**

Even though PG&E's Electric Settlements department requires that all Day-Ahead and Hour-Ahead Schedules and outages be submitted via the Internet web site, (or in the event it is not available email, or facsimile) in cases where information has changed (i.e., exceptions) Seller must call:

- (a) the Day-Ahead Trading Desk with updated Day-Ahead information at least 5 hours prior to the ISO Day-Ahead scheduling deadline for that delivery day;
- (b) the Hour Ahead Trading Desk with any Hour Ahead changes or modifications at least 30 minutes prior to the ISO scheduling deadline for that delivery hour: and
- (c) the Outage Coordinator with any outage information that was not submitted to Electric Settlements at least 38 hours prior to the delivery day.

## APPENDIX X

### RESOURCE ADEQUACY

1. Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to, the following:
  - A. Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the CAISO Interconnection Point; and
  - B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.
  
2. Seller shall comply with the Resource Adequacy requirements set forth in Section 40 of the CAISO Tariff, as may be amended or supplemented from time to time, including but not limited to the following:
  - A. Taking all actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity.
  - B. Coordinating with Buyer with regard to the submission of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff, to the CAISO; and
  - C. Complying with the applicable reporting requirements.
  
3. RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Interconnection Point for the Project.



**APPENDIX XI**

**EXAMPLES**

**[Please see attached]**

**Section 3.1(e) Examples:**

**Contract Quantity: 227,250 MWh**  
 Calculation of GEP: **Buyer FM**  
**Event**

	<b>Forecast</b>	<b>Actual</b>	<b>Credit toward GEP</b>
<b>January</b>	9,000	9,000	9,000
<b>February</b>	14,000	7,000	7,000
<b>FM March</b>	25,000	0	<b>25,000</b>
<b>FM April</b>	11,000	0	<b>11,000</b>
<b>FM May</b>	11,000	0	<b>11,000</b>
<b>June</b>	23,000	22,000	22,000
<b>July</b>	36,000	33,000	33,000
<b>August</b>	18,000	10,000	10,000
<b>September</b>	46,000	39,000	39,000
<b>October</b>	9,000	9,000	9,000
<b>November</b>	14,000	10,000	10,000
<b>December</b>	11,250	10,000	10,000
	<b>227,250</b>	<b>149,000</b>	<b>196,000</b> <b>OK</b>

**GEP Hours Calc**

Contract Quantity	227,250
Less: Seller FM Hrs	0
Hours for GEP Calc	227,250
GEP Hrs %	70%
GEP	159,075

**GEP = 159,075 (70% of 227,250 MWh)**

Calculation of GEP: **Seller FM Event**

	Forecast	Actual	Credit toward GEP	GEP Hours Calc	
January	9,000	9,000	9,000	Contract Quantity	227,250
February	14,000	7,000	7,000	Less: Seller FM Hrs	47,000
<b>FM</b> March	25,000	0	0	Hours for GEP Calc	180,250
<b>FM</b> April	11,000	0	0	GEP Hrs %	70%
<b>FM</b> May	11,000	0	0	GEP	126,175
June	23,000	22,000	22,000		
July	36,000	33,000	33,000		
August	18,000	10,000	10,000		
September	46,000	39,000	39,000		
October	9,000	9,000	9,000		
November	14,000	10,000	10,000		
December	11,250	10,000	10,000		
	227,250	149,000	<b>149,000</b>		

**GEP = 126,175 (70% of 180,250 MWh, where 180,250 is 227,250 minus the forecasted production during Seller FM months.)**

Contract Quantity: 227,250 MWh  
 Calculation of GEP: Buyer and Seller FM Event

	Forecast	Actual	Credit toward GEP
	9,000	9,000	9,000
	14,000	7,000	7,000
<b>Buyer FM</b>	25,000	0	<b>25,000</b>
<b>Buyer FM</b>	11,000	0	<b>11,000</b>
<b>Buyer FM</b>	11,000	0	<b>11,000</b>
	23,000	22,000	22,000
	36,000	33,000	33,000
	18,000	10,000	10,000
<b>Seller FM</b>	46,000	0	0
<b>Seller FM</b>	9,000	0	0
	14,000	10,000	10,000
	11,250	10,000	10,000
		101,000	<b>148,000</b>

**GEP Hours Calc**

Contract Quantity	227,250
Less: Seller FM Hrs	55,000
Hours for GEP Calc	172,250
GEP Hrs %	70%
GEP	120,575

**GEP = 120,575 (70% of 172,250 MWh, where 172,250 is 227,250 minus the forecasted production during Seller FM months.)**

**OK**

**Material Changes to EIRP - Example (Section 3.4(a)(ii)):**

***Assumptions***

Baseline EIRP Costs	\$500,000
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***Hypothetical***

<b>Contract Year</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>EIRP Costs</b>	\$500,000	\$600,000	\$600,000	\$650,000	\$800,000
<b>Difference from Baseline EIRP Costs</b>	\$0	\$100,000	\$100,000	\$150,000	\$300,000
<b>Seller Responsibility</b>	\$500,000	\$600,000	\$600,000	\$625,000	\$700,000
<b>Buyer Responsibility</b>	\$0	\$0	\$0	\$25,000	\$100,000

**SECTION 4.6 IMBALANCE ENERGY TRUE-UP ADJUSTMENT EXAMPLE:**

10-Minute Settlement Periods	Positive/Negative Energy Quantity	Contract Price	Imbalance Price	PISPA	PISNA	NISPA	NISNA	Comments
1	10	\$82.00	\$83.45	\$14.50				
2	(25)	\$82.00	\$77.50			\$112.50		
3	15	\$82.00	\$80.40		\$24.00			
4	(5)	\$82.00	\$89.00				\$ 35.00	
5	40	\$82.00	\$81.00		\$40.00			
6	(10)	\$82.00	\$89.11				\$ 71.10	
7	(15)	\$82.00	\$81.50			\$ 7.50		
8	5	\$82.00	\$88.65	\$33.25				
9	15	\$82.00	\$88.34	\$95.10				
10	10	\$82.00	\$85.11	\$31.10				
				\$173.95	\$64.00	\$120.00	\$106.10	
					\$109.95			Aggregate Monthly Positive Imbalance Amount
							\$13.90	Aggregate Monthly Negative Imbalance Amount
					<b>\$123.85</b>			Monthly Net Amount

NOTE: "Contract Price" and "Imbalance Price" in this example are not intended to reflect the Contract Price in this Agreement or an actual imbalance price, and this example is intended for illustrative purposes only.