

**EXECUTION COPY**

**POWER PURCHASE AND SALE AGREEMENT**

**between**

**PACIFIC GAS AND ELECTRIC COMPANY**  
**(as "Buyer")**

**and**

**NORTHWEST GEOTHERMAL COMPANY**  
**(as "Seller")**

**Unit Firm Product Baseload**

**MASTER POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

This *Power Purchase and Sale Agreement* ("Agreement") is made as of the following date: July 17, 2006 ("Execution Date"). The Agreement includes this Cover Sheet and, together with the exhibits, appendices, schedules and any written supplements hereto between the Parties, the Party A Tariff, if any, and the Party B Tariff, if any. The foregoing shall be referred to collectively as the Agreement. The Parties to this Agreement are the following:

Name: Northwest Geothermal Company  
("Seller")  
All Notices: Davenport Power LLC, Operator

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

Delivery Address:  
Street: 149 Weaver Street  
City: Greenwich State: CT Zip: 06831

Delivery Address:  
77 Beale Street, Mail Code N12F  
San Francisco, CA 94105

Mail Address: (if different from above)

Mail Address:  
P.O. Box 770000, Mail Code N12F  
San Francisco, CA 94177  
Attn: Kelly A. Everidge ([kabd@pge.com](mailto:kabd@pge.com))  
Director, Contract Mgmt & Settlements  
Phone: (415) 973-2055  
Facsimile: (415) 972-5507

Attn: Newberry Plant Manager

Phone: (203) 531-6877  
Facsimile: (203) 531-6881

Duns:  
[REDACTED]

Duns:  
[REDACTED]

**Invoices:**

Attn:  
  
Phone:  
Facsimile:

**Invoices:**

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

**Scheduling:**

Attn:  
  
Phone:  
Facsimile:

**Scheduling:**

Attn: Kevin F. Coffee ([kfc1@pge.com](mailto:kfc1@pge.com))  
Manager, Electric Trading  
Phone: (415) 973-7631  
Facsimile: (415) 973-0400

**Payments:**

Attn:  
  
Phone:  
Facsimile:

**Payments:**

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

**Wire Transfer:**  
[REDACTED]

**Wire Transfer:**  
BNK:



ABA:  
Acct:

**Credit and Collections:**

Attn:

Phone:

Facsimile:

**Credit and Collections:**

Attn:

Manager, Credit Risk Management

Phone: (415) 973-0004

Facsimile: (415) 973-7301

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

Attn: Douglas S. Perry

Phone: (443) 690-1710

Facsimile: (410) 243-5934

Email: [DPerry@davenportpower.com](mailto:DPerry@davenportpower.com)

With additional Notices of an Event of Default to:

Steven F. Greenwald, Esq.

Davis Wright Tremaine LLP

Suite 600

One Embarcadero Center

San Francisco, CA 94111-3611

Email: [stevegreenwald@dwt.com](mailto:stevegreenwald@dwt.com)

**Contract Manager:**

Attn: Jeannette Woo ([jxw7@pge.com](mailto:jxw7@pge.com))

Manager, Contract Management

Phone: (415) 973-5097

Facsimile: (415) 973-2207

With additional Notices of an Event of Default to:

PG&E Law Department

Attn: Renewables Portfolio Standard attorney

Phone: (415) 973-4377

Facsimile: (415) 972-5952

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

	Tariff:	Dated:	Docket Number:
Party A Tariff	<i>If applicable, Seller to provide prior to Commercial Operation Date</i>		
Party B Tariff:	Not Applicable		

---

**Article Three**

New Generation Facility



Add Section 3.9.

If not checked, inapplicable.

---

**Article Five**

Events of Default; Remedies

Cross Default for Party A:

Party A: Applicable

Other Entity:

Cross Default for Party B:

Party B: Applicable

Other Entity:

If not checked, inapplicable.

---

**Article Eight**

**Credit and Collateral Requirements**

**8.1 Seller Financial Information:**

(a) Financial Information:

Option A

Option B Specify:

Option C

**8.2 Buyer Financial Information:**

(a) Financial Information:

Option A

Option B Specify:

Option C Specify:

**8.4 Project Development Security; Delivery  
Term Security**

Applicable

Not Applicable

If Applicable:

The following is the "Project  
Development Security"

For each of Phases I and II:

8.4 (a)(i)(A) Project Development  
Security Amount: \$600,000.00 (product  
of (1) 30,000 kW, and (2) \$20.00 per  
kW), resulting in an aggregate total of  
\$1,200,000 for both Phases I and II.

For Each of Phases III and IV:

8.4 (a)(ii)(A) Project Development Security Amount on Date of Option Exercise: an amount equal to the product of (1) Subsequent Phase Declared Contract Capacity Amount, and (2) \$20.00 per kW

8.4 (a)(ii)(B) Project Development Security Amount on one year anniversary of Option Exercise Date: an amount equal to the product of (1) Subsequent Phase Declared Contract Capacity Amount, and (2) \$30.00 per kW

8.4 (a)(ii)(C) Project Development Security Amount on Construction Start Date: an amount equal to the product of (1) Subsequent Phase Declared Contract Capacity Amount, and (2) \$60.00 per kW

Type of Project Development Security:

Cash or Letter of Credit

The following is the "Delivery Term Security"

Each of Phases I and II:

8.4(a)(i)(C) Delivery Term Security Amount:

From either the Initial Energy Delivery Date or Phase Initial Energy Delivery Date, as applicable, until the last day of the 5<sup>th</sup> Contract Year = \$15,534,633.60 (resulting in an aggregate total of \$31,069,267.20 for both Phases I and II);

From the first day of the 6<sup>th</sup> Contract Year until the last day of the 10<sup>th</sup> Contract Year = \$16,341,955.20 (resulting in an aggregate total of \$32,683,910.40 for both Phases I and II);

From the first day of the 11<sup>th</sup> Contract Year until the last day of the Delivery Term = \$17,290,137.60, (resulting in an aggregate total of \$34,580,275.20 for both Phases I and II.

Each of Phases III and IV:

8.4(a)(ii)(D) and (E) Delivery Term Security Amount:

From the Phase Initial Energy Delivery Date until the last day of the 5<sup>th</sup> Contract Year = an amount equal to the product of (1) Declared Contract Capacity of such Phase; (2) 80%; (3) Yearly Hours; and (4) \$73.89/MWh;

From the first day of the 6<sup>th</sup> Contract Year until the last day of the 10<sup>th</sup> Contract Year = an amount equal to the product of (1) Declared Contract Capacity of such Phase; (2) 80%; (3) Yearly Hours; and (4) \$77.73/MWh;

From the first day of the 11<sup>th</sup> Contract Year until the last day of the Delivery Term = an amount equal to the product of (1) Declared Contract Capacity of such Phase; (2) 80%; (3) Yearly Hours; and (4) \$82.24/MWh.

Type of Delivery Term Security:

Cash or Letter of Credit

---

**Article 10**

**10.1 No Fault Termination**

**(a) Seller Termination Right**

Not Applicable

Applicable

**(b) PGC Funding Termination**

Not Applicable

Applicable

**10.11 Confidentiality**

Confidentiality Applicable  
If not checked, inapplicable.

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

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

---

The following Exhibits are included as follows:

Exhibit A, Form of Letter of Credit

Exhibit B, Initial Energy Delivery Date Confirmation Letter

Exhibit C, Milestones

Exhibit D, Project and Site Description

Exhibit E, Form of Certification

Exhibit F, Examples of Formulas and Language Used in the Agreement

Exhibit G, Sample BPA Generation Imbalance Bill Summary

Exhibit H, Phase III and Phase IV Acceptance Examples

The following Appendices are included as follows:

Appendix I [INTENTIONALLY OMITTED]

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

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

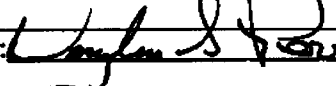
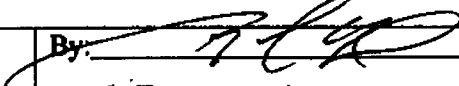
**Appendix IV, Resource Adequacy**

**Appendix V, Notice Procedures**



**AGREEMENT EXECUTION**

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

By: 	By: 
Name: <u>Douglas S. Perry</u>	Name: <u>ROY M. KUGA</u>
Title: <u>President, Darouqfit Power, LLC, operator</u>	Title: <u>VICE PRESIDENT ENERGY SUPPLY</u>
Date: <u>7/17/06</u>	Date: <u>7/17/06</u>

*JKW*

TABLE OF CONTENTS

ARTICLE ONE:	GENERAL DEFINITIONS .....	1
ARTICLE TWO:	TRANSACTION TERMS AND CONDITIONS .....	16
2.1	Transaction.....	16
2.2	Governing Terms .....	16
2.3	Authorized Representatives .....	16
2.4	Recording.....	16
ARTICLE THREE:	OBLIGATIONS AND DELIVERIES .....	16
3.1	Seller's and Buyer's Obligations .....	16
3.2	Environmental Attributes .....	27
3.3	Intentionally Omitted .....	27
3.4	Transmission and Scheduling .....	27
3.5	Standard of Care.....	29
3.6	Metering.....	30
3.7	Outage Notification.....	30
3.8	Operations Logs and Access Rights.....	32
3.9	New Generation Facility .....	33
ARTICLE FOUR:	COMPENSATION; MONTHLY PAYMENTS.....	36
4.1	Contract Price.....	36
4.2	TOD Periods .....	37
4.3	Capacity Factors.....	38
4.4	TOD Factors & Monthly TOD Payment.....	38
4.5	Performance Requirements .....	39
4.6	Performance Adjustments .....	39
4.7	Imbalance Energy Adjustments .....	40
4.8	Transmission Provider Charges .....	42
4.9	Additional Compensation.....	42
ARTICLE FIVE:	EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES .....	42
5.1	Events of Default .....	42
5.2	Declaration of Early Termination Date and Calculation of Settlement Amounts.....	44
5.3	Net Out of Settlement Amounts.....	45
5.4	Notice of Payment of Termination Payment.....	45
5.5	Disputes With Respect to Termination Payment .....	45
ARTICLE SIX:	PAYMENT AND NETTING.....	45
6.1	Billing and Payment; Remedies.....	45
6.2	Disputes and Adjustments of Invoices.....	46
ARTICLE SEVEN:	LIMITATIONS .....	46
7.1	Limitation of Remedies, Liability and Damages .....	46
ARTICLE EIGHT:	CREDIT AND COLLATERAL REQUIREMENTS.....	47
8.1	Buyer Financial Information .....	47
8.2	Seller Financial Information .....	48
8.3	Grant of Security Interest/Remedies .....	48
8.4	Project Development Security; Performance Assurance .....	49
8.5	Letter of Credit.....	50
ARTICLE NINE:	GOVERNMENTAL CHARGES.....	51

9.1	Cooperation .....	51
9.2	Governmental Charges.....	51
<b>ARTICLE TEN: MISCELLANEOUS.....</b>		<b>52</b>
10.1	Term of Agreement.....	52
10.2	Representations and Warranties.....	55
10.3	Title and Risk of Loss .....	56
10.4	Indemnities.....	56
10.5	Assignment.....	57
10.6	Governing Law .....	57
10.7	Notices .....	57
10.8	General.....	57
10.9	Audit.....	57
10.10	Confidentiality .....	58
10.11	RPS Confidentiality .....	58
10.12	Insurance .....	58
10.13	Intentionally Omitted.....	59
10.14	Eligible Renewable Energy Resource Obligations .....	59
10.15	Covenants.....	59
10.16	Execution of Agreement .....	61
10.17	Binding Agreement.....	61
10.18	Standard of Review for Modifications to Agreement.....	61
10.19	CPUC Approval with Conditions or Modifications.....	61
10.20	Climate Action Registry.....	61
<b>ARTICLE ELEVEN: CONDITIONS PRECEDENT .....</b>		<b>62</b>
11.1	Conditions Precedent .....	62
11.2	Failure to Meet All Conditions Precedent.....	62
<b>ARTICLE TWELVE: DISPUTE RESOLUTION .....</b>		<b>62</b>
12.1	Negotiation.....	62
12.2	Mediation .....	63
12.3	Arbitration.....	63
EXHIBIT A:	FORM OF LETTER OF CREDIT	
EXHIBIT B:	INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER	
EXHIBIT C:	MILESTONES	
EXHIBIT D:	PROJECT AND SITE DESCRIPTION	
EXHIBIT E:	FORM OF CERTIFICATION	
EXHIBIT F:	EXAMPLES OF FORMULAS AND LANGUAGE USED IN AGREEMENT	
EXHIBIT G:	SAMPLE BPA GENERATION IMBALANCE BILL SUMMARY	
EXHIBIT H:	PHASE III AND PHASE IV ACCEPTANCE EXAMPLES	
APPENDIX I:	COMMERCIAL OPERATION CERTIFICATION PROCEDURE	
APPENDIX II:	FORM OF MONTHLY CONSTRUCTION PROGRESS REPORT	
APPENDIX III:	FORM OF OUTAGE NOTIFICATION FORM	
APPENDIX IV:	RESOURCE ADEQUACY	
APPENDIX V:	NOTICE PROCEDURES	

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

**ARTICLE ONE: GENERAL DEFINITIONS**

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

1.1 "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 "Annual ERR Qualification Cost Threshold" has the meaning set forth in Section 10.15(b).

1.4 "Annual ERR Qualification Cost Threshold Decision" has the meaning in Section 10.15(b).

1.5 "Annual RA Cost Threshold" has the meaning set forth in Appendix IV.

1.6 "Annual RA Cost Threshold Decision" has the meaning in Appendix IV.

1.7 "Availability Adjustment Factor" shall mean the Capacity Factor for the applicable period, as determined pursuant to Section 4.3.

1.8 "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.

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

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

1.11 "Bonneville Power Administration" or "BPA" means the Bonneville Power Administration or any successor entity performing similar functions.

1.12 "Bonneville Power Administration Network PTP" means Bonneville Power Administration's firm point-to-point Transmission Service tariff, on file with the FERC, as such tariff may be revised or replaced from time to time.

1.13 "BPA Real Power Losses" means all Energy Seller delivers to Bonneville Power Administration in Bonneville Power Administration's role as a Transmission Provider, relating to losses and transmission service under the BPA Transmission Tariff, which amount of Energy shall not exceed in any hour the allowable percentage set forth in Schedule 9 of the BPA Transmission Tariff, as may be amended.

1.14 "BPA Grid" means the Federal Columbia Transmission System over which Bonneville Power Administration makes available firm point-to-point transmission service pursuant to the BPA Transmission Tariff. For administrative, pricing and other purposes, Bonneville Power Administration distinguishes the BPA Grid between its network transmission facilities and its Pacific Northwest-Pacific Intertie facilities.

1.15 "BPA Generation Imbalance Bill Summary" has the meaning set forth in Section 4.7(a).

1.16 "BPA Monthly Average Weighted Price" has the meaning set forth in Section 4.7(a)(i).

1.17 "BPA Transmission Tariff" means BPA's Open Access Transmission Service Tariff, on file with the FERC, as such tariff may be revised or replaced from time to time.

1.18 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall begin at 8:00 a.m. and end 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.

1.19 "Buyer" means Pacific Gas and Electric Company.

1.20 "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.

1.21 "Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce energy or ancillary services, including any accounting construct counted or that may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the ISO, the FERC, or any other entity invested with the authority under federal or state law, to require PG&E to procure, or to procure on PG&E's expense, Resource Adequacy or capacity. Examples of Capacity Attribute include net qualifying capacity and local capacity. Capacity Attributes do not include (i) any production tax credits associated with the construction or operation of 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, (ii) 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 (iii) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

- 1.22 "Capacity Test" has the meaning set forth in Section 3.1(j)(ii).
- 1.23 "CEC" means the California Energy Commission or its successor agency.
- 1.24 "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.
- 1.25 "COB" has the meaning set forth in Section 3.1(d).
- 1.26 "COB Index Price" means, for each hour, (1) the applicable firm on-peak or firm off-peak price reported for the daily COB Electricity Price Index as reported by Dow Jones Indexes, or a successor publication, (2) if published during the Delivery Term, an index which tracks prices for Energy at COB on an hourly basis ("Hourly COB Index"), or (3) in the event Dow Jones Indexes does not report a COB Electricity Price Index for a given day or a more appropriate Hourly COB Index does not exist, then for each hour of that day the applicable Dow Jones Indexes Mid-Columbia Electricity Price Index, or a successor publication, plus the applicable Bonneville Power Administration Network PTP and Pacific AC Intertie Daily Transmission Rates.
- 1.27 "Commercial Operation" means, with respect to each Phase, that the Project is operating and able to produce and deliver Energy to Buyer at the levels specified by and pursuant to the terms set forth in this Agreement.
- 1.28 "Commercial Operation Date" means, with respect to each Phase, the later of (i) the date that Seller has notified Buyer in writing that Commercial Operation has occurred and Buyer has notified Seller in writing that Buyer accepts the results of Seller's initial Capacity Test, with respect to a particular Phase of the Project, as provided for in Section 3.1(j)(ii).
- 1.29 "Construction Cure Period" has the meaning set forth in Section 3.9(c)(iv).
- 1.30 "Construction Start Date" means, with respect to each Phase, the later to occur of the date on which Seller delivers to Buyer (i) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor, and (ii) a written Certification substantially in the form attached hereto as Exhibit E.
- 1.31 "Contract Capacity" has the meaning set forth in Section 3.1(f)(i).
- 1.32 "Contract Price" means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in Section 4.1.
- 1.33 "Contract Quantity" has the meaning set forth in Section 3.1(e).
- 1.34 "Contract Year" means the twelve (12) consecutive months starting with the first day of the month following the Initial Energy Delivery Date and each consecutive twelve (12) month period thereafter during the Delivery Term.

1.35 "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.

1.36 "Cover Sheet" means the Cover Sheet that precedes Article One: General Definitions to this Agreement.

1.37 "CPUC" means the California Public Utilities Commission or its legally designated successor regulatory agency.

1.38 "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.), CPUC Decision 03-06-071, or other applicable law; and

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

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

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

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

1.41 "Curtailed and Force Majeure Delivery Protocol" has the meaning set forth in Section 3.1(f)(i).

