

**MASTER POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

This *Master Power Purchase and Sale Agreement*, which incorporates herein the General Terms and Conditions of the Edison Electric Institute and National Energy Marketers Association Master Power Purchase and Sale Agreement, Version 2.1 (modified 04/25/00) (the "General Terms and Conditions"), the Addendum, the Cover Sheet, the exhibits and schedules attached hereto and referenced herein, the Party B Tariff, and the Transaction (including the Confirmation entered into hereunder) (collectively, the "Agreement"). The Parties to this Agreement are the following:

Name: Military Pass Road-Newberry Volcano LLC  
("Party A" or "Seller")  
All Notices:

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

Street: 1183 NW Wall Street, Suite G  
City: Bend, Oregon Zip: 97701  
Attn: Steve Munson  
Phone: (541) 317-1984  
Facsimile: (541) 317-2879  
Duns:  
Federal Tax ID Number: [REDACTED]

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

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

**Invoices:**  
Attn: Ted Yura  
Phone: (415) 973-8660  
Facsimile: (415) 973-5507

**Scheduling:**  
Attn:  
Phone: (541) 317-1984  
Facsimile: (541) 317-2879

**Scheduling:**  
Attn: Kevin Coffee  
Phone: (415) 973-7631  
Facsimile: (415) 973-5333

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

**Payments:**  
Attn: Ted Yura  
Phone: (415) 973-8660  
Facsimile: (415) 973-5507

**Wire Transfer:**  
[REDACTED]

**Wire Transfer:**  
[REDACTED]

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**Credit and Collections:**

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

**Credit and Collections:**

Attn: Manager, Credit Risk  
Phone: (415) 972-5244  
Facsimile: (415) 973-7301

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

Attn: Steve Munson  
Phone: (541) 317-1984  
Facsimile: (541) 317-2879

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

Attn: Rich Miram  
Phone: (415) 973-1170  
Facsimile: (415) 973-9176

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

**Party A Tariff:**

**Party B Tariff:** Rate Schedule No. 1 Dated December 19, 2000 Docket Number ER03-198-000.

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**Article Three**

New Generation Facility Unit(s)

Add Section 3.8.  
If not checked, inapplicable.

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**Article Five**

Events of Default; Remedies

Cross Default for Party A:  
 Party A: Applicable  
 Other Entity:  
 Cross Default for Party B:  
 Party B: Applicable  
 Other Entity:

If not checked, inapplicable.

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**Article Eight**

**Credit and Collateral Requirements**

**8.1 Party A Credit Protection:**

**(a) Financial Information:**

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

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

**(b) Credit Assurances:**

- Not Applicable
- Applicable

**(c) Collateral Threshold:**

- Not Applicable
- Applicable

**(d) Downgrade Event:**

- Not Applicable
- Applicable.

**(e) Guarantor for Party B: Not Applicable**

**8.2 Party B Credit Protection:**

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**(a) Financial Information:**

Option A

Option B

Option C Specify: At any time

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

**(b) Credit Assurances:**

Not Applicable

Applicable

**(c) Collateral Threshold:**

Not Applicable

Applicable

**(d) Downgrade Event:**

Not Applicable

Applicable

**(e) Guarantor for Party A: As of the Execution Date, not applicable.**

Guarantee Amount: As of the Execution Date, not applicable.

**8.4 Project Development Security;  
Performance Assurance**

Applicable

Not Applicable

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If Applicable:

8.4 (a)(i) Bid Deposit: Product of (1) \$5,000 per MW and (2) 120 MW, which shall equal \$600,000.

8.4 (a)(ii) Project Development Security Amount: Product of (1) \$20,000 per MW and (2) 120 MW, subject to Sections 3.8(d)(v) and (vi) hereof, which shall equal \$2,400,000 as of the Execution Date.

8.4(a)(iii) Project Development Security Amount: Product of (1) \$56,000 per MW and (2) applicable Contract Capacity, subject to Sections 3.8(d)(v) and (vi) hereof, which is expected to be \$6,720,000 as of the Execution Date.

Type of Project Development Security:

Cash or Letter of Credit

8.4(a)(iv) Performance Assurance Amount: six (6) months of assumed revenues calculated as follows: the product of (a) 50%, (b)\$72.00, per Section 8.1 of the Confirmation, and (c) the Contact Quantity, as defined in the Confirmation, which is expected to be \$30,274,560 as of the Execution Date, subject to Sections 3.8(d)(v) and (vi) hereof.

Type of Performance Assurance:

Guaranty, subject to Section 8.6 hereof,  
Cash, Letter of Credit

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**Article 10**

**10.1 No Fault Termination**

**(a) Seller Termination Right**

Not Applicable

Applicable

**(b) PGC Funding Termination**

Not Applicable

Applicable

**10.11 Confidentiality**

Confidentiality  Applicable  
If not checked, inapplicable.

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

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

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**Schedule M**

Party A is a Governmental Entity or Public Power System

Party B is a Governmental Entity or Public Power System

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**Other Changes:** See Addendum to Master Power Purchase and Sale Agreement.

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**Agreement Execution**

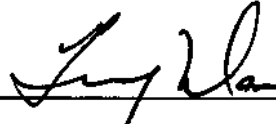
In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its duly authorized representative as of the date of last signature provided below:

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

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

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

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

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

Name: Fong Wdn

Title: Vice President, Power Contracts and  
Electric Resource Development

Date: 2/23/06

This Agreement is duly executed by the duly authorized representative of Military Pass Road Geothermal LLC solely with respect to the obligations of Military Pass Road Geothermal LLC pursuant to Section 3.8(d)(vii) hereof:

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

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

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

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

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Agreement Execution

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

By: Steve Munson By: \_\_\_\_\_

Name: Steve Munson Name: Fong Wan

Title: CEO Volcan Power Company Title: Vice President, Power Contracts and  
sole member Military Pass Road - Electric Resource Development  
Newberry Volcano LLC

Date: 2/23/06 Date: \_\_\_\_\_

This Agreement is duly executed by the duly authorized representative of Military Pass Road Geothermal LLC solely with respect to the obligations of Military Pass Road Geothermal LLC pursuant to Section 3.8(d)(vii) hereof:

By: Steve Munson

Name: Steve Munson

Title: CEO Volcan Power Company, sole member of  
Military Pass Road Geothermal LLC

Date: 2/23/06



ADDENDUM TO  
MASTER POWER PURCHASE AND SALES AGREEMENT

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**ADDENDUM TO MASTER POWER PURCHASE AND SALE AGREEMENT BETWEEN  
PACIFIC GAS AND ELECTRIC COMPANY AND MILITARY PASS ROAD-NEWBERRY  
VOLCANO LLC:**

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

**ARTICLE ONE: GENERAL DEFINITIONS**

The following definitions are deleted in their entirety.

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

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

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

"Affiliate" means, with respect to a Party, any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Party. For this purpose, "control," "controlled by," and "under common control" mean the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of such Party, whether through the ownership of voting securities or member or partnership interests, by contract or otherwise.

"Bid Deposit" means the security required of Seller in the amount of \$5,000.00 per MW based on the Contract Capacity of the Unit(s), which amount must be provided by Seller in accordance with Section 8.4(a)(i) hereof.

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

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

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

"Commercial Operation Date" means the date on which Seller notifies Buyer that Commercial Operation has occurred and Buyer confirms the Contract Capacity of the Unit(s), as provided in Appendix I hereto.

"Confirmation" means the written confirmation entered into by the Parties prior to the commencement of the Transaction.

"Construction" means the date specified in the Notice To Proceed to be issued to the EPC Contractor by Seller, a copy of which shall be delivered to Buyer.

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

"Construction Start Date" means, except as may be modified by Seller's exercise of the Project Relocation Option in Section 3.8(d)(vii)(a), a date no later than March 31, 2008 with respect to Phase I and October 1, 2009 with respect to Phase II.

"Contract Capacity" shall have the meaning set forth in paragraph 6 of the Confirmation.

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

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

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

"CPUC" or "Commission" means the California Public Utilities Commission or its successor agency.

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

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

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

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

"Daily Delay Damages" means, for each day, an amount equal to (i) the Project Development Security divided by (ii) sixty (60).

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

"Delivered Energy" shall have the meaning set forth in the Confirmation.

"Delivery Term" has the meaning attributed to such term in the Confirmation.

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

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

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the generation from the Unit(s). Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Unit(s), (ii) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related

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subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and/or air quality permits. If Seller's Unit(s) is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net GHGs associated with the production of electricity from such facility.

"Execution Date" means the date or the later of the two dates, if applicable, provided under the "Agreement Execution" section of the Cover Sheet with respect to Party A and Party B.

"Final Configuration Date" means the date that is on or before the date that is twelve (12) months from the Execution Date.

"Financial Institutions" means the commercial banks, insurance companies, or other financial institutions providing financing or refinancing to Seller for a majority of the costs of the development, design, equipment procurement, construction and operation of the Units.

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

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

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

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

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

"Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner. Factors used in determining economic benefit may include, without limitation, reference to

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

"Geothermal Reservoir Report" means a report obtained by Seller from an expert independent consulting firm qualified in geothermal reservoir assessment which assesses the geothermal potential of the project site.

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

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

"Guaranteed Commercial Operation Date" means October 1, 2008 with respect to Phase I and January 1, 2010 with respect to Phase II.

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

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

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

"Interconnection Agreement" means that certain agreement for the interconnection of the Units to the Transmission Owner's electric system to be negotiated by Seller and Transmission Owner.

"Interconnection Facilities" means the facilities necessary to interconnect the Unit(s) to the Transmission Owner's electric system, including, but not limited to, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Transmission Owner's electric system (or other systems to which the Transmission Owner's electric system is connected, including the ISO Grid) and Transmission Owner's customers from faults occurring at the Unit(s), and (b) the Unit(s) from faults occurring on the Transmission Owner's electric system or on the systems of others to which the Transmission Owner's electric system is directly or indirectly connected, including the PG&E electric system. Interconnection Facilities also include any necessary additions and reinforcements by PG&E to the PG&E electric system required as a result of the interconnection of the Unit(s) to the PG&E electric system, the ISO Grid, or electric systems of others to which the PG&E electric system is directly or indirectly

connected.

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

**"Interest Payment Date"** means the last Business Day of each calendar year or the last day of the calendar month following the last day on which Performance Assurance is held by Buyer.

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

The definition of **"Interest Rate"** in Section 1.26 of the Agreement shall be deleted in its entirety and replaced with the following:

**"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.

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

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

**"ISO Tariff"** means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by the Federal Energy Regulatory Commission.

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

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

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

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



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

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

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

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

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

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

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

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

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

"Performance Guarantee" means the minimum amount of Delivered Energy, as defined in the Confirmation, that Seller is obligated to deliver to Buyer in the applicable Contract Year(s) pursuant to Section 9.1(a) of the Confirmation.

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

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"PGC Funding Confirmation" means a written notice from the CEC to Seller acknowledging Seller's request for PGC Funds, the amount of which is provided in Appendix IV attached hereto, and the availability of such funds for Seller in a future PGC Funding Award.

"Phase I Units" means the Units with an expected total Net Rated Output Capacity of 60 MW.

"Phase II Units" means Units with an expected total Net Rated Output Capacity of 60 MW.

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

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

"Prudent Electrical Practices" means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence. Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, contractual obligations, the requirements or guidance of governmental entities and ISO, applicable laws, the requirements of insurers and the terms of this Agreement and the Interconnection Agreement.

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

"RMR" means Reliability Must Run.

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

"Scheduled Energy" shall have the meaning set forth in the Confirmation.

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

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of a Terminated Transaction pursuant to Section 5.2, unless the Terminated Transaction is the result of an Event of Default under Section 5.1(k) hereof.

"Substitute Unit" means the electric generation units of Military Pass Road Geothermal LLC, as further described in Appendix V hereof.

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

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

"TMM(s)" means the tie meter multipliers as defined in the ISO Tariff.

"TOD Period" has the meaning set forth in the Confirmation.

"Transmission Owner" means PacifiCorp, unless the Project Relocation Option, in § 3.8(d) (vii) is exercised, in which case "Transmission Owner" means Pacific Gas and Electric Company.

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

### ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

2.2 Governing Terms. Unless otherwise specifically agreed, the Transaction between the Parties shall be governed by this Agreement. This Agreement (including all exhibits, schedules and any written supplements hereto), any designated collateral or credit support arrangement between the Parties and the Transaction (including the Confirmation) shall be deemed a single integrated agreement between the Parties. Any inconsistency between any terms of this Agreement and the confirmation shall be resolved in favor of the terms of the Confirmation.

### ARTICLE THREE: OBLIGATIONS AND DELIVERIES

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

#### 3.1 Seller's and Buyer's Obligations.

(a) Seller Obligations. With respect to the Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point during the Delivery Term pursuant to the terms of the Confirmation, and Buyer shall pay Seller the Contract Price as provided in the Confirmation. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to and at the Delivery Point. The Parties intend that Seller will arrange and pay independently for any and all necessary electrical interconnection, Scheduling, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver power to the

Delivery Point for sale pursuant to the terms of this Agreement. Seller shall not make any alteration or modification to the Unit(s) that results in a change to the Net Rated Output Capacity of the Unit(s) without the prior written consent of Buyer. Seller shall be permitted to substitute up to 60 MW of Delivered Energy or Scheduled Energy, whichever is less, to be provided by the Unit(s) under this Agreement with energy produced from the Substitute Unit in accordance with the terms of this Agreement; provided that (A) the Substitute Unit qualifies and is certified as an Eligible Renewable Resource, as such term is defined in the Public Utilities Code Section 399.12 or 399.16, as of the date of this Agreement and (B) the Substitute Unit's output delivered to Buyer will qualify under the requirements of the California Renewables Portfolio Standard in effect as of the date of this Agreement. Buyer shall have the right to reject and not pay for any energy or capacity delivered or scheduled from the Substitute Unit and to discontinue receipt of energy and capacity from such unit at anytime that the Substitute Unit fails to meet either of the requirements set forth in the preceding sentence.

(b) Buyer Obligations. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt from the Delivery Point.

3.2 Environmental Attributes. Seller hereby provides and conveys all Environmental Attributes from the Unit(s) and the Substitute Unit, to the extent energy is scheduled or delivered to Buyer from that unit, to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Environmental Attributes from the Unit(s) and the Substitute Unit, to the extent Product is scheduled or delivered to Buyer from that unit, and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Unit(s) and the Substitute Unit, to the extent Product is scheduled or delivered to Buyer from that unit.

3.3 Transmission and Scheduling. Except as otherwise provided in the Confirmation, Seller shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment to and at the Delivery Point and bears all risks and costs associated with any transmission outages or curtailment prior to delivery at the Delivery Point. Seller shall be responsible for all ISO costs and charges including imbalance charges due to deviations from power schedules, electric transmission losses and congestion except when such imbalance or deviations are caused by (a) Buyer's failure to take the Scheduled Energy, except in the case of Force Majeure, Dispatch Down Period, or System Emergency, or (b) Force Majeure claimed by Buyer. Buyer shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, from the Delivery Point and bears all risks and costs associated with any such outages or curtailment therefrom. Buyer shall Schedule or arrange for Scheduling services with the ISO to receive the Product at the Delivery Point. Except for curtailment resulting from Force Majeure, or during a Dispatch Down Period as defined in the Confirmation, the non-availability of electric transmission service shall not excuse either Party's performance with respect to the Transaction.

3.4 Standard of Care.

(a) ISO Standards. All generation, scheduling and transmission services shall be performed in compliance with the ISO Tariff and Prudent Electrical Practices. Seller, at its own expense, shall fulfill all contractual, metering and interconnection requirements as set forth in Transmission Owner's applicable tariff, the ISO Tariff and implementing ISO standards and requirements including, but not limited to, executing an ISO Interconnection, Participating Generator and Meter Service Agreements and PTO Generator Special Facilities Agreements, so as to be able to deliver energy to the ISO Grid and bear all costs relating to all metering equipment installed to

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accommodate the Unit(s). Seller will exercise best efforts to comport and comply with any modifications, amendments or additions to the ISO Tariff.

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

(c) Protective Apparatus. Seller, at no cost to Buyer, agrees to furnish and install the relays, meters, power circuit breakers, synchronizer and other control and protective apparatus as Buyer, in its sole judgment, determines to be reasonably necessary for proper and safe operation of the Unit(s) in parallel with the PG&E or ISO Grid.

3.5 Metering. All output from the Unit(s) and output delivered to Buyer from the Substitute Unit for a Transaction must be delivered through a single ISO-approved revenue meter and, with respect to the Unit(s), that meter must be dedicated exclusively to those Unit(s) described herein and comply with the ISO Tariff and relevant protocols. All Product purchased under a Transaction must be measured by the Unit(s)'s or the Substitute Unit's ISO-approved revenue meter to be eligible for payment under this Agreement. In addition, Seller hereby agrees to provide all meter data to Buyer, and consents to Buyer obtaining from the ISO or the relevant transmission system operator, the relevant meter data applicable to the Unit(s) and the Substitute Unit, as applicable, and all inspection, testing and calibration data and reports. In the event that the ISO or relevant transmission system operator meter data is not sufficient to determine the output from the Unit(s) or Substitute Unit(s), Seller shall provide Buyer with access to real-time meter data. If the ISO makes any adjustment to any such meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.1, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the ISO provides to Seller such binding adjustment to the meter data.

### 3.6 Outage Notification.

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

(b) Planned Outages. Seller shall notify Buyer by submitting a completed Outage Notification Form in accordance with the provisions set forth in Section 3.6(f) below no later than December 1 of each year during the Delivery Term of its proposed Planned Outage schedule for the Unit(s) for the following calendar year, subject to Buyer's approval. Notwithstanding the submission of the Outage Notification Form described in the previous sentence, Seller shall also submit a completed Outage Notification Form in accordance with the provisions set forth in Section 3.6(f) below no later than seven (7) days prior to each Planned Outage. Seller shall not schedule Planned Outages during the months of January, June through September and December without obtaining Buyer's prior approval, which approval shall not be unreasonably withheld. Seller shall contact PG&E with any requested changes to the Planned Outage schedule if Seller believes the Unit(s) must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Electrical Practices. Seller shall not change its Planned Outage Schedule without Buyer's prior approval, which approval may not be unreasonably withheld.

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Seller shall not substitute power from any other source for the output of the Unit(s) during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the start of work, PG&E may request that Seller change its Planned Outage schedule. Seller shall notify PG&E of any incremental costs associated with the Planned Outage schedule change and an alternative schedule change, if any, that would result in lower incremental costs. If PG&E agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate PG&E's request. However, unless it is transmitting to Seller an ISO order, PG&E may not change Seller's Planned Outage schedule without Seller's approval.

(c) **Forced Outages.** Seller shall, in accordance with the provisions set forth in Section 3.6(f) below, (i) use commercially reasonable efforts to notify Buyer of any Forced Outage within 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 power from any other source, other than the Substitute Unit, for the output of the Unit(s) during a Forced Outage.

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

(e) **Force Majeure.** Within five (5) Business Days of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party written notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim; provided, however, that if the existence of the event of Force Majeure could not have been reasonably ascertained within such period, then within five (5) Business Days after the Party claiming Force Majeure became aware of such Force Majeure. Failure to provide timely notice constitutes a waiver of a Force Majeure claim. An outage resulting from an event of Force Majeure that prevents the Unit(s) from delivering at least sixty percent (60%) of the Contract Quantity during a period of twelve (12) consecutive months shall, at the election of Buyer, constitute an Event of Default. Seller shall not substitute energy from any other source, other than the Substitute Unit, for the output of the Unit(s) during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for energy not delivered or provided as a result of Force Majeure during the term of a Force Majeure claimed by Seller. A Force Majeure shall not result in a breach or Event of Default hereunder except as provided in this Section 3.6(e) or Section 3.8(d)(iii). In the event that Buyer is unable to accept at least forty percent (40%) of the Contract Quantity during a period of sixty (60) consecutive days, Seller may sell and deliver the product to a third party for the remainder of the Force Majeure, provided that Seller shall immediately cease delivery to any third party as soon as Buyer provides notice to Seller that the event of Force Majeure has terminated.

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

(i) Send the completed Outage Notification Form to Day Ahead Trading Desk Control Center by sending facsimile to: (415) 973-0400.

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

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

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

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

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

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

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

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

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

### 3.7 Operations Logs and Access Rights.

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

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(b) Access Rights. PG&E, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Unit(s) and the Substitute Unit during normal business hours and for any purposes reasonably connected with this Agreement, including inspection of the Units(s) and review of the Operations Logs, or the exercise of any and all rights secured to PG&E by law, or its tariff, schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC, as applicable. PG&E shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Unit(s) operator. Seller shall keep PG&E advised of current procedures for contacting the Unit operator's Safety and Security Departments.

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

### 3.8 New Generation Facility Unit(s).

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

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

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

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

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

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

(vi) Within five (5) days after the close of each calendar month until the Commercial Operation Date, provide to Buyer a Monthly Construction Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress.

(b) Buyer shall have the right to:

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



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

(iii) Inspect the Units(s)'s construction site or on-site Seller data and information pertaining to the Unit(s) and this Agreement during business hours upon reasonable notice.

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

(d) Construction Milestones.

(i) The Parties agree time is of the essence in regards to the Transaction. As such, the Parties also agree certain milestones for the construction of the Unit(s) ("Milestones") must be achieved in a timely fashion or Buyer will suffer damages. Seller shall provide Buyer with any requested documentation to support the achievement of Milestones and dates below within ten (10) Business Days of receipt of such request by Seller. As initial Milestones, Seller should within 60 days after the Execution Date (A) provide evidence to Buyer that it has completed the New Facilities Interconnection Application as outlined in the "CAISO Generating Unit Interconnection Procedure," and (B) provide evidence to Buyer that the Unit(s) has been pre-certified as an ERR by the CEC.

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

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

(A) Seller shall have started Construction of the Unit(s) by the applicable Construction Start Date.

(B) Seller shall have demonstrated Commercial Operations by the applicable Guaranteed Commercial Operation Date.