1.42 "Daily Delay Damages" means an amount equal to (i) the product of (a) Contract Quantity for the applicable Phase stated in MWhs and (b) the Contract Price specified in Section 4.1 for the first Contract Year divided by (ii) two-hundred seventy (270).

1.43 "Decision to Proceed Notice" has the meaning set forth in Section 10.19.

1.44 "Declared Contract Capacity" has the meaning set forth in Section 3.1(f)(i).

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

1.46 "Delay of Default Notice" has the meaning set forth in Section 5.1(k).

1.47 "Delivered Energy" means, for any hour, the lesser of (i) Scheduled Energy or (ii) Revenue Meter Energy.

1.48 "Delivery Point" has the meaning set forth in Section 3.1(d).

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

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

1.51 "Designated Election Point" has the meaning set forth in Section 3.1(f)(i).

1.52 "Dispatch Down Period" means times during which (a) curtailments ordered from the Transmission Provider as a result of a System Emergency or (b) scheduled or unscheduled maintenance on a Transmission Provider's transmission facilities that prevents Buyer from receiving Delivered Energy from, or Seller from delivering Delivered Energy at, the Delivery Point.

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

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

1.55 "Eligible Renewable Energy Resource" has the meaning set forth in Section 10.14.

1.56 "Energy" means three-phase, 60-cycle alternating current electric energy expressed in megawatt-hours ("MWh").

1.57 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the generation from the Project. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the



reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a per-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 Project, (ii) production tax credits associated with the construction or operation of 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 Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits 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.

1.58 "EPC Contractor" shall mean an engineering, procurement and construction contractor selected by Seller with substantial experience in the engineering, procurement and construction of power plants which shall have executed a contract with Seller to be responsible for the construction of the Project.

1.59 "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.

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

1.61 "Execution Date" has the meaning set forth in the first paragraph of the Cover Sheet.

1.62 "Extended Daily Delay Damages" has the meaning set forth in Section 3.9(c)(iv).

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

1.64 "Firm Transmission" means the highest quality (priority) service offered to electric transmission customers under a filed rate schedule that anticipates no planned interruption.

1.65 "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: (i) acts of God and natural catastrophes; (ii) actual or threatened civil disturbance, terrorism, war,

or riot; (iii) strike or other labor dispute in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable; (iv) System Emergencies declared by or forced curtailment required by a Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature, and physical damage to the transmission system making it impossible to transmit Energy.

1.66 "Force Majeure Status Report" has the meaning set forth in Section 5.1(k).

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

1.68 "Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market referent prices for renewable power set by the CPUC, market prices for comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of the applicable Transaction and include the value of Environmental Attributes.

1.69 "Generation Providing Entity" means an entity that has rights to sell energy from a generation source.

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

1.71 "Grace Period" has the meaning set forth in Section 5.1(k).

1.72 "Guaranteed Commercial Operation Date" shall mean each of the Phase I Guaranteed Commercial Operation Date, the Phase II Guaranteed Commercial Operation Date, the Phase III Guaranteed Commercial Operation Date, and the Phase IV Guaranteed Commercial Operation Date, as applicable.

1.73 "Guaranteed Construction Start Date" shall mean, as applicable, each of the Phase I Guaranteed Construction Start Date, the Phase II Guaranteed Construction Starts Date, the Phase III Guaranteed Construction Start Date, and the Phase IV Guaranteed Construction Start Date, as set forth in Section 3.9(c)(iii).

1.74 "Guaranteed Project Milestones" has the meaning set forth in Section 3.9(c)(iii).

1.75 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet or as subsequently appointed in accordance with the provisions of Section 8.5.

1.76 "Hourly COB Index" has the meaning set forth in the definition of COB Index Price.

1.77 "Hourly Positive Deviation" has the meaning set forth in Section 4.7(c).

1.78 "Imbalance Energy Adjustments" means a deduction from amounts owed by Buyer to Seller as a result of a Negative Deviation or an Hourly Positive Deviation, in each case as set forth in Section 4.7(b) and 4.7(c), respectively.

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

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

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

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

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

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

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

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

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

1.88 "John Day" means Bonneville Power Administration's John Day substation located in Oregon.

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

1.90 "Losses" means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market referent prices for renewable power set by the CPUC, market prices for comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the applicable Transaction and include value of Environmental Attributes. If the Non-Defaulting Party is the Seller, then "Losses" shall exclude any loss of PTCs.

1.91 "Malin" has the meaning set forth in Section 3.1(d).

1.92 "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), and as set forth in CPUC Resolution E-3980 – The 2005 Market Price Referents (MPR), issued on April 13, 2006.

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

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

1.95 "Monthly TOD Payment" has the meaning set forth in Section 4.4.

1.96 "month" means a calendar month unless otherwise specified.

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

1.98 "NERC" means the North America Electric Reliability Council.

1.99 "NERC Tag" means the electronic record of an energy transaction in accordance with the Transaction Information System implemented by the NERC known as ETAG 1.7 or its successor.

1.100 "Negative Deviation" has the meaning set forth in Section 4.7(b).

1.101 "Negotiation Period" has the meaning set forth in Section 10.19.

1.102 "Net Rated Output Capacity" means the Project's maximum tested power production capability in any metering interval after deducting auxiliary loads and station electrical uses.

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

1.104 "Night" has the meaning set forth in Section 4.2.

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

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

1.107 "Option Exercise Date" has the meaning set forth in Section 3.1(f)(ii).

1.108 "Option Exercise Notification" has the meaning set forth in Section 3.1(f)(ii).

1.109 "Optional Phase Capacity Expectation" has the meaning set forth in Section 3.1(c)(iv).

1.110 "Optional Phase Capacity Requirement" has the meaning set forth in Section 3.1(c)(iv).

1.111 "Optional Phase Capacity Test" has the meaning set forth in Section 3.1(c)(iv).

1.112 "Optional Phase Damages Amount" has the meaning set forth in Section 3.1(f)(iv).

1.113 "Optional Phase Retest Period" has the meaning set forth in Section 3.1(f)(iii).

1.114 "Overgeneration Imbalance Energy" means Energy scheduled by Seller to Bonneville Power Administration to return to Bonneville Power Administration previous Energy undergeneration shortfalls, in a given month, as well as unintended overgeneration above scheduled amounts.

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

1.116 "Pacific AC Intertie Daily Transmission Rate" means the firm rate adopted by the Bonneville Power Administration, and as may be revised from time to time, for daily transmission service on Bonneville Power Administration's portion of the Pacific AC Intertie.

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

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

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

1.120 "Payment Reduction" has the meaning set forth in Section 4.7(c).

1.121 "Penalties" has the meaning set forth in Section 4.8.

1.122 "Performance Adjustments" has the meaning in Section 4.6.

1.123 "Performance Adjustments Factor" has the meaning in Section 4.6.

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

1.125 "Performance Requirements" has the meaning set forth in Section 4.5.

1.126 "Period A" has the meaning set forth in Section 4.2.

1.127 "Period B" has the meaning set forth in Section 4.2.

1.128 "Period C" has the meaning set forth in Section 4.2.

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

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

1.131 "Phase" means either Phase I, Phase II, Phase III and Phase IV of the Project, as applicable.

1.132 "Phase I" has the meaning set forth in Section 3.1(f)(ii).

1.133 "Phase II" has the meaning set forth in Section 3.1(f)(ii).

1.134 "Phase III" has the meaning set forth in Section 3.1(f)(ii).

- 1.135 "Phase IV" has the meaning set forth in Section 3.1(f)(ii).
- 1.136 "Phase I Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(iii)(A).
- 1.137 "Phase II Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(iii)(B).
- 1.138 "Phase III Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(iii)(C).
- 1.139 "Phase IV Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(iii)(D).
- 1.140 "Phase I Guaranteed Construction Start Date" has the meaning set forth in Section 3.9(c)(iii)(A).
- 1.141 "Phase II Guaranteed Construction Start Date" has the meaning set forth in Section 3.9(c)(iii)(B).
- 1.142 "Phase III Guaranteed Construction Start Date" has the meaning set forth in Section 3.9(c)(iii)(C).
- 1.143 "Phase IV Guaranteed Construction Start Date" has the meaning set forth in Section 3.9(c)(iii)(D).
- 1.144 "Phase Construction Security Amount" has the meaning set forth in Section 3.1(f)(ii).
- 1.145 "Phase DCC Test" has the meaning set forth in Section 3.1f(v).
- 1.146 "Phase Eligible Increase Period" has the meaning set forth in Section 3.1(f)(v).
- 1.147 "Phase Initial Energy Delivery Date" has the meaning set forth in Section 3.1(c)(ii).
- 1.148 "Phase Initial Security Amount" has the meaning set forth in Section 3.1(f)(ii).
- 1.149 "Planned Outage" means removing the equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (i) must actually be conducted during the Planned Outage, and in Seller's sole discretion must be of the type that is both necessary to reliably maintain the Project, (ii) cannot be reasonably conducted during Project operations, and (iii) causes the generation level of the Project to be reduced by at least 10% of the Net Rated Output Capacity.
- 1.150 "Preschedule Day" has the meaning set forth in Section 3.4(a)(iv).
- 1.151 "Product" means each of energy, capacity and all products, services or attributes similar to the foregoing which can be produced by or associated with the Project, including without limitation Energy, Capacity Attributes and Environmental Attributes.

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

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

1.154 "Project Cure Period" has the meaning set forth in Section 3.9(c)(iv).

1.155 "Project Development Security" is the collateral required of Seller, as specified in the Cover Sheet and in Section 3.4(a).

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

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

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

1.159 "RAP" has the meaning in Section 3.1(j)(v).

1.160 "RA Capacity" shall mean the maximum amount of Contract Capacity which qualifies for Buyer's Resource Adequacy Requirements.

1.161 "Resource Adequacy" means the qualified and deliverable capacity from Unit(s) that can be counted toward Buyer's Resource Adequacy Requirements as described in CPUC D.04-10-035 and D.05-10-042, and subsequent CPUC decisions addressing Resource Adequacy issues, as those Resource Adequacy Requirements may be altered from time to time in the CPUC Resource Adequacy Rulemaking (R) 04-04-003 and (R) 05-12-013 or by any successor proceeding, and all other Resource Adequacy Requirements established by any other entity, including the ISO.

1.162 "Resource Adequacy Requirements" has the meaning set forth in Section 3.1(i).



1.163 "Revenue Meter" means a meter which allows Buyer to accurately track the actual deliveries from the Project and is capable of (i) producing Settlement Quality Meter Data as agreed to by Buyer and Seller, (ii) producing raw, unedited and unaggregated data in KWh and kVarh for both in and out values (i.e. load and generation), and (iii) providing real time data to Buyer.

1.164 "Revenue Meter Energy" means the quantity of Energy produced during any hour (i.e., increment measure could be as short as five (5) minutes) from the Project as measured in megawatt hours (MWh) at the Revenue Meter of the Project.

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

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

1.167 "Scheduled Energy" means the final quantity of Energy scheduled and delivered to the Delivery Point or, to the extent expressly permitted under this Agreement, to the Designated Election Point, for the use of the Buyer in accordance with BPA Transmission Tariff and the ISO Tariff, with the final quantity of Energy scheduled being that amount shown in the last schedule recognized by the Transmission Providers.

1.168 "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 may be amended by the FERC from time-to-time.

1.169 "Seller" means Northwest Geothermal Company, a general partnership.

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

1.171 "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.

1.172 "Settlement Quality Meter Data" means the validation, editing and estimation of the Revenue Meter data in order to produce data capable to use for settlement functions.

1.173 "Shoulder" has the meaning set forth in Section 4.2.

1.174 "Site" shall be the location of the Project described in Exhibit D.

1.175 "Source" means the actual generation facility.

1.176 "Subsequent Phase Declared Contract Capacity Amount" has the meaning set forth in Section 3.1(f)(ii).

1.177 "Super-Peak" has the meaning set forth in Section 4.2.

1.178 "System Emergency" means a system condition, as determined by the control area operator or Transmission Provider, that precludes a supplier, Seller or Buyer from exporting or importing the power from or to the relevant control area, respectively.

1.179 "Term" has the meaning provided in Section 10.1(d) of this Agreement.

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

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

1.182 "TOD Factors" has the meaning set forth in Section 4.4.

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

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

1.185 "Transaction Information System" means NERC ETAG 1.7 or its successor.

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

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

1.188 "Trigger Date" has the meaning set forth in Section 5.1(k).

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

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

1.191 "WECC" has the meaning set forth in Section 3.4(a)(iv).

1.192 "Yearly Hours" means 8,760 hours or 8,784 hours, as applicable, calculated by multiplying (i) 24 hours by (ii) either (a) 365 days or (b) 366 days during a Contract Year that contains a leap year date.

## ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

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

2.4 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement related to scheduling, trading or transactions, 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 arising from this Agreement related to such scheduling, trading or transactions. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

## ARTICLE THREE: OBLIGATIONS AND DELIVERIES

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

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Transaction is Baseload.

(b) Transaction. Except as provided in Section 3.1(j), during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product of the Project at the Delivery Point, and Buyer shall pay Seller the Contract Price for the MWh of Scheduled Energy subject to adjustments or deviations as set forth in Sections 4.5, 4.6 and 4.7. In no event shall Seller have the right to procure capacity or Energy from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Hourly Positive Deviations pursuant to Section 4.7. Except as otherwise provided under a written agreement, Buyer shall have no obligation to receive or purchase Energy, capacity or other Products from Seller before or after the Delivery Term, nor from any source other than the Project. During the Delivery Term, Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to and at the Delivery Point. During the Delivery Term, Buyer shall be responsible for any costs

or charges imposed on or associated with the Product after its receipt from the Delivery Point. The Parties intend that Seller will arrange and pay independently for any and all necessary costs under any interconnection agreement with the Transmission Owner necessary for delivery of the power to the Delivery Point. In accordance with Section 3.5, the Parties intend that Seller will arrange and pay independently for any and all necessary electrical interconnection, Scheduling, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Seller shall not make any alteration or modification to the Project that results in a decrease to the Net Rated Output Capacity of the Project without Buyer's prior written consent. Subject to the terms and conditions of Section 3.1(c), Seller shall have the right, but not the obligation, to implement any one or more of Phases III or IV, thereby resulting in an increase to the Net Rated Output Capacity of the Project and the Declared Contract Capacity as set forth in Section 3.1(f).

(c) Delivery Term.

(i) Delivery Term: Initial Energy Delivery Date for Phase I.

Notwithstanding when Phase II achieves its Phase Initial Energy Delivery Date or if, or when, Seller decides to implement either of Phases III or IV, the period of Product delivery pursuant to this Agreement (the "Delivery Term") shall be for twenty (20) Contract Years, beginning on the first date that Seller delivers the Product to Buyer from the Project in connection with Phase I pursuant to the terms of this Agreement (the "Initial Energy Delivery Date"), and continuing through the end of the twentieth (20<sup>th</sup>) Contract Year. The Initial Energy Delivery Date for Phase I shall not occur until all of the following have been satisfied:

(A) the Commercial Operation Date for Phase I;

(B) Buyer shall have received the Delivery Term Security for Phase I in accordance with the relevant provisions of Article Eight of the Agreement, as applicable;

(C) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied; and

(D) Buyer shall have received written notice from Seller that Seller intends to deliver Product to Buyer from the Project from such Phase on a specified date.

(ii) Phase Initial Energy Delivery Date for Phases II, III or IV.

Although Seller shall be obligated to implement Phase II, Seller shall have the right, but not the obligation, to implement each of Phases III or IV in accordance with the provisions of this Agreement. For each of Phases II, III or IV, the first date that Seller delivers the Product to Buyer from the Project in connection with such Phase pursuant to the terms of this Agreement (each, a "Phase Initial Energy Delivery Date") shall not occur until all of the following have been satisfied:

(A) the Commercial Operation Date for such Phase;

(B) Buyer shall have received the Delivery Term Security for such Phase in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; and

(C) Buyer shall have received written notice from Seller that Seller intends to deliver Product to Buyer from the Project from such Phase on a specified date.

(iii) Confirmation Letter. As evidence of either the Initial Energy Delivery Date or a Phase Initial Energy Delivery Date, to the extent applicable, the Parties shall execute a form of the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Exhibit B.

(iv) Acceptance by Buyer of Phase III or Phase IV. Notwithstanding the satisfaction of the requirements set forth in Sections 3.1(c)(ii), Buyer shall not be obligated to purchase or receive any additional Product associated with Phase III or IV, unless and until the results of a Capacity Test specific to each of Phases III and IV (each an "Optional Phase Capacity Test") demonstrates that the Net Rated Output Capacity for each such Phase is equal to or greater than seventy-five percent (75%) of the Subsequent Phase Declared Contract Capacity Amount for such Phase (the "Optional Phase Capacity Requirement"), provided, however, that to the extent that the Net Rated Output Capacity for such Phase is less than ninety percent (90%) of the Subsequent Phase Declared Contract Capacity Amount for such Phase (the "Optional Phase Capacity Expectation"), Seller shall be liable to Buyer for damages as set forth in Section 3.1(f)(iv). For clarification purposes only, examples of how the acceptance of either Phase III or Phase IV is intended to work are included in Exhibit H.

(v) Seller Conditions Required to be Fulfilled in Order to Sell Energy to Third Parties. During the Delivery Term, subject also to the further limitations set forth in Section 3.1(c)(vi), in order for Seller to sell or schedule Energy produced by the Project or on the Site to a third party, Seller must fulfill each of the following conditions set forth below in subparts (A), (B) and (C); provided, that Seller shall not be required to fulfill (x) the conditions in subparts (A), (B), and (C) for any sales permitted pursuant to subsections (A) through (E) of Section 3.1(f)(i), or (y) the condition set forth in subpart (C) for sales permitted pursuant to Section 3.1(f)(iii) following completion of the Optional Phase Retest Period:

(A) Seller shall provide to Buyer a certificate from a geothermal expert approved by Buyer (such approval not to be unreasonably withheld) that certifies that any sales of Energy to third parties shall (1) be from land or Unit(s) that are not associated with the Project; and (2) not share the Revenue Meter associated with the Project; and shall provide an opinion of such geothermal expert that any sales of Energy to third parties shall not harm, degrade or reduce the Product

expected to have been deliverable from the current Project for the remainder of the Delivery Term; and

(B) Seller shall execute an amendment to this Agreement which amends Exhibit D to this Agreement by providing a new definition of the defined term "Project" which accurately specifies all of the dedicated assets attributable to Project and on the Site at such point in time, including the Units, turbines, dedicated wells and the Revenue Meter necessary for the sale of Energy to Buyer, and land that is used by Phase I and II, and, if implemented, Phase III and IV, and as further contemplated herein; and

(C) Seller shall execute an amendment to this Agreement which amends the language of Section 3.1(j)(vii) by stating that it shall be an additional Event of Default if either: (1) the Availability Adjustment Factor falls to a level more than one and a half percent (1.5%) below the average of the Availability Adjustment Factor for the three (3) immediately preceding Contract Years on an aggregate basis during any period of twenty-four (24) consecutive months; (2) the Availability Adjustment Factor falls to a level more than three percent (3%) below the average of the Availability Adjustment Factor for the three (3) immediately preceding Contract Years on an aggregate basis during any period of twelve (12) consecutive months; or (3) the Availability Adjustment Factor falls below seventy-five percent (75%). For clarification purposes only, an example of how this Section 3.1(c)(v)(C) is intended to work is included in Exhibit F.

(vi) Further Limitations on Sale of Energy to Third Parties.

Notwithstanding the foregoing Section 3.1(c)(v), Seller may not sell or schedule any Product produced by the Project or on the Site to any party other than Buyer, for a period of ten (10) years from the Initial Energy Delivery Date, unless and until the Declared Contract Capacity is equal to or greater than 120 MW, except (A) for sales permitted pursuant to subsections (A) through (E) of Section 3.1(f)(i); or (B) only with respect to either Phase III or IV, as applicable, if such Phase fails to achieve the Optional Phase Capacity Requirement and, in accordance with the provisions of Section 3.1(f)(iii), Buyer elects not to accept Energy from such Phase.

(vii) Sale of Test Energy. Notwithstanding anything to the contrary contained in this Agreement, during the Delivery Term, but prior to the Phase Initial Energy Delivery Date for each of Phases II, III and IV, Seller may sell Energy attributable to each such Phase without regard to the limitations set forth above in Sections 3.1(c)(v) and 3.1(c)(vi); provided, however, that with respect to each of Phases III and IV, if the Phase Initial Energy Delivery Date has not occurred by the one (1) year anniversary of each such Phase's Guaranteed Commercial Operation Date, then any further sales of Energy attributable to such Phase shall be subject to the limitations set forth above in Sections 3.1(c)(v)(A), 3.1(c)(v)(B) and 3.1(c)(vi).

(d) Delivery Point. The Delivery Point shall be the BPA/ISO interchange point between California and Oregon, currently between NW1 and NP15 ISO Zones, known as Malin and referred to as MALIN\_5\_RNDMTN or any successor location ("COB").

(e) Contract Quantity. The quantity of Delivered Energy to be delivered by Seller during each Contract Year is expected to be at least 210,240 megawatt hours (MWh) ("Contract Quantity"), provided, however, that the Contract Quantity for each subsequent Contract Year shall automatically increase, whenever the Declared Contract Capacity for the Project increases, to that number of MWh calculated by multiplying (i) the Declared Contract Capacity for all Phases implemented as of such date, by (ii) Yearly Hours, by (iii) eighty percent (80%); provided, however, that for the current Contract Year, the Contract Quantity, with respect to an increase in the Declared Contract Capacity for any and all Phases implemented during such Contract Year, shall be determined by calculating, on a pro rata basis, the number of Yearly Hours attributable to the different Declared Contract Capacity values during such Contract Year. Any increase in Contract Quantity shall remain in effect until any subsequent increase of Contract Quantity resulting from another increase in Declared Contract Capacity as a result of implementation of a subsequent Phase or in accordance with the provisions of Section 3.1(f)(i), 3.1(f)(ii) or 3.1(f)(v).

(f) Contract Capacity/Net Rated Output Capacity.

(i) Contract Capacity: Declared Contract Capacity for Phases I and II. The contract capacity of the Project at any time shall be the lower of the following (the "Contract Capacity"): (I) the Declared Contract Capacity; or (II) the Net Rated Output Capacity of the Project. The "Declared Contract Capacity" will initially be 30 MW. Upon the Phase Initial Energy Delivery Date of Phase II, the Declared Contract Capacity will be 60 MW. Subject to Sections 3.1(c)(v) and 3.1(c)(vi), throughout the Delivery Term, Seller shall sell and schedule all Energy produced by the Project or on the Site solely to Buyer except (A) as set forth in Section 3.1(f)(vii), (B) BPA Real Power Losses, (C) Overgeneration Imbalance Energy, (D) to ISO in compliance with and in order to fulfill Seller's Resource Adequacy Requirements, and (E) during a Force Majeure event affecting Buyer (where such sale shall not be subject to the limitations of Section 3.1(c)(v)), to the extent that Buyer is unable to receive such Energy. Seller may sell Energy to third parties, in accordance with subsection (E) of the preceding sentence, provided that Buyer may, in its own discretion, elect to receive and pay the Contract Price for the Energy at either John Day, Malin or the Project's interconnection point with the BPA Grid (each, a "Designated Election Point"). If Buyer does elect to receive Energy at a Designated Election Point, Buyer shall communicate such intent to Seller by timely scheduling the Energy to be delivered to the appropriate Designated Election Point. Seller and Buyer agree to develop and agree upon a scheduling protocol ("Curtailed and Force Majeure Delivery Protocol") within twelve (12) months of the Execution Date to govern Seller's sales to a third party and Buyer's option to receive Energy at a Designated Election Point in accordance with subsections (A) and (E) of this Section 3.1(f)(i). Upon finalization of and agreement to the Curtailed and Force Majeure Delivery Protocol, the terms and conditions of such protocol shall

be incorporated herein by reference and made a part of this Agreement. In no event, other than as set forth in Section 3.1(f)(vi), shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds the then applicable Declared Contract Capacity.

(ii) Increase in Declared Contract Capacity of the Project by Implementing Either Phase III or IV. Seller shall have the right, in its sole discretion, to increase the Declared Contract Capacity of the Project beyond 60 MWs by implementing each of Phases III or IV by an amount not less than 20MW nor more than 60MW, on or before, as applicable, (i) the Phase III Guaranteed Commercial Operation Date, or (ii) the Phase IV Guaranteed Commercial Operation Date; provided, however, that the increase in Declared Contract Capacity for Phases III and IV shall not exceed 60MW in the aggregate. As a condition to Seller's right to increase the Declared Contract Capacity as set forth above, Seller shall deliver to Buyer for each Phase on or before the dates set forth below for Phases III and IV (each, an "Option Exercise Date") (i) written notification that Seller intends to implement the applicable Phase (each, an "Option Exercise Notification"); (ii) the stated increase in Declared Contract Capacity for such Phase in kW (each, a "Subsequent Phase Declared Contract Capacity Amount"); and (iii) Project Development Security in accordance with the provisions of Section 8.4(a)(ii)(A) in an amount (the "Phase Initial Security Amount") equal to the product of (A) \$20.00 and (B) the Subsequent Phase Declared Contract Capacity Amount, for such Phase:

Phases/MW	Option Exercise Date
"Phase I": 30 MW	N/A
"Phase II": 30 MW	N/A
"Phase III": 20 MW to 60 MW	On or before January 1, 2009
"Phase IV": 20 MW to 60 MW	On or before October 1, 2009

In addition, on or prior to the one (1) year anniversary of the Option Exercise Date, Seller shall, in order to comply with the provisions of Section 8.4(a)(ii)(B), deliver additional Project Development Security in an amount (the "Phase Anniversary Amount") equal to the product of (A) \$10.00 and (B) the Subsequent Phase Declared Contract Capacity Amount for such Phase, and prior to the Construction Start Date, Seller shall, in order to comply with the provisions of Section 8.4(ii)(C), deliver additional Project Development Security in an amount (the "Phase Construction Security Amount") equal to the product of (A) \$30.00 and (B) the Subsequent Phase Declared Contract Capacity Amount, such that following the Construction Start Date for such Phase. The total amount of Project Development Security shall be equal to the sum of the Phase Initial Security Amount, the Phase Anniversary Amount and the Phase Construction Security Amount. Subject to the terms of this Agreement, on the Phase Initial



Energy Delivery Date for each of Phases III and IV, the Declared Contract Capacity shall increase in accordance with the provisions of Section 3.1(f)(iii), 3.1(f)(iv) or 3.1(f)(v), as applicable. If Seller fails to deliver to Buyer an Option Exercise Notification together with the Phase Initial Security Amount by the Option Exercise Date, or fails to deliver the Phase Anniversary Amount and the Phase Construction Security Amount by the Construction Start Date, then Seller shall forfeit its right to implement the applicable Phase unless otherwise agreed to by Buyer in its sole discretion. Failure to implement any Phase shall not affect Seller's right to implement subsequent Phases. After any increase in Declared Contract Capacity becomes effective, the Declared Contract Capacity shall never decrease below such amount; provided, however, that the Declared Contract Capacity may increase in accordance with the provisions of Section 3.1(c)(iv) and this Section 3.1(f). Each Phase shall be subject to the terms and conditions set forth in Section 3.9 of this Agreement.

(iii) If Net Rated Output Capacity For Phases III or IV is Less Than 75% of Declared Contract Capacity. In the event that Seller fails to achieve the Optional Phase Capacity Requirement by the Guaranteed Commercial Operation Date for either Phase III or Phase IV, Buyer shall be entitled to draw upon all of the Project Development Security associated with such Phase as set forth in Section 8.4(a)(ii). For a period of twelve (12) months following the Guaranteed Commercial Operation Date for such Phase (each, an "Optional Phase Retest Period"), Seller shall employ commercially reasonable methods to increase the Net Rated Output Capacity for such Phase and achieve the Optional Phase Capacity Requirements. If at any time during the Optional Phase Retest Period, Seller demonstrates by means of an Optional Phase Capacity Test that such Phase has achieved Optional Phase Capacity Requirement, Buyer shall be obligated to accept such Phase subject to Seller's satisfaction of the requirements set forth in Section 3.1(c)(ii). Prior to the completion of the tenth (10th) month of the Optional Phase Retest Period, assuming such Phase has not yet achieved the Optional Phase Capacity Requirement, Seller shall have conducted an Optional Phase Capacity Test and submitted the results of such test to Buyer for evaluation. Buyer may, in its sole discretion and at any time prior to the end of the Optional Phase Retest Period, elect to accept such Phase subject to Seller's satisfaction of the requirements set forth in Section 3.1(c)(ii). If Buyer elects to accept such Phase, subject to the provisions of Section 3.1(f)(v), the Declared Contract Capacity as well as the initial Net Rated Output Capacity for such Phase shall be equal to the most recent Optional Phase Capacity Test performed prior to the end of the Optional Phase Retest Period. If, following the completion of the Optional Phase Retest Period, either the applicable Phase fails to achieve the Optional Phase Capacity Requirement or Buyer elects not to accept such Phase, then Seller shall have the right, subject to compliance with the provisions of Section 3.1(c)(v)(A) and 3.1(c)(v)(B), to sell the Energy from such Phase to a third party.

(iv) If Net Rated Output Capacity For Phases III or IV is 75% or More But Less than 90% of Declared Contract Capacity. To the extent that the Net Rated Output Capacity for either Phase III or IV meets the Optional Phase Capacity Requirement, but fails to meet the Optional Phase Capacity Expectation

by the Guaranteed Commercial Operation Date, Seller shall be liable for damages to Buyer in an amount (each, an "Optional Phase Damages Amount") equal to the product of (A) \$60.00 and (B) the difference of (1) the number of kW attributable to such Phase if the Phase had achieved the Optional Phase Capacity Expectation and (2) the actual number of kW attributable to such Phase based on the Optional Phase Capacity Test. Buyer, in its sole discretion, may draw upon the Project Development Security for such Phase in order to satisfy any Optional Phase Damages Amount. Subject to the provisions of Section 3.1(f)(v), the Declared Contract Capacity for a Phase that meets its Optional Phase Capacity Requirement, but fails to meet the Optional Phase Capacity Expectation, shall be an amount equal to the product of (X) the most recent Optional Phase Capacity Test and (Y) 1.1.

(v) Increase in Declared Contract Capacity of Phases III or IV. If the Net Rated Output Capacity of either Phase III or IV is an amount equal to or greater than the Optional Phase Capacity Expectation, then the Declared Contract Capacity for such Phase shall be equal to the Subsequent Phase Declared Contract Capacity as set forth in such Phase's Option Exercise Notification. If the Net Rated Output Capacity for either Phase III or IV is less than the Optional Phase Capacity Expectation, then during the first twelve (12) months following the Phase Initial Energy Delivery Date of such Phase (each, a "Phase Eligible Increase Period"), Seller has the right to conduct up to two (2) Capacity Tests, specific to each such Phase (each, a "Phase DCC Test"), in order to determine whether Seller can increase the Declared Contract Capacity applicable to such Phase. If Seller elects to undertake a Phase DCC Test during the Phase Eligible Increase Period, Seller shall use the protocol and criteria as set forth in Section 3.1(j). If the Phase DCC Test results in a Net Rated Output Capacity that meets or exceeds the Optional Phase Capacity Expectation for such Phase, then the Declared Contract Capacity attributable to such Phase shall be increased to the Subsequent Phase Declared Contract Capacity; otherwise the Declared Contract Capacity for such Phase shall equal the product of (A) the most recent Optional Phase Capacity Test and (B) 1.1; provided, however, that the Declared Contract Capacity may never exceed the Subsequent Phase Declared Contract Capacity Amount set forth in the Option Exercise Notice for such Phase, provided, further, that such increase in Declared Contract Capacity shall not take effect until Seller has posted the required incremental increase in Delivery Term Security calculated in accordance with the provision of Section 8.4(a)(ii)(E). The Declared Contract Capacity for each of Phases III or IV may not be increased following the Phase Eligible Increase Period.

(vi) Limitation on Buyer's Obligation to Purchase Energy. Except as set forth in this Section 3.1(f)(vi), in the absence of a further written agreement between the Parties, Buyer shall have no obligation to purchase or receive any Delivered Energy or Scheduled Energy from Seller that exceeds the then applicable Declared Contract Capacity. Notwithstanding the foregoing, Seller may Schedule and Buyer shall be obligated to purchase and receive from Seller during any Super-Peak hour in Period A, any amount of Delivered Energy less than or equal to one hundred and ten percent (110%) of the then applicable Declared Contract Capacity of the Project; provided, however, that Buyer may, in

its sole discretion and upon delivery of prior notice in accordance with WECC protocols, limit Seller to deliver an amount of Delivered Energy that shall not exceed one hundred percent (100%) of the Declared Contract Capacity of the Project for up to an aggregate of fifteen (15) days during the Super-Peak hours in Period A.

(vii) Limitations on Sales of Energy to Third Parties During Dispatch Down Period. The Parties agree that this Section 3.1(f)(vii) shall not be effective until such time that the Curtailment and Force Majeure Delivery Protocol has been agreed to by Buyer and Seller. Subject to the requirement of the foregoing sentence, in the event that Seller is unable to deliver to Buyer, or Buyer is unable to receive at least fifty percent (50%) or more of the Contract Capacity during any Dispatch Down Period precipitated by an issue affecting ISO and during such Dispatch Down Period Seller is unable to deliver Energy to Buyer at the Delivery Point, then Buyer may elect to receive and pay the Contract Price for the Energy at a Designated Election Point in accordance with the Curtailment and Force Majeure Delivery Protocol; provided that in the event that Buyer elects not to receive such Energy at a Designated Election Point, Seller may sell such Energy to third parties in accordance with the Curtailment and Force Majeure Delivery Protocol at Seller's sole risk and expense.

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

(h) Interconnection Point(s). The Interconnection Point(s) shall be on Midstate Electric Cooperative's line, running to La Pine, Oregon or with the facilities of the Bonneville Power Administration at La Pine, Oregon or such other points as Seller and the Bonneville Power Administration shall agree. Seller shall promptly advise Buyer with the final designation of the Interconnection Point(s).

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

(j) Performance Requirements/Performance Excuses.

(i) Net Rated Output Capacity for Phases I and II; Net Rated Output Capacity for Project; Capacity Tests. If the Net Rated Output Capacity (A) at the Commercial Operation Date for Phase I or Phase II is less than 27 MW, or (B) as of the date of any Capacity Test for the Project performed during the Delivery Term in accordance with the provisions set forth herein is less than ninety percent (90%) of the then applicable Declared Contract Capacity,

subject to Seller's right to Re-Test, then in each such case Buyer shall have the right to declare an Event of Default. With respect to subpart (A) of this Section 3.1(j)(i), if either Phase I or Phase II is less than 27 MW Buyer may, in its sole discretion, decide to waive such Event of Default and accept such Phase at the reduced Net Rated Output Capacity.

(ii) Test Procedures and Protocols: Commercial Operation Certification Procedures for each Phase. Seller shall be responsible for and bear its own costs to conduct any Capacity Test, whether such Capacity Test is initiated by Buyer or Seller. 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 test and any subsequent tests or Re-Tests (each, a "Capacity Test"), as required by this Agreement:

(A) The principle for the Capacity Test performance criteria will be generation and delivery of the Contract Capacity over the specified duration of the Capacity Test.

(B) To calculate the test capacity, the total number of kilowatt-hours (kwh) generated during the test period shall be divided by the total number of consecutive hours in the test period. The test period shall be one hundred and twenty (120) consecutive hours. The Net Rated Output Capacity shall be the sum of the total Revenue Meter Energy for five (5) days divided by 120 hours (24 hours x 5 days).

(C) Buyer shall have the right to attend, and be present at all times during, the Capacity Test and any Re-Test.

(D) Seller shall deliver to Buyer a written report of the Capacity Test results within fifteen (15) days of completion of the Capacity Test. The Net Rated Output Capacity resulting from the Capacity Test shall be effective beginning the first day of the month immediately following the date that the written report is required to be delivered to Seller, and shall continue in effect until the date that the Net Rated Output Capacity changes as a result of any subsequent Capacity Test permitted pursuant to this Agreement; provided, that (i) with respect to a Capacity Test that establishes the Commercial Operation Date for any Phase, the Net Rated Output Capacity shall be effective on the Initial Energy Delivery Date or Phase Initial Energy Delivery Date, as applicable, and (ii) with respect to a Capacity Test during the Delivery Term that results in a Net Rated Output Capacity that is less than ninety percent (90%) of the Declared Contract Capacity, the Net Rated Output Capacity shall be effective five (5) days from the date that Seller receives the results of such Capacity Test.