(iv) Seller shall cause the Phase I Unit(s) and Phase II Units (collectively, the "Units," as further defined in Article One) to achieve the Commercial Operation Date no later than the applicable Guaranteed Commercial Operation Date; and no earlier than eighteen (18) months prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the applicable Guaranteed Commercial Operation Date or Construction begins after the applicable Construction Start Date, as applicable (as

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either Guaranteed Project Milestone may be delayed on a day by day basis for Force Majeure up to one hundred eighty (180) days), Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (I) the Commercial Operation Date occurs after the applicable Guaranteed Commercial Operation Date for up to a total of sixty (60) days ("Project Cure Period"); or (II) the Construction commences after the applicable Construction Start Date, as applicable, up to a total of sixty (60) days ("Construction Cure Period"). In accordance with § 5.4 hereof, each Party agrees and acknowledges that (a) the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone, would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the applicable Construction Start Date, if Seller meets the Guaranteed Commercial Operation Date (including the applicable cure period). Such Daily Delay Damages shall be returned in accordance with Section 8.4(c) hereof.

Notwithstanding the limitations set forth in the prior paragraph Seller may, at its option, and by notice to Buyer not later than (5) five Business Days prior to the expiration of the Project Cure Period or the Construction Cure Period, elect to extend the Project Cure Period or the Construction Cure Period, as the case may be, for up to sixty (60) days; provided, that, prior to the start of the extended cure period Seller posts additional security sufficient to cover the maximum amount of Daily Delay Damages that Buyer would be entitled to draw during such extended period.

(v) For the relevant phase, if, on or before a Guaranteed Commercial Operation Date, Seller is only able to demonstrate a portion of the Net Rated Output Capacity for the Units as evidenced by the Initial Capacity Demonstration Test, set forth in Appendix I (the "Demonstrated Net Rated Output Capacity"), then Seller shall only be entitled to a return of the portion of the Project Development Security equal to the product of Project Development Security per kilowatt times the Demonstrated Net Rated Output Capacity in kilowatts. If Seller is unable to demonstrate the ability of the Unit(s) to deliver the Net Rated Output Capacity as set forth in the Confirmation, the Net Rated Output Capacity shall be reduced as of the applicable Guaranteed Commercial Operation Date by the amount of Net Rated Output Capacity not demonstrated, and the Contract Quantity shall be adjusted to reflect the Net Rated Output Capacity of the Units. Notwithstanding the foregoing, if Seller is unable to demonstrate a Net Rated Output Capacity of at least 30 MW during the Initial Capacity Demonstration Test, the Unit(s) shall not qualify for Commercial Operation.

(vi) Notwithstanding anything in this Agreement or the Confirmation to the contrary, Seller shall have the right to not construct Phase II (the "Project Reduction"); provided that Seller notifies Buyer on or before the Final Configuration Date that Seller is exercising the Project Reduction option. In the event that Seller exercises the Project Reduction option as provided above, (i) Seller shall not be required to post Project Development Security or Performance Assurance with respect to the Phase II Units and (ii) neither party shall have any further obligations or liabilities with respect to the Phase II Units under this Agreement.

(vii) Notwithstanding anything in this Agreement or the Confirmation to the contrary, in the event that either (A) legislation is passed into law in the State of California within one hundred and twenty (120) days after the Execution Date that would

result in the Unit being ineligible for a PGC Funding Award, or (B) Seller receives a Geothermal Reservoir Report which concludes that the geothermal reservoir from which the Units would receive fuel for the production of energy under this Agreement cannot provide sufficient fuel for the Units to produce more than 60 MW of Contract Capacity over the Delivery Term, as such term is defined in the Confirmation,, Seller shall have the right to substitute the Unit with the Substitute Unit, under this Agreement and thereafter develop the Substitute Unit as the Unit and the Unit as the Substitute Unit (the "Project Relocation Option"); provided that Seller notifies Buyer in writing on or before the Final Configuration Date that Seller is exercising the Project Relocation Option. Upon exercise of the Project Relocation Option, Buyer, Seller, and Military Pass Road Geothermal LLC ("Shasta"), agree that (i) all of the rights, obligations, and liabilities of Seller under this Agreement and the Confirmation shall be assumed in their entirety by Shasta; (ii) Seller shall assume all of the rights, obligations, and liabilities of the Substitute Unit; and (iii) Buyers consents to an assignment of the Agreement by Seller to Shasta. The Parties and Shasta further agree that upon Seller's exercise of the Project Relocation Option, the Delivery Point after a Restructuring Event, as set forth in Section 4 of the Confirmation, shall be modified so that the Delivery Point of the Unit shall be the 230 KV line busbar at Round Mountain, with respect to Shasta as the Unit, and the Delivery Point of the Substitute Unit shall be the 230 KV line busbar at Cottonwood substation with respect to Seller as the Substitute Unit. To further effect this assignment and assumption of obligations under this Agreement and the Confirmation, the Parties and Shasta agree that upon Seller's exercise of the Project Relocation Option, the Parties and Shasta shall execute the Assignment and Assumption Agreement, attached hereto as Exhibit B.

**ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

Sections 4.1 and 4.2 shall be deleted in their entirety.

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

Section 5.1 of the Agreement shall be modified as follows:

Section 5.1(c) is amended by deleting the reference to "three (3) Business Days after written notice" and replacing it with "thirty (30) days after written notice; provided that either Party shall be permitted to extend such cure period with the other Party's prior written consent, which consent shall not be unreasonably withheld or delayed."

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

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

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

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

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Section 5.1(l) is added as follows: "failure of Seller to meet the "Performance Guarantee" set forth in Section 9.1(a) of the Confirmation."

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

5.2 Declaration of Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate the Transaction (referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for 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, non-affiliated dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount or Default Payment Amount.

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

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

5.4 Default Payment: Upon an Early Termination Date resulting from an Event of Default under Section 5.1(k) hereof, Seller as a Defaulting Party, shall pay to Buyer, as Non-Defaulting party, a Default Payment of the Project Development Security posted with Buyer at the time of such Default, which amount shall be reduced by amounts drawn from the Project Development Security as Daily Delay Damages and may be reduced at Buyer's election, by an amount equal to cash held by Buyer pursuant to Article Eight and other amounts due from Buyer to Seller under this Agreement. Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone, would be difficult or impossible to predict with certainty, and (b) the Project Development Security is an appropriate approximation of such damages. Upon payment of the Default Payment, Seller shall be released of all further liabilities and obligations under this Agreement, but for the Indemnity by Seller under Section 10.4(a).

5.5 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting

Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective.

5.6 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, or Default Payment in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of Non-Defaulting Party's calculation of such payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute and the dispute shall be resolved in accordance with Section 12.2; provided, however, that if the payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment or Default Payment, as applicable.

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

New Sections 5.8 and 5.9 shall be added as follows:

5.8 Cure by Financial Institutions. In connection with any financing or refinancing of the Units by Seller, Buyer shall execute and deliver to Financial Institutions providing such financing or refinancing a consent to the collateral assignment of this Agreement that is in form and substance mutually agreed by Buyer and such Financial Institutions. The consent shall include provisions addressing the following matters:

- (a) permitting the Financial Institutions to cure, on behalf of Seller, any and all cureable Event(s) of Default by Seller and assume all of Seller's rights and obligations arising under the Agreement; provided that Financial Institution's represent that they are financially capable of assuming such obligations and such Financial Institutions satisfy the "Assignment" criteria set forth in Section 10.5 of this Agreement;
- (b) requiring Buyer to give written notice of the Event of Default to the Financial Institutions within the cure period provided to Seller before exercising such termination right specifying the Event of Default;
- (c) requiring in order for a Financial Institutions to cure an Event of Default on

behalf of Seller, that the Financial Institutions send a written notice to Buyer indicating the Financial Institutions' intention to cure (such cure to be effectuated within the period allotted to Financial Institutions) prior to the later of (i) five (5) Business Days after the effective date of Buyer's notice to Financial Institutions of the Event of Default and (ii) the end of any cure period provided to Seller; and

(d) providing any such Financial Institutions the same period after the effective date of Buyer's notice of Event of Default to remedy the Event of Default as is given to Seller after Seller's receipt of notice of Event of Default, plus an additional thirty (30) days ("Extended Cure"), unless the Event of Default occurs under Section 5.1(e) (or otherwise in connection with Article Eight of this Agreement) or pursuant to Section 5.1(a), in which case the Financial Institutions shall be provided ten (10) Business Days to cure; provided that such Extended Cure period shall, where applicable, be extended further for the time reasonably required for such Financial Institutions to take possession of the Units (including possession by a receiver), if possession of the Units is required for such cure by such Financial Institutions and if judicial or regulatory proceedings are necessary as a precondition to taking possession (but in no event more than an additional one hundred twenty (120) days from the effective date of Buyer's notice to Financial Institutions of such Event of Default, or in the event of multiple Events of Default, the first such notice from Buyer); and provided further that such Financial Institutions (1) act with reasonable and continuous diligence to obtain possession of the Units and, thereafter, complete such cure and (2) are not subject to an Event of Default during such additional cure period under this subpart (d).

5.9 Right of First Offer. In the event that Seller makes any alteration or modification to the Units that results in an increase of the Net Rated Output Capacity of the Unit(s) (the "Incremental Capacity"), Seller shall offer Incremental Capacity to Buyer in writing before offering it to any other entity. If Buyer fails to accept such offer within ninety (90) days of receipt thereof, Seller shall have the right to sell the Incremental Capacity to third parties on terms no less favorable to Seller than those offered to Buyer. In the event that Seller sells the Incremental Capacity to a third party, Buyer agrees to work with Seller to make reasonable modifications to this Agreement and the Confirmation in order to allow such sales; provided that Buyer's rights under this Agreement and the Confirmation shall not otherwise be effected.

## ARTICLE SIX: PAYMENT AND NETTING

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

6.1 Billing and Payment; Remedies. On or before the fifth (5<sup>th</sup>) calendar day of each month, Seller shall provide to Buyer (i) records of metered data sufficient to document and verify the generation of Product by the Unit(s), or Substitute Unit, as applicable, for all hours during the preceding month, including ISO metering and transaction data, and (ii) an invoice, in the format specified by Buyer, covering the services provided in the preceding month. Buyer shall pay the undisputed amount of such invoices on or before the later of the twentieth (20<sup>th</sup>) day of each month or fifteen (15) calendar days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next 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.

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

#### ARTICLE SEVEN: LIMITATIONS

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

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

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CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

### ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

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

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

#### 8.4 Project Development Security; Performance Assurance.

(a) Project Development Security; Performance Assurance. To secure its obligations under this Agreement, in addition to satisfying any credit terms pursuant to the terms of Section 8.2 to the extent marked "Applicable," Seller agrees to deliver to Buyer (the "Secured Party"):

(i) Bid Deposit in the amount set forth on the Cover Sheet with respect to this subpart (a)(i), upon the Execution Date of this Agreement until the first date that Project Development Security is provided pursuant to subpart (ii) of this Section;

(ii) Project Development Security in the amount and form set forth in the Cover Sheet, with respect to this subpart (a)(ii), within thirty (30) days of the date on which all of the conditions precedent set forth in Article Eleven are either satisfied or waived, and Seller shall maintain in full force and effect until the earlier of (A) December 1, 2006 and (B) within ten (10) Business Days from the day on which Seller receives the Geothermal Reservoir Report with respect to the first 60 MW of the Units ("Geothermal Report Date");

(iii) Project Development Security in the amount and form set forth in the Cover Sheet, with respect to this subpart (a)(iii), from the earlier of (A) December 1, 2006 and (B) the Geothermal Report Date until the Commercial Operation Date; and

(iv) Performance Assurance in the amount set forth on the Cover Sheet with respect to this subpart (a)(iv), the form of which shall be determined by Seller, from the Commercial Operation Date until 30 days following the last day of the Delivery Term.