(E) A failure by Buyer to specify objections to the results of Seller's initial Capacity Test within a commercially reasonable period of

time not to exceed fifteen (15) Business Days shall be deemed as Buyer's acceptance of the initial Capacity Test for such Phase.

(iii) Seller's Rights to Test Prior to Commercial Operation Date. Seller shall have the right to perform as many Capacity Tests as it deems necessary to establish Commercial Operation for any Phase prior to the Guaranteed Commercial Operation Date or declaration of Commercial Operation for such Phase, subject to any applicable cure periods. In order to establish timely Commercial Operation for any Phase, Seller shall deliver to Buyer the written Capacity Test report set forth above before the Guaranteed Commercial Operation Date for such Phase, subject to any applicable cure periods. Notwithstanding anything to the contrary in this Agreement, Seller shall not have the right to Re-Test after the Guaranteed Commercial Operation Date, subject to any applicable cure periods, in order to establish Commercial Operation.

(iv) Buyer's Right to Trigger Capacity Test. During the Delivery Term, Buyer shall have the right to trigger Seller to conduct up to two (2) Capacity Tests in any given Contract Year. Furthermore, if Seller fails to meet any of the Performance Requirements as set forth in Section 4.5 for any two (2) TOD Periods in any rolling six (6) month period, Buyer shall have the right to trigger Seller to conduct a Capacity Test. Buyer shall provide Seller thirty (30) days' notice prior to any Capacity Test requested by Buyer. Seller shall perform and pay its own costs associated with any such Capacity Test.

(v) Retesting by Seller If Net Rated Output Capacity Is Less than 90% of Declared Contract Capacity. If, during the Delivery Term, the Net Rated Output Capacity as a result of any Capacity Test triggered by Buyer as set forth in Section 3.1(j)(iv) is less than ninety percent (90%) of the Declared Contract Capacity, Seller shall submit to Buyer, within ten (10) Business Days of such failed Capacity Test, a remedial action plan ("RAP"), which shall provide a detailed description of Seller's course of action and plan to achieve, at a minimum, ninety percent (90%) of the then applicable Declared Contract Capacity. Seller shall have the right, but not the obligation, to elect to perform one or more retests (each, a "Re-Test"), using the protocol and criteria as set forth in Section 3.1(j), within ninety (90) days of the date that Seller submits its Capacity Test results to Buyer. Seller shall bear its own costs for any Re-Test. Seller's failure to make such election and complete a Re-Test within such ninety (90) day period shall constitute an unconditional waiver of Seller's right to Re-Test, and shall be deemed a failure of the Re-Test. In addition, Seller's failure to deliver to Buyer within such ninety (90) day period a new Capacity Test report demonstrating that the Net Rated Output Capacity is at least ninety percent (90%) of the Declared Contract Capacity shall constitute an Event of Default.

(vi) Availability Adjustment Factor Requirement. Subject to Section 3.1(j)(viii) and any changes pursuant to Section 3.1(c)(v), it shall be an additional Event of Default if the Availability Adjustment Factor is less than seventy percent (70%) on an aggregate basis during any period of twelve (12) consecutive months. In no event, except for Hourly Positive Deviations, shall

Seller have the right to procure Energy from sources other than the Project for sale and delivery pursuant to this Agreement.

(vii) Seller Excuses: Availability Adjustment Factor. Seller shall be excused from achieving the Availability Adjustment Factor for the applicable time period, in the event that Seller fails to deliver the Product to Buyer for any of the following reason:

- (A) during Force Majeure;
- (B) by Buyer's failure to perform; or
- (C) during Dispatch Down Periods.

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

(ix) Dispatch Down/Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(j), Seller shall reduce deliveries to the Delivery Point during any Dispatch Down Period.

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

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

3.3 Intentionally Omitted.

3.4 Transmission and Scheduling.

(a) Seller Obligations.

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

(ii) Annual Forecast of Delivery Schedules. During the Delivery Term, no later than forty-five (45) days before the beginning of each

calendar year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day deliveries of Scheduled Energy, by hour, for the following calendar year.

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

(iv) **Daily Delivery Schedules.** During the Delivery Term, Seller shall conduct all scheduling in full compliance with the applicable Western Electricity Coordinating Council ("WECC") protocols and scheduling practices for Preschedule Day Schedules and for any changes to such Schedules after they are made and provide the Day-ahead delivery schedule no later than 6:00 a.m. of the Preschedule Day as defined by the WECC. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (A) Monday – Preschedule Day for Tuesday
- (B) Tuesday – Preschedule Day for Wednesday
- (C) Wednesday – Preschedule Day for Thursday
- (D) Thursday – Preschedule Day for Friday and Saturday
- (E) Friday – Preschedule Day for Sunday and Monday

(v) Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website ([www.wecc.biz](http://www.wecc.biz)) under the document title, "Prescheduling Calendar." Each Preschedule Day Schedule shall clearly identify, for each hour, all amounts of Product to be delivered and sold to Buyer pursuant to this Agreement and may not change such schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the Transmission Provider. Seller shall promptly provide Buyer with a copy of any and all updates to such schedule indicating a change in Scheduled Energy from the then-current schedule. These notices and schedules shall be sent to:

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

(vi) **Hourly Delivery Schedules.** In the event of a Forced Outage or a scheduling change imposed by Buyer or the Transmission Provider, which results in a change to its deliveries (whether in part or in whole), Seller

shall notify Buyer immediately by calling Buyer to provide any and all changes to the Day-Ahead Schedule and to provide a revised schedule thereto as soon as possible, but in no event later than (1) hour before Buyer is required to submit Hour-Ahead schedules to the ISO. With respect to any Forced Outage, Seller shall comply with the notice requirements set forth in Section 3.7(c). Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Unit during or after the end of such outage. These notices and schedule changes shall be sent to:

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

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

(c) **Scheduling.** Throughout the Delivery Term, Seller or a third party designee of Seller, as approved by Buyer, shall schedule Energy produced from the Project in accordance with the BPA Transmission Tariff.

(d) **Firm Transmission.** Seller shall (i) be responsible to obtain Firm Transmission rights for the Declared Contract Capacity and (ii) use such transmission rights to deliver Scheduled Energy to Buyer at the Delivery Point.

(e) **NERC Tag.** Seller (i) shall be responsible to have a NERC Tag for any and all Scheduled Energy that flows through an interconnection between adjacent control areas; (ii) will meet the NERC requirements for a Generation Providing Entity (GPE); and (iii) will register the Project as the Source to enable the documentation of each delivery from the Project under the terms of this Agreement by a NERC Tag.

3.5 **Standard of Care.** All generation, scheduling and transmission services, if any, shall be performed by Seller in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs of the Transmission Provider, WECC and Prudent Electrical Practices. Seller, at its own expense, shall fulfill the applicable contractual, metering and interconnection requirements, including those set forth in Participating Transmission Owner's applicable tariffs, the Transmission Provider Tariff and implementing Transmission Provider standards and requirements, including but not limited to executing applicable interconnection agreements, Participating Generator Agreement, Meter Service Agreement and PTO Generator Special Facilities Agreements, so as to be able to deliver energy to the Transmission Provider controlled grid and bear all costs relating to installation and operation of all metering equipment, including real-time metering and any necessary communication to transmit this data to Buyer installed to measure the Project's output. Seller will exercise best efforts to comport and comply with



conditions, any modifications, amendments or additions to the applicable Transmission Provider tariffs and protocols. Seller agrees to abide by all NERC, WECC and BPA reliability requirements.

### 3.6 Metering.

(a) Project Revenue Meter. All output from the Project for the Transaction must be delivered through a single Revenue Meter and that meter must be dedicated exclusively to the Project described herein during the Delivery Term. All Product purchased under the Transaction must be measured by the Project Revenue Meter to be eligible for payment under this Agreement. In addition, Seller hereby agrees to provide all Revenue Meter data to Buyer, and consents to providing all Revenue Meter data applicable to the Project it provides to or receives from the Transmission Provider and all inspection, testing and calibration data and reports. If the Transmission Provider makes any adjustment to any Revenue Meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2 covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the Transmission Provider provides to Seller such binding adjustment to the meter data. Seller shall grant Buyer or cause Buyer to be granted direct access to the Revenue Meter at the Project Site and/or the Revenue Meter data that is posted by the applicable Transmission Provider.

(b) Phase Meters. Notwithstanding the foregoing Section 3.6(a), prior to the Initial Energy Delivery Date for Phase I and the applicable Phase Initial Energy Delivery Date for each of Phases II, III and IV, Seller shall ensure that each Phase will have its own Revenue Meter from which Buyer can accurately track the actual deliveries from the Unit(s) related to such Phase; provided that Seller may use the Project Revenue Meter as the Revenue Meter for Phase I.

### 3.7 Outage Notification.

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

(b) Planned Outages. Seller shall notify Buyer by submitting a completed Outage Notification Form in accordance with the provisions set forth in Appendix V no later than December 1 of each year during the Delivery Term of its proposed Planned Outage schedule for the Project for the following calendar year, subject to Buyer's approval. If Buyer has not responded to the proposed Planned Outage schedule within sixty (60) days of Buyer's receipt of such schedule, Seller shall send Buyer another written request for approval, which written request shall state that if Buyer does not respond to such request in writing within thirty (30) days after Buyer's receipt of such written notice, then the Planned Outage schedule for such calendar year shall be deemed approved. The Planned Outage schedule shall be deemed approved if Buyer does not

respond to Seller's request as set forth above. In the event that Buyer rejects the Planned Outage schedule as proposed by Seller or otherwise fails to approve a schedule for the Planned Outage by the 75th day after Buyer receives Seller's initial proposed schedule for a Planned Outage, the Parties agree to communicate as soon as practicable with the intent in such meeting or telephone conference to select a mutually-agreeable schedule for the Planned Outage which provides Seller sufficient time to schedule, coordinate, and procure the necessary labor and equipment to conduct the Planned Outage and enable Seller to conduct and complete the Planned Outage within the months of March, April or May of such calendar year. Notwithstanding the submission of the Outage Notification Form described in the previous sentence, Seller shall also submit a completed Outage Notification Form in accordance with the provisions set forth in Appendix V no later than seven (7) days prior to each Planned Outage. Seller shall not schedule Planned Outages during the months of June through February. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Electrical Practices. Seller shall not change its Planned Outage Schedule without Buyer's approval, not to be unreasonably withheld and Buyer shall respond to Seller's request to change the Planned Outage schedule within fourteen (14) days of Buyer's receipt of such request. Seller shall not substitute power from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the start of work, Buyer may request in writing that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request and Seller shall invoice and Buyer shall pay such incremental costs in accordance with the payment provisions in Sections 6.1 and 6.2. However, Buyer may not change Seller's Planned Outage schedule without Seller's approval.

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

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

(e) **Force Majeure.** As soon as possible but not later than seventy-two (72) hours after commencement of an event of Force Majeure, the non-performing Party shall provide the other Party oral notice of the event of Force Majeure and within two (2)

weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party written notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely notice constitutes a waiver of a Force Majeure claim. Seller shall not substitute power from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for capacity or Energy not delivered or provided as a result of Force Majeure during the term of a Force Majeure. A Force Majeure shall not result in a breach or Event of Default hereunder except as provided in Section 5.1(k) or Section 5.1(l).

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 Project; (iv) Seller's inability to obtain sufficient fuel to operate the Project, except if such inability to obtain sufficient fuel is due to an event of Force Majeure; (v) subject to Section 10.1(b), Seller's failure to obtain funds from the CEC to supplement the payments made pursuant to this Agreement; (vi) a Forced Outage, except if such Forced Outage is due to an event of Force Majeure; (vii) a strike or labor dispute limited only to a Party or its Affiliates, including contractors or agents thereof, (viii) any equipment failure not caused by Force Majeure, or (ix) lack of funds or a change in economic circumstances with respect to either Party.

(f) Notice Procedures. Notice of outages must be provided to PG&E as set forth in Appendix V.

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

### 3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, steam quality, steam characteristics, consumptive water use, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements,

electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) **Access Rights.** Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by law. Seller shall keep Buyer advised of current procedures for contacting the Project operator's safety and security personnel.

### 3.9 **New Generation Facility.**

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

(i) Design and construct the Project.

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

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

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

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

(vi) Within fifteen (15) days after the close of each calendar month until the Commercial Operation Date, provide to Buyer a Monthly Construction Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress; provided that such meetings pursuant to this section 3.9(a) may be conducted by telephone. The Monthly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

(b) Buyer shall, at its own expense, have the right, but not the obligation, to:

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

provided, however, that Seller shall have no obligation to address any such perceived flaws.

(ii) Inspect the Project's construction site or on-site Seller data and information pertaining to the Project during normal business hours after providing notice to Seller. Following Seller's receipt of such notice, Seller shall authorize Buyer to proceed with the inspection, provided that such inspection shall be scheduled by Seller within two (2) Business Days.

(c) Construction Milestones.

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

(ii) If Seller misses three or more Milestones, other than a Guaranteed Project Milestone, or misses any one by more than ninety (90) days, except as the result of Force Majeure or a failure to obtain CPUC Approval within one hundred eighty (180) days of the Execution Date of this Agreement, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a RAP, which shall provide a detailed description of Seller's course of action and plan to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any RAP shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, then subsection (iv) below shall apply.

(iii) "Guaranteed Project Milestones" are as follows for the applicable Phases, if implemented, each of which may be extended as set forth in subsection (iv) below:

(A) Phase I:

The Construction Start Date for Phase I shall be by June 30, 2008 (the "Phase I Guaranteed Construction Start Date").

By January 1, 2010 (the "Phase I Guaranteed Commercial Operation Date"), Seller shall have demonstrated Commercial Operation.

(B) Phase II:

The Construction Start Date for Phase II shall be by July 31, 2009 (the "Phase II Guaranteed Construction Start Date").

By October 1, 2010 (the "Phase II Guaranteed Commercial Operation Date"), Seller shall have demonstrated Commercial Operation for Phase II.

(C) Phase III:

The Construction Start Date for Phase III shall be by April 30, 2010 (the "Phase III Guaranteed Construction Start Date").

By July 1, 2011 (the "Phase III Guaranteed Commercial Operation Date"), Seller shall have demonstrated Commercial Operation for Phase III.

(D) Phase IV:

The Construction Start Date for Phase IV shall be by December 1, 2010 (the "Phase IV Guaranteed Construction Start Date").

By January 1, 2012 (the "Phase IV Guaranteed Commercial Operation Date"), Seller shall have demonstrated Commercial Operation for Phase IV.

(iv) With respect to each Phases I and II, Seller shall cause the Project to demonstrate Commercial Operation for such Phase by the Guaranteed Commercial Operation Date for such Phase; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date for such Phase. For purposes of clarification, Seller shall be deemed to have demonstrated Commercial Operation for each Phase I, II, III and IV so long as Seller submits a Capacity Test, subsequently accepted by Buyer, prior to the Guaranteed Commercial Operation Date for such Phase. Subject to the preceding sentence, if the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date or the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, (as may be delayed on a day by day basis by one or more events of either (A) Force Majeure or (B) a delay in CPUC Approval due solely to a third party interceding as set forth in Section 11.2, up to ninety (90) days in the aggregate for either Guaranteed Project Milestone), Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of sixty (60) days ("Project Cure Period"); or (II) the Construction commences after the Guaranteed Construction Start Date, as applicable, up to a total of ninety (90) days ("Construction Cure Period"). Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone for Phase I or II, would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages are an appropriate approximation

of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the Guaranteed Construction Start Date, if Seller meets the Guaranteed Commercial Operation Date (including the applicable cure period), in which case such Daily Delay Damages, including any Extended Delay Damages collected by Buyer, shall be returned in accordance with Section 8.4(c) of this Agreement.

Notwithstanding the limitations set forth in the prior paragraph, Seller may, at its option, and by notice to Buyer no later than (5) five Business Days prior to the expiration of either the Project Cure Period or the Construction Cure Period, elect to extend the Project Cure Period or the Construction Cure Period, as the case may be, for up to sixty (60) days; provided, that, prior to the expiration of the original Project Cure Period or the original Construction Cure Period, as the case may be, Seller posts additional Project Development Security in the form of a letter of credit or cash sufficient to cover an amount (the "Extended Daily Delay Damages") equal to (i) the result of (a) Contract Quantity stated in MWhs multiplied by (b) the Contract Price specified in Section 4.1 for the first Contract Year divided by (ii) 180. Buyer shall be entitled to draw upon such Extended Daily Delay Damages during such extended period. There shall be only one extension permitted to each of the Project Cure Period and the Construction Cure Period for each Phase, and no extension shall be effective unless Buyer receives the additional Project Development Security before expiration of the original Project Cure Period or the original Construction Cure Period, as the case may be.

(v) Limitation on Damages for Failure to Meet Guaranteed Project Milestones for Phases III and IV. Notwithstanding anything to the contrary in this Agreement, Buyer shall not have the right to terminate this Agreement or declare an Event of Default under Section 5.1(l) arising solely from Seller's failure to meet any of the Guaranteed Project Milestones for Phases III or IV. Seller's maximum liability for damages for a Phase III or IV Guaranteed Project Milestone breach are capped at the amount of the Project Development Security for such Phase III or Phase IV, as the case may be, as of the date of such breach.

#### ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 **Contract Price.** The Contract Price for each megawatt hour (MWh) of Scheduled Energy in each calendar year during the Delivery Term for each Phase shall be as follows:

<b>Contract Year</b>	<b>Contract Price (\$/MWh)</b>
1	71.24
2	71.87
3	72.52
4	73.19
5	73.89

6	74.61
7	75.35
8	76.12
9	76.91
10	77.73
11	78.58
12	79.45
13	80.35
14	81.28
15	82.24
16	82.24
17	82.24
18	82.24
19	82.24
20	82.24

The Contract Price shall be adjusted, as calculated on an hourly basis, based on the applicable TOD Factors.