Seller shall provide additional Project Development Security and Performance Assurance as required in Section 3.8(d)(vi) hereof. The Performance Assurance shall not be deemed a limitation of damages.



(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security 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. Subject to Section 3.8(d)(v) hereof, 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, including amounts held by Buyer as Daily Delay Damages due to delayed Phase I Construction Start Date or Phase II Construction Start Date, as applicable, shall be returned to Seller within two (2) Business Days after Seller's provision of Performance Assurance; provided, however, that with Buyer's consent, Seller may elect to apply the Project Development Security toward the Performance Assurance, if any, provided pursuant to this Section 8.4.

(d) Calculation of Performance Assurance. The amount of the Performance Assurance required by this Section 8.4 shall be an amount set forth on the Cover Sheet subject to Sections 3.8(d)(v) and (vi) hereof.

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

#### 8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 8, then Seller shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit that is issued by a qualified bank acceptable to Buyer, and in accordance with this Agreement, and (ii) (A) provide a substitute Letter of Credit, other than from the bank failing to honor the outstanding Letter of Credit, or (B) post cash in an amount equal to the outstanding Letter of Credit within five (5) Business Days after Buyer receives notice of such refusal ("Cure"), as applicable, in the event (x) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P; or (y) the issuer of an outstanding Letter of Credit indicates its intent not to renew such Letter of Credit, (z) if an issuer of a Letter of Credit shall fail to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer. If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight.

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

8.6 Guaranty. Seller shall be permitted to substitute a guaranty, in a form acceptable to Buyer, held by Buyer as Performance Assurance, for a cash or Letter of Credit, upon satisfaction of all of the following conditions: the Guarantor must (a) be incorporated in a jurisdiction of the United States; (b) have a Credit Rating that is not less than either BBB by S&P or Baa2 by

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Moody's; and (c) meet such other credit requirements set forth by Buyer to evidence the Guarantor's ability to support the Performance Assurance Amount. 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, then, within five (5) Business Days of notice from Buyer, Seller shall post Performance Assurance in the form of cash or a Letter of Credit.

### ARTICLE NINE: GOVERNMENTAL CHARGES

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

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

### ARTICLE TEN: MISCELLANEOUS

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

#### 10.1 No Fault Termination Rights; Remedies and Term of Agreement.

(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)(A) 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 either (1) exercise the Project Relocation Option and not terminate this Transaction or (2) 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.

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(B) At any time prior to the Funding Termination Deadline, if applicable, Seller shall send to Buyer within ten (10) days of (i) 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 (ii) 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 (1) waive its termination rights under this Section 10.1(a)(i) or (2) notify Buyer that the Transaction is terminated, pursuant to the terms of this Confirmation. 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)(i) 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 Confirmation, 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 either (1) exercise the Project Relocation Option and not terminate this Transaction; provided that Buyer shall continue to pay the Contract Price for the product delivered from Shasta pursuant to the terms of this Agreement; or (2) 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 remainder of the Delivery Term (the "Option"). Buyer shall have thirty (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,

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conditioned upon Buyer's receipt of Option Approval, as defined below, within one hundred and eighty (180) 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 Lost PGC Funds ("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 (30) 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 the Option Approval, Buyer shall continue to pay 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 Award, whichever occurs 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 of its intention to not exercise the Option, (II) the Option expires without having been exercised, (III) Buyer fails to seek Option Approval within thirty (30) days after the Exercise Date, or (IV) Buyer fails to obtain Option Approval within one hundred and eighty (180) days after Buyer's receipt of the Revocation Notice. If Seller terminates the Transaction, such termination shall be effective thirty (30) days from the date on which Seller provides written notice to Buyer of its intent to terminate. 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(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 shall be paid by the reinstated PGC Funding Award. If the 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 (10) days after 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 the such notice.

(c) Term of Agreement. The Term shall commence upon the satisfaction of the conditions precedent set forth in Article Eleven of this Agreement and shall remain in effect until 60 days following the conclusion of the Delivery Term set forth in the Confirmation or unless terminated sooner pursuant to Sections 10.1(a) or (b) or 11.2 of this Agreement; provided however, that if the Transaction has been terminated under Section 5.2 this Agreement shall remain in effect until the Parties have fulfilled all obligations with respect to the Transaction.

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

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

Sections 10.2 (vii) and (ix) shall be deleted in their entirety.

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

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

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

### 10.4 Indemnities.

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

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

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

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

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

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

10.8 General. This Agreement constitutes the entire agreement between the Parties relating to its subject matter. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together constitute but one and the same instrument. Facsimile or PDF transmission will be the same as delivery of any original document. At the request of the either party, the other party will confirm facsimile or DPF signatures by signing an original document. All indemnity rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns. Nothing in this Agreement shall in any way restrict or otherwise limit the rights of either Party under Sections 205 and 206 of the Federal Power Act.

Section 10.10 (Forward Contracts) is deleted in its entirety.

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

10.11 Confidentiality. Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party's employees, Financial Institutions or potential Financial Institutions or investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071 and made applicable to this Agreement by D.04-06-015, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 10.12 of this Agreement, (v) in order to comply with any applicable law, regulation, or any exchange, control area or ISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi), or (vi) in

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order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 10.11 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

The following new Section 10.12 shall be added as follows:

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

The following new Section 10.13 shall be added as follows:

**10.13 Insurance.** Throughout the term of this Agreement, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with respect to the Unit(s) specified in the Confirmation. Buyer reserves the right to request coverages of the type and amounts that are required by lenders for similarly financed projects. Reviews of such insurance may be conducted by Buyer on an annual basis. Seller is also responsible for its agents and contractors' maintaining sufficient limits of the appropriate insurance coverage. The insurance carrier or carriers and form of policy shall be subject to review and approval by Buyer, which approval may not be unreasonably withheld or delayed.

(a) **Workers' Compensation and Employers' Liability.**

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

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

(b) **Commercial General Liability.**

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

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

(c) Seller shall (i) prior to the Initial Energy Delivery Date (as defined in the Confirmation), furnish a certificate of insurance to Buyer, which certificate shall provide that such insurance shall not be terminated nor expire except on thirty (30) calendar days' prior written Notice

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to Buyer, (ii) maintain such insurance in effect for so long as Seller's Unit(s) is operated in parallel with the Buyer electric system, (iii) furnish an endorsement specifying that Seller's insurance is primary and that any insurance or self-insurance maintained by Buyer shall not contribute with it and (iv) furnish to Buyer an additional insured endorsement with respect to such insurance in substantially the following form:

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

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

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

The following new Section 10.14 "Prevailing Wage" shall be added as follows:

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

The following new Section 10.15 "Covenants" is added as follows:

**10.15 Covenants.**

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

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

(ii) it shall maintain (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, or any law, rule regulation, order or the like applicable to it.



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(b) Seller, and, if applicable, its successors, covenants that throughout the Delivery Term of each Transaction entered into under this Agreement and, so long as there is no change with respect to the applicable laws, statutes, regulations, or interpretations thereof by the courts or regulatory agencies: (a) the Unit(s) will qualify and will be certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16 as of the date of this Agreement; and (b) the Unit's(s)' output delivered to Buyer will qualify under the requirements of the California Renewables Portfolio Standard in effect as of the Execution Date of this Agreement.

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

### ARTICLE ELEVEN: CONDITIONS PRECEDENT

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

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

(b) CPUC Approval has been obtained. Seller shall use its best efforts to support Buyer in obtaining CPUC Approval. Buyer shall have no obligation to seek rehearing or to appeal a CPUC decision which rejects the Agreement or modifies the Agreement in a manner unsatisfactory to either Party; and

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

11.2 Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied on or before one hundred and twenty (120) days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate the Agreement effective upon receipt of Notice by the other Party.

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

### ARTICLE TWELVE: DISPUTE RESOLUTION

12. Dispute Resolution.

Mindful of the high costs of litigation, not only in dollars but time and energy as well, the Parties intend to and do hereby establish a final and binding out-of-court dispute resolution procedure to be

followed in the event any controversy should arise out of or concerning the performance of the Transaction(s). Accordingly, it is agreed as follows:

12.1 Negotiation.

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

(b) Within 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 the relevant information and to attempt to resolve the dispute.

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

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

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

12.2 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.1 above or is a dispute regarding the Termination Payment, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the American Arbitration Association ("AAA"). As the first step, the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. If within 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"). Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with

either Party and shall be knowledgeable in the field. Either Party may initiate arbitration by filing with AAA a notice of intent to arbitrate within 60 days of service of the written demand for mediation.

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

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

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

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

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

#### OTHER CHANGES

Schedule M is deleted in its entirety.

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

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

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**Exhibit A, Form of Letter of Credit.**

**The following new Exhibit B is included as follows:**

**Exhibit B, Form of Assignment and Assumption Agreement**

**The following new Appendices are included as follows:**

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

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

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

**Appendix IV, Seller PGC Fund Amount Spreadsheet**

**Appendix V, Substitute Unit Identification**

SCHEDULE P

Product Definitions:

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

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

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

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

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

**EXHIBIT A**

**LETTER OF CREDIT**

**ISSUING BANK LETTERHEAD  
ADDRESS**

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

Irrevocable Standby Letter of Credit Number: \_\_\_\_\_

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

Applicant: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

AND

2. Beneficiary's signed statement certifying:

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

OR

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

This Letter of Credit expires at our counters located at [INSERT ADDRESS] on [INSERT DATE], ("Expiration Date") but the Expiration Date shall be automatically extended without amendment for a period of one year and on each successive Expiration Date, unless at least sixty (60) days before the then

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current Expiration Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

**Special Conditions:**

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

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

Except as otherwise stated herein, this credit is subject to the UCP and, with respect to matters not so covered, this Letter of Credit is subject to and governed by the laws of the State of New York. If you have any questions regarding this Letter of Credit, please call [Telephone No.].

By: \_\_\_\_\_  
Authorized Signature  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT B

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment Agreement (the "Assignment Agreement") is made and entered into as of \_\_\_\_\_ ("Effective Date"), by and among Military Pass Road-Newberry Volcano LLC, a California limited liability company ("Assignor"), and Military Pass Road Geothermal LLC, a California limited liability company ("Assignee").