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

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

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

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

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

1. "Super-Peak" (5x8) = HE (Hours Ending) 13 – 20 (Pacific Prevailing Time (PPT)) Monday – Friday (*except* NERC Holidays).
2. "Shoulder" = HE 7 – 12, 21 and 22 PPT Monday – Friday (*except* NERC Holidays); and HE 7 – 22 PPT Saturday, Sunday and all NERC Holidays.



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

As used herein, "NERC Holidays" include: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the last Thursday in November. New Year's Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the "NERC Holiday" is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the "NERC Holiday" remains on that Saturday.

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

$$\text{Capacity Factor} = \frac{\text{Delivered Energy}}{(\text{Contract Capacity} \times (\text{Hours in TOD Period less Seller Excuse Hours}))}$$

The annual Capacity Factor shall be the weighted average of the Capacity Factors for each TOD Period, such weighting to be an adjustment for the number of hours in the applicable TOD Period. For clarification purposes only, an example of how the annual Capacity Factor is intended to be calculated is included in Exhibit F.

4.4 **TOD Factors & Monthly TOD Payment.**

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

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

(b) **Monthly TOD Payment.** For each month, Buyer shall pay Seller for Scheduled Energy in each TOD Period an amount (the "Monthly TOD Payment") resulting from multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the Scheduled Energy for a given hour. The Monthly TOD Payment shall be calculated as follows on an hourly basis and shall be aggregated for each month:

Monthly TOD Payment<sub>month</sub> =

$$\left[ \sum_{hour=1}^n (\text{Contract Price } \$ * \text{TOD Factor} * \text{Scheduled Energy } MW_{hour})_{hour} \right]$$

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

<b>TOD PERIOD</b>			
<b>Period</b>	<b>1. Super-Peak</b>	<b>2. Shoulder</b>	<b>3. Night</b>
A. June – September	93%	90%	80%
B. Oct. – Dec., Jan. & Feb.	90%	85%	65%
C. Mar. – May	80%	75%	65%

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

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

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

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

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

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

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

For the purpose of calculating the Performance Adjustment for each month in Periods A, B and C, the Performance Requirement shall be measured and calculated once on an aggregate basis for the entire period in the month immediately following the last month of the completed Period A, B or C, as applicable, which shall include all months constituting the applicable period. The Performance Adjustment for each month in Periods A, B and C shall be reflected in an invoice provided by Buyer to Seller no later than November 10<sup>th</sup> for Period A, April 10<sup>th</sup> for Period B and July 10<sup>th</sup> for Period C 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. If a payment is owed as a result of such true-up, then Seller shall pay Buyer the undisputed amount no later than fifteen (15) calendar days after Seller's receipt of such invoice; subject to the payment provisions in Section 6.1 of the Agreement. All disputes shall be subject to Section 6.2 of the Agreement.

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

#### **4.7 Imbalance Energy Adjustments.**

(a) **BPA Generation Imbalance Bill Summary.** Each month Bonneville Power Administration provides Seller with a statement, the form of which may be subject to change (each, a "BPA Generation Imbalance Bill Summary"), reporting the net month-end balance of overgeneration or undergeneration of Energy by Seller for the prior month. An example of a BPA Generation Imbalance Bill Summary is attached hereto as Exhibit G. Seller shall provide Buyer with a copy of the BPA Generation Imbalance Bill Summary in accordance with the provisions of Section 6.1. The BPA Generation Imbalance Bill Summary sets forth for each of Bonneville Power Administration's Bands 1, 2, and 3 information on the amount of imbalances for the "Heavy-Load Hours" and for the "Light-Load Hours." This information consists of: (i) the number of hours with a deviation; (ii) the total net MWh of deviations; and (iii) the average weighted price. For clarification purposes only, examples of how Imbalance Energy Adjustments are intended to be calculated pursuant to this Section 4.7 are included in Exhibit F.

(b) **Calculation of Adjustment for Overgeneration; Negative Deviation.** "Negative Deviation" as identified on any BPA Generation Imbalance Bill Summary means, for the applicable month, the amount by which the total net amount of Revenue Meter Energy less BPA Real Power Losses exceeds the total amount of Scheduled Energy for such month. In any month that there is a Negative Deviation amount, the Seller shall calculate the "BPA Monthly Average Weighted Price" which means, for any given month, an amount equal to the total amount of dollars that the

BPA Generation Imbalance Bill Summary credits Seller for MWh of Negative Deviation divided by the aggregate sum of MWh of Negative Deviation. For the purposes of this Agreement, if for any month (i) Bonneville Power Administration credits Seller for any MWh of Negative Deviation in the BPA Generation Imbalance Bill Summary and (ii) the BPA Monthly Average Weighted Price, as calculated by Seller, is higher than the Contract Price, Seller shall deduct from amounts owed by Buyer an amount equal to the product of (A) the total MWh of Negative Deviation and (B) the difference between the BPA Monthly Average Weighted Price and the Contract Price as set forth in the formula below:

**Deduction by Seller for Negative Deviations = the total MWh of Negative Deviation \* (BPA Monthly Average Weighted Price – Contract Price)**

(c) Calculation of Adjustment for Undergeneration: Hourly Positive Deviation. “Hourly Positive Deviation” means, in any given hour, the amount of Energy by which (i) Revenue Meter Energy is less than (ii) Scheduled Energy. During any hour in which there is an Hourly Positive Deviation, Seller shall deduct from amounts owed by Buyer to Seller an amount equal to the monthly aggregation of all monthly Hourly Positive Deviation deductions, as calculated in accordance with Sections 4.7(c)(i) and 4.7(c)(ii) below:

(i) COB Index Price Lower than the Contract Price as Adjusted for TOD Factors. When the hourly COB Index Price is less than the product of the Contract Price and the applicable TOD Factor, Buyer shall deduct from the Monthly TOD Payment to Seller an amount equal to the product of (A) the quantity of MWh of Hourly Positive Deviation and (B) the difference between (I) the product of the Contract Price and the applicable TOD Factor and (II) the product of the COB Index Price and .95, as set forth in the formula below:

**Payment Reduction for Hourly Positive Deviation where COB Index Price is less than the Product of the Contract Price and applicable TOD Factor = Hourly Positive Deviation \* [(Contract Price\*TOD Factor) - (COB Index Price\*0.95)].**

(ii) COB Index Price Greater than or Equal to the Contract Price as Adjusted for TOD Factors. When the hourly COB Index Price is greater than or equal to the product of the Contract Price and the applicable TOD Factor, Buyer shall deduct from the Monthly TOD Payment to Seller an amount equal to (A) the quantity of MWh of Hourly Positive Deviation and (B) the product of (I) the product of the Contract Price and the applicable TOD Factor and (II) .05, as set forth in the formula below:

**Payment Reduction for Hourly Positive Deviation where COB Index Price is greater than or equal to the Product of the Contract Price and applicable TOD Factor = Hourly Positive Deviation \* [(Contract Price\*TOD Factor)\*0.05].**

(d) **Billing for Section 4.7 Payment Reductions.** When the BPA Generation Imbalance Bill Summary becomes available for a particular month, any Imbalance Energy Adjustments pursuant to Sections 4.7(b) and 4.7(c) above, shall be calculated as provided herein, and shall be reflected in the next monthly invoice provided pursuant to Section 6.1 of this Agreement.

4.8 **Transmission Provider Charges.** Seller shall assume all liability and pay for all congestion charges up to and at the Delivery Point. Seller shall also assume all liability and reimburse Buyer for any Penalties, as defined below, incurred by Buyer as a result of Seller's failure to abide by Seller's Transmission Provider Tariffs and all applicable protocols of Seller's Transmission Providers. Seller 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. Such notification shall not alter Seller's responsibilities for payment for all imbalance and congestion charges and Performance Adjustments under this Agreement. As used herein, "Penalties" means any fees, liabilities, assessments, or similar charges assessed by the Transmission Provider.

4.9 **Additional Compensation.** In the event that Seller is compensated by a third party for any Environmental Attributes or Capacity Attributes associated with the Project, Seller shall provide all such compensation directly to Buyer.

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

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

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

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

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after such Party's receipt of written notice; provided however, if such failure cannot be cured within such thirty (30) day period despite diligent efforts to do so, but is capable of cure within sixty (60) days, the thirty (30) day cure period shall be extended by up to an additional thirty (30) days to a total of not more than sixty (60) consecutive days, provided, further, that the obligated Party continues such diligent efforts and is able to remedy the failure within the extended cure period;

(d) such Party becomes Bankrupt;

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

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

(g) Intentionally Omitted;

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

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

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

(iii) a Guarantor becomes Bankrupt;

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

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

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

(j) failure to meet the performance requirements agreed to pursuant to Sections 3.1(j)(i) and 3.1(j)(vi);

(k) an outage resulting from an event of Force Majeure affecting Seller that prevents the Project from delivering at least 60% of the Contract Quantity for a period of twelve (12) consecutive months (rolling); provided, however, that prior to declaring an Event of Default pursuant to this Section 5.1(k), Buyer shall, for each such Force Majeure event, at least wait until a date (the "Trigger Date") which shall be the earlier of (i) fifteen (15) days from the end of such period of twelve (12) consecutive months; or (ii) Buyer's receipt from Seller of a written status report (the "Force Majeure Status Report") detailing the issues affecting the Project related to the Force Majeure event, including a description of such issues, Seller's progress towards resolving such issues, Seller's expected date of delivering at least 60% of the Contract Quantity for a given calendar month, and any other important information related to such Force Majeure

event. Following the Trigger Date, Buyer may declare an Event of Default at any time; provided, however, if Buyer has, within fifteen (15) days of such Trigger Date, decided not to declare an Event of Default at such time, then Buyer shall provide Seller with a written notice (a "Delay of Default Notice") indicating such decision and, in Buyer's sole discretion, stating whether or not Buyer intends to grant Seller a temporary period of time (a "Grace Period") during which Buyer shall refrain from declaring an Event of Default to enable Seller to continue to work towards resolving the issues affecting the Project related to the applicable Force Majeure event. Notwithstanding the foregoing, Buyer shall not be under any obligation to provide Seller with a Delay of Default Notice and, following the Trigger Date, Buyer may declare an Event of Default at any time, except during a Grace Period, if any, granted pursuant to a Delay of Default Notice; and provided further that Buyer may not declare an Event of Default in accordance with this Section 5.1(k) at any time that Seller has delivered at least 60% of the Contract Quantity over the prior 12 consecutive months (rolling); and

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

#### 5.2 Declaration of Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate the Transaction (the "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by five or more bona fide unaffiliated market participants. If five or more quotes are obtained, the high and low quotations shall be excluded and a simple average of the other three quotations shall be used for this purpose. If the number of available quotes is 3, then the average of the 3 quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Product, (c) at the same Delivery Point, and (d) for the remaining Delivery Term, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remaining Delivery Term of the Terminated Transaction and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Transaction. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

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

5.4 **Notice of Payment of Termination Payment.** As soon as practicable after a liquidation as prescribed by Section 5.3, 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(s). The Termination Payment shall be made to the Non-Defaulting Party, as applicable, 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 five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

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

6.1 **Billing and Payment; Remedies.** On or before the tenth (10th) calendar day of each month, Seller shall provide to Buyer (i) records of metered and scheduled data, including Revenue Meter data, Scheduled Energy, BPA Real Power Losses, Hourly Positive Deviations, the BPA Generation Imbalance Bill Summary and hourly supporting data and any other relevant back-up data, Settlement Meter Data, NERC Tag data and transaction data sufficient to document and verify the generation of Product by the Project; all BPA Real Power Losses for all hours during the preceding month and/or preceding months; and for Imbalance Energy Adjustments and (ii) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Section 4.4, as adjusted for Performance Adjustments (as provided for in Section 4.6) and Imbalance Energy Adjustments (which may include preceding months). Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) 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 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the initial due date of the disputed payment 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. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

#### **ARTICLE SEVEN: LIMITATIONS**

7.1 **Limitation of Remedies, Liability and Damages.** 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 BREACHING PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE BREACHING PARTY'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 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO

DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### **ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

8.1 **Buyer Financial Information.** The applicable financial information shall be as specified on the Cover Sheet.

(a) **Financial Information.** Option A: If requested by Seller, Buyer shall deliver (i) within 120 days following the end of each fiscal year, a copy of Buyer'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 Buyer'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 Buyer diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Seller, Buyer 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: Promptly following demand by Seller, but in no event later than (i) 120 days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (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 Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on [www.pge-corp.com](http://www.pge-corp.com) or on the 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 Seller upon their completion and filing with the SEC.

8.2 Seller Financial Information. The applicable credit and collateral requirements shall be as specified on the Cover Sheet.

(a) Financial Information. Option A: If requested by Buyer, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of Seller'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 Buyer, Seller 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: Buyer may request from Seller the information specified in the Cover Sheet.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement, whether now existing or hereafter arising, and to the extent Seller delivers Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer (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 constituting Project Development Security or Delivery Term Security 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 identified as security, including 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 Secured 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 Project Development Security and Delivery Term Security, as applicable, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of Seller in the possession of the Secured Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Project Development Security and Delivery Term Security, as applicable

then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by the Seller. The Secured Party shall apply the proceeds of the collateral identified as security 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.

If the Parties elect as being applicable on the Cover Sheet, the following new Section 8.4 shall be added to the Agreement:

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

(a) **Project Development Security; Performance Assurance.** To secure its obligations under this Agreement, satisfying any credit terms pursuant to the terms of Section 8.2, to the extent marked applicable, Seller agrees to deliver to Buyer security in the amounts and for the periods specified below and to maintain such security in full force and effect for the period posted with Buyer, as set forth below:

(i) with respect to each of Phases I and II, (A) within thirty (30) days of the date on which all of the Conditions Precedent set forth in Article Eleven are either satisfied or waived until, as applicable, either the Initial Energy Delivery Date or the Phase Initial Energy Delivery Date, Project Development Security in the amount and in the form set forth on the Cover Sheet; and (B) from, as applicable, either the Initial Energy Delivery Date or the Phase Initial Energy Delivery Date until the end of the Term, the Delivery Term Security in the amount and in the form set forth on the Cover Sheet;

(ii) with respect to each of Phases III and IV, if implemented by Seller, (A) from the Option Exercise Date until the one year anniversary of such Option Exercise Date, Project Development Security in the amount and in the form set forth on the Cover Sheet; (B) from the one year anniversary of such Option Exercise Date until the Construction Start Date, Project Development Security in the amount and in the form set forth on the Cover Sheet; (C) from the Construction Start Date until the Phase Initial Energy Delivery Date for such Phase, Project Development Security in the amount and in the form set forth on the Cover Sheet; (D) from the Phase Initial Energy Delivery Date for such Phase until the end of the Term, the Delivery Term Security in the amount and in the form set forth on the Cover Sheet; and (E) if there is an increase in the Declared Contract Capacity of the Project during a Phase Eligible Increase Period, the Delivery Term Security in the amount and in the form set forth on the Cover Sheet.

Except as set forth in Section 3.9(c)(v) with respect to the Project Development Security for Phases III and IV, any such 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 or Termination

Payment 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. In addition, if an Event of Default occurs after the Initial Energy Delivery Date of Phase I at a time when Buyer is holding Project Development Security for any one or more of Phases II, III and IV, Buyer shall be entitled to draw on the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date; provided, that as set forth in Section 3.9(c)(v), Buyer shall not have the right to terminate this Agreement solely for Seller's failure to meet any of the Guaranteed Project Milestones for Phases III or IV.

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

(d) Calculation of Delivery Term Security. The amount of the Delivery Term Security required of Seller by this Section 8.4 for each Phase shall be the amount set forth on the Cover Sheet.

(e) Return of Delivery Term Security. In the absence of an Event of Default or a dispute between the Parties, within five (5) Business days of the completion of the Delivery Term, Buyer shall return to Seller any undisputed portion of the Delivery Term Security being held, including any interest due to Seller pursuant to Section 8.4(f); provided, further, in the event that there is no Event of Default, but a dispute exists, Buyer shall return to Seller any undisputed portion of the Delivery Term Security, including the interest due upon such undisputed portion pursuant to Section 8.4(f).

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

#### 8.5 Letter of Credit.

(a) Buyer agrees that Seller may post the Project Development Security or Delivery Term Security by either posting cash or posting a Letter of Credit in accordance with the requirements for a Letter of Credit set forth in this Agreement. With respect to any security that Seller has posted in cash, Seller may once each calendar year provide Buyer sixty (60) days notice that it intends to replace such cash security with a Letter of Credit designated in the same amount. Upon Seller providing Buyer the Letter of Credit in the necessary amount and in the agreed upon form, Buyer shall release the cash security to Seller. With respect to any security that Seller has posted with a Letter of Credit, Seller may once each calendar year provide Buyer sixty (60) days notice that it

intends to replace such Letter of Credit security with cash in the same amount. Upon Seller providing Buyer the cash in the necessary amount, Buyer shall release the Letter of Credit security to Seller and such Letter of Credit shall no longer be of any force or effect.

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

(c) Seller shall be permitted to substitute a guaranty, in a form acceptable to Buyer, held by Buyer as Delivery Term Security, for 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 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 as determined by Buyer in its sole discretion, then, within five (5) Business Days of notice from Buyer, Seller shall post Delivery Term Security in the form of cash or a Letter of Credit.

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

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

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

9.2 **Governmental Charges.** Seller shall pay or cause to be paid all taxes imposed by any governmental authority ("Governmental Charges") on or with respect to the Product or the Transaction arising prior to the Delivery Point, including but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. PG&E

shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. If either Party pays or causes to be paid any Governmental Charges on or with respect to the Project or the Transaction on behalf of the other Party, such Party shall provide the other Party with written notice regarding the amount and type of such Governmental Charges. Notwithstanding the foregoing, any such notice shall be for informational purposes only and a failure to deliver such notice shall not result in any liability for the paying Party.

## ARTICLE TEN: MISCELLANEOUS

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

(ii) At any time prior to the Funding Termination Deadline, if applicable, Seller shall send to Buyer within ten (10) days of (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) or (2) notify Buyer that the Transaction is terminated, pursuant to the terms of this Agreement. If Seller has the right to terminate this Transaction, but fails to send written notice of termination by the

Funding Termination Deadline, then Seller's termination right per this subsection 10.1(a) shall be deemed waived in its entirety.

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

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

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

(ii) **Right of First Refusal Option.**

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

(B) **Exercise of Option.** If Buyer chooses to exercise the Option, Buyer shall send written notice to Seller stating that Buyer is exercising the Option, conditioned upon Buyer's receipt of Option Approval, as defined below, within 180 days of date on which Buyer received the Revocation Notice. The effectiveness of the Option exercise shall be subject to Buyer's receipt of a final, non-appealable order issued by the CPUC, satisfactory to Buyer, approving Buyer's exercise of the Option and recovery of costs associated with the payment



of the percentage of lost PGC Funding (“Option Approval”). The date on which Buyer provides written notice of its Option exercise to Seller shall be the “Exercise Date.” Buyer shall file an advice filing or application seeking the Option Approval within 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 Option Approval Buyer shall continue paying Seller’s Lost PGC Funds on a monthly basis until the expiration of the term of Seller’s PGC Funding Award, or Reinstatement of Seller’s PGC funding, whichever comes first.

(D) Seller’s Termination Right. Seller may terminate the Transaction in accordance with subsection (b)(i) above upon the occurrence of any of the following events: (I) Buyer provides written notice to Seller rejecting the exercise of the Option, (II) the Option expires without being exercised, (III) Buyer fails to seek Option Approval within 30 days of the Exercise Date, or (IV) Buyer fails to obtain Option Approval within 180 days of Buyer’s receipt of the Revocation Notice. If Seller then terminates the Transaction, such termination shall be effective 30 days from the date on which Seller notifies Buyer of such termination. Both Parties shall continue to perform under this Transaction until the effectiveness of any such termination by Seller.

(iii) Reinstatement of PGC Funding. If the PGC Funding Award is reinstated in its entirety, including retroactive payments for lost PGC Funds, at anytime before (A) Seller’s termination of this Transaction or (B) Buyer’s exercise of the Option, then Seller shall no longer be permitted to terminate this Transaction, pursuant to this Section 10.1(b)(iii), and both Parties shall continue to perform under this Transaction. If the PGC Funding Award is reinstated in whole or in part at anytime after Buyer has exercised the Option, then Buyer shall be relieved of all further obligations to pay any of Seller’s lost PGC Funds, which will be covered by the reinstated PGC Funding Award. If PGC Funding Award is reinstated in whole or in part on a retroactive basis after Buyer has exercised the Option, then Buyer shall have the right to offset against payments due to Seller that portion of such award amount equivalent to the lost PGC Funds paid by Buyer to Seller between the period in which the PGC Funds were revoked and reinstated. Seller shall notify Buyer in writing of any such reinstatement of PGC Funds within 10 days of receiving notice of such reinstatement from the CEC, CPUC, or other regulatory agency responsible for the PGC Funds program, which notice shall include a copy of such notice.

(c) Intentionally Omitted.

(d) Term. The term of this Agreement shall commence upon the satisfaction of the Conditions Precedent set forth in Article Eleven of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to Section 5.2 or Section 11.2 of this Agreement (the "Term"); provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Project Development Security, Delivery Term Security or any other Performance Assurance, as applicable is released and/or returned as applicable (if any is due).

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

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

(b) the execution, delivery and, except for (A) CPUC Approval, in the case of Buyer, and (B) all permits necessary to construct, operate and maintain the Project in the case of Seller, performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

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

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

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

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

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

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

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 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, (ii) Seller's operation and/or maintenance of the Project, or (iii) Seller's actions or inactions with respect to this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction or 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 the Product and such failure by Seller was attributable to an Event of Default pursuant to Section 5.1(j) which was declared by Buyer in the Contract Year for which the CPUC assessed penalties against Buyer for failure to satisfy the Renewable Portfolio Standards requirements; provided, further, that in the event that if Seller's Event of Default was a precipitating factor causing Buyer to be assessed penalties by the CPUC pursuant to the Renewable Portfolio Standard, but that other sellers of power upon which Buyer was relying upon to satisfy the Renewable Portfolio Standard failed to satisfy their contractual obligations to Buyer, Seller shall only be required to indemnify Buyer for an amount equal to Seller's pro rata portion of the penalties assessed against Buyer with respect to the failure of these power sellers to satisfy their respective delivery requirements to Buyer.

(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, 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 or economic loss of property belonging to Buyer, Seller, or others, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its agents, employees, directors or officers.

(c) No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of

this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

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 or delayed; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 **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 CALIFORNIA, 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 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. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity rights shall survive the termination of this Agreement for twelve (12) months. Nothing in this Agreement shall in any way restrict or otherwise limit the rights of either Party under Sections 205 and 206 of the Federal Power Act.

10.9 **Audit.** Each Party has the right, at its sole expense to conduct an audit during normal working hours, upon providing forty-eight (48) hours written notice to the Party to be audited, and to examine the records of the other Party to the extent reasonably necessary to verify

the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy or Scheduled Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

**10.10 Confidentiality.** Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party's employees, lenders, investors, prospective debt lenders or equity providers, 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 10.11 of this Agreement; (v) in order to comply with any applicable law, regulation, or any exchange, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC. In connection with requests made pursuant to clause (v) of this Section 10.10 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

**10.11 RPS Confidentiality.** Notwithstanding Section 10.10 of this Agreement, at any time on or after the date on which the 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, then neither Party shall disclose Party name or Project location, pursuant to this Section 10.11, until six (6) months after such CPUC Approval.

**10.12 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 Project specified in the Section 3.1(g). PG&E reserves the right to request coverages of the type and amounts that are required by lenders for similarly financed projects. Reviews of such insurance may be conducted by PG&E on an annual basis. Seller is also responsible for its agents and contractors' maintaining sufficient limits of the appropriate insurance coverage. The insurance carrier or carriers and form of policy shall be subject to review and approval by Buyer.

(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 Commercial General Liability Coverage "occurrence" form, with no additional coverage deletions.

(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 date the Commercial Operation Date 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 to Buyer, (ii) maintain such insurance in effect for so long as Seller's Project is operated in parallel with the Transmission Owner's 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, PG&E, its director, officers, agents, and employees are named as additional insured with respect to all liabilities arising out of Seller's use and ownership of Seller's Project.'

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

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

10.13 Intentionally Omitted.

10.14 Eligible Renewable Energy Resource Obligations. Seller agrees that during the Delivery Term the Project will fulfill the obligations of an out-of-state resource qualifying as an Eligible Renewable Energy Resource ("ERR") as established by the CEC; provided however, that Seller shall not be in breach of the obligation set forth in the preceding clause or in the covenants set forth in Section 10.15(b) below, if Seller's sole reason for failing to maintain such certification is the disqualification of the Project as an ERR due to a subsequent amendment, modification, or

replacement of California Public Utilities Code Section 399.12 or 399.16, which new law no longer recognizes geothermal technology as an ERR. The Parties further agree that so long as the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard, as such standard is codified as of the Execution Date, notwithstanding subsection 10.15(b)(i), Seller shall not be in breach of this Agreement. Seller agrees that it shall implement any action to maintain the Project's ERR certification and fulfill the obligations of an out-of-state resource qualifying as an ERR as such obligations or certification requirements may be modified by the CEC subsequent to the Execution Date, which actions would result in an unreimbursed capital cost and/or operating expense to Seller of up to \$0.40 per kW during such Contract Year (the "Annual ERR Qualification Cost Threshold"); provided, however, that Seller shall not be obligated to take any further actions to maintain such certification or fulfill such obligations once Seller has reached the Annual ERR Qualification Cost Threshold; provided further, that Seller shall promptly inform Buyer by written notice of any action to maintain such certification or fulfill such obligations that would exceed the Annual ERR Qualification Cost Threshold and Buyer shall, within ninety (90) Business Days of its receipt of Seller's notice, provide Seller with its decision (each, an "Annual ERR Qualification Cost Threshold Decision") as to whether (i) Seller should proceed to take such actions to maintain such certification and fulfill such obligations and agree to reimburse Seller for any unreimbursed capital cost or operating expense that exceeds the Annual ERR Qualification Cost Threshold or (ii) Seller has no obligation to take such actions to maintain such certification or fulfill such obligations. Notwithstanding the foregoing, Seller shall not be obligated to take any action to maintain such certification or fulfill such obligations that would result in an expense that exceeds the Annual ERR Qualification Cost Threshold until Seller receives Buyer's Annual ERR Qualification Cost Threshold Decision.

#### 10.15 Covenants.

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

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

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

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

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

(b) Qualification of Project as Eligible Renewable Energy Resource.

Seller and, if applicable, its successors, covenants that throughout the term of the Delivery Term of this Agreement that to the following: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewable Portfolio Standard in effect as of the date of this Agreement. For sake of certainty, the Parties agree that the Public Utilities Code Section 399.12 and 399.16 referred to in subpart (b)(i) of this Section 10.15 shall be those provisions as in effect as of the Execution Date of this Agreement.

(c) Ownership of Project. Seller covenants throughout the Delivery Term that it has or will have ownership of, or a demonstrable exclusive right to control the Project.

10.16 Execution of Agreement. 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 an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing an original document.

10.17 Binding Agreement. This Agreement shall be binding on each Party's successors and permitted assigns.

10.18 Standard of Review for Modifications to Agreement. The standard of review the FERC shall apply when acting on proposed modifications to this Agreement, either on the FERC's own motion or on behalf of a signatory or a non-signatory, shall be the "just and reasonable" standard of review rather than the "public interest" standard of review.

10.19 CPUC Approval with Conditions or Modifications. In the event that the CPUC decision approving this Agreement contains any conditions or modifications to the terms of this Agreement, each of the Parties covenants and agrees to provide the other Party notice (the "Decision to Proceed Notice"), within thirty (30) days of receipt of CPUC Approval, stating whether such Party accepts or rejects the Agreement as approved by the CPUC with the specified conditions or modifications and stating whether all other conditions of CPUC Approval have been satisfied. If both Parties agree in writing to accept the Agreement as approved by the CPUC with the specified conditions and modifications, then CPUC Approval shall be deemed to have occurred on the date that this CPUC decision becomes final and non-appealable. If either Party decides to reject the Agreement pursuant to its Decision to Proceed Notice, the Parties agree that they shall negotiate for a period of sixty (60) days (the "Negotiation Period") with the object to revise the Agreement in a manner to incorporate the specified conditions or modifications required by the CPUC Approval. In the event that the Parties are unable to agree on a revised Agreement within the Negotiation Period (as may be extended upon mutual written agreement of the Parties), either Party shall have the right to terminate this Agreement without liability arising from such termination for either Party, provided, however, that all indemnity rights shall survive the termination of this Agreement for twelve (12) months.



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

#### 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 has been duly executed by the authorized representatives of each of Buyer and Seller;
- (b) CPUC Approval has been obtained; and
- (c) Buyer receives CPUC Approval that finds that Buyer's entry into this Agreement is reasonable and that payments to be made by Buyer hereunder are recoverable in rates.

11.2 Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied on or before 180 days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement and the Transaction effective upon receipt of Notice by the other Party; provided, that if the Condition Precedent set forth in Section 11.1(a) has been satisfied except that a third party has either timely filed an application for rehearing with the CPUC or an appeal of the CPUC's decision approving this Agreement, then the 180 day period shall be extended until the earlier to occur of (i) the date that the CPUC Approval is obtained, and (ii) the 270<sup>th</sup> day from the date on which Buyer files this Agreement for CPUC Approval; and, provided, further, that all indemnity rights shall survive the termination of this Agreement for twelve (12) months.

11.3 Buyer Obligation Following Execution Date. Following the Execution Date, but prior to the commencement of the Term of this Agreement, Buyer shall have the obligation to take those steps necessary for seeking CPUC Approval, including submitting this Agreement to the CPUC for review and requesting that the CPUC make the findings necessary to satisfy the conditions precedent set forth in Sections 11.1(b) and 11.1(c).

#### 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. Accordingly, it is agreed as follows:

##### 12.1 Negotiation.

- (a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's

Contract Manager, as identified on the Cover Sheet hereof or such other person designated in writing as a representative of the Party ("Manager"). Either Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt such request, at a mutually agreed time and place. If the matter is not resolved within 15 Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies, who shall have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

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

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

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

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

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

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

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

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

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

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.

**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: \_\_\_\_\_  
[insert Applicant's address] \_\_\_\_\_  
\_\_\_\_\_

Account Party: \_\_\_\_\_  
[insert Account Party's 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 ("Letter of Credit") at this office in your favor at the request of the Applicant and for the account of the Account Party. Payments under this Letter of Credit are payable at sight 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:

"Pursuant to the terms of that certain Master Power Purchase and Sale Agreement dated \_\_\_\_\_ (Agreement") by and between Account Party and Beneficiary, Beneficiary is entitled to draw on this Letter of Credit for amounts owed by Account Party under the Agreement."

OR

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

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

**Special Conditions:**

1. Partial drawing(s) are permitted.
2. All banking charges associated with this Letter of Credit are for the account of the Applicant.
3. This Letter of Credit is not transferable.
4. This Letter of Credit shall terminate upon the earlier of:
  - a. the making by you of the final drawing available to be made hereunder;
  - b. the surrender of this original Letter of Credit accompanied by your letter acknowledging termination of this Letter of Credit; and
  - c. the Expiration Date.

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"), that interrupts 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**

**INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER**

In accordance with the terms of that certain Master Power Purchase and Sale Agreement dated \_\_\_\_\_ ("Agreement") by and between Pacific Gas and Electric Company ("Buyer") and Northwest Geothermal Company ("Seller"), this Confirmation Letter serves to document the further agreement of Buyer and Seller that (i) the conditions precedent to the occurrence of the Initial Energy Delivery Date for Phase [I, II, III, IV] were satisfied, and (ii) Seller scheduled and Buyer received the Product, as specified in the Agreement for Phase [I, II, III, IV], as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. This letter shall memorializes and confirms that the Initial Energy Delivery Date, as defined in the Agreement, for Phase [I, II, III, IV] is [state actual date]. [By executing this Confirmation Letter, to the extent that the Commercial Operation Date for Phase [I, II, III, IV] falls after the Guaranteed Commercial Operation Date for such Phase, Buyer hereby waives any right it may have to declare an Event of Default due to Seller's failure to meet the applicable Guaranteed Commercial Operation Date; provided, however, that Buyer shall be entitled to retain any damages, otherwise due, including Daily Delay Damages, related to such failure].

IN WITNESS WHEREOF, each Party has caused this Confirmation Letter be duly executed by its authorized representative

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

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

Name:

Name:

Title:

Title:

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

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

**EXHIBIT C****MILESTONES****Milestone Schedule**

<b>Identify Milestone</b>	<b>Date for Completion</b>
First Commercial Well Completion	10/15/2007
Guaranteed Construction Start Date - Phase I	6/30/2008
Pour Turbine Foundations – Phase I	6/1/2009
Turbine Generator Shipped – Phase I	9/1/2009
First steam to Power Plant - Phase I	12/1/2009
Synchronize Generator to Grid - Phase I	12/15/2009
Guaranteed Commercial Operation Date - Phase I	1/1/2010
Guaranteed Construction Start Date - Phase II	7/31/2009
Pour Turbine Foundations – Phase II	3/1/2010
Turbine Generator Shipped – Phase II	6/1/2010
First steam to Power Plant - Phase II	9/1/2010
Synchronize Generator to Grid - Phase II	9/15/2010
Guaranteed Commercial Operation Date - Phase II	10/1/2010
Guaranteed Construction Start Date - Phase III	4/30/2010
Pour Turbine Foundations – Phase III	12/1/2010
Turbine Generator Shipped – Phase III	3/1/2011
First steam to Power Plant - Phase III	6/1/2011
Synchronize Generator to Grid - Phase III	6/15/2011
Guaranteed Commercial Operation Date - Phase III	7/1/2011
Guaranteed Construction Start Date - Phase IV	12/1/2010

<b>Pour Turbine Foundations – Phase IV</b>	<b>6/1/2011</b>
<b>Turbine Generator Shipped – Phase IV</b>	<b>9/1/2011</b>
<b>First steam to Power Plant - Phase IV</b>	<b>12/1/2011</b>
<b>Synchronize Generator to Grid - Phase IV</b>	<b>12/15/2011</b>
<b>Guaranteed Commercial Operation Date - Phase IV</b>	<b>1/1/2012</b>



## EXHIBIT D

### PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

#### Description of Newberry Project

- **The Project's geothermal generating plants will be physically located on two to four plant sites of approximately 5 acres each, with pipelines running (1) to production wells dispersed on 3-acre drilling pads located within a mile of the plant sites and (2) to reinjection wells.**

The term "Site" as defined in the Master Agreement means the following:

- **The Project Site is situated in central Oregon on the western flank of Newberry Volcano, a large shield volcano that is largely covered by pine trees. The western flank timber has been harvested for many years and contains numerous logging roads. The community of Sunriver, Oregon is about 10 miles northwest, and Bend, Oregon is 25 miles north northwest. La Pine, Oregon is 10 miles southwest.**
- **The Project Site shall comprise all of Seller's leased property as depicted on the map West Newberry Unit Lease Map, attached hereto as Attachment A. The Project Site comprises approximately 5,000 acres. The Site is described as follows:**

**Sections 24, 25 and the area of section 36 that is north of Paulina Creek, Township 21 South, Range 11 East of the Willamette Meridian, Deschutes County, Oregon;**

**Sections 16, 17, 18, 19, 29, 30 and the area of section 32 that is north of Paulina Creek, Township 21 South, Range 12 East, of the Willamette Meridian, Deschutes County, Oregon.**

#### Interconnection

The Power Plant will be connected as follows:

- **The interconnection point shall be on Midstate Electric Cooperative's line, running to La Pine, Oregon or with the facilities of the Bonneville Power Administration at La Pine, Oregon or such other points as Seller and the Bonneville Power Administration shall agree. A transmission line of up to 20 miles may be built for such interconnection.**

Power Plant Assets include, but are not limited to, the following:

**The Project will include the following components in numbers determined by resource location and overall layout:**

- **roofed buildings containing the turbine generators, control room, offices, switching gear, a visitors center and maintenance areas**
- **turbines**
- **separators**
- **cooling towers, if applicable**
- **noncondensable gas removal systems**
- **hydrogen sulfide abatement systems**
- **fire protection systems**
- **plant water storage and sump ponds**
- **geothermal production wells**
- **reinjection wells and piping**
- **geothermal well field gathering systems through which geothermal resource reaches the plant**

**Steamfield Assets:**

- **production wells drilled at the Site to support the Project**
- **geothermal well field gathering systems**
- **geothermal well field reinjection systems consisting of piping and reinjection wells drilled at the Site to support the Project**

**Related Assets:**

- **Exclusive or non-exclusive rights, as applicable, to use water wells for facility use, local roads and Site buildings**
- **All Relevant Instruction Manuals, Engineering Data Books, and Parts Catalogues at the Plant or at any other location**
- **All Relevant Drawings (Including but not limited to All Diagrams, and Piping and Instrument Drawings) at the Plant or any other location**
- **All Plant and Steamfield Performance Records at the Plant or any other location**
- **All other intangible assets that are part of or associated with any of the assets previously described in this Exhibit D, the use of which may or may not be exclusive to the Project.**

**The Unit(s) utilized as generation assets as part of the Project are described below: (collectively, the "Units"):**

**Name: NGC-1, NGC-2, NGC-3, NGC-4**

**Location: Newberry NGC North, as designated herein.**

**Substation Name: (point of interconnection with the BPA Controlled Grid)  
("Substation") Midstate Electric Cooperative's line, running to La Pine, Oregon  
or with the facilities of the Bonneville Power Administration at La Pine, Oregon**

**Current ISO Zone in which Substation resides: Not in California**

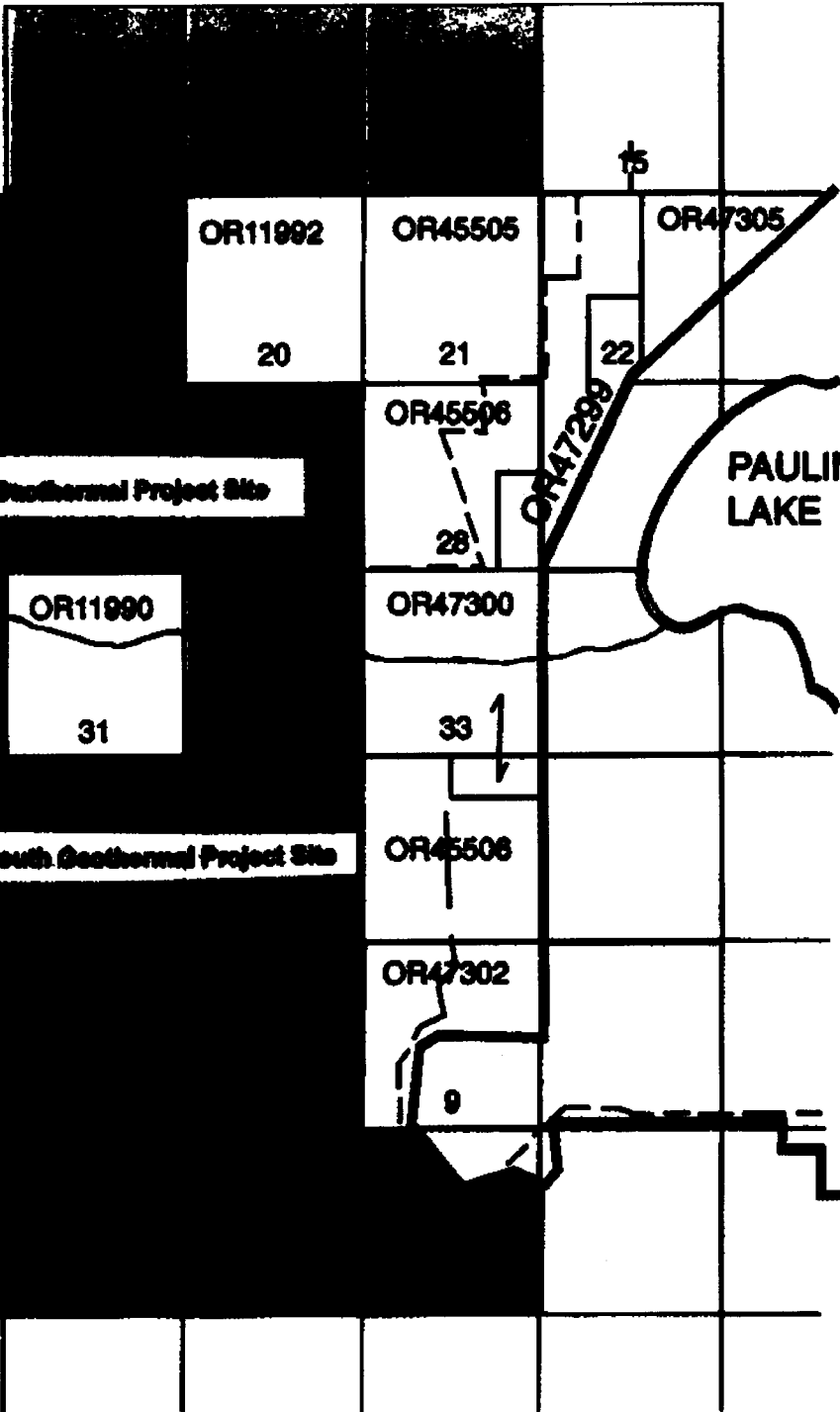
**Turbine and Configuration: Direct flash or binary or combined cycle.**





R 11 E

R 12 E

T 21 S

T 22 S



-  NORTHWEST GEOTHERMAL COMPANY LEASES
-  ORMAT LEASES
-  NEWBERRY NATIONAL MONUMENT BOUNDARY
-  NON-SURFACE OCCUPANCY BOUNDARY

N  
↑

NORTHWEST GEOTHERMAL COMPANY

---

**WEST NEWBERRY UNIT  
LEASE MAP**

**EXHIBIT E**

**FORM OF CERTIFICATION**

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

1. The contract between Seller and the EPC Contractor for construction of Phase [I, II, III, IV] of the Project (the "Contract") has been executed by each of Seller and the EPC Contractor;
2. Seller is in compliance with its obligations under the Contract; and
3. The Notice to Proceed has been delivered by Seller to the EPC Contractor and Seller anticipates that EPC Contractor shall commence construction shortly and complete such construction before the Guaranteed Commercial Operation Date.

IN WITNESS WHEREOF, Seller has caused this Certification to be duly executed by its authorized representative as of the date of last signature provided below:

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

Name:

Title:

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

**EXHIBIT F**

**EXAMPLES OF FORMULAS AND LANGUAGE USED IN AGREEMENT**

**I Example of 3<sup>rd</sup> party sales option revised annual Availability Adjustment Factor values**

For the purposes of this example, each Contract Year begins on December 1<sup>st</sup> and ends on November 30<sup>th</sup>. Assume the online date of the third-party capacity sales is June 30, 2015

**Online date of 3<sup>rd</sup> party capacity sales: June 30, 2015**

**Historical Data:**

Previous Contract Year (December 1, 2013 – November 30, 2014) Availability Adjustment Factor = 82.00%

2<sup>nd</sup> Previous Contract Year (December 1, 2012 – November 30, 2013) Availability Adjustment Factor = 83.00%

3<sup>rd</sup> Previous Contract Year (December 1, 2011 – November 30, 2012) Availability Adjustment Factor = 80.50%

**Revised Event of Default Limits**

Rolling 24 month Event of Default minimum limit: 80.33%

Rolling 12 month Event of Default minimum limit: 78.83%

**II. Example Annual Availability Adjustment Factor Calculation**

The following is an example of an annual Availability Adjustment Factor calculation, calculated December 31<sup>st</sup> for the previous 12 months (rolling average). Assume that for the previous January the Contract Capacity is 60 MWs and the Delivered Energy is 59 MWs in all hours except five (night) Seller Excuse Hours in which the Delivered Energy is 0 MWs. Assume that all other months, February through December, have 95% Super-Peak, 90% Shoulder and 90% Night Availability Adjustment Factors

**Table 1; Example January TOD Period Calculation**

	<b>Total Delivered Energy (MWhs)</b>	<b>Total Hours in Period</b>	<b>Seller Excuse Hours</b>	<b>Period Availability Adjustment Factor</b>
<b>Night</b>	14,337	248	5	98.33%
<b>Shoulder</b>	19,352	328	0	98.33%
<b>Super-Peak</b>	9,912	168	0	98.33%

**Table 2; Total Monthly Period Hours**

	<b>Super-Peak</b>	<b>Shoulder</b>	<b>Night</b>
<b>January</b>	168	328	248
<b>February</b>	160	288	224
<b>March</b>	176	320	248
<b>April</b>	176	304	240
<b>May</b>	160	336	248
<b>June</b>	176	304	240
<b>July</b>	184	312	248
<b>August</b>	168	328	248
<b>September</b>	168	312	240
<b>October</b>	176	320	248
<b>November</b>	160	320	240
<b>December</b>	176	320	248

The Total Monthly Period Hours in Table 2 are based on the NERC Holidays as would fall in a given year; depending on the NERC Holidays for any given year which may fall on different days of the week, the allocation of the hours will be slightly different.

**Table 3; Example Monthly Availability Adjustment Factor Values**

	<b>Super-Peak</b>	<b>Shoulder</b>	<b>Night</b>	<b>Monthly Average</b>
<b>January</b>	98.33%	98.33%	98.33%	98.33%
<b>February</b>	95.00%	90.00%	80.00%	87.86%
<b>March</b>	95.00%	90.00%	80.00%	87.85%
<b>April</b>	95.00%	90.00%	80.00%	87.89%
<b>May</b>	95.00%	90.00%	80.00%	87.74%
<b>June</b>	95.00%	90.00%	80.00%	87.89%
<b>July</b>	95.00%	90.00%	80.00%	87.90%
<b>August</b>	95.00%	90.00%	80.00%	87.80%
<b>September</b>	95.00%	90.00%	80.00%	87.83%
<b>October</b>	95.00%	90.00%	80.00%	87.85%
<b>November</b>	95.00%	90.00%	80.00%	87.78%
<b>December</b>	95.00%	90.00%	80.00%	87.85%

**Annual Availability Adjustment Factor Calculation**

Annual Availability Adjustment Factor is the weighted average of the monthly Period TOD values. The monthly Period TOD values are averaged based on the number of hours in each Period as a percentage of the total annual hours. In this example the Annual Availability Adjustment Factor is 88.73%.

**III. Example Imbalance Energy Adjustment Language**

**Monthly Negative Deviation Example**

<i>Project's monthly generation:</i>	
Project's monthly Revenue Meter Energy	23,000 MWh

<b>Project's monthly scheduling commitments:</b>	
Project's monthly Scheduled Energy to Buyer	22,000 MWh
Project's monthly scheduled BPA Real Power Losses	345 MWh
<b>Total Monthly Negative Deviation</b>	<b>655 MWh</b>

**Hourly Positive Deviation Examples**

<b>Example 1</b>	
<b>Project's hourly generation:</b>	
Project's hourly Revenue Meter Energy	29 MW
<b>Project's hourly scheduling commitments:</b>	
Project's hourly Scheduled Energy to Buyer	30 MW
Project's hourly scheduled BPA Real Power Losses	2 MW
Project's hourly scheduled Overgeneration Imbalance Energy	3 MW
<b>Total Hourly Positive Deviation</b>	<b>1 MW</b>

<b>Example 2</b>	
<b>Project's hourly generation:</b>	
Project's hourly Revenue Meter Energy	31 MW
<b>Project's hourly scheduling commitments:</b>	
Project's hourly Scheduled Energy to Buyer	30 MW
Project's hourly scheduled BPA Real Power Losses	2 MW
Project's hourly scheduled Overgeneration Imbalance Energy	3 MW
<b>Total Hourly Positive Deviation</b>	<b>0 MW</b>



**GENERATION IMBALANCE BILL SUMMARY**

**T-ATTACHMENT**

REPORT DATE: [REDACTED] DATA THROUGH: [REDACTED]  
 CUSTOMER: [REDACTED]  
 BILL SUMMARY ID: [REDACTED]

BILL TYPE: Resale Fleet  
 MONTH: August

HOURS IN MONTH: 488  
 HOURS WITH PRICE DATA: 487  
 HOURS WITH METER DATA: 488  
 HOURS WITH SCHEDULE DATA: 488

**INTENTIONAL DEVIATIONS:**

Positive deviations charged at 125% of SP4's marginal cost for that day  
 Negative deviations credited at 75% of SP4's marginal cost for that day

# of Hours with Positive Intentional Deviations:	0
# of Hours with Negative Intentional Deviations:	0
Positive Intentional Deviations (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ NET CHARGE (CREDIT) For Positive Intentional Deviations:</b>	<b>\$0.00</b>

**POSITIVE DEVIATION = UNDER-GEN**  
**NEGATIVE DEVIATION = OVER-GEN**

(0.0% of all hours in month)  
 (0.0% of all hours in month)

Negative Deviations Negated (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ Credit Negated, INT Deviations:</b>	<b>\$0.00</b>

**GENERATION DEVIATIONS IN BAND 3:**

Positive deviations charged at 125% of SP4's marginal cost for that day (included separately for HLM/LH)  
 Negative deviations credited at 75% of SP4's marginal cost for that day (included separately for HLM/LH)

**HEAVY-LOAD HOURS**

# of Hours with Positive Deviations Culminating Within Band 3:	0
Positive Deviations Within Band 3 (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ NET CHARGE (CREDIT) For Positive Deviations Within Band 3, HLH:</b>	<b>\$0.00</b>
# of Hours with Negative Deviations Culminating Within Band 3:	0
Negative Deviations Within Band 3 (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ NET CHARGE (CREDIT) For Negative Deviations Within Band 3, HLH:</b>	<b>\$0.00</b>
Net \$ Charge (or Credit) for HLH:	\$0.00

**POSITIVE DEVIATION = UNDER-GEN**  
**NEGATIVE DEVIATION = OVER-GEN**

(0.0% of all hours in month)

Negative Deviations Negated (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ Credit Negated, HLH:</b>	<b>\$0.00</b>

**LIGHT-LOAD HOURS**

# of Hours with Positive Deviations Culminating Within Band 3:	0
Positive Deviations Within Band 3 (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ NET CHARGE (CREDIT) For Positive Deviations Within Band 3, LLH:</b>	<b>\$0.00</b>
# of Hours with Negative Deviations Culminating Within Band 3:	0
Negative Deviations Within Band 3 (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ NET CHARGE (CREDIT) For Negative Deviations Within Band 3, LLH:</b>	<b>\$0.00</b>
Net \$ Charge (or Credit) for LLH:	\$0.00
<b>\$ CHARGE (CREDIT), DEVIATIONS WITHIN BAND 3:</b>	<b>\$0.00</b>

(0.0% of all hours in month)

Negative Deviations Negated (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ Credit Negated, LLH:</b>	<b>\$0.00</b>
<b>\$ CREDIT NEGATED, BAND 3:</b>	<b>\$0.00</b>

**GENERATION DEVIATIONS IN BAND 2:**

Positive deviations charged at 110% of SP4's marginal cost for that day and hour  
 Negative deviations credited at 85% of SP4's marginal cost for that day and hour

**HEAVY-LOAD HOURS**

# of Hours with Positive Deviations Culminating Within Band 2:	0
Positive Deviations Within Band 2 (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ NET CHARGE (CREDIT) For Positive Deviations Within Band 2, HLH:</b>	<b>\$0.00</b>
# of Hours with Negative Deviations Culminating Within Band 2:	0
Negative Deviations Within Band 2 (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ NET CHARGE (CREDIT) For Negative Deviations Within Band 2, HLH:</b>	<b>\$0.00</b>
Net \$ Charge (or Credit) for HLH:	\$0.00

**POSITIVE DEVIATION = UNDER-GEN**  
**NEGATIVE DEVIATION = OVER-GEN**

(0.0% of all hours in month)

Negative Deviations Negated (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ Credit Negated, HLH:</b>	<b>\$0.00</b>

**LIGHT-LOAD HOURS**

# of Hours with Positive Deviations Culminating Within Band 2:	0
Positive Deviations Within Band 2 (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ NET CHARGE (CREDIT) For Positive Deviations Within Band 2, LLH:</b>	<b>\$0.00</b>
# of Hours with Negative Deviations Culminating Within Band 2:	0
Negative Deviations Within Band 2 (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ NET CHARGE (CREDIT) For Negative Deviations Within Band 2, LLH:</b>	<b>\$0.00</b>
Net \$ Charge (or Credit) for LLH:	\$0.00
<b>\$ CHARGE (CREDIT), DEVIATIONS WITHIN BAND 2:</b>	<b>\$0.00</b>

(0.0% of all hours in month)

Negative Deviations Negated (mwh):	0.000
Avg. Weighted Price (\$/mwh):	0.00000
<b>\$ Credit Negated, LLH:</b>	<b>\$0.00</b>
<b>\$ CREDIT NEGATED, BAND 2:</b>	<b>\$0.00</b>

**T-ATTACHMENT**  
**POSITIVE DEVIATION = UNDER-GEN**  
**NEGATIVE DEVIATION = OVER-GEN**

**GENERATION DEVIATIONS IN BAND 1:**

Net deviation balance charged at average market price for the month (evaluated separately for H/L/H/L/H)

<b>HEAVY-LOAD HOURS</b>	
# of Hours with Positive Deviations Culminating Within Band 1:	0
# of Hours with Negative Deviations Culminating Within Band 1:	0
Net Deviations Within Band 1 (month):	0.000
Average Market Price for Month H/L/H (month):	0.000000
<b>\$ NET CHARGE (CREDIT) For Deviations Within Band 1, H/L/H:</b>	<b>\$0.00</b>

(0.0% of all hours in month)	
(0.0% of all hours in month)	
Negative Deviations Negated (month):	0.000
Avg. Weighted Price (Month):	0.000000
<b>\$ Credit Negated, H/L/H:</b>	<b>\$0.00</b>

<b>LIGHT-LOAD HOURS</b>	
# of Hours with Positive Deviations Culminating Within Band 1:	0
# of Hours with Negative Deviations Culminating Within Band 1:	0
Net Deviations Within Band 1 (month):	0.000
Average Market Price for Month L/L/H (month):	0.000000
<b>\$ NET CHARGE (CREDIT) For Deviations Within Band 1, L/L/H:</b>	<b>\$0.00</b>
<b>\$ CHARGE (CREDIT), DEVIATIONS WITHIN BAND 1:</b>	<b>\$0.00</b>

(0.0% of all hours in month)	
(0.0% of all hours in month)	
Negative Deviations Negated (month):	0.000
Avg. Weighted Price (Month):	0.000000
<b>\$ Credit Negated, L/L/H:</b>	<b>\$0.00</b>
<b>\$ CREDIT NEGATED, BAND 1:</b>	<b>\$0.00</b>

**OTHER CRITERIA**

Heavy-Load Hours (Mon-Sat) begin at HOUR BROWD:	0000
Heavy-Load Hours (Mon-Sat) end at HOUR BROWD:	0000
Number of Hours BPA Was in Split Conditions:	0000
Number of Days BPA Was in Split Conditions:	0000
Number of Hours in Test Period:	000000
Are Over-Generation Deviations Allowed?	0000
Is Customer Exempt From Band 1?	0000

**TOTAL \$ CHARGE (OR CREDIT) \$0.00**

## Phase III and Phase IV Acceptance Examples

**Information Used for all examples:**

Subsequent Phase Declared Contract Capacity Amount **40 MW**  
 Optional Phase Capacity Expectation (OPCE) **36 MW** (90% of Subsequent Phase Declared Amount) [Section 3.1(c)(v)]  
 Optional Phase Capacity Requirement (OPCR) **30 MW** (75% of Subsequent Phase Declared Amount) [Section 3.1(c)(iv)]  
 NROC Capacity Test at any time: Optional Phase Capacity Test

**Example 1 Assumptions**

The Optional Phase Capacity Test as of the Phase Guaranteed Commercial Online Date (GCOD) is 20 MW. The Phase is not accepted and the Optional Phase Rerest Period begins. The highest Optional Phase Capacity Test results are 22 MW and the Phase is accepted by FGLS. The Phase DCC Test result is 24 MW.

**Example 2 Assumptions**

The Optional Phase Capacity Test as of the Phase GCOD is 34 MW. The Phase DCC Test result is 39 MW.

**Example 3 Assumptions:**

The Optional Phase Capacity Test as of the Phase GCOD is 36 MW.

Optional Phase Capacity Test as of the Phase GCOD:	At Guaranteed Commercial Operation Date (GCOD):		Optional Phase Rerest Period		Phase Eligible Increases Period	
	[Sections 3.1(c)(iv), 3.1(f)(ii) & 3.1(f)(v)]	[Section 3.1(f)(ii)]	[Section 3.1(f)(ii)]	[Section 3.1(f)(ii)]	[Sections 3.1(f)(v) & 3.1(f)(vi)]	[Sections 3.1(f)(v) & 3.1(f)(vi)]
<b>Example 1</b>	20	20 MW The Phase DCC Test result is 24 MW. The Phase is accepted by FGLS.	20 MW The Phase DCC Test result is 24 MW. The Phase is accepted by FGLS.	20 MW The Phase DCC Test result is 24 MW. The Phase is accepted by FGLS.	20 MW The Phase DCC Test result is 24 MW. The Phase is accepted by FGLS.	20 MW The Phase DCC Test result is 24 MW. The Phase is accepted by FGLS.
<b>Example 2</b>	34	34 MW The Phase DCC Test result is 39 MW. The Phase is accepted by FGLS.	34 MW The Phase DCC Test result is 39 MW. The Phase is accepted by FGLS.	34 MW The Phase DCC Test result is 39 MW. The Phase is accepted by FGLS.	34 MW The Phase DCC Test result is 39 MW. The Phase is accepted by FGLS.	34 MW The Phase DCC Test result is 39 MW. The Phase is accepted by FGLS.
<b>Example 3</b>	36	36 MW The Phase DCC Test result is 39 MW. The Phase is accepted by FGLS.	36 MW The Phase DCC Test result is 39 MW. The Phase is accepted by FGLS.	36 MW The Phase DCC Test result is 39 MW. The Phase is accepted by FGLS.	36 MW The Phase DCC Test result is 39 MW. The Phase is accepted by FGLS.	36 MW The Phase DCC Test result is 39 MW. The Phase is accepted by FGLS.

**APPENDIX II**  
**FORM OF MONTHLY**  
**CONSTRUCTION PROGRESS REPORT**

**Monthly Progress Report**  
**of**  
**Northwest Geothermal Company**  
**("Seller")**

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

**[Date]**

**1.0 Instructions.**

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

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

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

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

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

(iv) Any material change in 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 an additional copy via email to [\_\_\_\_\_].

**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

---

<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 Project or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse effect includes, but is not limited to, Seller's inability to achieve a Milestone date.

2.2.6 Permitting

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 Project 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:

DESCRIPTION	ARTICLE THIRTEEN: STATUS

**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.

ARTICLE FOURTEEN: DESCRIPTION	ARTICLE FIFTEEN: STATUS

**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>



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:

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

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

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

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

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

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

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

**9.0 Milestones.**

**9.1 Milestone schedule.**

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

**9.2 Remedial Action Plan (applicable if Seller fails to achieve Milestone in accordance with Section 3.9(c)(ii) of the Agreement).**

Please explain in detail each of the following aspects of Seller's Remedial Action Plan, as provided in Section 3.9(ii) 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 Project:**

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 Project as of the date specified below.

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

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

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

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



**PLEASE DO NOT ALTER THIS**

**APPENDIX III**

**OUTAGE NOTIFICATION FORM**

**SEND VIA U.S. MAIL OR FAX**

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

**MAILING ADDRESS:**

Pacific Gas and Electric Company  
Attention: Manager, Bilateral Settlements  
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 and Sale Agreement, dated \_\_\_\_\_, 20[ ] ("Agreement") entered into by [ ] and Pacific Gas and Electric Company. All capitalized terms not defined herein shall have the meaning provided in the Agreement.**

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

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

**NOTIFICATION OF PLANNED OUTAGE ♦ FORCED OUTAGE ♦ PROLONGED OUTAGE**

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

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

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

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

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

by

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

(Signature)

(Date)

**Notification Requirements:**

This notice shall be delivered in compliance with Section 3.7 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

### Resource Adequacy

- I. To the extent applicable for out of ISO Area resources, Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to the following:
  - A. Cooperating with and encouraging the regional entity, including the ISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following the requirements the CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the Delivery Point; and
  - B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions the CPUC or regional entity or entities responsible for Resource Adequacy administration may issue.

Notwithstanding the foregoing, Seller shall not be required to implement any change or improvement to the Project, including to its operations, a Unit, the electrical interconnection facilities, or the transmission network, during any Contract Year on or after the Initial Energy Delivery Date in order to comply with Resource Adequacy Requirements that would result in an unreimbursed capital cost and/or operating expense that would exceed \$0.60 per kW during such Contract Year (the "Annual RA Cost Threshold"); provided, however, that Seller shall promptly inform Buyer by written notice of any change or improvement that would exceed the Annual Cost Threshold and Buyer shall, within ninety (90) Business Days of its receipt of Seller's notice, provide Seller with its decision (each, an "Annual RA Cost Threshold Decision") as to whether (i) Seller should proceed to implement such change or improvement and agree to reimburse Seller for any unreimbursed capital cost or operating expense that exceeds the Annual Cost Threshold or (ii) Seller has no obligation to proceed to implement such change or improvement. Notwithstanding the foregoing, Seller shall not be obligated to initiate the construction or modification of any change or improvement that would result in an expense that exceeds the Annual RA Cost Threshold until Seller receives Buyer's Annual RA Cost Threshold Decision.

2. ISO Requirements:
  - A. If not generating and not subject to a partial or full outage, Seller shall bid the full contract capacity to the ISO and shall respond to all ISO instructions; and



B. Seller shall commit the Project, in response to a request from ISO, to generate up to the full Contract Capacity unless the Project (i) is subject to a partial or full outage, or (ii) is affected by an event of Force Majeure.

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

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

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

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

1. Call for permission to parallel before any start-up at the appropriate Area Control Centers (see Attachment A of the Outage Notification Form)
2. Call your Area Control Center again after start-up with parallel time.
3. Call your Area Control Center after any separation and report separation time as well as date and time estimate for return to service.

**B. NOTIFICATION REQUIREMENTS FOR [AVAILABILITY NOTICES,] SCHEDULES AND CHANGES TO SCHEDULES**

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

- b) Phone: Call PG&E's Hour-Ahead Trading Desk with any changes to the schedule or notifications at least 30 minutes prior to the ISO scheduling hour-ahead deadline for that delivery hour.

3. Send the Outage Notification Form by the following method:

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

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

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

**1. Submission of Outages, Generation**

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

- a) Testing the Unit(s) During an Outage. Notify the designated PG&E Control Center by telephone and the Power Settlements Department as provided above before testing the Unit(s) during an Outage. Indicate on the original Outage Notification Form if testing will be conducted during an Outage.
- b) Communication with PG&E Control Center. Seller shall maintain operating communications with the PG&E Control Center at \_\_\_\_\_. The operating communications shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled Outages, equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.

- c) **Logs of Communication Records with PG&E's Area Control Center and Electric Settlements personnel:** Seller shall maintain written records of all communiqués with PG&E which will be available for audit at PG&E's request. These records shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled outages, equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.

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

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

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

Amendment

**FIRST AMENDMENT TO THE JULY 17, 2006 MASTER POWER PURCHASE AND SALE AGREEMENT BETWEEN NORTHWEST GEOTHERMAL COMPANY AND PACIFIC GAS AND ELECTRIC COMPANY**

THIS FIRST AMENDMENT ("Amendment") is entered into by and between PACIFIC GAS AND ELECTRIC COMPANY ("PG&E") and NORTHWEST GEOTHERMAL COMPANY ("Northwest"). PG&E and Northwest are sometimes referred to herein individually as "Party" and collectively as "Parties." All capitalized terms not defined herein shall have the meaning set forth in the PPA, as defined below.

**RECITALS**

**WHEREAS**, PG&E and Northwest are parties to the certain Master Power Purchase and Sale Agreement, dated July 17, 2006, (the "PPA") and wish to make certain changes to such PPA as set forth in this Amendment.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, PG&E and Northwest agree as follows.

**1. Amendment to the PPA**

(a) Section 3.1(c), Delivery Term, shall be modified as follows by:

(i) inserting the following text immediately prior to subpart (i):

"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."

If the "Non-standard Delivery" contract term is selected, Parties need to apply to the CPUC justifying the need for non-standard delivery."

(b) The definition of "CPUC Approval" in Section 1.38 of Article One, General Definitions, shall be hereby deleted in its entirety and replaced with the following:

"1.38 "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 the Buyer, subject to CPUC review of the 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;

(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; and

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

(c) The definition of "Environmental Attributes" in Section 1.57 of Article One, General Definitions, shall be hereby deleted in its entirety and replaced with the following:

"1.57 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (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 Project, (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 Project for compliance



with local, state, or federal operating and/or air quality permits. If Seller's Project is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from such facility."

(d) The definition of "Market Price Referent" in Section 1.92 of Article One, General Definitions, shall be hereby deleted in its entirety and replaced with the following:

"1.92 "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)."

(e) Section 3.2, Environmental Attributes, shall be hereby deleted in its entirety and replaced with the following:

"3.2 Environmental Attributes. Seller hereby provides and conveys all Environmental Attributes from the Project to Buyer as part of the Product being delivered, as such term is described in this Agreement for the period set forth in this Agreement. Seller represents and warrants that Seller holds the rights to all Environmental Attributes from the Project, and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Project."

(f) Section 10.1(a), Seller Termination Right, shall be hereby deleted in its entirety and replaced with the following:

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

(i) If Seller's Bid Price exceeds the Market Price Referent, Seller may seek a PGC Funding Award from the California Energy Commission, or its successor agency ("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 Transaction for CPUC Approval ("Funding Termination Deadline"), then Seller may unilaterally terminate this Transaction prior to the Funding Termination Deadline effective as of the date on which Buyer receives Seller's written notice of termination. If Seller exercises this termination right, neither Buyer nor Seller shall be subject to liability of any kind.

(ii) At any time prior to the Funding Termination Deadline, if applicable, Seller shall send to Buyer within ten (10) days of (A) obtaining a



PGC Funding Confirmation or PGC Funding Award, written notice of such confirmation or award and a copy of the final funding award agreement entered into by the California Energy Commission, or its successor agency ("CEC") and Seller, if the funding award agreement has been granted at that time, or (B) receiving written notice from the CEC denying Seller's application for the requested PGC Fund Amount, a copy of such notice and a written statement from Seller, in which Seller shall (x) waive its termination rights under this Section 10.1(a) or (y) 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 Section 10.1(a) shall be deemed waived in its entirety."

(h) Section 10.1 (b), PGC Funding Termination, shall be hereby deleted in its entirety and replaced with the following:

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

(ii) Right of First Refusal Option.

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

(B) Exercise of Option. If Buyer chooses to exercise the Option, Buyer shall send written notice to Seller stating that Buyer is exercising the Option, conditioned upon Buyer's receipt of Option Approval, as defined below, within 180 days of date on which Buyer received the Revocation Notice. The effectiveness of the Option exercise shall be subject to Buyer's receipt of a final, non-appealable order issued by the CPUC, satisfactory to Buyer, approving Buyer's exercise of the Option and recovery of costs associated with the payment of the percentage of lost PGC Funding ("Option Approval"). The date on which Buyer provides written notice of its Option exercise to Seller shall be the "Exercise Date." Buyer shall file an advice filing or application seeking the Option Approval within 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 Option Approval Buyer shall continue paying Seller's Lost PGC Funds on a monthly basis until the expiration of the term of Seller's PGC Funding Award, or Reinstatement of Seller's PGC funding, whichever comes first.

(D) Seller's Termination Right. Seller may terminate the Transaction in accordance with subsection (i) above upon the occurrence of any of the following events: (I) Buyer provides written notice to Seller rejecting the exercise of the Option, (II) the Option expires without being exercised, (III) Buyer fails to seek Option Approval within 30 days of the Exercise Date, or (IV) Buyer fails to obtain Option Approval within 180 days of Buyer's receipt of the Revocation Notice. If Seller then terminates the Transaction, such termination shall be effective 30 days from the date on which Seller notifies Buyer of such termination. Both Parties shall continue to perform under this Transaction until the effectiveness of any such termination by Seller.

(iii) Reinstatement of PGC Funding. If the PGC Funding Award is reinstated in its entirety, including retroactive payments for lost PGC Funds, at anytime before (A) Seller's termination of this Transaction or (B) Buyer's exercise of the Option, then Seller shall no longer be permitted to terminate this Transaction, pursuant to Section 10.1(b)(i), and both Parties shall continue to perform under this Transaction. If the PGC Funding Award is reinstated in whole or in part at anytime after Buyer has exercised the Option, then Buyer shall be relieved of all further obligations to pay any of Seller's lost PGC Funds, which will be covered by the reinstated PGC Funding Award. If PGC Funding Award is reinstated in whole or in part on a retroactive basis after Buyer has exercised the Option, then Buyer shall have the right to offset against payments due to Seller that portion of such award amount equivalent to the lost PGC Funds paid by Buyer to Seller between the period in which the PGC Funds were revoked and reinstated. Seller shall notify Buyer in writing of any such reinstatement of PGC Funds within 10 days of receiving notice of such reinstatement from the CEC, CPUC, or other regulatory agency responsible for the PGC Funds program, which notice shall include a copy of the notice."



- (i) Section 10.5, Assignment, shall be modified by deleting the words "or delayed" as used in the first sentence of that Section.
- (j) Section 10.10, Confidentiality, shall be modified as follows by:
  - (i) adding the word "the" before "Buyer's Procurement Review Group" in subpart (ii);
  - (ii) deleting the phrase "and made applicable to this Agreement by D.04-06-015" in subpart (ii); and
  - (iii) replacing the word "FERC" in subpart (vi) with the words "Federal Energy Regulatory Commission."
- (k) Section 10.11, RPS Confidentiality, shall be hereby deleted in its entirety and replaced with the following:

"10.11 RPS Confidentiality. Notwithstanding Section 10.10 of this Agreement at any time on or after the date on which the 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 10.11, until six months after such CPUC Approval."

- (l) Section 10.15(b), Qualification of Project as Eligible Renewable Energy Resource, shall be deleted in its entirety and replaced with the following:

"(b) Qualification of Project as Eligible Renewable Resource. Seller, and, if applicable, its successors, covenants throughout the term of the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard."

- (m) The following paragraph shall be added to the PPA as Section 10.2 (i):

"(i) Seller, and, if applicable, its successors, represents and warrants throughout the term of the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard."

## 2. CPUC Approval

This Amendment shall become effective upon satisfaction of the following conditions precedent:

(a) CPUC Approval; and

(b) PG&E's receipt of a final and non-appealable CPUC order that finds that PG&E's entry into this Amendment is reasonable and that payments to be made by PG&E under the PPA as amended herein are recoverable in rates.

If both of the above-listed conditions precedents are not satisfied on or before sixty (60) 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 PPA, other than the terms addressed in this Amendment, shall be deemed modified, amended, waived, or otherwise affected by this Amendment. If there is a conflict between the terms of the PPA and those of this Amendment, this Amendment shall control.

**IN WITNESS WHEREOF**, each Party has caused this Amendment to be executed by their authorized representatives, effective as of this 29<sup>th</sup> day of November, 2006. By signing this Amendment, each of the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

*[signature page follows]*

**PACIFIC GAS AND ELECTRIC  
COMPANY**

By: Roy M. Kuga 

Title: Vice President, Energy Supply

Date: November 29, 2006

**NORTHWEST GEOTHERMAL  
COMPANY**

By: Douglas S. Perry

Title: President, Davenport Power, LLC,  
Operator


Date: November 29, 2006

CONFIDENTIALITY PROTECTED Under D.06-06-066 App 1 Item VII "Contracts & PPAs"

**PACIFIC GAS AND ELECTRIC  
COMPANY**

By: Roy M. Kuga  
Title: Vice President, Energy Supply  
Date: November 29, 2006

**NORTHWEST GEOTHERMAL  
COMPANY**

  
By: Douglas S. Perry  
Title: President, Davenport Power, LLC,  
Operator  
Date: November 29, 2006

{00266474.DOC v 7}8

Execution Copy