WHEREAS, Assignor is party to that certain Master Power Purchase and Sale Agreement, including the Confirmation and Cover Sheet, dated September \_\_, 2005, with Pacific Gas and Electric Company (the "Agreement"), a copy of which is attached as Exhibit A;

WHEREAS, Assignor wishes to assign its rights and obligations under the Agreement to Assignee, and Assignee wishes to assume such rights and related obligations, pursuant to Section 3.8(d)(vii) of the Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Capitalized Terms.** Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Agreement.
2. **Assignment.** To the extent that Assignor has any right, title, benefit, privileges or interest in and to the Agreement, effective as of the date first set forth above, Assignor hereby assigns, sells, transfers and sets over (collectively, the "Assignment") to Assignee all of Assignor's right, title, benefit, privileges and interest in and to the Agreement. Assignee hereby accepts the Assignment of the Agreement.
3. **Assumption.** Assignee assumes all of the duties, obligations and liabilities of Assignor whenever accrued pursuant to the Agreement and hereby confirms that Assignee shall be a party to the Agreement as of the Effective Date hereof.
4. **Further Actions.** Each of the parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignment contemplated by this Assignment Agreement.
5. **Representations and Warranties.**
  - (a) Assignor represents and warrants that it has all requisite power and authority and legal right to enter into and carry out the transactions contemplated hereby and this Assignment Agreement constitutes the legal, valid and binding obligations of Assignor and is enforceable against it in accordance with its terms.
  - (b) Assignee represents and warrants that (i) it has all requisite power and authority and legal right to enter into and carry out the transactions contemplated hereby and to carry out and perform the obligations of Assignor pursuant to the terms of the Agreement this Assignment Agreement and (ii) this Assignment Agreement constitutes the legal, valid and binding obligations of Assignee and is enforceable against it in accordance with its term.



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6. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.
7. **Successors and Assigns.** This Agreement shall be binding upon Assignor and its successors and assigns and shall be binding upon and inure to the benefit of Assignee and its successors and assigns.
8. **Amendments.** This Agreement may not be terminated, amended, supplemented, waived or modified orally, but only upon the prior written consent of each of the parties hereto, such consent not to be unreasonably withheld.
9. **Counterparts.** This Assignment Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
10. **Further Assurances.** Each of the parties agrees that from time to time after the date hereof, it shall execute and deliver or cause to be executed and delivered to the other party such instruments, documents and papers, and shall take all such further action as may be reasonably requested by the other party in order to consummate more effectively the purposes of this Agreement.

*[Signature Page Follows]*

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IN WITNESS WHEREOF, the parties have executed this Assignment Agreement as of the date first above written.

**MILITARY PASS ROAD-NEWBERRY VOLCANO LLC, a California limited liability company**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**MILITARY PASS ROAD GEOTHERMAL LLC, a California limited liability company**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**APPENDIX I**

**Initial Capacity Demonstration Test Principles**

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

1. The principle for the Test performance criteria will be generation and delivery of the Contract Capacity over the specified duration of the test as stated as percentage Capacity Factors in the Performance Requirements for the applicable Time of Delivery Period ("TOD Period").
2. For the Baseload product, passage of the Test will require the Unit(s) to meet the Performance Requirements specified in the Confirmation for the TOD Periods applicable for the month(s) in which the Test takes place for the duration of three hundred thirty-six (336) consecutive hours (two (2) weeks). For the purpose of illustration, for a Test taking place during Monthly Period A (June through September), the test criteria would be to demonstrate ninety-five percent (95%) Capacity Factor during the Super-Peak TOD Period, ninety percent (90%) Capacity Factor during the Shoulder TOD Period, and eighty percent (80%) Capacity Factor during the Night TOD Period. Each such requirement shall be calculated as a mean of the amount of Delivered Energy during the applicable TOD period for the 14-day duration of the Test divided by the product resulting from multiplying the Net Rated Output Capacity times the number of hours in the applicable TOD period. For the purposes of calculating Delivered Energy for the Test, Delivered Energy shall exclude any energy greater than the Net Rated Output Capacity in each hour.
3. If Seller fails to pass the Test, Seller shall have the right, but not the obligation, to elect to perform a re-test, using identical protocol and criteria as the original Test, a maximum of one time within thirty (30) days of the failure of the original Test ("Re-Test"). Seller shall bear all costs for any Re-Test. Seller's failure to make such election within thirty (30) days after failure of the original Test shall constitute an unconditional waiver of this right to Re-Test, and shall be deemed a failure of the Re-Test.
4. Seller's failure to pass the Re-Test shall give the Buyer the right, but not the obligation, to declare an Event of Default.

**APPENDIX II**

**FORM OF MONTHLY  
CONSTRUCTION PROGRESS REPORT**

**Monthly Progress Report  
of  
Military Pass Road-Newberry Volcano LLC  
("Seller")**

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

**[Date]**

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### 1.0 Instructions.

Any capitalized terms used in this report which are not defined herein shall have the means ascribed to them in the Master Power Purchase and Sale Agreement by and between \_\_\_\_\_ ("Seller") and Pacific Gas & Electric Company dated \_\_\_\_\_, 2005 (the "Agreement").

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

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

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

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

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

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

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

**2.0 Executive Summary.**

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

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

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

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

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

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

---

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

**2.2.7 Startup Testing and Commissioning**

**3.0 Permitting.**

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

**3.1 State and/or Federal Governmental Approvals.**

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

<b>DESCRIPTION</b>	<b>STATUS</b>

**3.2 Local and/or county Governmental Approvals.**

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

<b>DESCRIPTION</b>	<b>STATUS</b>

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

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

**3.4 Permitting activities occurring during the current calendar month.**

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

**3.5 Permitting Notices received from EPC Contractor.**

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

**4.0 Design Activities.**

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

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

<b>ACTIVITY</b>	<b>EPC CONTRACTOR/ SUBCONTRACTOR</b>	<b>SCHEDULED COMPLETION DATE</b>	<b>ACTUAL COMPLETION DATE</b>

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

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

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

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

**5.0 Property Acquisition Activities.**

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

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

<b>ACTIVITY</b>	<b>SCHEDULED COMPLETION DATE</b>	<b>ACTUAL COMPLETION DATE</b>




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

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

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

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

**6.0 Engineering Activities.**

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

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

<b>ACTIVITY</b>	<b>EPC CONTRACTOR/ SUBCONTRACTOR</b>	<b>SCHEDULED COMPLETION DATE</b>	<b>ACTUAL COMPLETION DATE</b>

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

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

**6.3. Engineering activities completed during the previous calendar month.**

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

**6.4. Three-month look-ahead engineering schedule.**

Please provide a three-month look ahead engineering schedule.

**7.0 Major Equipment Procurement.**

**7.1 Table of major equipment to be procured by Seller or the EPC Contractor (including its subcontractors).**

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

<b>EQUIPMENT DESCRIPTION</b>	<b>MANUFACTURER</b>	<b>MODEL</b>	<b>CONTRACTED DELIVERY DATE</b>	<b>ACTUAL DELIVERY DATE</b>	<b>PROJECTED INSTALLATION DATE</b>	<b>ACTUAL INSTALLATION DATE</b>

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

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

**7.3 Major Equipment procurement activities completed during the previous calendar month.**

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

**8.0 Construction and Interconnection Activities.**

**8.1 Table of construction and interconnection activities to be performed by Seller or EPC Contractor (including its subcontractors).**

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

<b>ACTIVITY</b>	<b>EPC CONTRACTOR/ SUBCONTRACTOR</b>	<b>SCHEDULED COMPLETION DATE</b>	<b>ACTUAL COMPLETION DATE</b>


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

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

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

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

**8.4 EPC Contractor Monthly Construction Progress Report.**

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

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

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

**9.0 Milestones.**

**9.1 Milestone schedule.**

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

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

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

**9.2.1 Missed Milestone**

**9.2.2 Plans to achieve missed Milestone**

**9.2.3 Plans to achieve subsequent Milestone**

**9.2.4 Delays in engineering schedule**

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

**9.2.5 Delays in Major Equipment procurement**

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

**9.2.6 Delays in construction and interconnection schedule**

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

**10.0 Safety and Health Reports**

**10.1 Please list all accidents from the previous calendar month:**

**10.2 Any work stoppage from the previous calendar month:**

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

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

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

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

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

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

APPENDIX III

**DO NOT ALTER FORM**



OUTAGE NOTIFICATION FORM

SEND VIA U.S. MAIL OR FAX

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

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

FAX NUMBER: (415) 973-2151

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

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

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

Unit Mailing Address: \_\_\_\_\_

NOTIFICATION OF PLANNED OUTAGE ♦ FORCED OUTAGE ♦ PROLONGED OUTAGE

● The Unit will shut down for PLANNED OUTAGE from:

\_\_\_\_\_ to \_\_\_\_\_  
(Date and Time) (Date and Time)

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

\_\_\_\_\_

(Date and Time)

to: \_\_\_\_\_ due to \_\_\_\_\_  
(Date and Time)

● The FORCED OUTAGE was confirmed via telephone on \_\_\_\_\_  
(Date and Time)

by \_\_\_\_\_  
(Designated Control Center/Switching Center and Operator)

**EXECUTION COPY**

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

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**Outage Notification Form submitted by:** \_\_\_\_\_

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

\_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Date)**

**Notification Requirements:**

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

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

**(Rev. 7/04)**

**Appendix IV**

**SELLER PGC FUND AMOUNT SPREADSHEET**

The PGC Fund Amount that Military Pass Road- Newberry Volcano LLC will apply or has applied for with the California Energy Commission, pursuant to Section 10.1(a) of the Agreement, is approximately \$60,008,976, plus or minus \$2,000,000.

The calculation of the PGC Fund Amount is based upon the following:

Market Price Referent of \$.0615/kWh, per CPUC Resolution E-3942 issued July 21, 2005

Discount Rate- Pacific Gas and Electric's Weighted Cost of Capital of 7.65%.

Net Present Value ("NPV") Date- The date used for the calculation of the NPV amount of the PGC Fund Amount shall be January 1, 2005.

Expected Generation - The Contract Quantity or expected annual deliveries of energy and capacity from Seller used in the above calculation are as follows:

Year	Generation (kWh)
2005	
2006	
2007	
2008	105,120,000
2009	420,480,000
2010	840,960,000
2011	840,960,000
2012	840,960,000
2013	840,960,000
2014	840,960,000
2015	840,960,000
2016	840,960,000
2017	840,960,000
2018	840,960,000
2019	840,960,000
2020	840,960,000
2021	840,960,000
2022	840,960,000
2023	840,960,000
2024	840,960,000
2025	840,960,000
2026	840,960,000
2027	840,960,000
2028	560,640,000

**Appendix V: Substitute Unit Identification**

**Substitute Unit.** Delivered Energy may be supplied from the following generation Substitute Unit only:

Substitute Unit Name: Military Pass Road Geothermal, LLC  
Site Name: Military Pass Road  
Substitute Unit Physical Address: N/A. Approx Coord: T 42 N, R 3 W and R 4 W. Long: -  
122.2, Lat: 41.5  
Technology Type: Geothermal  
Specific Unit Description:

The Military Pass Road geothermal project is located 10 miles northeast of Weed, CA near a stratovolcano along the Cascade range. The project believes a large, high temperature geothermal reservoir is located beneath its 18,000 acres of federal geothermal lease applications.

It is anticipated that the Military Pass Road project will supply this PPA up to 60 MW of baseload geothermal power with delivery to the PG&E system Cottonwood cluster. This project optionality provision benefits the Newberry Military Pass Road project with optional site capability. The project will interconnect at the Cascade substation.

The project expects to utilize two air-cooled 30 MW steam flash geothermal power plants, coming online sequentially.

Each 30 MW steam flash power plant includes at least the following:

- production wells
- steam separators
- steam turbine/generator
- back-side cooling and condenser systems
- reinjection well systems
- associated electrical equipment to interconnect the facility

Seller will provide further details by the Final Configuration Date.

**Total Net Rated Output Capacity: 120 MW**

**Interconnection.** The Delivery Point is described as follows:

Delivery Point: Delta Substation  
Delivery Point Address: To be determined  
Additional Information: To be determined



Master PSA

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# Master Power Purchase & Sale Agreement

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# MASTER POWER PURCHASE AND SALES AGREEMENT

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# MASTER POWER PURCHASE AND SALE AGREEMENT

## COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*” ) is made as of the following date: \_\_\_\_\_ (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Name (“\_\_\_\_\_” or “Party A”)

Name (“Counterparty” or “Party B”)

All Notices:

All Notices:

Street: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Attn: Contract Administration

Attn: Contract Administration

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Duns: \_\_\_\_\_

Duns: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

**Invoices:**

**Invoices:**

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Scheduling:**

**Scheduling:**

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Payments:**

**Payments:**

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Wire Transfer:**

**Wire Transfer:**

BNK: \_\_\_\_\_

BNK: \_\_\_\_\_

ABA: \_\_\_\_\_

ABA: \_\_\_\_\_

ACCT: \_\_\_\_\_

ACCT: \_\_\_\_\_

**Credit and Collections:**

**Credit and Collections:**

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

With additional Notices of an Event of Default or Potential Event of Default to:

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

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

Party A Tariff      Tariff \_\_\_\_\_      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

Party B Tariff      Tariff \_\_\_\_\_      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

---

**Article Two**

Transaction Terms and Conditions       Optional provision in Section 2.4. If not checked, inapplicable.

---

**Article Four**

Remedies for Failure to Deliver or Receive       Accelerated Payment of Damages. If not checked, inapplicable.

---

**Article Five**

Events of Default; Remedies       Cross Default for Party A:  
 Party A: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_

Other Entity: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_

Cross Default for Party B:

Party B: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_

Other Entity: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_

5.6 Closeout Setoff

Option A (Applicable if no other selection is made.)

Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_  
\_\_\_\_\_

Option C (No Setoff)

---

**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A

Option B Specify: \_\_\_\_\_

Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ \_\_\_\_\_

Party B Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's

- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

## 8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: \_\_\_\_\_
- Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's
- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party A: \_\_\_\_\_  
Guarantee Amount: \_\_\_\_\_

---

**Article 10**

Confidentiality

Confidentiality Applicable      If not checked, inapplicable.

---

**Schedule M**

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

**Other Changes**

Specify, if any: \_\_\_\_\_



IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

Party B Name

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

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

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

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

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

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

**DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.**

## GENERAL TERMS AND CONDITIONS

### ARTICLE ONE: GENERAL DEFINITIONS

1.1 “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.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

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

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “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 the Transaction.

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

1.12 “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 issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

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

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

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

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

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

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

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, 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 A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "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 termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

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

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

- 1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.
- 1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.
- 1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.
- 1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.
- 1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.
- 1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.
- 1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.
- 1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.
- 1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.
- 1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.
- 1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.
- 1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.
- 1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.
- 1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.
- 1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

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

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, 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 Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

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

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

## **ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS**

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 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 Master 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. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

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

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. 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 or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services



with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

#### **ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

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

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

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

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
  - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
  - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

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

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 or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) 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 two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

#### 5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

### **ARTICLE SIX: PAYMENT AND NETTING**

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any 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.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. 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. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 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 of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

## **ARTICLE SEVEN: LIMITATIONS**

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. 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 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B'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 Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 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 60 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.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.



8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 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 Party B, Party A shall deliver (i) within 120 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 60 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.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all 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, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## **ARTICLE NINE: GOVERNMENTAL CHARGES**

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). 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 the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. 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 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, 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 legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are 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 Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 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 Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such 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.

10.6 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 NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. 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. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

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 Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. 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 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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.

## SCHEDULE M

**(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)**

- A. The Parties agree to add the following definitions in Article One.

“Act” means \_\_\_\_\_.<sup>1</sup>

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

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<sup>1</sup> Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.



positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF \_\_\_\_\_<sup>2</sup> SHALL APPLY.

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<sup>2</sup> Insert relevant state for Governmental Entity or Public Power System.

## **SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS**

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

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

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into \_\_\_\_\_ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.



C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on \_\_\_\_\_, \_\_\_\_\_  
between \_\_\_\_\_ (“Party A”) and \_\_\_\_\_ (“Party B”)  
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Product:

Into \_\_\_\_\_, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: \_\_\_\_\_)

Unit Firm

(Specify Unit(s): \_\_\_\_\_)

Other \_\_\_\_\_

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency       Seller       Buyer

FT-Delivery Point Contingency       Seller       Buyer

Transmission Contingent       Seller       Buyer

Other transmission contingency

(Specify: \_\_\_\_\_)

Contract Quantity: \_\_\_\_\_

Delivery Point: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Energy Price: \_\_\_\_\_

Other Charges: \_\_\_\_\_

Delivery Period: \_\_\_\_\_  
Special Conditions: \_\_\_\_\_  
Scheduling: \_\_\_\_\_  
Option Buyer: \_\_\_\_\_  
Option Seller: \_\_\_\_\_  
Type of Option: \_\_\_\_\_  
Strike Price: \_\_\_\_\_  
Premium: \_\_\_\_\_  
Exercise Period: \_\_\_\_\_

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated \_\_\_\_\_ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

## Confirmation Letter

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION BETWEEN  
MILITARY PASS ROAD-NEWBERRY VOLCANO LLC  
and  
PACIFIC GAS AND ELECTRIC COMPANY**

This confirmation letter dated as of this February 23, 2006 ("Confirmation") confirms the Transaction between Military Pass Road-Newberry Volcano LLC ("Seller") and Pacific Gas and Electric Company ("Buyer" or "PG&E") regarding the Transaction in accordance with and subject to the terms and provisions of the Master Power Purchase & Sale Agreement ("Master Agreement") dated as of February 23, 2006. This Confirmation shall not be effective until all of the conditions precedent in Article 11 of the Master Agreement have been satisfied. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement or, if not defined in the Master Agreement, the ISO Tariff.

1. Product; Unit(s).

(a) The Parties shall check the applicable box to specify the Product, as defined in Section 3 below, to be delivered and sold by Seller and received and purchased by Buyer under this Transaction:

- Peaking**
- Baseload**
- Dispatchable**

(b) Unit(s) is described in Appendix A.

2. Delivery Term. The Parties shall specify 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 on which Seller delivers the Product from the Unit(s) pursuant to the terms of this Confirmation (the "Initial Energy Delivery Date"). The Initial Energy Delivery Date shall not occur until all of the following have been completed: (i) Commercial Operation Date, (ii) Buyer shall have received Performance Assurance in accordance with the relevant provisions of Article Eight of the Master Agreement, as applicable, and (iii) all of the applicable conditions precedent in Article 11 of the Master Agreement have been satisfied.

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3. Product Delivery Periods and Definitions. The following shall supplement the Product Definitions in Schedule P of the Master Agreement with respect to this Transaction:

(a) Peaking means unit-contingent firm energy delivered hour ending ("HE") 13 to 20 (Pacific Prevailing Time (PPT)), Monday through Friday (excluding NERC holidays) from June 1 through September 30.

(b) Baseload means unit-contingent firm energy delivered with the applicable capacity factors provided herein.

(c) Dispatchable means unit-contingent firm energy and capacity available for Buyer to Schedule and dispatch up or down at Buyer's option within the parameters of the applicable dispatch protocol, which shall be mutually agreed by Buyer and Seller and attached as an appendix to this Confirmation. Unit(s) shall have a minimum run time of eight (8) consecutive hours or less and a minimum down time of eight (8) consecutive hours or less.

4. Delivery Point. The Delivery Point shall be NP-15. If the current NP-15 zonal delivery point is materially modified or replaced with an alternate trading hub, or the zonal market structure established by the ISO that exists as of the date of this Agreement is reconfigured to a nodal or alternative structure by the ISO (either constituting a "Restructuring Event"), then the Delivery Point with respect to the Unit(s) shall be the 230 KV line busbar at Round Mountain substation and the Delivery Point with respect to the Substitute Unit shall be the 230 KV line busbar at Cottonwood substation; provided however, that if the Seller is exempt from payment of congestion charges or allocated congestion revenue rights at no cost to Seller, the delivery point with respect to the Unit(s) or Substitute Unit, as applicable, shall be the E-Z Gen Hub, as defined by the ISO, or Buyer's load aggregation point, as defined and identified by the ISO, whichever exists at the time of the Restructuring Event and is recognized by the ISO for delivery to Buyer through an SC to SC trade, in accordance with Section 7 below.

5. Contract Quantity. The quantity of energy to be delivered by Seller for (A) Contract Year 1 shall be 420,480 MWh, and (B) in each subsequent Contract Year thereafter the quantity of energy to be delivered shall be 840,960 MWh, subject to Sections 3.8(d)(v) and (vi) of the Agreement, and in accordance with the following formula:

$$\text{Contract Quantity} = A \times B \times C \times D$$

Where A = Net Rated Output Capacity.

B = 80% capacity factor.

C = 8,760 hours unless the calculation is being performed for the last contract year in which case the value of this factor "C" shall be the number of hours in the last calendar year.

D = 1.0 for each Contract Year

6. Contract Capacity. The Contract Capacity for every Contract Year shall be the lower of the amount specified in the succeeding sentence or the Net Rated Output Capacity of the Unit(s) at the Delivery Point at such time. The Contract Capacity (a) during Contract Year 1 shall be 60 MW, subject to Section 3.8(d)(v) of the Agreement; and (b) during Contract Years 2 through 20, the Contract Capacity shall be 120 MW, subject to Sections 3.8(d)(v) and (vi) of the Agreement. Throughout the Delivery Term, Seller shall sell and schedule all energy produced by the Unit(s) solely to Buyer and in no event shall Buyer be obligated to receive or pay for Scheduled Energy, as defined in Section 7 below, that

exceeds 120% of the Contract Capacity. In no event shall Seller have the right to procure electric capacity or energy from sources other than the Unit(s) or Substitute Unit, subject to Section 3.1(a) of the Agreement, for sale or delivery to Buyer under this Transaction.

Throughout the Delivery Term, Seller shall make available the Contract Capacity to Buyer at all times.

"Delivered Energy" (or "Energy Delivered" as used in Section 9.1(a)) means all energy produced from the Unit(s) or Substitute Unit, subject to Section 3.1(a) of the Agreement, as measured in megawatt hours (MWh) at the ISO-approved revenue meter of the Unit(s), based on a power factor of precisely one, and net of all applicable losses, including, but not limited to the following: (a) any transmission or transformation losses between the ISO-approved revenue meter and the Delivery Point, (b) any applicable GMM or TMM, or any successor method to account for losses or congestion established by the ISO (or successor organization), and (c) the applicable Distribution Loss Factor, if applicable.

7. Scheduling and Scheduling Coordinator. Each of Seller and Buyer shall be its own Scheduling Coordinator ("SC"), as such term is defined in the Master Agreement, with respect to this Transaction or designate a qualified third party to fulfill such role. Throughout the Delivery Term, Seller shall designate an inter-SC trade for the Delivered Energy solely to Buyer's SC ("Scheduled Energy"). Conduct of deliveries through inter-SC trades shall be in compliance with the Settlement and Billing Protocol of the Tariff, including but not limited to Sections SBP2.14, Inter-Scheduling Coordinator Energy Trades. If the ISO designates, under a revised market design, zones or nodes which replace the NP-15 zone and zonal delivery points with a trading hub for SC trades, then the inter-SC trade location shall be at the Delivery Point, as provided in Section 4 hereof.

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

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

7.3. Daily Delivery Schedules. Seller or its SC shall provide the Day-Ahead delivery schedule to Buyer no later than fourteen (14) hours before the ISO Day-Ahead scheduling deadline, in accordance with ISO scheduling protocols. Seller or its SC shall provide PG&E with hourly deliveries for each hour of the following Trade Day; provided, however, that a schedule provided on a day before any non-Business Day shall include deliveries planned for each day to and including the next Business Day. Each delivery schedule shall clearly identify, for each hour, all amounts of Product to be scheduled and sold to Buyer pursuant to this Confirmation. Seller or its SC shall deliver Product in accordance with its Day-Ahead schedule, which shall reflect the expected generation of the Unit, as may be modified by the Hour-Ahead schedule, which may reflect changes in the expected generation of the Unit, and subject to the applicable Tariff. Seller or its SC shall promptly notify Buyer of any changes in such schedule, pursuant to the Hour Ahead scheduling procedures described below. These notices and schedules shall be sent, in a manner agreed to by the Parties, to:

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

7.4. Hourly Delivery Schedules. In the event that Seller makes a change to its schedule in Hour Ahead scheduling for any reason, including Forced Outages (other than a scheduling change imposed by Buyer or the ISO), which results in a change to its forecasted deliveries (whether in part or in



whole), Seller or its SC shall notify Buyer immediately by calling Buyer's on-duty SC to provide any and all changes to the Day-Ahead Schedule and to provide a revised schedule thereto as soon as possible, but in no event later than one (1) hour before Buyer's SC is required to submit Hour-Ahead schedules to the ISO.

8. Monthly Payments.

8.1 Contract Price. The Contract Price for each megawatt hour (MWh) of Scheduled Energy in each Contract Year for Contract Year 1 through and including Contract Year 20 shall be \$61.50, which amount represents the 2004 Baseload Market Price Referent, in accordance with CPUC Resolution E-3942 issued July 21, 2005, as adjusted by Sections 8.4 and 8.7 of this Confirmation. Buyer and Seller acknowledge and agree that the actual price for each MWh of Scheduled Energy shall be \$71.00, subject to the terms set forth in the Agreement.

8.2 TOD Periods. The Time of Delivery Periods ("TOD Periods") specified below, as A1 through C3, shall be referenced by the following designations:

**TOD PERIOD**

<b>Period</b>	<b>1. Super-Peak</b>	<b>2. Shoulder</b>	<b>3. Night</b>
A. June – September	A1	A2	A3
B. December and January	B1	B2	B3
C. Feb. - May, Oct. & Nov.	C1	C2	C3

Period Definitions: The Periods are defined as follows:

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

TOD Period hour Definitions: The hours in the TOD Periods are defined as follows:

- 1. **Super-Peak** (5x8) = HE (Hours Ending) 13 – 20 PPT Monday – Friday (*except* NERC Holidays).
- 2. **Shoulder** = HE 7 – 12, 21 and 22 PPT Monday – Friday (*except* NERC Holidays); and HE 7 – 22 PPT Saturday, Sunday and all NERC holidays.
- 3. **Night** (7x8) = HE 1 - 6, 23 and 24 PPT all days (*including* NERC Holidays).

As used herein, "NERC Holidays" include: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the last Thursday in November. New Year's Day, Independence Day, and Christmas Day are predetermined dates each year, in the event one of these holidays occurs on a Sunday, the "NERC Holiday" will be considered celebrated on the Monday

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immediately following that Sunday and if any of these holidays occur on a Saturday, the "NERC Holiday" remains on that Saturday.

8.3 **Capacity Factors.** The Capacity Factor shall be calculated by TOD Period and defined as the percentage amount resulting from Scheduled Energy in the applicable TOD Period divided by the product resulting from multiplying the Contract Capacity times the number of hours in the applicable TOD Period:

**Capacity Factor = Scheduled Energy / (Contract Capacity x Hours in TOD Period less Lost Output, as defined below).**

8.4 **TOD Factors.** In accordance with all other terms of this Section 8, the Contract Price for Delivered Energy shall be adjusted by the following Time of Delivery Factors ("TOD Factors") for each of the specified TOD Periods in which Scheduled Energy is delivered:

**TOD FACTOR**

---

<b>Period</b>	<b>1. Super-Peak</b>	<b>2. Shoulder</b>	<b>3. Night</b>
A. June - September	1.25	1.06	0.85
B. December & January	1.20	1.07	0.85
C. Feb. - May, Oct. & Nov.	1.11	1.00	0.82

For each month, Buyer shall pay Seller for Scheduled Energy in each TOD Period ("Monthly TOD Payment") according to the following formula:

**Monthly TOD Payment = Contract Price x TOD Factor x Scheduled Energy**

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

**TOD PERIOD**

---

<b>Period</b>	<b>1. Super-Peak</b>	<b>2. Shoulder</b>	<b>3. Night</b>
A. June - September	90%	90%	80%
B. December & January	85%	85%	80%
C. Feb. - May, Oct. & Nov.	80%	80%	60%

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

$$\text{Maximum Monthly TOD Payment} = \text{Contract Price} \times \text{TOD Factor} \times 1.0000 \times \text{Contract Capacity} \times \text{Hours in applicable TOD Period.}$$

This calculation shall be rounded to the nearest \$0.01.

To the extent that Seller fails to satisfy the Performance Requirements specified above in Section 8.5, Seller shall be liable for and pay to Buyer "Performance Adjustments", as defined herein. The Performance Adjustment shall be paid on a monthly basis for Periods A and B, and on an aggregate basis for Period C, as provided further below. For each 1 percent by which the Capacity Factor in each TOD Period is less than the Performance Requirement for such TOD Period, Seller shall incur and pay to Buyer the following percentages of the applicable Maximum Monthly TOD Payment ("Performance Adjustment Factors"):

#### PERFORMANCE ADJUSTMENT FACTORS

Period	1. Super-Peak	2. Shoulder	3. Night
A. June - September	3.00	2.00	1.25
B. December & January	2.50	2.00	1.25
C. Feb. – May, Oct. & Nov.	1.50	1.25	1.00

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

$$\text{Performance Adjustment} = (\text{Performance Requirement} - \text{Capacity Factor}) \times \text{Performance Adjustment Factor} \times \text{Maximum Monthly TOD Payment.}$$

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

In no event shall the applicable Performance Adjustment exceed the amount of the applicable Maximum Monthly TOD Payment. For the purposes of illustration, the Performance Requirement in Period B3 is 80 percent Capacity Factor and the Performance Adjustment Factor for Period B3 is 1.25. If the Capacity Factor in Period B3 were 78.5 percent, then Seller would pay Buyer the following Performance Adjustment = (80% – 78.5%) x 1.25 = 1.5% x 1.25 = 1.88 percent of the Maximum Monthly TOD Payment for TOD Period B3.

For purposes of this Agreement, "Lost Output" means the estimated quantity of Delivered Energy that Seller was unable to deliver, as provided in Attachment A as described below, because of any of the following:

- (i) Force Majeure;
- (ii) Buyer's failure to perform under this Confirmation; or
- (iii) a reduction of Delivered Energy required in order to comply with a Dispatch

Down Period, as defined in Section 12 below.

The Parties agree that the estimated quantities provided for the applicable TOD Period shall be used to determine the Lost Output during the applicable TOD Period.

8.7. (a) Imbalance Energy. On or about the fifth (5<sup>th</sup>) day of each month, Seller will provide to Buyer complete records for the applicable settlement interval of Delivered Energy and Scheduled Energy for the preceding month. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. "Imbalance Energy" means the amount of energy, in any given hour, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered "Positive Imbalance Energy;" when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the "Negative Imbalance Energy."

(b) Imbalance Price. For each ISO settlement time interval in any month in which there is Positive Energy Imbalance, the Imbalance Price shall be the Hourly Average-Energy Price as published by the ISO with respect to positive Imbalance Energy charges for the applicable ISO settlement time interval location. For each ISO settlement time interval in any month in which there is Negative Energy Imbalance, the Imbalance Price shall be the Hourly Average-Energy Price as published by the ISO with respect to negative Imbalance Energy for the applicable time interval. In the event that the ISO fails to post the "Hourly Average-Energy Price," the Imbalance Prices shall be the straight average of the (10-minute) settlement interval prices for the applicable hour and Delivery Point zone; provided that if the applicable settlement interval is modified to a 5-minute or other interval by the ISO, such new time interval shall apply.

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

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

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

8.8 ISO Charges. Seller shall assume all liability and pay for all congestion charges to the Delivery Point. Each Party shall also assume all liability and reimburse the other Party for any Penalties, as defined below, incurred by the other Party as a result of the first Party's failure to abide by the Tariff. Seller and Buyer shall cooperate to minimize imbalances and Penalties, as defined below to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred, pursuant to the applicable Day Ahead and/or Hour Ahead scheduling procedures described above. Such notification shall not alter Seller's responsibilities for payment for all imbalance and congestion charges and Penalties incurred prior to the Delivery Point. As used herein, "Penalties" means any fees, liabilities, assessments, or similar charges assessed by the ISO.

9. Performance Guarantee/Excuses for Failure to Perform.

9.1 (a) Performance Guarantee. Buyer, in its sole discretion, shall have the right to declare an Event of Default if Seller fails to achieve the Performance Guarantee, after giving notice to Seller of such failure and permitting Seller to cure such failure, as provided herein. The "Performance Guarantee" means Seller's obligation to deliver to Buyer no less than 90% of the Contract Quantity (the "Availability Adjustment Factor") in each Contract Year, as adjusted for Lost Output. If the Seller delivers less than the Performance Guarantee at the end of a Contract Year, then Seller shall nevertheless be deemed to have achieved the Performance Guarantee only if:

(i) Seller pays to Buyer the Energy Replacement Damage Amount calculated in accordance with the formula set forth below; and

(ii) such Energy Replacement Damage Amount is paid within five (5) Business Days of Seller's receipt of written notice from Buyer regarding Seller's failure to meet the Performance Guarantee.

(b) For purposes of this Section 9.1:

(i) "Energy Replacement Damage Amount" means the amount equal to the product of (i) the lesser of \$50/Mwh or the REC Market Price of a Renewable Energy Credit for the next following Contract Year and (ii) the difference between the Availability Adjustment Factor in MWh and the sum of the Delivered Energy for the Contract Year plus Lost Output for that year .

(ii) "Renewable Energy Credit" means a tradable credit that is recognized by the CPUC for purposes of Buyer's obligations and compliance under the Renewables Portfolio Standard Program, codified at California Public Utilities Code Section 399.11, et. seq., as may be modified from time to time.

(iii) "REC Market Price" means, the market price of a Renewable Energy Credit, which shall be deemed to be \$50/Mwh until such time as Seller provides to Buyer at least three (3) Broker quotes demonstrating that the market price for a Renewable Energy Credit is less than \$50/Mwh, after that time, the market price of a Renewable Credit shall be the average of three (3) Broker quotes.

(iv) "Broker" means a broker or dealer in the Renewables Energy Credit(s) market, which broker/dealer is not affiliated with either Party or any other Broker from whom a quote is obtained.

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

**EXECUTION COPY**

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

11. Resource Adequacy. Seller grants, pledges, assigns and otherwise commits to Buyer the full Contract Capacity in order for Buyer to meet its resource adequacy requirements, as this term is defined by the CPUC, "Resource Adequacy Requirements." Seller recognizes that the Resource Adequacy Requirements have not been finalized by the CPUC and agrees that Seller shall comply with such requirements once finalized and adopted by the CPUC to ensure that Buyer may include this Transaction in meeting its Resource Adequacy Requirements. The Parties shall take all actions (including, but not limited to, amending the Confirmation) and execute all documents or instruments necessary to enable Buyer to use the Contract Capacity to meet Buyer's resource adequacy requirements as ultimately determined by the CPUC in connection with R.04-04-003. Seller represents and warrants to Buyer that Seller has not used, granted, pledged, assigned or otherwise committed any portion of the Contract Capacity to satisfy the resource adequacy requirement of any party other than Buyer. Seller shall not use, grant, pledge, assign or otherwise commit any portion of the Contract Capacity to satisfy the resource adequacy requirement of any party other than Buyer.

12. Dispatch Down/Curtailment. Seller shall reduce deliveries during a "Dispatch Down Period" which means (a) curtailments ordered directly or indirectly from the ISO, including Buyer or System Emergency, as defined in the Tariff, that prevents Buyer from accepting Delivered Energy at the Delivery Point, or (b) scheduled or unscheduled maintenance on Buyer's transmission facilities that prevents Buyer from accepting Delivered Energy at the Delivery Point.

EXECUTION COPY

IN WITNESS WHEREOF, each of the Parties has caused this Confirmation to be duly executed by its authorized representative as of the date first written above.

**Seller: Military Pass Road-  
Newberry Volcano LLC**

**Buyer: Pacific Gas and Electric Company**

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

By: *[Signature]*

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

Name: FONG WAN

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

Title: VP, ENERGY PROCUREMENT

IN WITNESS WHEREOF, each of the Parties has caused this Confirmation to be duly executed by its authorized representative as of the date first written above.

**Seller: Military Pass Road-  
Newberry Volcano LLC**

**Buyer: Pacific Gas and Electric Company**

By: Steve Munson

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

Name: Steve Munson

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

Title: CEO Volcano Power Company  
Sole Member of Military Pass  
Road - Newberry Volcano LLC

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



Appendix A

Unit(s). Delivered Energy will be supplied from the following generation Unit only, subject to Section 3.1(a) of the Agreement:

Unit Name: Military Pass Road-Newberry Volcano LLC  
Site Name: Newberry Volcano  
Unit Physical Address: N/A. Approx Coord: T 21 S and T 22 S, R 12 E. Long: -121.3, Lat: 43.7  
Technology Type: Geothermal  
Specific Unit Description:

The Newberry Volcano geothermal project is located 20 miles south of Bend, OR. The project believes a large, high temperature geothermal reservoir is located beneath its 40,000 acres of issued federal geothermal leases.

It is anticipated that the Newberry Volcano project will supply a portion of this PPA of up to 120 MW of baseload geothermal power with delivery to the PG&E system via the BPA transmission system.

The project expects to utilize two to four 30 MW steam flash geothermal power plants, coming online sequentially. The first two units will be Phase I, coming online prior to 10/1/08. The second two units will be Phase II, coming online prior to 1/1/10 at Newberry Volcano or Substitute Unit.

Each 30 MW steam flash power plant includes at least the following:

- production wells
- steam separators
- steam turbine/generator
- back-side cooling and condenser systems
- reinjection well systems
- associated electrical equipment to interconnect the facility to the BPA transmission system

Seller will provide further details by the Final Configuration Date.

**Unit Total Net Rated Output Capacity: 120 MW**

Interconnection. The Interconnection Point is described as follows:

Interconnection Point: California/Oregon Border (COB)/Round Mountain Substation  
Interconnection Point Address: To be determined  
Additional Information: To be determined

**Attachment A**

**Lost Output Estimates**

For purposes of this Confirmation, "Lost Output" shall include energy that could have been produced by the Unit(s) and delivered to the Delivery Point but for the occurrence of the following events with respect to Seller:

- (i) Force Majeure;
- (ii) Buyer's failure to perform under this Confirmation; or
- (iii) a reduction of Delivered Energy required in order to comply with a Dispatch Down Period, as defined in Section 12 of the Confirmation.

The "Lost Output" shall be measured as the sum of (i) the Delivered Energy, during the qualifying time period, from the three (3) days preceding the date in which Lost Output first occurred and (ii) the sum of the Delivered Energy, during the qualifying time period, from the three (3) days following the date in which Lost Output last occurred, with the result of such calculation divided by six (6). In the event that Lost Output occurred during more than one TOD Period, separate calculations shall be made for each such TOD Period. Upon Buyer's request, Seller shall provide to Buyer relevant data and supporting documentation so that Buyer can audit and verify the calculation of energy that could have been produced and delivered but is not actually produced and delivered, as contemplated by the preceding sentence, and Buyer may have such data, documentation and calculation reviewed by an appropriately qualified and experienced third party. To the extent not already provided in the Agreement, Seller shall notify Buyer in writing of cause of the Lost Output and first and last date of the Lost Output event; provided that with respect to causes (ii) and (iii) set forth above, respectively, Seller shall explain how Buyer has failed to perform under this Confirmation or provide evidence of the curtailment order provided by the ISO or PG&E leading to Seller's Dispatch Down Period.

Amendment

**FIRST AMENDMENT TO THE FEBRUARY 23, 2006 MASTER POWER PURCHASE AND SALE AGREEMENT BETWEEN MILITARY PASS ROAD-NEWBERRY VOLCANO LLC AND PACIFIC GAS AND ELECTRIC COMPANY**

THIS FIRST AMENDMENT ("First Amendment") is entered into by and between Military Pass Road-Newberry Volcano LLC ("Military Pass") and PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"). PG&E and Military Pass are sometimes referred to herein individually as "Party" and collectively as "Parties." All capitalized terms not defined herein shall have the meaning set for the in the Agreement, as defined below.

**RECITALS**

Whereas, Military Pass and PG&E are parties to the certain Master Power Purchase and Sale Agreement, dated February 23, 2006, ("Agreement") and the Confirmation dated February, 2006 (the "Confirmation"), which supplements and forms a part of the Agreement.

**NOW THEREFORE**, in consideration of the mutual premises and covenants contained herein, PG&E and Military Pass agree as follows.

**1. Amendment to the Agreement**

(a) Article One of the Agreement shall be amended to include the two new definitions:

""Eligible Renewable Energy Resource" has the meaning set forth in the Public Utilities Code Sections 399.12 or 399.16 in effect as of the Execution Date of this Agreement."

""California Renewables Portfolio Standard" means the renewable energy program and policies established by Senate Bill 1038, as codified in California Public Utilities Code Sections 399.11 through 399.15 and Sections 381, 383.5, and 445, respectively, as such code provisions are in effect as of the Execution Date of this Agreement."

(b) The definition of "Environmental Attributes" in Article One of the Agreement shall be deleted in its entirety and replaced with the following:

""Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Unit(s) and its displacement of conventional energy generation. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or

future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Unit(s), (ii) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and/or air quality permits. If Seller's Unit(s) is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from such facility."

(c) Section 10.1(a) of the Agreement shall be amended by deleting the following from the ninth line in subpart (i)(A), "either (1) exercise the Project Relocation Option and not terminate this Transaction or (2)."

(d) Section 10.1(b)(i) of the Agreement shall be amended by deleting the following clause in the ninth line thereof, "either (1) exercise the Project Relocation Option and not terminate this Transaction; provided that Buyer shall continue to pay the Contract Price for the product delivered from Shasta pursuant to the terms of this Agreement; or."

(e) Section 10.1(b)(ii)(D)(I) of the Agreement shall be amended by deleting the phrase "of its intention to not exercise the Option," and inserting in place thereof, "rejecting the exercise of the Option."

(f) Section 10.1(b)(ii)(D)(II) of the Agreement shall be amended by deleting the word "having been" and inserting in place thereof, "being."

(g) Section 10.1(b)(ii)(D) of this Agreement shall be amended by deleting from the penultimate sentence of that section, the words "its intent to terminate" and inserting in place thereof "such termination."

(h) Section 10.1(b)(iii) of this Agreement shall be amended by deleting from the eighth line thereof, the words "shall be paid," and inserting in place thereof, "will be covered."

(i) Section 10.11(c) of the Agreement shall be modified by deleting the phrase "and made applicable to this Agreement by D.04-06-015."

(j) Section 10.15(b) of the Agreement shall be deleted in its entirety and replaced with the following:

"Seller, and if applicable, its successors, covenant throughout the Delivery Term of the Transaction entered into under this Agreement that: (a) the Unit(s) qualifies and is certified by the CEC as an Eligible Renewable Energy Resource; and (b) the Unit(s)

output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard."

**2. CPUC Approval**

This Amendment shall become effective upon satisfaction of the following conditions precedent:

- (i) CPUC Approval; and
- (ii) PG&E's receipt of a final and non-appealable CPUC order that finds that PG&E's entry into this Agreement is reasonable and that payments to be made by PG&E hereunder are recoverable in rates.

If both of the above-listed conditions precedents are not satisfied on or before 120 days from the date on which PG&E files this Amendment for CPUC Approval, then either Party may terminate this Amendment effective upon receipt of written notice by the other Party.

**3. No Other Modifications**

No provision of the Amendment or the Confirmation other than the terms addressed in this First Amendment shall be deemed modified, amended, waived, or otherwise affected by this First Amendment. If there is a conflict between the terms of the Amendment and the Confirmation and those of this First Amendment, this First Amendment shall control.

IN WITNESS WHEREOF, each party has caused this First Amendment to be executed by their authorized representatives, effective as of this 19th day of October, 2006. By signing this First Amendment, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

**PACIFIC GAS AND ELECTRIC COMPANY**

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

**MILITARY PASS ROAD-  
NEWBERRY VOLCANO LLC**

  
 By: \_\_\_\_\_  
 Title: CEO  
 Newberry Power Company  
 Date: 10/19/06

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- (i) CPUC Approval; and
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If both of the above-listed conditions precedents are not satisfied on or before 120 days from the date on which PG&E files this Amendment for CPUC Approval, then either Party may terminate this Amendment effective upon receipt of written notice by the other Party.

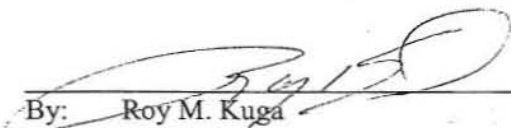
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No provision of the Amendment or the Confirmation other than the terms addressed in this First Amendment shall be deemed modified, amended, waived, or otherwise affected by this First Amendment. If there is a conflict between the terms of the Amendment and the Confirmation and those of this First Amendment, this First Amendment shall control.

**IN WITNESS WHEREOF**, each party has caused this First Amendment to be executed by their authorized representatives, effective as of this 19th day of October, 2006. By signing this First Amendment, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

**PACIFIC GAS AND ELECTRIC COMPANY**

**MILITARY PASS ROAD-  
NEWBERRY VOLCANO LLC**

By:  \_\_\_\_\_  
Roy M. Kuga

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

Title: Vice President, Energy Supply

Title:

Date: 10/26/06

Date: