

**POWER PURCHASE AND SALE AGREEMENT**

**Between**

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

and

**ARLINGTON WIND POWER PROJECT LLC**  
(as "Seller")

**POWER PURCHASE AND SALE AGREEMENT**

TABLE OF CONTENTS

COVER SHEET 6 pages

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS..... 1

ARTICLE TWO: GOVERNING TERMS AND TERM..... 23

    2.1 Entire Agreement ..... 23

    2.2 Interpretation ..... 23

    2.3 Authorized Representatives ..... 24

    2.4 Recording ..... 24

    2.5 Term ..... 24

    2.6 Binding Nature ..... 25

ARTICLE THREE: OBLIGATIONS AND DELIVERIES ..... 25

    3.1 Seller’s and Buyer’s Obligations ..... 25

    3.2 Green Attributes ..... 35

    3.3 Resource Adequacy ..... 35

    3.4 Delivery; Seller’s Arrangements with Shaping Party ..... 35

    3.5 Standards of Care ..... 39

    3.6 Metering ..... 40

    3.7 Outage Notification ..... 41

    3.8 Operations Logs and Access Rights ..... 44

    3.9 New Generation Facility ..... 44

    3.10 Replacement Shaping Party ..... 47

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS ..... 51

    4.1 Contract Price and Shaping Fee ..... 51

    4.2 TOD Periods ..... 51

    4.3 TOD Factors and Monthly TOD Payment ..... 51

    4.4 Excess Net Output ..... 51

    4.5 Additional Compensation ..... 51

    4.6 Increased Costs of Wind Integration Changes; Market  
    Restructuring ..... 52

    4.7 Adjustment of Shaping Fee ..... 53

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE  
REQUIREMENT; REMEDIES ..... 53

    5.1 Events of Default ..... 53

    5.2 Declaration of Early Termination Date ..... 56

    5.3 Calculation of Termination Payment ..... 56

    5.4 Notice of Payment of Termination Payment ..... 57

5.5	Disputes with Respect to Termination Payment .....	57
5.6	Right to Seek Payment.....	57
5.7	[Intentionally Omitted] .....	57
5.8	Damages for Failure to Deliver or Receive Scheduled Energy .....	58
ARTICLE SIX: PAYMENT.....		60
6.1	Billing and Payment; Remedies.....	60
6.2	Disputes and Adjustments of Invoices.....	60
ARTICLE SEVEN: LIMITATIONS.....		61
7.1	Limitation of Remedies, Liability and Damages .....	61
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS .....		62
8.1	Buyer Financial Information.....	62
8.2	Seller Financial Information .....	62
8.3	Grant of Security Interest/Remedies.....	63
8.4	Project Development Security; Performance Assurance .....	63
8.5	Letter of Credit.....	65
ARTICLE NINE: GOVERNMENTAL CHARGES .....		66
9.1	Cooperation.....	66
9.2	Governmental Charges.....	66
ARTICLE TEN: MISCELLANEOUS .....		67
10.1	No Fault Termination – Production Tax Credit.....	67
10.2	Representations and Warranties.....	71
10.3	Covenants.....	73
10.4	Title and Risk of Loss .....	74
10.5	Indemnities.....	74
10.6	Assignments .....	76
10.7	Confidentiality .....	76
10.8.	RPS Confidentiality .....	77
10.9	Audit.....	77
10.10	Insurance .....	77
10.11	Access to Financial Information .....	81
10.12	Governing Law .....	81
10.13	General.....	81
10.14	Federal Power Act.....	82
10.15	Severability .....	82
10.16	Counterparts .....	82
ARTICLE ELEVEN: CONDITIONS PRECEDENT .....		82
11.1	Conditions Precedent .....	82
11.2	Failure to Meet All Conditions Precedent.....	82
11.3	Buyer’s Duty to Seek CPUC Approval.....	83

ARTICLE TWELVE: DISPUTE RESOLUTION.....	83
12.1 Intent of the Parties .....	83
12.2 Management Negotiations .....	83
12.3 Mediation .....	84
12.4 Arbitration.....	84
ARTICLE THIRTEEN: NOTICES .....	85
Appendix I, Form of Letter of Credit	
Appendix II, Initial Shaped Energy Delivery Date Confirmation Letter	
Appendix III, Permitting and Construction Milestones Schedule	
Appendix IV, Project Description	
Appendix V, Form of Certification	
Appendix VI, Commercial Operation Date Certification Procedure	
Appendix VII, Form of Monthly Progress Report	
Appendix VIII, Outage Notification Form	
Appendix IX, Counterparty Notification Requirements for Outages	
Appendix X, Resource Adequacy	
Appendix XI, Examples	
Appendix XII, Forms of Consent and Agreement	
Part A: Form of Consent and Agreement (Secured Financing Parties)	
Part B: Form of Consent and Agreement (Unsecured Financing Parties)	
Appendix XIII, [Intentionally Omitted]	
Appendix XIV, Cost Components of Buyer’s Shaping Party Fee and Adjusted Shaping Fee	
Appendix XV, Diagram of Delivery Structure Under Shaping Agreement	
Appendix XVI, Certification of Delivery and Receipt of Shaping Agreement	

**POWER PURCHASE AND SALE AGREEMENT**

COVER SHEET

This Power Purchase and Sale Agreement is made as of the Execution Date set forth on the signature page hereof. The General Terms and Conditions attached hereto, along with this Cover Sheet, appendices, schedules and any written supplements hereto between the Parties shall be referred to collectively as the "Agreement." Seller and Buyer listed below are each individually considered a "Party" and collectively are considered the "Parties" to the Agreement.

Name: Arlington Wind Power Project LLC  
("Seller")

**All Notices:**

c/o Horizon Wind Energy LLC  
808 Travis, Suite 700  
Houston, Texas 77002  
Attn: Chief Operating Officer  
Phone: (713) 265-0244  
Facsimile: (713) 265-0365



**Invoices:**

Attn: Brian Hayes  
(brian.hayes@horizonwind.com)

Phone: 713-265-0245  
Facsimile: 713-265-0365

**Scheduling Coordinator:** Constellation  
Energy Commodities Group, Inc.,  
represented by:

Attn: COB Scheduler  
Phone: 410-468-3530  
Facsimile: 410-468-3540

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

**All Notices:**

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

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



**Invoices:**

Attn: Amol Patel ([AxPx@pge.com](mailto:AxPx@pge.com))

Manager, Bilateral Settlements  
Phone: (415) 973-6510  
Facsimile: (415) 973-2151

**Scheduling Coordinator:** PG&E, represented by:

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

**Payments:**

Attn: Brian Hayes  
(brian.hayes@horizonwind.com)

Phone: 713-265-0245  
Facsimile: 713-265-0365



**Payments:**

Attn: Amol Patel (AxPx@pge.com)

Manager, Bilateral Settlements  
Phone: (415) 973-4569  
Facsimile: (415) 973-2151



**Credit and Collections:**

Attn: Jayshree Desai  
(jayshree.desai@horizonwind.com)  
Phone: 713-265-0253  
Facsimile: 713-265-0365

**Credit and Collections:**

Attn: Credit Risk Management  
Manager, Credit Risk Management  
Phone: (415) 973-9099  
Facsimile: (415) 973-7301

**With additional Notices of an Event of Default to:**

Attn: Leslie Freiman, Esq.  
(leslie.freiman@horizonwind.com)  
Phone: 713-265-0252  
Facsimile: 713-265-0365

**Contract Manager:**

Attn: Ted Yura (THY1@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:

---

**Article Three**

New Generation Facility

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

**Article Eight**

Credit and Collateral Requirements

8.2      Seller Financial Information:

- Option A  
X      Option B: Specify: Energias de Portugal, S.A.

8.4      Project Development Security; Delivery Term Security

- x      Applicable  
      Not Applicable

If Applicable:

**The following is the “Project Development Security”**

8.4 (a)(i) Project Development Security Amount: \$ 1,040,000

8.4 (a)(ii) Project Development Security Amount: \$ 3,118,000

Total Project Development Security Amount: \$ 4,158,000

Type of Project Development Security: Letter of Credit or Cash.

**The following is the “Delivery Term Security”**

8.4(a)(iii) Delivery Term Security Amount: \$ 15,500,000

Type of Delivery Term Security: Letter of Credit

**Article 10**

10.1 No Fault Termination – Production Tax Credit

- Not Applicable
- Applicable

10.7 Confidentiality

- Confidentiality Applicable : If not checked, inapplicable.
  - Confidentiality Notification: If checked on the Cover Sheet, Seller has waived its right to notification in accordance with Section 10.7 (v).
-



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

Appendix I, Form of Letter of Credit

Appendix II, Initial Shaped Energy Delivery Date Confirmation Letter

Appendix III, Permitting and Construction Milestones Schedule

Appendix IV, Project Description

Appendix V, Form of Certification

Appendix VI, Commercial Operation Date Certification Procedure

Appendix VII, Form of Monthly Progress Report

Appendix VIII, Outage Notification Form

Appendix IX, Counterparty Notification Requirements for Outages

Appendix X, Resource Adequacy

Appendix XI, Examples

Appendix XII, Forms of Consent and Agreement

Part A Form of Consent and Agreement (Secured Financing Parties)

Part B: Form of Consent and Agreement (Unsecured Financing Parties)

Appendix XIII [Intentionally Omitted]

Appendix XIV, Cost Components of Buyer's Shaping Party Fee and Adjusted Shaping Fee

Appendix XV, Diagram of Delivery Structure Under Shaping Agreement

Appendix XVI, Certification of Delivery and Receipt of Shaping Agreement

**(Signature Page Follows)**


EXECUTION COPY

Agreement Execution

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

ARLINGTON WIND POWER PROJECT LLC

PACIFIC GAS AND ELECTRIC COMPANY

Signature: 

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

Name: Antonio Coutinho

Name: Roy Kuga

Title: Chief Energy Management Officer

Title: Vice President, Energy Supply

Date: May 28, 2008

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

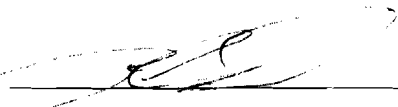
**Agreement Execution**

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

ARLINGTON WIND POWER PROJECT LLC

PACIFIC GAS AND ELECTRIC COMPANY

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

Signature:   
Name: Roy Kuga  
Title: Vice President, Energy Supply  
Date: May 28, 2008



## GENERAL TERMS AND CONDITIONS

### ARTICLE ONE: GENERAL DEFINITIONS

1.1 “AAA” has the meaning set forth in Section 12.3.

1.2 “Adjustment Factors” has the meaning set forth in Section 10.1(b)(i).

1.3 “Affiliate” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power. A Financing Party shall not be considered an Affiliate solely due to its role as a Financing Party.

1.4 “Agreement” has the meaning set forth in the Cover Sheet. For purposes of Section 10.12, the use of the word “agreement” shall have the same meaning as Agreement.

1.5 “Alternative Delivery Point” means a delivery point, other than the Primary Delivery Point, that is mutually agreed to by Buyer and the Shaping Party. If Buyer and the Shaping Party agree to an Alternative Delivery Point, Buyer shall promptly notify Seller of such agreement and the Alternative Delivery Point.

1.6 “Alternative Delivery Structure” has the meaning set forth in Section 3.10(a)(ii).

1.7 “Alternative Delivery Structure Term Sheet” has the meaning set forth in Section 3.10(a)(ii).

1.8 “Approval Period” has the meaning set forth in Section 10.1(c)(ii).

1.9 “Associated Project Delivery Period” has the meaning set forth in Section 3.1(i)(i).

1.10 “ATC” means the available transfer capacity of a given transmission path, expressed in MW, after allocation of rights associated with Existing Contracts and Transmission Ownership Rights (as such terms are defined (including any modifications thereto) in the CAISO or BPA transmission capacity rating guidelines), to that path’s Operating Transfer Capability established consistent with the CAISO and WECC transmission capacity rating guidelines for Captain Jack and consistent with the BPA and WECC transmission capacity rating guidelines for Malin; *provided* that the definition of ATC in this Agreement shall be subject to any amendments or modifications to ATC by the CAISO or BPA. Under the terms and conditions of this Agreement, ATC shall be determined by the CAISO at Captain Jack, including any modifications from time-to-time by the CAISO, and ATC shall be determined by BPA at Malin, including any modifications from time to time by BPA.

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

1.12 “BPA” means Bonneville Power Administration or any successor entity or entities transmitting or transporting electric energy on behalf of Seller or Shaping Party at or from the Interconnection Point and also includes any entity or entities providing secondary transmission to Shaping Party in connection with this Agreement.

1.13 “Business Day” means any day except a Saturday, Sunday, or a NERC Holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. (Pacific Prevailing Time).

1.14 “Buyer” shall have the meaning set forth on the Cover Sheet.

1.15 “Buyer Indemnified Parties” shall have the meaning set forth in Section 10.5(a)(i).

1.16 “Buyer’s WREGIS Account” shall have the meaning set forth in Section 3.1(o)(i).

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

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

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

1.20 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project or the Shaped Energy may be counted toward a resource adequacy requirement or any other measure by BPA, the FERC or any other state or federal entity.

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

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

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

1.24 “COB” means the electricity trading hub that is the point of control area interchange at the California-Oregon border between the 500 kV transmission system owned and/or controlled by BPA and other Pacific Northwest entities (including its or their successor(s)), and the 500 kV transmission system owned and/or controlled by the CAISO and other California entities (including its or their successor(s)), which includes the substations of Captain Jack and Malin and any other substations or transmission lines added to such hub after the Execution Date.

1.25 “COB Mid-C Spread Change” means the amount, either positive or negative, calculated by subtracting the Initial Reference Value from the Final Reference Value.

1.26 “Commercial Operation Date” means the date on which both of the following have occurred: (a) the conditions set forth in Sections 1 through 4 of Appendix VI have been satisfied with respect to the Project, and (b) Seller has delivered to Buyer a certification substantially in the form attached hereto as Appendix V, certifying that the requirements of Sections 1 through 4 of Appendix VI have been satisfied with respect to the Project.

1.27 “Conditions Precedent” has the meaning set forth in Section 11.1.

1.28 “Construction Start Date” means the later to occur of the date on which Seller delivers to Buyer (i) a copy of the notices delivered to the turbine supplier, electrical contractor and balance of plant contractor, as described on Appendix III, and (ii) Seller’s written certification, substantially in the form attached hereto as Appendix V, that it has delivered those notices.

1.29 “Contract Capacity” means the generation capacity designated for the Project in Section 3.1(f).

1.30 “Contract Price” means \$76.75 per MWh. The Contract Price *excludes* the Shaping Fee.

1.31 “Contract Quantity” means 240,000 MWhs.

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

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

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

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

1.36 “CPUC Amendment Approval” has the meaning set forth in Section 10.1(b)(viii).

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

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

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

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

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

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

1.40 “Curtailed” means (i) a curtailment ordered by BPA, or (ii) scheduled or unscheduled outage on BPA’s transmission facilities, that, in either case, prevents or

limits Seller's ability to deliver energy from the Project to the Interconnection Point, or prevents or limits Shaping Party's ability to receive energy from the Project at the Interconnection Point. If a Party becomes aware of a Curtailment, it shall notify the other Party of the expected scope and duration of the Curtailment as soon as practicable.

1.41 "Daily Delay Damages" means with respect to a Guaranteed Project Milestone and subject to Section 3.9(d)(iii)(B), an amount equal to (a) the Project Development Security Amount posted as of the first date that Daily Delay Damages are payable under this Agreement with respect to such Guaranteed Project Milestone, divided by (b) 120.

1.42 "Damages" means any and all claims, liabilities, losses, damages, causes of action, fines, interest, awards, penalties, litigation, lawsuits, administrative proceedings, administrative investigations, costs, and expenses (including reasonable attorney's fees, court costs and other costs of suit, arbitration, dispute resolution or other similar proceedings), including for injury, illness or death and including those owed to third parties (whether asserted in contract, in warranty, in tort, by statute or otherwise) incurred by the claiming Party.

1.43 "Day Ahead Schedule" shall mean a Schedule prepared by a Scheduling Coordinator on a timeframe consistent with a WECC Scheduling Day.

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

1.45 "Delivery Point" is defined in Section 3.1(d).

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

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

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

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

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

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

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

1.53 "Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources



Code Section 25741, as either code provision is amended or supplemented from time to time.

1.54 “Energy” shall mean the general term of energy for purposes of the definition of Green Attributes.

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

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

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

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

1.59 “Executive(s)” has the meaning set forth in Section 12.2(a).

1.60 “Exercise Period” has the meaning set forth in Section 3.7(c)(vi)(C).

1.61 “Existing Contracts” means the contracts that grant transmission service rights in existence on the ISO Operations Date (as defined in the CAISO Tariff) (including any contracts entered into pursuant to such contracts) as may be amended in accordance with their terms or by agreement between the parties thereto from time to time.

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

1.63 “Final Reference Value” shall be the hourly average (weighted by On-Peak Hours and Off-Peak Hours, to the extent that indicative quotes are available for On-Peak Hours and Off-Peak Hours during the applicable calendar year(s)) of three (3) days of indicative quotes provided by four (4) brokers (ICAP, Tullet, TFS and Prebon). The indicative quotes shall be on the COB-Mid C spread for the calendar years 2009-2013. Shaping Party shall determine the three (3) day average of the COB-Mid C spread quotes received from the four (4) brokers as follows: the first day’s average shall be for the first Business Day immediately following the day on which the CPUC Approval of this Agreement is final and non-appealable. The next two (2) days’ averages shall be for the next two (2) Business Days after the first Business Day for which averages are calculated. An example illustrating the calculation of the Final Reference Value under certain stated assumptions is set forth in Appendix XI.

1.64 “Financing Parties” means with respect to Seller and the Project, (i) the lenders (including any trustee or agent on behalf of such lenders) providing development, bridge, construction and/or permanent debt financing or refinancing of the development, construction, ownership, leasing, operation or maintenance (including working capital) of

the Project, whether that financing or refinancing takes the form of private debt, public debt or any other form (including but not limited to debt financing or refinancing provided to a member or other direct or indirect owner of Seller), and (ii) any Person or Persons who provide funds to Seller directly or indirectly primarily in connection with the utilization of PTCs and tax depreciation benefits associated with holding an ownership interest in the Project (which Person or Persons shall not include Seller or any of its Affiliates).

1.65 “Firm Block Energy Confirmation” means the confirmation set forth in Exhibit B of the Shaping Agreement.

1.66 “Force Majeure” shall mean any event or circumstance that wholly or partly prevents or delays Seller’s performance of any material obligation arising under this Agreement that concerns the generation of Products from the Project or the delivery or receipt of Products at the Interconnection Point (including any event or circumstance that wholly or partly prevents or delays Shaping Party’s performance under the Unit Contingent Confirmation), but only if and to the extent (i) such event or circumstance is not within the reasonable control, directly or indirectly, of the Person affected by the event or circumstance, (ii) the affected Person has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on Seller’s ability to perform its obligations under this Agreement and which by the exercise of due diligence the affected Person could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the affected Person. A Force Majeure shall not result in a breach or Event of Default under this Agreement.

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

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

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

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

(b) Force Majeure shall not be based on:

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

(ii) Seller's inability to obtain approvals of any type for the construction, operation, or maintenance of the Project, except if Seller's inability to obtain approvals is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above or of the type contemplated by the first grammatical paragraph of this definition;

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

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

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

(vi) a strike, work stoppage or labor dispute that is limited exclusively to personnel who are (x) performing work specifically at the Project or at any portion thereof, and (y) who are employed by any one or more of Seller, Seller's Affiliates or subcontractors thereof or any third party engaged by Seller to work specifically on the Project or any portion thereof; *provided, however*, that before the Commercial Operation Date such a strike, work stoppage or labor dispute shall nonetheless be a Force Majeure event (A) until the first to occur of (1) the engagement of replacement personnel or employees that overcome the effect of the strike, work stoppage or labor dispute, or (2) the passage of sixty (60) days from the commencement of the strike, work stoppage or labor dispute, or (B) to the extent that the employees or personnel involved are unionized and/or the subject of a contract entered into in the ordinary course of business and cannot be discharged or replaced without violating Law or breaching the contract.

(vii) any equipment failure except if such equipment failure is caused solely by an independent, identifiable event of Force Majeure or by a serial defect that, at any time before the third anniversary of the Commercial Operation Date affects at least fifty percent (50%) of the Wind Turbines included in the Project;

(viii) an Uncontrollable Force (which shall apply only to events occurring after the Interconnection Point that affect deliveries of Shaped Energy to or at the Delivery Point); or

(ix) Any Curtailment.

1.67 "Forced Outage" means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated

trip in response to an alarm or equipment malfunction at the Project, for maintenance or repair at the Project that is not a Planned Outage and not the result of Force Majeure.

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 the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining economic benefit may include, without limitation, reference to information supplied by one or more third parties or information available internally to a Party (as long as such internal information is used together with information supplied by one or more third parties), including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, Market Price Referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, or settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term. Notwithstanding the foregoing, information available to a Party internally shall not be used exclusively in determining economic benefit and may only be considered together with information supplied by one or more third parties.

1.69 “Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the wind energy industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

1.70 “Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority 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 “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question (including, when applicable, BPA and CAISO).

1.72 “Governmental Charges” has the meaning set forth in Section 9.2(a).

1.73 “Green 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. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any

avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

1.74 "Guaranteed Commercial Operation Date" shall have the meaning set forth in Section 3.9(d)(ii).

1.75 "Guaranteed Construction Start Date" shall have the meaning set forth in Section 3.9(d)(i).

1.76 "Guaranteed Energy Production" means the guaranteed energy production requirement contemplated by Section 3.1(e)(ii).

1.77 "Guaranteed Energy Production—Annual Test" means the product of 65% of the Contract Quantity and the ratio of the difference between (A) and (B), with the difference divided by (A), where (A) is 8,760 (8,784 in leap years), and (B) is the aggregate number of Seller Excuse Hours in the applicable Contract Year. An example illustrating the application of this definition under certain stated assumptions is set forth in Appendix XI.

1.78 "Guaranteed Energy Shortfall" is defined in Section 3.1(e)(ii)(A).

1.79 “Guaranteed Project Milestones” shall have the meaning set forth in Section 3.9(d).

1.80 “Hour Ahead” shall have the meaning set forth in the CAISO Tariff.

1.81 “Imbalance Energy” means the amount of energy, in any given hour, by which the amount of Shaped Energy deviates from the amount of Scheduled Energy.

1.82 “Indemnified Party” means either Seller Indemnified Parties or Buyer Indemnified Parties which is seeking indemnification pursuant to Section 10.5, as the case may be.

1.83 “Indemnifying Party” means either Seller or Buyer which is required to indemnify the Indemnified Party pursuant to Section 10.5, as the case may be.

1.84 “Initial Shaped Energy Delivery Date” shall have the meaning set forth in Section 3.1(c).

1.85 “Initial Negotiation End Date” has the meaning set forth in Section 12.2(a).

1.86 “Initial Reference Value” shall be Four Dollars and Sixty One Cents (\$4.61) per MWh.

1.87 “Interconnection Agreement” means the Standard Large Generation Interconnection Agreement Contract No. 05TX-11935 dated September 16, 2005 between Columbia Energy Partners, as interconnector, and BPA, including Revision No. 1, Appendix A (November 8, 2005) and Revision No. 2, Appendix A (March 7, 2006), as such agreement may be revised, amended, reissued or restated from time to time. Columbia Energy Partners has assigned its interest in the Interconnection Agreement to Seller.

1.88 “Interconnection Facilities” means the facilities, apparatus installed, and means required by the Interconnection Agreement.

1.89 “Interconnection Point” means the point located inside the BPA’s Jones Canyon Substation, on the high side of the 230 kV motor operated disconnect switch located where the Jones Canyon Substation 230 kV bus connects to Seller’s Arlington Wind Project Substation bus, further depicted in Appendix A, Attachment 2 of the Interconnection Agreement.

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

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

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

1.93 “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.

1.94 “Law” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including (i) any of the foregoing that are enacted, amended, or issued after the Execution Date and become effective during the Delivery Term; or (ii) any binding interpretation of any of the foregoing. For purposes of Sections 10.2(b)(ii) and 10.12, the use of the word “law” shall have the same meaning as Law.

1.95 “Letter 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 Appendix I to this Agreement.

1.96 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.3. Factors used in determining the loss of economic benefit may include, without limitation, reference to information supplied by one or more third parties or information available internally to a Party (as long as such internal information is used together with information supplied by one or more third parties), including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, Market Price Referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of the Transaction to determine economic loss and include the value of Green Attributes. Notwithstanding the foregoing, information available to a Party internally shall not be used exclusively in determining economic benefit and may only be considered together with information supplied by one or more third parties. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of Production Tax Credits or other federal or state tax credits related to the Project or generation therefrom. If the Non-Defaulting Party is the Buyer and Buyer calculates “Losses” so as to claim cover damages for Buyer’s incremental cost of acquiring replacement Product, Buyer shall not be entitled to claim penalties assessed against Buyer by the CPUC pursuant to the Renewable Portfolio Standard, Public

Utilities Code Section 399 et seq., with respect to each MWh for which Buyer seeks cover damages. Conversely, to the extent Buyer claims penalties assessed against Buyer by CPUC pursuant to the Renewable Portfolio Standard, Public Utilities Code Section 399 et seq. (either as an element of Losses or pursuant to the indemnity set forth in Section 10.5(a)(ii)), then for each MWh for which such penalty is claimed by Buyer, the cover damages for replacement Product shall be excluded from Buyer's Losses and shall not be claimed or recovered by Buyer.

1.97 "Major Forced Outage" means any Forced Outage involving the shutdown of more than ten percent (10%) of the Wind Turbines at one time.

1.98 "Malin" means the Malin substation located within the COB trading hub.

1.99 "Manager" has the meaning set forth in Section 12.2(a).

1.100 "Market Price Index" means the COB On Peak and Off Peak Indices as published by IntercontinentalExchange ("ICE") on ICE's official website (currently located at <http://www.intex.com>) or any successor thereto, under the headings "Price Indices, Power COB." If the Market Price Index or any replacement of that index ceases to be published or ceases to be the market standard index for deliveries at COB, Buyer shall propose as a replacement Market Price Index a substantially equivalent index that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of electricity (firm on-peak and firm off-peak) at COB for the applicable periods. The proposed replacement Market Price Index shall be subject to Seller's consent, which shall not be unreasonably withheld, conditioned or delayed.

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

1.102 "Milestone" has the meaning set forth in Section 3.9(c).

1.103 "Monthly Progress Report" means the report similar in form and content attached hereto as Appendix VII.

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

1.105 "MWh" means megawatt-hour.

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

1.107 "NERC Holiday" means the NERC Holidays, as defined by NERC, and may be modified by NERC from time to time. As of the Execution Date, the NERC Holidays, as defined by NERC, are the following: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each



year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4<sup>th</sup>) Thursday in November. New Year's Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the "NERC Holiday" is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the "NERC Holiday" remains on that Saturday.

1.108 "Net Output" means all of the 3-phase, 60-cycle electric energy produced by the Project as metered at the Interconnection Point by the metering facilities described in Section 3.6, expressed in MWh. Net Output *expressly excludes* (a) Green Attributes and (b) Capacity Attributes.

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

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

1.111 "Notice" shall, unless otherwise specified in this Agreement, mean written communications by a Party to be delivered to the applicable address specified in the Cover Sheet or otherwise in this Agreement by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). A Notice of any default or any other material occurrence under this Agreement shall describe the default or material occurrence in reasonable detail.

1.112 "Notice of Project Redelivery" has the meaning set forth in Section 3.7(c)(vi)(B).

1.113 "Off-Peak Banked Energy" means the positive or negative balance of the amount of Off-Peak Energy, which balance is incrementally increased or decreased by the Shaping Party in accordance with Section 3.1(j).

1.114 "Off-Peak Energy" means Net Output delivered to Shaping Party by Seller at the Interconnection Point during Off-Peak Hours.

1.115 "Off-Peak Hours" means the period of Off-Peak Hours, as defined by NERC, and as may be modified by NERC from time-to-time. As of the Execution Date, the Off-Peak Hours, as defined by NERC, are the hours ending (HE) 0100 PPT through HE 0600 PPT, HE 2300 through 2400 PPT and all hours on Sunday and NERC Holidays.

1.116 "On-Peak Banked Energy" means the positive or negative balance of the amount of On-Peak Energy, which balance is incrementally increased or decreased by the Shaping Party in accordance with Section 3.1(j).

1.117 "On-Peak Energy" means Net Output delivered to Shaping Party by Seller at the Interconnection Point during On-Peak Hours.

1.118 “On-Peak Hours” means the period of On-Peak Hours, as defined by NERC, and as may be modified by NERC from time-to-time. As of the Execution Date, the On-Peak Hours, as defined by NERC, are the hours ending (HE) 0700 PPT through HE 2200 PPT Monday through Saturday, excluding NERC Holidays.

1.119 “Operating Transfer Capability” means the maximum capability of a transmission path to transmit real power, expressed in MW, at any given point in time; *provided* that the definition of Operating Transfer Capability in this Agreement shall be subject to any amendments or modifications to Operating Transfer Capability by the CAISO for Captain Jack and shall be subject to any amendments or modifications to Operating Transfer Capability by BPA for Malin.

1.120 “Option” has the meaning set forth in Section 3.7(c)(vi)(C).

1.121 “Outage Notification Form” means the notice form attached hereto as Appendix VIII, which shall be submitted by Seller to Buyer in accordance with the relevant provisions of Section 3.7. Buyer reserves the right to revise or change the form by giving Notice to Seller.

1.122 “Pacific Prevailing Time” or “PPT” means Pacific Standard Time or Pacific Daylight Time, as applicable.

1.123 “Parties” means Seller and Buyer collectively. For purposes of Section 10.12, the use of the word “parties” shall have the same meaning as Parties.

1.124 “Party” means Seller or Buyer individually. For purposes of Section 10.12, the use of the word “party” shall have the same meaning as Party.

1.125 “Performance Assurance” means collateral in the form of Project Development Security and Delivery Term Security provided by Seller to Buyer to secure Seller’s obligations hereunder.

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

1.127 “Person” means an individual, corporation, limited liability company, voluntary association, joint stock company, business trust, partnership, agency, Governmental Authority or other entity.

1.128 “Placed in Service Requirement” means the placed in service criteria necessary to qualify for the PTCs as described in Section 45(c)(3)(A) of the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder.

1.129 “Post-PTC Amendment” has the meaning set forth in Section 10(a).

1.130 “Post PTC Offer” has the meaning as set forth in Section 10.1(b)(i).

1.131 “Post PTC Option” has the meaning as set forth in Section 10.1(b)(ii).

1.132 “Post PTC Product” has the meaning as set forth in Section 10.1(b)(i).

1.133 “Post PTC Exercise Period” has the meaning as set forth in Section 10.1(b)(ii).

1.134 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) involves the shutdown of more than ten percent (10%) of the Wind Turbines at any given time.

1.135 “Primary Delivery Point” means COB, which is the principal point of delivery for the Shaped Energy that Seller delivers to Buyer under this Agreement.

1.136 “Product” means (i) the Shaped Energy delivered by Seller to Buyer at the Delivery Point, (ii) the Green Attributes measured by Net Output and delivered by Seller to Buyer at the Delivery Point, and (iii) any Capacity Attributes associated with the Shaped Energy and/or the Project. Notwithstanding any other provision of this Agreement and for the avoidance of doubt, Product *specifically excludes* (and Seller shall retain for its own use) (A) PTCs, (B) any 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, and (C) any cash grants, subsidies or other monetary supports paid or payable to Seller by a Governmental Authority or a not for profit entity for the construction, ownership, use, operation or maintenance of the Project.

1.137 “Production Tax Credit” or “PTC” means the Section 45 PTCs and any other federal, state or local tax credits or other tax benefits resulting from the construction, ownership, use, operation or maintenance of the Project.

1.138 “Project” shall mean all of the Wind Turbines, the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility as more particularly described on Appendix IV. For purposes of the definition of Green Attributes, the word “project” shall have the same meaning as Project.

1.139 “Project Delivery Period” has the meaning set forth in Section 3.1(i)(ii).

1.140 “Project Development Security” is the collateral required of Seller, as specified in the Cover Sheet, and referred to in Section 8.4(a).

1.141 “Project Meter” has the meaning set forth in Section 3.6(a).

1.142 “PTC Legislation” has the meaning set forth in Section 10.1(a).

1.143 “RA Capacity” shall mean the maximum amount of Shaped Energy or generation from the Project that qualifies for Buyer’s Resource Adequacy Requirements.

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

1.145 “Redelivery Period” has the meaning set forth in Section 3.1(i)(iii).

1.146 “Redelivery Product” has the meaning set forth in Section 3.7(c)(vi)(B).

1.147 “Referral Date” has the meaning set forth in Section 12.2(a).

1.148 “Remedial Action Plan” has the meaning set forth in Section 3.9(c).

1.149 “Renewable Energy Credit” has the meaning set forth in the California Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Law.

1.150 “Replacement Period” has the meaning set forth in Section 3.10(e)(i).

1.151 “Replacement Price” means (i) the price per MWh at which Buyer, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the quantity of Shaped Energy in any hour that is less than the quantity of Scheduled Energy for that hour, or (ii) absent such a purchase, the market price per MWh at the Delivery Point for the quantity of Shaped Energy in any hour that is less than the quantity of Scheduled Energy for that hour, as such market price is determined by Buyer in a commercially reasonable manner.

1.152 “Replacement Shaping Agreement” has the meaning set forth in Section 3.10(c).

1.153 “Replacement Shaping Party” has the meaning set forth in Section 3.10(a)(i).

1.154 “Replacement Shaping Service Term Sheet” has the meaning set forth in Section 3.10(a)(i).

1.155 “Resale Price” means (i) the price per MWh at which Seller, acting in a commercially reasonable manner, effects a resale of the quantity of energy that Buyer scheduled or received at the Delivery Point in any hour that is less than the quantity of Scheduled Energy for that hour, or (ii) absent such a resale, the market price per MWh at the Delivery Point for the quantity of energy that Buyer scheduled or received at the Delivery Point in any hour that is less than the quantity of Scheduled Energy for that hour, as such market price is determined by Seller in a commercially reasonable manner.

1.156 “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource

Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

1.157 “Resource Adequacy Requirements” shall have the meaning set forth in Section 3.3.

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

1.159 “Schedule” or “Scheduling” means the actions of Shaping Party, Buyer and/or their designated representatives or Scheduling Coordinator, including each such entity’s transmission providers, if applicable, of notifying, requesting and confirming to each other the quantity of energy to be delivered on any given day or days during the Delivery Term at the Delivery Point.

1.160 “Scheduled Energy” means the quantities of Shaped Energy to be delivered at the Delivery Point pursuant to Section 3.1(j), as such quantities are scheduled under Section 3.4(d).

1.161 “Scheduling Coordinator” or “SC” means an entity certified by each operator of any portion of the transmission system where transmission of the energy will occur to undertake all functions necessary to schedule delivery and transmission of all energy to and at the Delivery Point. Seller’s Scheduling Coordinator is the Shaping Party, whose representative is designated on the Cover Sheet. Buyer shall serve as its own Scheduling Coordinator, and Buyer’s representative is designated on the Cover Sheet.

1.162 “Section 45 PTCs” means the production tax credits applicable to electricity produced from certain renewable resources pursuant to 26 U.S.C. § 45 or substantially equivalent tax credits based on energy production from any portion of the Project.

1.163 “Section 5.8 Damages” is defined in Section 5.8(a).

1.164 “SEC” means the U.S. Securities and Exchange Commission.

1.165 “Seller” shall have the meaning set forth on the Cover Sheet.

1.166 “Seller’s BPA Transmission Service” means twenty-five (25) MW of BPA Long Term Firm Point to Point Transmission Service procured by Seller from the Point of Delivery to the Northwest Market Hub.

1.167 “Seller Excuse Hours” means those hours during which Seller is unable to schedule or deliver energy at the Interconnection Point as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, or (c) a Curtailment.

1.168 “Seller Indemnified Parties” shall have the meaning set forth in Section 10.5(b).

1.169 “Seller’s WREGIS Account” shall have the meaning set forth in Section 3.1(o)(i).

1.170 “Settlement Agreement” means the Bonneville Power Administration 2009 Wind Integration – Within-Hour Balancing Service Rate Case Settlement Agreement.

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

1.172 “Shaped Energy” means flat blocks of twenty-five (25) MW of electrical energy delivered or deemed delivered to Buyer by the Shaping Party at the Delivery Point.

1.173 “Shaping Agreement” means the Master Power Purchase and Sale Agreement between Shaping Party and Seller dated May 28, 2008, including the Unit Contingent Confirmation and the Firm Block Energy Confirmation. As of the Execution Date, Seller has executed a separate certificate in the form of Appendix XVI to which it has attached a true and correct copy of the Shaping Agreement, and Buyer has countersigned the certificate acknowledging receipt of such Shaping Agreement.

1.174 “Shaping Fee” means Twenty Dollars and Six Cents (\$20.06) per MWh, which is the price in U.S. Dollars to be paid by Buyer to Seller for the shaping and redelivery of the Shaped Energy at the Delivery Point. The Shaping Fee shall be adjusted after the Effective Date as provided in Section 4.7.

1.175 “Shaping Party” means Constellation Energy Commodities Group, Inc., or its successors or assigns. The Shaping Party shall provide to Seller the shaping and firming services contemplated by the Shaping Agreement.

1.176 “Shaping Party Contract Price” means the “Contract Price” specified in Section 2.1(b) of the Firm Block Energy Confirmation.

1.177 “Shaping Party Default” shall occur on the date of termination by Seller of the Shaping Agreement following default by the Shaping Party.

1.178 “Shortfall Price” means any positive difference between (i) the time weighted average (based on the on peak hours and the off peak hours during the day) of the daily prices of electricity at COB (as published by the Market Price Index) for the prior Contract Year plus Twenty-Five Dollars (\$25.00) per MWh (to reflect the agreed-upon per MWh value of Green Attributes), and (ii) the Contract Price plus the Shaping Fee for the same prior Contract Year.

1.179 “Site” shall mean the location of the Project as described in Appendix IV.

1.180 "Term" shall have the meaning provided in Section 2.5.

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

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

1.183 "Transaction" means the transaction contemplated by this Agreement.

1.184 "Transmission Ownership Rights" means a non-Participating TO ownership or joint ownership right to transmission facilities within the ISO Control Area that has not executed the Transmission Control Agreement and the transmission facilities are not incorporated into the ISO Controlled Grid. The terms used in this definition (as indicated by initial capitalization) shall have the meaning given to them in the CAISO Tariff.

1.185 "Transmission Path" means each "Point-of-Receipt" and "Point-of-Delivery" to be implemented in order to flow electricity from the electric power generation source to Buyer at the Delivery Point, including each firm transmission provider between such source and the Delivery Point and each firm transmission OASIS number to be implemented between such source and the Delivery Point.

1.186 "Transmission Upgrades" means any additions and/or reinforcements to an electric transmission system that are required under the Interconnection Agreement as the result of the interconnection of the Project to BPA's electric system.

1.187 "Uncontrollable Force" means an event or circumstance that prevents one Party from performing its obligations under this Agreement, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which by the exercise of due diligence the claiming Party is unable to avoid, cause to be avoided, or overcome.

(a) So long as the requirements of the preceding sentence are met, an "Uncontrollable Force" may include and is not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any Governmental Authority.

(b) The following shall not be considered "Uncontrollable Forces": (i) Seller's or Shaping Party's cost of obtaining energy; (ii) Buyer's inability due to the price of energy, to use or resell such energy; (iii) Buyer's inability to transmit Shaped Energy from the Delivery Point to load or any other destination; or (iv) Buyer's inability to obtain licenses, permits, tariffs, or other Governmental Approvals required to perform the transactions contemplated by this Agreement (other than the CPUC Approval and the Condition Precedent set forth in Section 11.1(c)).

(c) No Party shall be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period; *provided, however*, that nothing contained in this definition of “Uncontrollable Force” shall be construed to require a Party to settle any strike or labor dispute in which it may be involved.

(d) Notwithstanding the “due diligence” obligations or obligations to remove or remedy the causes set forth in the foregoing paragraph (which do not apply to this paragraph except as specified below), where the entity providing transmission services for delivery of Shaped Energy under this Agreement interrupts such transmission service, the interruption in transmission service shall be considered an Uncontrollable Force only in the following two sets of circumstances:

(i) If (A) Shaping Party and Buyer (or Seller and Buyer) agreed on a Transmission Path during normal WECC preschedule trading, but in no event later than 7:30 am PPT for deliveries to the Delivery Point (*provided, however*, that if normal WECC preschedule trading procedures change after the Execution Date in a manner that makes 7:30 a.m. PPT an unreasonable deadline, Buyer and Seller, on the one hand, and Shaping Party, on the other, shall mutually agree on a revised deadline according to the then-current WECC preschedule procedures and practices), (B) firm transmission involving the Transmission Path was obtained by the Shaping Party pursuant to a transmission tariff or contract to effectuate the transaction under this Agreement, (C) such entity providing transmission service curtailed or interrupted such firm transmission pursuant to the applicable transmission tariff or contract, and (D) Shaping Party has made commercially reasonable efforts (under the circumstances) to obtain alternate energy at the Delivery Point, alternate transmission services or an alternate means of delivering energy; or

(ii) If Shaping Party and Buyer (or Seller and Buyer) did not agree on the Transmission Path pursuant to clause (i) above, an interruption in transmission service shall be considered an Uncontrollable Force only if (A) Shaping Party shall have made arrangements with an entity providing transmission service for firm transmission to effectuate the transaction under this Agreement, (B) such entity providing transmission service curtailed or interrupted such transmission service due to an event of Uncontrollable Forces or provision of like effect, and (C) Shaping Party could not obtain alternate energy at the Delivery Point, alternate transmission services, or alternate means of delivering energy after exercising due diligence.

(e) If a claiming Party is attempting to avoid, cause to be avoided, or overcome an Uncontrollable Force, in accordance with this Section, the other Party shall reasonably cooperate with such attempts by the claiming Party.

Notwithstanding this definition of “Uncontrollable Force” and the provisions pertaining to that term, an event that affects the generation of Products from the Project or the delivery or receipt of Products at the Interconnection Point shall be governed by the



definition of “Force Majeure” and the provisions of this Agreement pertaining to Force Majeure.

1.188 “Unit”, as used in Appendix VIII, means the Project.

1.189 “Unit Contingent Confirmation” means the confirmation set forth as Exhibit A of the Shaping Agreement.

1.190 “WECC” means the Western Electricity Coordinating Council or successor agency.

1.191 “WECC Scheduling Day” means the preschedule day as defined in the WECC calendar.

1.192 “Weekly Delivery Notice” has the meaning set forth in Section 3.4(d)(ii).

1.193 “Wind Integration Change” means a change in any Law that:

(a) changes the ancillary service costs (including generation imbalance service), fees, penalties, expenses or benefits that the BPA assesses or provides that (i) are imposed, assessed or credited based on the impacts of energy generated by wind projects, and (ii) are imposed, assessed or credited in connection with either the Net Output received at the Interconnection Point or the Contract Capacity; or

(b) imposes new or additional (i) obligations on a Party to obtain or provide transmission service or ancillary services or (ii) wind integration service charges or imbalance costs, fees, penalties, expenses or provides benefits that, in either case, (x) are imposed, assessed or credited by BPA based on the impacts of energy generated by wind projects, and (y) are imposed, assessed or credited by BPA in connection with either the Net Output received at the Interconnection Point or the Contract Capacity, including any charges, costs, fees, penalties, expenses or benefits that are imposed, assessed or credited in connection with the Settlement Agreement.

“Wind Integration Change” shall not include any (A) changes in transmission service or ancillary service rates made pursuant to BPA general ratemaking proceedings, or (B) other changes affecting the costs, fees, penalties, expenses or benefits of point-to-point and other transmission service, scheduling and dispatch service, reactive power and voltage control service, operating reserve service (spinning and non spinning) that, in the case of each of the foregoing clauses (A) and (B), are not based on the impacts of energy generated by wind projects (even if energy generated by wind projects is affected by the change).

1.194 “Wind Integration Change Costs” has the meaning set forth in Section 4.6(a).

1.195 “Wind Turbine” means any of the forty-nine (49) Suzlon 2.1 MW wind turbine generators that are included as part of the Project, including any replacements or substitutes therefor.

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

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

1.198 "WREGIS Certificate Deficit" has the meaning set forth in Section 3.1(o)(vii).

1.199 "WREGIS Certificate Surplus" has the meaning set forth in Section 3.1(o)(vii).

1.200 "WREGIS Certificates" shall have the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewable Portfolio Standards.

1.201 "WREGIS Operating Rules" shall mean those operating rules and requirements adopted by WREGIS as of June 4, 2007, as subsequently amended or supplemented.

## ARTICLE TWO: GOVERNING TERMS AND TERM

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

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

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

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

(c) Defined terms (as indicated by initial capitalization) used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article One, unless otherwise specified.

(d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine

gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

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

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

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

2.3 Authorized Representatives. Each Party shall provide Notice to the other Party of the Persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or receipt 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 or other paperless memorialization (“Recording”) of all telephone calls or other remote conversations or communications between the Parties to this Agreement, *provided* that such calls, conversations or communications are typically recorded during transactions of the nature of those hereunder, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or Recording and to obtain any necessary consent of such officers and employees.

2.5 Term. The Term shall commence upon the satisfaction or waiver of the Conditions Precedent set forth in Section 11.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to 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); (ii) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due); and (iii) the conclusion of the Delivery Term with respect to Seller’s obligations under Sections 3.7(c)(vi) and 10.1 if either Party

exercises its rights to terminate this Agreement pursuant to Sections 3.7(c)(v) or 10.1. All indemnity rights shall survive the termination or expiration of this Agreement for twelve (12) months.

2.6 **Binding Nature.** This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

- (a) Sections 3.1(h), 3.1(o), 3.1(p), 3.1(q), 3.9(a)(vi), 5.1(a)(iv) and (v), and 5.1(b)(iv);
- (b) Section 5.1(a)(ii) only with respect to Section 10.2 and Section 5.1(a)(iii) only with respect to the Sections and Articles identified in this Section 2.6;
- (c) Sections 5.2 through 5.6;
- (d) Sections 8.3, 8.4(a)(i) and (ii) and 8.5;
- (e) Sections 10.1, 10.2, 10.3(b)(iii), 10.3(c), 10.6 through 10.8 and 10.12 through 10.15; and
- (f) Articles One, Two, Seven, Eleven, Twelve and Thirteen.

Upon occurrence of the Effective Date, this Agreement shall be in full force and effect, enforceable and binding in all respects.

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

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

(a) **Background.** Pursuant to the Shaping Agreement, (i) Seller sells and delivers Net Output to Shaping Party at the Interconnection Point, (ii) Shaping Party sells Shaped Energy in the quantity determined under Section 3.1(j) to Seller at the Delivery Point, and (iii) Seller takes title to such Shaped Energy at the Delivery Point. Pursuant to this Agreement Seller shall sell and deliver, and Buyer shall purchase and accept, the Product at the Delivery Point.

#### **(b) Transaction; Exclusivity.**

(i) Unless specifically excused by the terms of this Agreement, from the Initial Shaped Energy Delivery Date until the expiration or termination of the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, at the Delivery Point the quantity of Product specified herein, and Buyer shall pay Seller the Contract Price and Shaping Fee therefor, all in accordance with the terms hereof.

(ii) Buyer shall have no obligation to receive or purchase Product from Seller (A) before the commencement of the Delivery Term, or (B) after the expiration or termination of the Delivery Term.

(iii) Except as otherwise provided in this Agreement (including Section 4.6), Seller shall be responsible for any costs or charges imposed on or associated with the Product up to and at the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point.

(iv) Seller shall arrange and pay independently for any and all necessary costs under the Interconnection Agreement. In accordance with Section 3.4 and except as otherwise provided in Section 3.4(e), Section 3.10 and Section 4.6, Seller shall 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.

(v) Throughout the Delivery Term, Seller shall sell all energy (including Net Output, Scheduled Energy and Shaped Energy), Green Attributes and Capacity Attributes produced by or associated with the Project solely to Buyer, except that Seller may (A) provide energy from the Project to the extent and for the time period required under the Interconnection Agreement, (B) sell energy or Product to any third party or third parties during any period in which Buyer is in breach of its obligation to receive Shaped Energy or Product at the Delivery Point under this Agreement and such breach is continuing, and (C) sell energy from the Project to the Shaping Party for sale and delivery to Seller at the Delivery Point as Shaped Energy pursuant to the Shaping Agreement. Shaping Party may also sell Scheduled Energy to one or more third parties when Buyer fails to take Shaped Energy at the Delivery Point in breach of this Agreement and while such breach is continuing or when Uncontrollable Force prevents Shaping Party from delivering or Buyer from receiving Shaped Energy at the Delivery Point but only during the continuance of Uncontrollable Force. For the avoidance of doubt, Seller shall not be required to sell any pre-Commercial Operation Date test energy from the Project to Buyer, as Seller intends to sell all such test energy to Shaping Party pursuant to the Shaping Agreement.

(vi) Buyer hereby covenants that it will not intentionally refuse to accept deliveries of Scheduled Energy on a systematic basis, except as permitted under the terms and conditions of this Agreement.

(vii) Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(c) Delivery Term. The “Delivery Term” shall mean fifteen (15) Contract Years beginning on the first date that Seller delivers the Product to the Delivery Point (“Initial Shaped Energy Delivery Date”) in connection with this Agreement and continuing until the end of the fifteenth (15<sup>th</sup>) Contract Year unless terminated as provided by the terms of this Agreement. The Initial Shaped Energy Delivery Date shall not occur until all of the following have been satisfied: (i) the Commercial Operation Date has occurred; (ii) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; and (iii) all of the applicable Conditions Precedent in Article Eleven of the

Agreement have been satisfied or waived in writing. As evidence of the Initial Shaped Energy Delivery Date, the Parties shall execute and exchange the "Initial Shaped Energy Delivery Date Confirmation Letter" attached hereto as Appendix II on the Initial Shaped Energy Delivery Date.

(d) Delivery Point. The Delivery Point means either the Primary Delivery Point or an Alternative Delivery Point and shall be the point for delivery of the Product under this Agreement.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity. The quantity of Net Output to be delivered to the Shaping Party at the Interconnection Point during each Contract Year is expected to be the Contract Quantity.

(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to deliver Net Output at the Interconnection Point in an amount no less than the Guaranteed Energy Production—Annual Test in at least one of any two consecutive Contract Years during the Delivery Term (such two consecutive Contract Years being a "Performance Measurement Period"). If the Net Output delivered at the Interconnection Point is less than the Guaranteed Energy Production—Annual Test in both Contract Years in a Performance Measurement Period, then within one hundred twenty (120) days after the last day of the last month of such Performance Measurement Period, Buyer shall give Seller a Notice setting forth the quantity in MWhs of the difference between the Guaranteed Energy Production—Annual Test and the actual Net Output delivered at the Interconnection Point in each of the Contract Years in the Performance Measurement Period (each, a "Guaranteed Energy Shortfall"). If a Guaranteed Energy Shortfall occurs in both Contract Years in a Performance Measurement Period, Seller nevertheless shall be deemed to have met the Guaranteed Energy Production requirement if Seller pays liquidated damages to Buyer as provided in Section 3.1(e)(ii)(B) within ten (10) Business Days after Seller receives Notice from Buyer of Seller's failure to deliver the Guaranteed Energy Production in the second consecutive Contract Year in the applicable Performance Measurement Period; *provided, however*, that Seller shall not be entitled to continue paying such liquidated damages after Seller has paid to Buyer liquidated damages under this Section 3.1(e)(ii) equal to 100 GWh in the aggregate during the Delivery Term.

(B) If Seller elects to pay liquidated damages as contemplated by Section 3.1(e)(ii)(A) to satisfy the Guaranteed Energy Production requirement, the amount of liquidated damages shall be equal to the product of (1) the Shortfall Price, multiplied by (2) the lower Guaranteed Energy Shortfall between the two Contract Years in the Performance Measurement Period. Seller's cure by payment of liquidated damages with respect to a Performance Measurement Period shall be deemed achievement of the Guaranteed Energy Production, and the next following Contract Year shall be the first year in a new two-year Performance Measurement Period.

(C) If Seller does not pay liquidated damages within the time period specified in Section 3.1(e)(ii)(A) or if Seller has paid to Buyer liquidated damages set forth in Section 3.1(e)(ii)(A) equal to 100 GWh in the aggregate during the Delivery Term, Buyer may, at its option, declare an Event of Default within sixty (60) days after the expiration of Seller's specified time period to cure. If Buyer opts not to declare an Event of Default with respect to Seller's failure to meet the Guaranteed Energy Production—Annual Test requirement, then Buyer shall be deemed to have waived its right to declare an Event of Default based on Seller's failure with respect to the Performance Measurement Period that served as the basis for the default.

(D) If Seller is unable to pay damages because it has already paid damages as set forth in Section 3.1(e)(ii)(A) equal to 100 GWh in the aggregate, and Buyer nonetheless waives its right to declare an Event of Default, Buyer shall again have the right to declare an Event of Default (subject to the conditions set forth in this Section 3.1(e)(ii)) if as of the last day of the month following the next succeeding Performance Measurement Period Seller again fails to achieve the Guaranteed Energy Production—Annual Test requirement in both of two (2) consecutive Contract Years in that Performance Measurement Period.

(E) If Seller fails to pay Buyer an amount due under Section 3.1(e)(ii)(A) and Buyer nonetheless waives its right to declare an Event of Default, Buyer shall again have the right to declare an Event of Default (subject to the conditions set forth in this Section 3.1(e)(ii)) if as of the last day of the month following the next succeeding Contract Year Seller again fails to achieve the Guaranteed Energy Production – Annual Test requirement.

(F) Each Party agrees and acknowledges that the damages that Buyer would incur due to the Project's failure to produce the Guaranteed Energy Production would be difficult or impossible to predict with certainty, and that the liquidated damages contemplated by this Section 3.1(e)(ii) are an appropriate approximation of such damages.

(G) Buyer's remedies under this Section 3.1(e)(ii) shall be Buyer's sole and exclusive remedies for failure by Seller to satisfy the Guaranteed Energy Production requirement. With respect to any and all other operational or performance defects, defaults or shortfalls affecting the Project, whether arising from deficiencies in the wind resource or from any defect in the design, construction, administration, maintenance or operation of the Project, Buyer's sole and exclusive remedies shall be the right (1) to declare an Event of Default pursuant to Section 5.1(b)(iii) in the circumstances described in Section 3.1(e)(ii)(C), (2) to declare an Event of Default pursuant to and in accordance with Section 5.1(a)(iii) for Seller's failure to perform a material covenant or obligation set forth in this Agreement, and (3) upon Buyer's declaration of any such Event of Default in accordance with this Agreement, to exercise any and all of its rights associated with such an Event of Default (including terminating this Agreement and making a claim for a Termination Payment).

(f) Contract Capacity. The capacity (“Contract Capacity”) of the Project shall be 102.9 MW installed.

(g) Project. All Green Attributes delivered as part of the Product shall be supplied from the Project only. Net Output delivered to the Shaping Party at the Interconnection Point shall be supplied from the Project only. Shaped Energy received by Buyer at the Delivery Point shall contain the Project’s CEC RPS Identification Number in the Miscellaneous field of the associated NERC E-Tag. Buyer shall be responsible for providing this NERC E-Tag. Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity of the Project without Buyer’s prior written consent. Seller’s compliance with this Section 3.1(g) and with Section 3.1(o) shall be deemed to satisfy Seller’s obligation to convey Green Attributes to Buyer in accordance with Section 3.2.

(h) Interconnection Facilities and Transmission Upgrades. Seller shall, at its sole expense, (i) provide and maintain its own Interconnection Facilities as required by the Interconnection Agreement, (ii) cause all Transmission Upgrades required by the Interconnection Agreement to be constructed and placed in service, and (iii) take such steps as may be required under the Interconnection Agreement to cause BPA to install and maintain BPA’s Interconnection Facilities (including the metering facilities required by the Interconnection Agreement).

(i) Project Delivery Period and Redelivery Period.

(i) “Associated Project Delivery Period” means, with respect to each Redelivery Period, the Project Delivery Period that ended at 2400 hours of the Sunday two (2) Sundays prior to the start of such Redelivery Period.

(ii) “Project Delivery Period” means a seven (7) day period beginning at 0000 hours Monday and ending at 2400 hours Sunday; *provided, however*, that (A) if the Commercial Operation Date occurs on a day other than a Monday, the first Project Delivery Period shall begin on such day and end at 2400 hours on the immediately following Sunday, and (B) the last Project Delivery Period shall begin at 0000 hours Monday of the week before the Monday two weeks before the Monday of the last week of the Delivery Term and end two weeks before 2400 hours of the last Saturday of the Delivery Term. For example, if the Commercial Operation Date occurs on Tuesday, January 1, 2008, then the first Project Delivery Period will be from 0000 hours Tuesday, January 1, 2008 until 2400 hours Sunday, January 6, 2008, and the last Project Delivery Period, assuming this Agreement has not been terminated before its expiration, will be from 0000 hours Monday, December 26, 2022 until 2400 hours Saturday, December 31, 2022.

(iii) “Redelivery Period” means, with respect to each Project Delivery Period, the seven (7) day period beginning at 0000 hours on the second Monday immediately following the Sunday of the Associated Project Delivery Period and ending at 2400 hours the following Sunday; *provided, however*, that (A) the first Redelivery Period will be no longer than seven (7) days and will begin at 0000 on the second



Monday following the Commercial Operation Date and end at 2400 on the following Sunday, and (B) the last Redelivery Period shall begin at 0000 hours on the second Monday immediately following the Sunday of the last Project Delivery Period and end at 2400 hours on the following Sunday, or such earlier end date and time as the Parties may mutually agree upon. For example, if the Commercial Operation Date occurs on Tuesday, January 1, 2008, then the first Redelivery Period will begin at 0000 hours Monday, January 14, 2008 and end at 2400 hours Sunday, January 20, 2008, and the last Redelivery Period, assuming this Agreement has not been terminated before its expiration, will be from 0000 hours Monday, January 9, 2023 until 2400 hours Saturday, January 14, 2023.

(j) Delivery Obligation.

(i) During each Redelivery Period, Seller shall deliver to the Delivery Point the following quantities of Shaped Energy: (A) during On-Peak Hours of the Redelivery Period the quantity established under Section 3.1(j)(ii) using the amount of On-Peak Energy delivered during the Associated Project Delivery Period and any On-Peak Banked Energy that existed as of the end of the Associated Project Delivery Period; and (B) during Off-Peak Hours of the Redelivery Period the quantity established pursuant to Section 3.1(j)(ii) using the amount of Off-Peak Energy delivered during the Associated Project Delivery Period and any Off-Peak Banked Energy that existed as of the end of the Associated Project Delivery Period.

(ii) Seller shall for purposes of establishing the quantity of Shaped Energy to be delivered during a Redelivery Period (A) round the amount of On-Peak Energy delivered during an Associated Project Delivery Period plus On-Peak Banked Energy that existed as of the end of the Associated Project Delivery Period to the nearest incremental value of zero (0) MW, twenty-five (25) MW, fifty (50) MW, seventy-five (75) MW, one hundred (100) MW, one hundred twenty-five (125) MW, one hundred fifty (150) MW, one hundred seventy-five (175) MW, or two hundred (200) MW, and (B) round the amount of Off-Peak Energy delivered during an Associated Project Delivery Period plus Off-Peak Banked Energy that existed as of the end of the Associated Project Delivery Period to the nearest incremental value of zero (0) MW, twenty-five (25) MW, fifty (50) MW, seventy-five (75) MW, one hundred (100) MW, one hundred twenty-five (125) MW, one hundred fifty (150) MW, one hundred seventy-five (175) MW, or two hundred (200) MW. For the purposes of determining whether to round amounts up or down, (x) if an amount is less than twelve and five-tenths (12.5) MW above one of the incremental values set forth in the preceding sentence for a given Redelivery Period, then the On-Peak Energy plus On-Peak Banked Energy or the Off-Peak Energy plus Off-Peak Banked Energy, as applicable, shall be rounded down to the nearest incremental value and (y) if an amount is greater than or equal to twelve and five-tenths (12.5) MW above one of the incremental values set forth in the preceding sentence for a given Redelivery Period, then the On-Peak Energy plus On-Peak Banked Energy or the Off-Peak Energy plus Off-Peak Banked Energy, as applicable, shall be rounded up to the nearest incremental value (unless the amount is greater than two hundred (200) MW, in which case the amount shall be rounded down to two hundred (200) MW). Notwithstanding the foregoing provisions of this Section 3.1(j)(ii), deliveries of Shaped

Energy during the last Redelivery Period may be made in increments of less than twenty-five (25) MWs. If either the On-Peak Banked Energy or the Off-Peak Banked Energy, exceeds two hundred (200) MW at any point in time, Seller and Buyer shall meet with Shaping Party and confer in good faith about ways to reduce the quantity of banked energy below two hundred (200) MW.

(iii) Following the calculation pursuant to Section 3.1(j)(ii) of the quantity of Shaped Energy to be delivered during a Redelivery Period:

(A) the balance of the “On-Peak Banked Energy” shall be calculated as the difference between (1) the amount of On-Peak Energy delivered during the Associated Project Delivery Period plus the amount, if any, of On-Peak Banked Energy that existed as of the end of the Associated Project Delivery Period and (2) the amount calculated in clause (A) of Section 3.1(j)(ii); and

(B) the balance of the “Off-Peak Banked Energy” shall be calculated as the difference between (1) the amount of Off-Peak Energy delivered during the Associated Project Delivery Period plus the amount, if any, of Off-Peak Banked Energy that existed as of the end of the Associated Project Delivery Period and (2) the amount calculated in clause (B) of Section 3.1(j)(ii).

(iv) Scheduled Energy that is not delivered to the Delivery Point during a Redelivery Period as the result of an Uncontrollable Force shall be added to the On-Peak Banked Energy or Off-Peak Banked Energy, as applicable and redelivered during the next Redelivery Period(s) in accordance with this Section 3.1(j).

(v) Consistent with WECC protocols, Buyer shall be responsible for creating the tag for the Shaped Energy.

(vi) Examples of the intended operation of this Section 3.1(j) are set forth in Appendix XI.

(k) Limits on Deliveries to Primary Delivery Point. Seller shall not deliver or permit the Shaping Party to deliver an amount of Shaped Energy to the Captain Jack substation at the Primary Delivery Point on any given delivery date that is in excess of the ATC at the Captain Jack substation as published by CAISO for such delivery date. Seller accepts that Buyer, subject to its other scheduled obligations, will accommodate deliveries at Captain Jack, but under no circumstances will Buyer be required to accept deliveries at Captain Jack if doing so requires Buyer to schedule more than the CAISO ATC at Captain Jack.

(l) [INTENTIONALLY OMITTED]

(m) Performance Excuses.

(i) Seller Excuses. As provided in the calculation of Guaranteed Energy Production – Annual Test, Seller shall be excused from achieving the Guaranteed Energy Production for the applicable time period during Seller Excuse Hours.

In addition, Seller's performance of its obligation to deliver Shaped Energy to the Delivery Point shall be excused to the extent that (A) deliveries of energy at the Delivery Point by Seller or Shaping Party are prevented or limited by an Uncontrollable Force, or (B) Buyer's continuing default under this Agreement.

(ii) Buyer Excuses. Buyer's performance of its obligation to receive or pay for the Product shall be excused (A) to the extent Buyer's receipt of energy at the Delivery Point is prevented or limited by an Uncontrollable Force, or (B) during Seller's continuing default under this Agreement.

(n) Climate Action Registry. CPUC's Decision 06-02-032 requires that the Project be registered with the California Climate Action Registry. Before the Commercial Operation Date, Seller shall register the Project with the California Climate Action Registry in accordance with Decision 06-02-032 and any subsequent CPUC order; *provided, however*, that Seller shall not be required to undertake any actions pursuant to this Section 3.1(n) that would result in costs or expenses in excess of \$10,000.00 during the Delivery Term; *and provided further* that Seller shall nonetheless be required to comply with this Section 3.1(n) if Buyer agrees in writing to reimburse Seller for any costs or expenses in excess of \$10,000.00 during the Delivery Term in the manner set forth in Section 6.1.

(o) WREGIS.

(i) Before the Delivery Term, Seller shall, at its sole expense, register the Project with WREGIS. During the Delivery Term, Seller shall, at its sole expense, establish and maintain an account with WREGIS (the "Seller's WREGIS Account"). Seller shall transfer all WREGIS Certificates associated with all Renewable Energy Credits corresponding to the Net Output generated by the Project using Forward Certificate Transfers (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (the "Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(ii) Buyer shall, at its sole expense, establish and maintain the Buyer's WREGIS Account with WREGIS during the Delivery Term sufficient to facilitate the transfers of WREGIS Certificates from Seller to Buyer as contemplated by this Section 3.1(o). Buyer shall be responsible for all WREGIS expenses associated with (A) establishing and maintaining the Buyer's WREGIS Account, and (B) subsequently transferring or retiring WREGIS Certificates.

(iii) Seller shall cause Forward Certificate Transfers to occur monthly based on the certification procedure established by the WREGIS Operating Rules. As of the Execution Date, the WREGIS Certificates are expected to be created no later than ninety (90) days after the end of each calendar month for Net Output generated

by the Project in that calendar month. For example, for Net Output generated by the Project in January 2009, the WREGIS Certificates will be created in WREGIS no later than April 30, 2009. Since WREGIS Certificates will only be created for whole MWh amounts of energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(iv) Seller shall, at its sole expense, validate, adjust, and dispute data with WREGIS before WREGIS Certificate are created so that the WREGIS Certificates for a given calendar month correspond with the Net Output generated by the Project for the same calendar month (as evidenced by Project Meter data). Seller shall provide Buyer with copies of all correspondence or documentation to or from WREGIS with respect to the validation, adjustment, and dispute of the Project Meter data that is the basis of the WREGIS Certificate.

(v) Seller shall give Buyer Notice at least thirty (30) days before amending or terminating (A) a Forward Certificate Transfer order from Seller's WREGIS Account to Buyer's WREGIS Account, (B) Seller's WREGIS Account, or (C) the Project's registration with WREGIS. Buyer shall give Seller Notice at least thirty (30) days before amending or terminating Buyer's WREGIS Account.

(vi) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article Six, Buyer shall pay for the WREGIS Certificates before the WREGIS Certificates are formally transferred to Buyer. Notwithstanding this delay in the delivery of the WREGIS Certificates, Buyer shall have all right and title to, and the right to receive the transfer of, such WREGIS Certificates upon payment to Seller in accordance with Article Six.

(vii) Within (10) Business Days after the creation of a WREGIS Certificate(s) for the Net Output generated by the Project in a given calendar month, Seller shall cause WREGIS to transfer to Buyer's Account an amount of WREGIS Certificates that matches the Net Output from the Project in whole MWhs for the same calendar month. If this amount of WREGIS Certificates is not transferred to Buyer's WREGIS Account, Seller shall provide to Buyer in its next invoice (A) a statement of any deficit in WREGIS Certificates delivered to Buyer for the calendar month as compared to the Net Output from the Project for the same calendar month (the "WREGIS Certificate Deficit"), and (B) a statement of any surplus in WREGIS Certificates delivered to Buyer with respect to a given calendar month as compared to the Net Output generated by the Project for the same calendar month (the "WREGIS Certificate Surplus").

(viii) Within sixty (60) days after the end of a given ninety (90) day certificate creation period, Seller shall reconcile Buyer's account for any WREGIS Certificate Deficit or WREGIS Certificate Surplus caused by Seller by (A) with respect to a WREGIS Certificate Surplus, making a prior period adjustment and withholding from future WREGIS Certificate transfers to Buyer an amount equal to the WREGIS Certificate Surplus for that certificate creation period, or (B) with respect to a WREGIS Certificate Deficit,

transferring to Buyer an amount of WREGIS Certificates of the same calendar year vintage in an amount that shall cause the WREGIS Certificate Deficit to equal zero (0); *provided* that (1) such replacement WREGIS Certificates are allowed at that time by the CPUC and CEC for Buyer's compliance with the California Renewables Portfolio Standard and permit a consistent application of the delivery structure of the Product as contemplated in this Agreement, and (2) all reconciliations to Buyer's WREGIS Account required to adjust the amount of WREGIS Certificates transferred to Buyer are effected no later than one hundred twenty (120) days after the end of the calendar year.

(ix) If Seller fails to use diligent efforts to cure a WREGIS Certificate Deficit in accordance with clause (iv) or clause (viii) of this Section 3.1(o) during a given Performance Measurement Period, any WREGIS Certificate Deficit that would have been corrected had Seller used such diligent efforts shall be deemed a deficit in Net Output with respect to the calculation of Seller's performance regarding the Guaranteed Energy Production—Annual Test requirement.

(x) Subject to Seller's obligations under clause (iv) of this Section 3.1(o), if a WREGIS Certificate Deficit or a WREGIS Certificate Surplus is caused by an error or omission of WREGIS, the Parties shall cooperate to cause WREGIS to correct the error or omission.

(xi) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in existence on the Effective Date in a manner inconsistent with this Section 3.1(o), the Parties shall modify this Section 3.1(o) as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for a given calendar month that correspond to the Net Output generated by the Project in the same calendar month.

(xii) Seller's compliance with this Section 3.1(o) and with Section 3.1(g) shall be deemed to satisfy Seller's obligation to convey Green Attributes to Buyer in accordance with Section 3.2.

(xiii) If WREGIS does not go into effect or is eliminated or materially changed after the Execution Date such that this Section 3.1(o) cannot be implemented in accordance with its terms, this Agreement shall remain in full force and effect and the Parties shall take such steps as may be reasonably required in the circumstances to effectuate the transfer of the Green Attributes from Seller to Buyer in accordance with this Agreement and any successor to WREGIS.

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

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

(r) Enforcement of Shaping Party Covenant. If the Shaping Party breaches its obligations under Section 3.1(c) of the Shaping Agreement and Buyer instructs Seller to notify Shaping Party of a failure to perform under Section 5.1(a)(iii) of the Shaping Agreement, Seller shall give Shaping Party a Notice of Shaping Party's failure to perform. If the Shaping Party's failure to perform is not timely cured as provided in Section 5.1(a)(iii) of the Shaping Agreement, Seller shall (if Buyer so instructs Seller in a Notice to Seller stating that Shaping Party has not timely cured the failure to perform) give the Shaping Party a Notice that declares an Event of Default under the Shaping Agreement and specifies an Early Termination Date under Section 5.2 of the Shaping Agreement. Buyer shall cooperate with Seller as reasonably required to enable Seller to pursue its remedies against Shaping Party under the Shaping Agreement.

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

3.3 Resource Adequacy. During the Delivery Term, Seller commits to Buyer all of the Contract Capacity, including any Capacity Attributes associated with the Project. Seller acknowledges that Buyer plans to use this commitment of Contract Capacity (including Capacity Attributes) to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe ("Resource Adequacy Requirements"). Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. To enable Buyer to use the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements, Seller shall comply with Appendix X during the Delivery Term.

3.4 Delivery; Seller's Arrangements with Shaping Party.

(a) Seller Obligations to Deliver. Pursuant to the Shaping Agreement, Seller shall deliver the Net Output from the Project to the Shaping Party at the Interconnection Point and shall take title to the Shaped Energy scheduled by Shaping Party at the Delivery Point. Except as provided in Section 3.4(b) and Section 4.6, Seller shall be responsible for all arrangements and costs in connection therewith. Seller shall deliver the Shaped Energy to Buyer at the Delivery Point pursuant to the terms of this Agreement.

(i) SC Services by Shaping Party. Subject to the terms of this Agreement, Seller shall be responsible for causing the Shaping Party to perform the SC services in accordance with Good Utility Practice, applicable Laws and the Shaping Agreement. Seller shall require that the Shaping Party maintain all qualifications and permits necessary for the execution, delivery and performance of the SC services with respect to the Net Output, the Scheduled Energy and the Shaped Energy. Buyer shall coordinate and cooperate with Shaping Party in scheduling delivery and receipt of

Shaped Energy at the Delivery Point. If Shaping Party proposes to deliver Shaped Energy at an Alternative Delivery Point (or to return deliveries to the Primary Delivery Point from an Alternative Delivery Point) or proposes a Transmission Path, Buyer shall promptly give Seller Notice of any objection to that proposal.

(ii) Standard of Performance. Seller shall have the right to engage the Shaping Party pursuant to the Shaping Agreement for the SC services for the Shaped Energy, *provided* that the same shall not relieve Seller of any of its obligations under this Agreement unless expressly stated in Section 3.4(e) or Section 3.10 in connection with a Shaping Party Default. As between Buyer and Seller, and subject to the terms of this Agreement, Seller shall be solely responsible for the acts, omissions or defaults of Shaping Party or any other subcontractor, with such acts, omissions or defaults being deemed acts, omissions or defaults of Seller.

(iii) Financial Responsibility. Except as provided in Section 3.4(e), Section 3.10 and Section 4.6, Seller shall be responsible for any costs and charges associated with the Shaping Party, the Shaping Agreement or providing the SC services, and for any other transaction fees, scheduling and imbalance penalties, settlement of Imbalance Energy, ancillary services associated with the delivery of the Net Output to Shaping Party at the Interconnection Point, the delivery of the Product to the Delivery Point (except as set forth in Section 3.1(g) relating to Green Attributes), or congestion costs and other similar costs and charges otherwise associated with the Project.

(b) Buyer's Obligations to Receive. Buyer shall schedule and receive from Seller the Shaped Energy at the Delivery Point as scheduled by the Shaping Party. Buyer shall arrange, pay independently for and be responsible for the transmission service, including interconnection, scheduling, distribution and/or transmission (and any regulatory approvals for the foregoing) in order to (i) accept and transmit Shaped Energy from the Delivery Point, (ii) receive Green Attributes in accordance with Section 3.1(o), and (iii) receive Capacity Attributes at the Interconnection Point or the Delivery Point, as applicable, in each case pursuant to the terms of this Agreement.

(c) Transmission.

(i) Except as otherwise set forth in this Agreement, including in Sections 3.1(m)(i), 3.4(e)(ii), 3.7(c), 3.7(d), and 4.6, during the Delivery Term, Seller shall (or shall cause the Shaping Party to) arrange and be responsible for transmission service and shall bear all risk and expense of (i) BPA costs and charges (including but not limited to ancillary service charges, imbalance charges and penalties due to deviations from the amount of Scheduled Energy); and (ii) electric transmission losses, congestion, and any interruption in or outages or curtailment of transmission to and at the Delivery Point. Seller and Shaping Party shall use commercially reasonable efforts to schedule and deliver Shaped Energy using firm transmission service; *provided* that Seller and Shaping Party shall have the right to schedule and deliver Shaped Energy using firm transmission, non-firm transmission, conditional firm transmission or any combination of such transmission; *provided further* that if delivery of Shaped Energy is interrupted for reasons other than Force Majeure or Uncontrollable Force, Seller and/or Shaping Party

shall be obligated to perform in accordance with Section 5.8. Seller shall fulfill all contractual, metering and applicable interconnection requirements.

(ii) Buyer Obligations. Except as otherwise set forth herein, including in Sections 3.1(m)(ii) and 3.7(d) during the Delivery Term, Buyer shall arrange, or cause to be arranged, and be responsible for transmission service from the Delivery Point. Except as expressly provided with respect to Uncontrollable Force at the Delivery Point, Buyer shall bear all risks and costs associated with such transmission service, including any transmission outage, congestion or curtailment from the Delivery Point.

(d) Scheduling by Seller to Buyer.

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

(ii) Weekly Delivery Notice. Seller shall cause Shaping Party to provide Seller and Buyer with week-ahead Notice for each Redelivery Period via e-mail, in the format specified by Buyer, or other method (as may be mutually agreed upon by the Parties) no later than the end of the second (2<sup>nd</sup>) Business Day in the week following the Associated Project Delivery Period for such Redelivery Period. Seller shall cause Shaping Party to provide Seller and Buyer along with each such week-ahead Notice a statement of the On-Peak Banked Energy and Off-Peak Banked Energy, including an accounting of any additions and deductions made to the balances of the On-Peak Banked Energy and Off-Peak Banked Energy in accordance with Section 3.1(j). Each weekly delivery notice (the "Weekly Delivery Notice") shall clearly identify, for each hour in the week, the quantity of Scheduled Energy during such Redelivery Period and may include the Transmission Path for delivery of such Scheduled Energy.

(iii) Daily Delivery Schedules. Seller shall cause the Shaping Party to provide the Day Ahead Schedule to Buyer via e-mail, in the format specified by Buyer, or other method (as may be mutually agreed upon by the Parties) in a manner consistent with WECC preschedule requirements; *provided, however*, that (A) any Day Ahead Schedule delivered pursuant to this clause (iii) shall not change any quantity of Scheduled Energy from the quantity specified in the associated Weekly Delivery Notice, and (B) such Day Ahead Schedule shall specify the Transmission Path, if any, for delivery of such Scheduled Energy, or change a Transmission Path previously identified in the Weekly Delivery Notice. 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

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 Day Ahead Schedule shall clearly identify, for each hour, all amounts of Shaped Energy expected to be delivered and sold to Buyer pursuant to this Agreement. Seller shall deliver Shaped Energy in accordance with its Day Ahead Schedule, and may not change such schedule past the deadlines provided in this section except in the event of an Uncontrollable Force or based on customary energy tagging protocols. These Notices and schedules shall be sent to Buyer via e-mail, in the format specified by Buyer, or at the following address or by other method (as may be agreed by the Parties):

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

If Seller fails to cause Shaping Party to provide Buyer with a Day Ahead Schedule as required herein, Buyer shall rely on the delivery schedule provided in the Weekly Delivery Notice with respect to the day to be covered in the Day Ahead Schedule and Seller shall be liable for such delivery based on the Weekly Delivery Notice.

(iv) Hourly Delivery Schedules. Without limiting its other obligations under this Agreement, if Shaping Party changes its Day Ahead Schedule (or Weekly Delivery Notice, if applicable) on the actual date of delivery for any reason, which results in any change to quantity of Scheduled Energy to be delivered, Seller shall, or shall cause Shaping Party to, notify Buyer promptly by calling Buyer’s on-duty Scheduling Coordinator, and provide a revised schedule as soon as possible. These Notices and schedule changes shall be sent to Buyer via e-mail, in the format specified by Buyer, or at the following address or by other method (as may be agreed by the Parties):

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

(vi) Buyer shall act as its own Scheduling Coordinator with respect to receipt of Shaped Energy.

(e) Scheduling by Buyer in the Event of Shaping Party Default.

During the Replacement Period, Buyer shall act as SC for the energy at the Interconnection Point.

(i) SC Services. As SC, Buyer shall perform the following services: (A) transmitting to BPA and CAISO operational data or information provided by Seller, including real-time telemetry or operational information, (B) communicating to Seller operational and other information, including specific deployment instructions, and other messages from BPA and CAISO relating to the energy, (C) submitting resource plans, (D) submitting energy schedules and performing other scheduling activities required of a SC representing a resource, (E) bidding into the BPA and CAISO, and (F) managing the impact if Seller's scheduled Net Output or Shaped Energy do not match the amount scheduled and settling BPA and CAISO statements.

(ii) Standard of Performance. Buyer shall perform the SC services in accordance with Good Utility Practice and applicable Laws. Buyer shall maintain all qualifications and permits necessary for the execution, delivery and performance of the SC services for the energy.

(iii) Seller Cooperation. Seller shall cooperate with Buyer in completing any and all documentation required by BPA or CAISO to accomplish the designation of Buyer as the SC.

(iv) SC Subcontractors. Buyer shall have the right to use subcontractors for the SC services, *provided* that the same shall not relieve Buyer of any of its obligations under this Agreement. As between Buyer and Seller, Buyer shall be solely responsible for the acts, omissions or defaults of any such subcontractor, with such acts, omissions or defaults being deemed acts, omissions or defaults of Buyer.

(v) Financial Responsibility. Buyer shall be responsible for any costs and charges associated with providing the SC services, and for any other transaction fees, scheduling and imbalance penalties, settlement of Imbalance Energy, ancillary services associated with the use of the energy from the Interconnection Point (excluding reactive power and Governmental Charges, which shall be the responsibility of the Seller), congestion costs and similar costs and charges otherwise associated with the Project, in each case as now or in the future assessed.

3.5 Standards of Care.

(a) At Project. Seller shall comply with all applicable requirements of Law, BPA, NERC and WECC relating to construction, ownership and operation of the Project. Seller shall perform all generation services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of BPA, (ii) WECC scheduling practices, and (iii) Good Utility Practices.

(b) To and at the Delivery Point. Seller shall cause Shaping Party to perform all transmission and scheduling services to and at the Delivery Point, in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and

protocols of BPA and the CAISO, (ii) WECC scheduling practices and (iii) Good Utility Practices.

(c) From the Delivery Point. Buyer shall receive Shaped Energy at the Delivery Point and shall perform all scheduling services for transmission of Shaped Energy from the Delivery Point in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of BPA and the CAISO, (ii) WECC scheduling practices and (iii) Good Utility Practices. Buyer shall comply with all applicable requirements of Law, NERC and WECC relating to the receipt of Shaped Energy at the Delivery Point and the transmission of Shaped Energy from the Delivery Point.

(d) Reliability Standard. Seller agrees to abide by the following to the extent applicable to Seller's performance under this Agreement:

(i) NERC, WECC, CAISO, BPA reliability requirements, and the Resource Adequacy Requirements as set forth in Appendix X;

(ii) CPUC General Order No. 167 ("Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities"); and

(iii) All applicable requirements regarding interconnection of the Project as set forth in the Interconnection Agreement.

### 3.6 Metering.

(a) Project Meter. All Net Output from the Project shall be delivered through a single revenue meter that is (i) controlled by the BPA, (ii) dedicated exclusively to the Project and (iii) located at the Interconnection Point (collectively, the "Project Meter"). All Net Output shall be measured by the Project Meter in accordance with applicable BPA policies, criteria, rules, guidelines, tariffs and protocols. Seller shall cause the Project Meter and related equipment to be installed and maintained pursuant to the Interconnection Agreement and shall bear all costs of the Project Meter and related equipment.

(b) Project Meter Data. Seller shall provide all Project Meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from BPA, to the extent available from BPA, (i) the Project Meter data and (ii) all inspection, testing and calibration data and reports. If the data and reports described in the preceding sentence are not available directly from BPA, Seller shall obtain the reports from BPA and provide them to Buyer.

(c) Adjusted Project Meter Data and Revised Invoices. If BPA makes any adjustment to the Project Meter data for a given time period, Seller shall submit revised monthly invoices, pursuant to Section 6.1, covering the entire applicable time period in order to conform fully such adjustments to the Project Meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which BPA provides to Seller such binding adjustment to the Project Meter data.

3.7 Outage Notification.

(a) Planned Outages. Seller shall give Buyer and Shaping Party Notice of Seller’s proposed Planned Outage schedule for the Project for the following calendar year by submitting a completed Outage Notification Form (Appendix VIII) in accordance with Article Thirteen no later than August 1 of each year during the Delivery Term. Buyer shall give Notice of any reasonable objections to a proposed Planned Outage schedule within ten (10) Business Days of receipt thereof, and failure of Buyer to so object within such time period shall be deemed approval of such annual Planned Outage schedule. If Buyer shall provide any such objection to Seller, the Parties shall promptly confer for the purpose of discussing in good faith such objections; *provided* that Seller shall have no obligation to modify such Planned Outage schedule to address any Buyer objection thereto. To the extent that Seller modifies the proposed Planned Outage schedule to address Buyer’s objections, Seller shall provide, or cause to be provided, as promptly as practicable a new proposed Planned Outage schedule to Buyer and Shaping Party, which shall then be subject to Buyer review subject to the time periods and standards set forth above. Seller shall furnish, or cause to be furnished, Buyer with reasonable advance Notice of any change in the annual Planned Outage schedule by submitting a new Outage Notification Form (Appendix VIII) in accordance with the provisions set forth in Appendix IX. Reasonable minimum advance notice of any change in the annual Planned Outage schedule is as follows:

<u>Planned Outage Expected Duration</u>	<u>Advance Notice to Buyer</u>
5 days or less	At least 7 days
over 5 days	At least 30 days

Seller shall use commercially reasonable efforts consistent with Good Utility Practice, manufacturers’ recommendations and warranties and applicable Laws to minimize Planned Outages during the months of June through September. Seller shall not substitute energy from any other source for the output of the Project during a Planned Outage.

(b) Major Forced Outages. Seller shall, in accordance with the provisions set forth in Appendix IX, (i) give Buyer Notice of any Major Forced Outage as soon as reasonably practical after the commencement of such Major Forced Outage including a written estimate of its expected duration, and (ii) submit a completed Outage Notification Form to Buyer in accordance with the instructions provided therein and Article Thirteen. Seller shall not substitute energy from any other source for the output of the Project during a Forced Outage.

(c) Force Majeure.

(i) Within seventy-two (72) hours after the date on which (A) Seller knows or should have known of the commencement of Force Majeure (during

periods before the Commercial Operation Date), or (B) the Force Majeure commences (during periods after the Commercial Operation Date), Seller shall give Buyer oral notice of the event of Force Majeure.

(ii) Within two (2) weeks after (A) Seller knows or should have known of the commencement of Force Majeure (during periods before the Commercial Operation Date), or (B) the Force Majeure commences (during periods after the Commercial Operation Date), Seller shall provide Buyer with Notice describing in detail the particulars of the occurrence giving rise to the Force Majeure claim.

(iii) Failure to provide timely Notice within such seventy-two (72) hour or two (2)-week period, as applicable, shall constitute a waiver of the Force Majeure claim only with respect to the period before the date on which Notice of the Force Majeure is given to Buyer; *provided, however*, that Seller's failure to provide Notice of the Force Majeure claim within ninety (90) days after the date specified in Section 3.7(c)(i) or (ii) constitutes waiver of the Force Majeure claim.

(iv) Seller shall not substitute or authorize the substitution of energy 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 Product not delivered or provided as a result of a Force Majeure event during the term of a Force Majeure event.

(v) Subject to Section 3.7(c)(vi), either Party may terminate this Agreement by giving Notice of such termination to the other Party if Seller's obligations under this Agreement have been partially or fully suspended for eighteen (18) consecutive months as a result of a Force Majeure event that has prevented Seller from operating more than fifty percent (50%) of the Wind Turbines for the duration of such eighteen (18) consecutive month period; *provided, however*, that such eighteen (18) consecutive month period may be extended by an additional six (6) months if the damage caused by the Force Majeure event can be corrected through repair, restoration or other action or effort by the Seller, and Seller shall have furnished to Buyer an acceptable proposal or plan for such repair, restoration or other action or effort reasonably acceptable to Buyer before the expiration of such eighteen (18) consecutive month period and is diligently pursuing such proposal or plan. If such six (6) month extension is granted, then the termination right described in this Section 3.7(c)(v) shall not be exercisable until the end of such six (6) month period. Termination under this Section 3.7(c)(v) shall be without liability to either Party except for any obligations for amounts due and payable in the ordinary course before such termination (specifically excluding any Termination Payment).

(vi) Buyer's Right of First Offer.

(A) The provisions set forth in this Section 3.7(c)(vi) shall survive any termination of this Agreement under Section 3.7(c)(v) and shall remain

in effect through what would have been the end of the Delivery Term had the Agreement not been terminated in accordance with Section 3.7(c)(v).

(B) Following the termination of this Agreement under Section 3.7(c)(v), Seller shall, prior to engaging in any communications with any third party for the purpose of negotiating a term sheet or contract for the sale of any or all of the Net Output or associated Green Attributes and Capacity Attributes generated by the Project at the Interconnection Point or any other point (the “Redelivery Product”), give Notice to Buyer of Seller’s intent to sell such Redelivery Product from the Project (the “Notice of Project Redelivery”); *provided* that Seller shall have the right to survey the market to determine the demand for such Redelivery Product, the price associated with such Redelivery Product and such other information relating to the marketing of such Redelivery Product.

(C) The Notice of Project Redelivery shall include the proposed contract price for the Redelivery Product, the expected date on which Seller intends to commence deliveries of the Redelivery Product, and any additional terms and conditions associated with the delivery of the Redelivery Product. Buyer, in its sole discretion, shall have the right, but not the obligation to purchase the Redelivery Product on the terms and conditions set forth in the Notice of Project Redelivery (the “Option”). Buyer shall have forty-five (45) days from its receipt of the Notice of Project Redelivery (the “Exercise Period”) to exercise the Option by giving Notice to Seller of Buyer’s exercise of the Option.

(D) If Buyer timely exercises the Option, Buyer and Seller shall within a further seventy-five (75) days negotiate and enter into a power purchase agreement for the sale and purchase of Redelivery Product similar in all material respects to this Agreement, except for any different terms and conditions set forth in the Notice of Project Redelivery on which Buyer exercised its Option, or as otherwise mutually agreed to by Buyer and Seller.

(E) Following execution of the power purchase agreement for the Redelivery Product, Buyer shall have a further one hundred eighty (180) days in which to obtain any final, nonappealable order from the CPUC that is required to approve Buyer’s entry into the power purchase agreement and the rate recovery of the payments to be made by Buyer thereunder.

(F) Pending Buyer’s decision to exercise the Option and, if Buyer timely exercises the Option, during the period thereafter until execution of the power purchase agreement and the receipt of any necessary approval from the CPUC, to the extent requested by Buyer, Seller shall sell to Buyer the Redelivery Product from the Project on mutually agreeable terms and conditions. If Buyer is not able to purchase or is not interested in purchasing the Redelivery Product on an interim basis, or if the Parties are unable to reach agreement on the terms and conditions of such interim sale and purchase of Redelivery Product, Seller shall have the right to sell the Redelivery Project to one or more third parties pursuant to one or more transactions having a term of

less than one (1) year that will not prevent the sale of Redelivery Product to Buyer on the terms and conditions set forth in the Notice of Project Redelivery.

(G) If any of the following occurs, then Seller shall no longer be restricted by this Section 3.7(c)(vi) from selling or scheduling to any third party any of the Redelivery Product generated by the Project on terms and conditions acceptable to Seller: (i) Buyer does not receive any required CPUC Approval within one hundred eighty (180) days after execution of the power purchase agreement for the Redelivery Product, (ii) Buyer provides Notice to Seller rejecting the Option, (iii) Buyer fails to provide Notice exercising the Option during the Exercise Period, or (iv) the Parties fail to reach agreement on a final power purchase agreement despite the Parties' good faith efforts during the seventy-five (75)-day negotiation period set forth in Section 3.7(c)(vi)(D).

(d) Uncontrollable Force. With respect to deliveries of Shaped Energy at the Delivery Point, any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence, as provided in the definition of "Uncontrollable Force," to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by Notice under Article Thirteen. No Party shall be relieved by an Uncontrollable Force of any obligation to make payments then due or which the Party is obligated to make with respect to performance that occurred before the Uncontrollable Force. An Uncontrollable Force shall not result in (i) a breach or Event of Default under this Agreement or (ii) a right to terminate this Agreement.

### 3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain, or cause to be maintained, an operations log of all material operations and maintenance information for the Project. Such log shall include information on the performance of the Project, wind data, maintenance performed, outages, results of inspections, replacements, and any other significant event related to the operation of the Project. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's written 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. While on the Site, Buyer shall comply with all Site and safety rules of Seller that may be in effect for the Project, from time to time. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

### 3.9 New Generation Facility.

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

- (i) Design and construct the Project.
- (ii) Comply with Seller's obligations under Section 3.1(h).
- (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 written request, provide to Buyer Seller's electrical specifications and design drawings for Buyer's review at least forty-five (45) days prior to Seller's expected Construction Start Date. If Buyer requests electrical specifications and design drawings, Seller shall after the date of such request also provide to Buyer reasonable advance Notice of any material changes in the Project and provide to Buyer specifications and design drawings of any such material changes.

(vi) Within fifteen (15) days after the close of each calendar month until the Commercial Operation Date, provide to Buyer a Monthly Progress Report and, at Buyer's request, cause representatives of Seller to meet telephonically with Buyer's designated representatives to review such monthly reports and discuss Seller's construction progress. The Monthly Progress Report shall identify the Guaranteed Project Milestones and indicate whether Seller has met or is on target to meet such Guaranteed Project Milestones.

(b) Site Inspection. Subject to the requirements in Section 3.8(b), Buyer may inspect the Site during construction and meet with representatives of Seller and its contractors to discuss the status of the construction of the Project.

(c) Milestones. If Seller misses a milestone set forth in Seller's permitting and construction schedule attached hereto as Appendix III for the Project (a "Milestone"), Seller shall advise Buyer of the missed Milestone in Seller's Monthly Progress Report. In these circumstances, Seller's Monthly Progress Report shall include a description of Seller's course of action and plan (collectively, the "Remedial Action Plan") to achieve the missed Milestone and the date on which the Milestone is expected to be achieved; *provided, however*, that delivery of a Monthly Progress Report containing a Remedial Action Plan for a missed Milestone shall not relieve Seller of its obligation to meet the Guaranteed Commercial Operation Date. If a missed Milestone is a Guaranteed Project Milestone, then subsection (d) below shall apply.

(d) Guaranteed Project Milestones. "Guaranteed Project Milestones" are as follows:

- (i) The Construction Start Date shall occur no later than June 30, 2008, which date shall be the "Guaranteed Construction Start Date."



(ii) Seller shall have demonstrated achievement of the Commercial Operation Date per the terms of Appendix VI no later than August 31, 2009, which date shall be the "Guaranteed Commercial Operation Date."

(iii) Seller shall cause the Construction Start Date to occur by the Guaranteed Construction Start Date and shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; *provided however*, that the Commercial Operation Date shall not occur prior to December 1, 2008.

(A) If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date or the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable (as may be delayed on a day by day basis by Force Majeure up to one hundred eighty (180) days 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 (1) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of one hundred twenty (120) days; or (2) the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, up to a total of one hundred twenty (120) days.

(B) For the avoidance of doubt, Seller shall have no obligation or liability to continue to pay Daily Delay Damages after the expiration of the cure period applicable thereto, and Daily Delay Damages shall be capped at \$34,650 per day and \$4,158,000 in the aggregate. If Buyer elects to declare an Early Termination because an event of Force Majeure delays a Guaranteed Project Milestone by over one hundred eighty (180) days, Buyer shall not be entitled to any Daily Delay Damages (other than those that become due before the Force Majeure event) or to any Termination Payment, but may terminate this Agreement by giving thirty (30) days' Notice of termination.

(C) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone would be difficult or impossible to predict with certainty, and (ii) the Daily Delay Damages are an appropriate approximation of such damages.

(D) Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the Guaranteed Construction Start Date, only if Seller meets the Guaranteed Commercial Operation Date (as may be extended by Force Majeure as described above), in the manner provided in Section 8.4(c) of this Agreement. For sake of certainty, Buyer shall retain all Daily Delay Damages drawn as a result of Seller's failure to meet the Guaranteed Commercial Operation Date (as may be extended by Force Majeure, as described above) and the Guaranteed Construction Start Date, if Seller fails to meet the Guaranteed Commercial Operation Date.

(E) The payment by Seller of Daily Delay Damages and Buyer's right to terminate this Agreement shall be Buyer's sole and exclusive remedies

for, and shall be Seller's only liability for, Seller's failure to achieve, or delay in achieving, the Guaranteed Commercial Operation Date.

3.10 Replacement Shaping Party. Upon the occurrence of a Shaping Party Default, the following provisions shall govern:

(a) Solicitation of Term Sheets.

(i) Seller shall have a total of ninety (90) days from the Shaping Party Default to obtain, using diligent efforts, term sheets for shaping services from one or more third parties (each a "Replacement Shaping Party") comparable to services provided pursuant to the Shaping Agreement, that enables Seller to deliver, and Buyer to receive, at the Delivery Point the Product at a price stated in dollars per MWh for the remainder of the Term. Within such ninety (90)-day period, Seller shall give Buyer a Notice identifying each proposed Replacement Shaping Party and setting forth the terms and conditions under which each Replacement Shaping Party would provide such services to Seller (each, a "Replacement Shaping Service Term Sheet").

(ii) If requested by Buyer at the commencement of the ninety (90)-day period, Seller shall during such ninety (90)-day period also solicit one or more term sheets whereby a proposed Replacement Shaping Party would propose delivery of a comparable substitute energy product (the "Alternative Delivery Structure", and any such term sheet being an "Alternative Delivery Structure Term Sheet"). Seller shall deliver any resulting Alternative Delivery Structure Term Sheet(s) to Buyer at the same time as Seller delivers the Replacement Shaping Service Term Sheet(s).

(b) Buyer's Review of Term Sheets.

(i) Subject to clauses (iii) and (iv) below, if the terms and conditions contemplated in a proposed Replacement Shaping Service Term Sheet are the same as the terms and conditions of the original Shaping Agreement in all material respects (other than price), Buyer shall be deemed to have accepted the lowest priced Replacement Shaping Service Term Sheet that sets forth such terms and conditions and that is proposed by a party that exceeds the criteria set forth in Section 3.10(b)(iii)(A) through (D).

(ii) Subject to clauses (iii) and (iv) below, within thirty (30) days after the date on which Seller gives Buyer Notice of one or more reasonably detailed Replacement Shaping Service Term Sheets that contain any term or condition (other than price) that is different from the original Shaping Agreement in any material respect, Buyer shall notify Seller whether or not Buyer accepts the terms and conditions contemplated by any such proposed Replacement Shaping Service Term Sheet. In determining whether or not to accept the proposed terms and conditions, Buyer shall act in good faith and in a commercially reasonable manner.

(iii) Buyer shall have the right to reject any Replacement Shaping Party, regardless of whether a Replacement Shaping Service Term Sheet

contains terms and conditions similar in all material respects (other than price) to the terms and conditions of the original Shaping Agreement, if such Replacement Shaping Party, based on Buyer's determination in its reasonable discretion (A) is not creditworthy based on Buyer's then standards typically used to evaluate credit and counterparty exposure, (B) lacks sufficient experience in transactions of the type described in the Shaping Agreement, (C) has a history of, or ongoing, poor relations with Buyer, or (D) could reasonably be expected to make materially more difficult obtaining any Government Approval required in connection with the transaction with a Replacement Shaping Party. To facilitate Seller's solicitation of a Replacement Shaping Party, at the request of Seller, Buyer shall provide informal feedback concerning Buyer's views of any candidate Replacement Shaping Party.

(iv) Buyer shall have the right in its sole discretion to direct Seller to accept the Alternative Delivery Structure Term Sheet by providing Notice within thirty (30) days of receipt of the Alternative Delivery Structure Term Sheet.

(c) Replacement Shaping Agreement. Promptly following Buyer's acceptance or deemed acceptance of a proposed Replacement Shaping Service Term Sheet or direction to Seller to accept an Alternative Delivery Structure Term Sheet, Seller shall enter into a new shaping service agreement or agreements with the applicable Replacement Shaping Party (the "Replacement Shaping Agreement") pursuant to which the Replacement Shaping Party commences deliveries to the Delivery Point (or such alternate delivery point as may be specified in the Alternative Delivery Structure Term Sheet) no later than the first to occur of (i) thirty (30) days after Buyer's acceptance, deemed acceptance or direction under Section 3.10(b), or (ii) one hundred fifty (150) days after the Shaping Party Default. Following the execution and delivery of a Replacement Shaping Agreement, this Agreement shall remain in full force and effect in accordance with its terms.

(d) Price Changes.

(i) If the accepted Replacement Shaping Service Term Sheet proposed the same terms and conditions as the original Shaping Agreement in all material respects (other than price), Seller shall be responsible for any incremental price changes between the shaping fee contemplated by the Replacement Shaping Service Term Sheet and the Shaping Fee, and accordingly reserves all of its rights and remedies against the original Shaping Party.

(ii) If the accepted Replacement Shaping Service Term Sheet contains any term or conditions (other than price) that is different from the original Shaping Agreement in any material respect, Seller shall be responsible for managing all non-price terms or conditions and any incremental price changes between the shaping fee contemplated by the Replacement Shaping Service Term Sheet and the Shaping Fee, and accordingly reserves all of its rights and remedies against the original Shaping Party.

(iii) For purposes of this Section 3.10(d)(iii), the "Proxy Price" means either (A) the price per MWh set forth in a Replacement Shaping Service Term

Sheet that proposes the same terms and conditions as the original Shaping Agreement in all material respects (other than price) (or, if there is more than one such Replacement Shaping Service Term Sheet, the average of the prices proposed in those received), or (B) if no such Replacement Shaping Service Term Sheet has been offered under Section 3.10(a)(i), then a price per MWh determined in the same manner as the “Adjusted Shaping Fee” pursuant to Section 3.10(h)(i). If Buyer directs Seller to accept an Alternative Delivery Structure Term Sheet in a situation in which the Shaping Fee is greater than the Proxy Price, Buyer shall pay Seller the price of the Alternative Delivery Structure Term Sheet plus the amount by which the Shaping Fee exceeds the Proxy Price. If Buyer directs Seller to accept an Alternative Delivery Structure Term Sheet in a situation in which the Proxy Price is greater than the Shaping Fee, Buyer shall pay Seller the price of the Alternative Delivery Structure Term Sheet minus the amount by which the Proxy Price exceeds the Shaping Fee.

(e) Replacement Period.

(i) The “Replacement Period” shall consist of (i) the initial ninety (90) day period contemplated by Section 3.10(a), plus (ii) the thirty (30) day period contemplated by Section 3.10(b), plus (iii) an additional thirty (30) day period to allow time for the Replacement Party to commence performance under the Replacement Shaping Agreement. Commencing as soon as practicable but no later than five (5) Business Days after a Shaping Party Default and continuing until the end of the Replacement Period, (1) Seller shall deliver, and Buyer shall accept and take delivery of, the Net Output at the Interconnection Point, (2) Buyer shall be responsible for arranging the transmission and delivery of the Net Output to the Delivery Point at Buyer’s expense, and (3) Buyer shall serve as SC as provided in this Section 3.4(e) at Buyer’s expense. All other terms and conditions of this Agreement shall continue in effect during the Replacement Period. To facilitate Buyer’s ability to step in expeditiously to perform Shaping Party’s duties following a Shaping Party Default, Seller shall give Buyer a copy of any notice of default that Seller delivers to Shaping Party under the Shaping Agreement.

(ii) If following any default by Shaping Party under the Shaping Agreement, but before a Shaping Party Default, the Shaping Party fails to perform all of the services under the Shaping Agreement, then at the request of Seller, Buyer shall use commercially reasonable efforts to perform some or all of the services provided above with respect to the Replacement Period, and the Replacement Period shall be extended accordingly.

(iii) If within one hundred fifty (150) days after a Shaping Party Default Seller has not entered into a Replacement Shaping Agreement, unless the Parties otherwise agree in writing, Buyer shall continue to perform the services provided above with respect to the Replacement Period, and the Replacement Period shall be extended accordingly.

(f) Shaping Party Fee Plus Incremental Costs. During the Replacement Period, Seller shall pay Buyer the Shaping Fee for each MWh of Shaped

Energy delivered at the Delivery Point. If during the Replacement Period Buyer's cost to provide shapening services is in excess of the Shapening Fee, Seller shall pay to Buyer an amount equal to the difference between Buyer's actual costs of providing the shapening services and the Shapening Fee for each day of the Replacement Period that such actual costs exceeded the Shapening Fee, which Buyer's actual cost to provide the shapening services shall be calculated in the same manners as the "Adjusted Shapening Fee" pursuant to Section 3.10(h)(i) below. Seller shall pay the Shapening Fee to Buyer within ten (10) days of receipt of Buyer's invoice therefor. To give Seller sufficient time to pursue its remedies against Shapening Party, Buyer shall not (unless Seller otherwise requests) issue an invoice for the positive difference between Buyer's actual costs of providing the shapening service and the Shapening Fee at any time before the one hundred twentieth (120<sup>th</sup>) day after the Shapening Party Default (at which time incremental actual costs will be trued up against prior deliveries). Thereafter during the Replacement Period, Buyer shall invoice Seller monthly for any positive difference between Buyer's actual costs of providing the shapening service and the Shapening Fee.

(g) [Intentionally Omitted.]

(h) Adjusted Shapening Fee. The Adjusted Shapening Fee shall be a single price for the balance of the Delivery Term. If no third party becomes the Replacement Shapening Party and Buyer assumes the duties of the Shapening Party set forth in clauses (1)-(3) of Section 3.10(e)(i) for the balance of the Delivery Term (as such duties may be modified by the Parties):

(i) Seller shall pay Buyer an "Adjusted Shapening Fee" determined according to the provisions of this Section 3.10(h) absent an agreement otherwise. The Adjusted Shapening Fee shall be provided to Seller upon Notice by Buyer to Seller as a single price, which Notice shall include a reasonably detailed explanation of Buyer's calculation of Buyer's commercially reasonable costs per MWh of providing the shapening service or components thereof, as described in Appendix XIV. In the event that Seller does not accept Buyer's calculation of the Adjusted Shapening Fee, Buyer shall calculate the Adjusted Shapening Fee or applicable components thereof by using the average of written market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the value of the Adjusted Shapening Fee or a particular component thereof. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be for services or components thereof, as set forth on Appendix XIV. If a quote is available for one or more but fewer than all of the components of the services as set forth on Appendix XIV, Buyer may calculate the Adjusted Shapening Fee by obtaining quotations on such individual components or groups of components in a manner contemplated by this Section 3.10(h)(i) or documenting and justifying the cost of components to the extent that quotes are not available and then aggregating the costs of all components in a commercially reasonable manner; and

(ii) Upon agreement of, calculation from the quotes for, or justification acceptable to Seller to the extent quotes are not available, the Adjustment

Shaping Fee and thereafter during the balance of the Delivery Term, Buyer shall continue to pay Seller the Contract Price and the Shaping Fee for all Product provided under this Agreement, and Seller shall pay Buyer the Adjusted Shaping Fee for each MWh of Shaped Energy. Payment of the Adjusted Shaping Fee shall occur by credit against the monthly payments due from Buyer to Seller hereunder.

(i) If Seller recovers all or part of any of Seller's BPA Transmission Service (including any transmission credits) assigned or made available to the Shaping Party in connection with the Shaping Agreement, at Buyer's request Seller shall make such transmission service available for use in connection with any shaping services provided by Buyer or a Replacement Shaping Party under this Section 3.10.

#### **ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS**

4.1 Contract Price and Shaping Fee. Buyer shall pay Seller the Contract Price for each MWh of Product delivered to the Delivery Point. In addition, Buyer shall pay Seller an additional fee per MWh in an amount equal to the Shaping Fee for each MWh of Shaped Energy delivered or deemed delivered pursuant to Section 5.8(c) to the Delivery Point. Collectively, Buyer shall pay Seller a total of \$96.81/MWh (fixed) for the Product delivered to the Delivery Point in each Contract Year; *provided, however*, that the Shaping Fee (and thus the total per MWh amount) shall be adjusted as provided in Section 4.7 for COB Mid-C Spread Change.

4.2 TOD Periods. Time of delivery periods shall not apply to this Agreement.

4.3 TOD Factors and Monthly TOD Payment.

(a) TOD Factors. Neither the Contract Price nor the Shaping Fee shall be adjusted by Time of Delivery Factors.

(b) Monthly Payment. For each month, Buyer shall pay Seller a fixed amount for Shaped Energy along with the Green Attributes, as specified in Section 4.1.

4.4 Excess Net Output. In any Contract Year, if Seller generates Net Output in excess of one hundred twenty percent (120%) of the annual Contract Quantity amount, the Contract Price for the associated Product in excess of one hundred twenty percent (120%) shall be adjusted to be seventy-five percent (75%) of the applicable Contract Price. The Shaping Fee with respect to such excess shall not be adjusted.

4.5 Additional Compensation. The Parties acknowledge that additional values or attributes may be ascribed to the Project or the Product after the Execution Date. Accordingly, to the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Project during the Term, including compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; *provided, however*, that for avoidance of doubt, nothing in this Agreement precludes Seller from retaining or making available to Shaping Party credits related to Transmission Upgrades contemplated by

Section 3.1(h), except when such transmission credits are made available to Buyer pursuant to Section 3.10(i).

4.6 Increased Costs of Wind Integration Changes; Market Restructuring.

(a) Sharing of Wind Integration Change Costs. If a Wind Integration Change imposed after the Execution Date causes an increase or decrease in costs, fees, penalties, expenses or benefits after the Execution Date then such costs, charges, penalties and expenses, on the one hand, and benefits, on the other hand, shall be netted against each other (provided that to the extent that any such costs, fees, penalties and expenses are partially or fully offset by benefits and Shaping Party is not entitled or eligible to receive such benefits, the amount of the Wind Integration Change shall be calculated excluding such excluded benefits) to produce a single net amount per Contract Year (the "Wind Integration Change Costs"). If a Wind Integration Change occurs more than one time following the Execution Date, the associated Wind Integration Change Costs shall be calculated in connection with each Wind Integration Change then in effect and the Wind Integration Change Costs shall be aggregated for purposes of the allocations below. Any increases in Wind Integration Change Costs shall be allocated as follows:

(i) Buyer shall be obligated to pay, or reimburse Seller, for the first Seven Hundred Twenty Thousand Dollars (\$720,000) per Contract Year.

(ii) Seller and Buyer shall share equally in the next Seven Hundred Twenty Thousand Dollars (\$720,000) (so \$360,000 each) per Contract Year.

(iii) If at any point during the Term, the Wind Integration Change Costs exceed One Million Four Hundred Forty Thousand Dollars (\$1,440,000) per Contract Year and neither Party agrees in writing to accept the obligation hereunder to pay for such excess Wind Integration Change Costs within forty-five (45) days of the date on which such Wind Integration Change Costs exceed One Million Four Hundred Forty Thousand Dollars (\$1,440,000) in a Contract Year, then either Party may terminate this Agreement after such forty-five (45) day period upon Notice to other Party, without liability to either Party for such termination. Any such excess Wind Integration Change Costs incurred before the Parties agree in writing to accept the obligation to pay for such excess Wind Integration Change Costs or the termination of this Agreement shall be shared equally by the Parties.

Seller shall cause the Shaping Party to bear for its own account all costs, charges or benefits other than Wind Integration Change Costs imposed on or associated with the receipt and transmission of Net Output and the transmission and delivery of Shaped Energy. For the avoidance of doubt, as of the Execution Date, neither the Contract Price nor the Shaping Fee include any charges, costs, fees, penalties, expenses or benefits that are imposed, assessed or credited in connection with the Settlement Agreement. Any such charges, costs, fees, penalties, expenses or benefits in connection with the Settlement Agreement shall be allocated between the Parties as provided in this Section 4.6(a).

(b) Market Restructuring. If the electric energy market in which the Delivery Point is located is restructured, redesigned or otherwise modified to (i) include nodal pricing, locational marginal pricing or any similar or related concept, (ii) incorporate a regional transmission organization, independent system operator or similar entity, or (iii) accommodate a substantial change occurring after the Execution Date in a statute, law, rule, or regulation governing the bilateral energy market, then, to the extent necessary to preserve the intent of the Parties under this Agreement (including the respective rights, duties, benefits and obligations of the Parties contemplated hereunder and thereunder), the Parties shall negotiate in good faith amendments to this Agreement in order to preserve such intent.

4.7 Adjustment of Shaping Fee. Effective as of the date on which the CPUC Approval becomes final and nonappealable, the Shaping Fee shall be adjusted to reflect the COB Mid-C Spread Change as follows:

(a) If the COB Mid-C Spread Change is zero, than no change will be made to the Shaping Fee.

(b) If the COB Mid-C Spread Change is negative, the Shaping Fee shall be decreased by the per MWh amount of the COB Mid-C Spread Change. If a negative COB Mid-C Spread Change is greater than Two Dollars (\$2.00) per MWh, the Shaping Fee shall not be decreased by more than Two Dollars (\$2.00) per MWh and Shaping Party shall retain the benefit of the incremental decrease of the COB Mid-C Spread Change above Two Dollars (\$2.00) per MWh.

(c) If the COB Mid-C Spread Change is positive, then the Shaping Fee shall be increased by the per MWh amount of the COB Mid-C Spread Change (with such increase not to exceed Two Dollars (\$2.00) per MWh). If a positive COB Mid-C Spread Change is greater than Two Dollars (\$2.00) per MWh, Seller shall cause the Shaping Party to absorb for Shaping Party's own account the incremental increase of the COB Mid-C Spread Change above Two Dollars (\$2.00) per MWh.

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

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

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made, if such failure is not remedied within thirty (30) days after the non-breaching Party gives Notice of the failure to the



breaching Party in accordance with Article Thirteen of this Agreement; *provided* that if such inaccuracy is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured, the breaching Party shall have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure the material breach, so long as the breaching Party commences the cure within the initial thirty (30) day cure period and thereafter diligently pursues the cure; *provided however*, that, if a change in Law occurs after execution of this Agreement that causes the representation and warranty made by Seller in Section 10.2(b)(i) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b)(i) shall not be an Event of Default provided that Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after the non-breaching Party gives Notice of the failure to the breaching Party in accordance with Article Thirteen of this Agreement; *provided*

(A) that if such breach is not reasonably capable of being cured within the thirty (30) day cure period specified above but is reasonably capable of being cured, the breaching Party shall have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure the material breach, so long as the breaching Party commences the cure within the initial thirty (30) day cure period and thereafter diligently pursues the cure;

(B) that any failure of a Party to deliver or receive, as applicable, the quantity of Product required under this Agreement, shall not be a deemed an Event of Default so long as the non-performing Party pays the other Party any amounts owed pursuant to Section 5.8 as a result of such failure, *provided* that (1) payment of amounts owed by Seller under Section 5.8 in connection with a breach by Shaping Party of its obligations under Section 3.1(c) of the Shaping Agreement and a breach by Seller of its obligations under Section 3.1(r) of this Agreement shall not prevent Buyer from giving Seller a Notice under this Section 5.1(a)(iii) of Seller's failure to perform under Section 3.1(r) and thereafter pursuing Buyer's rights and remedies under this Agreement if Seller does not timely cure its failure to perform under Section 3.1(r) as provided in Section 5.1(a)(iii), and (2) payment of amounts owed by Buyer under Section 5.8 in connection with a breach by Buyer of its obligations under Section 3.1(b)(vi) shall not prevent Seller from giving Buyer a Notice under this Section 5.1(a)(iii) of Buyer's failure to perform under Section 3.1(b)(vi) as provided in Section 5.1(a)(iii); and

(C) a Shaping Party Default shall not constitute an Event of Default of Seller but shall instead be governed exclusively by Section 3.10, *provided* that Seller's breach of Section 3.1(r) shall constitute a failure by Seller to perform and shall not be construed as a Shaping Party Default;

(iv) such Party becomes Bankrupt; *provided, however*, that if a third party files a petition or commences a proceeding against a Party under any bankruptcy, insolvency, reorganization or similar Law, an Event of Default shall not occur unless and until the proceeding or cause of action remains undismissed for sixty (60) days or the affected Party earlier files a pleading admitting or failing to contest the material allegations of the proceeding or cause of action; or

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

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

(i) if at any time during the Term of the Agreement, Seller delivers to Buyer Green Attributes associated with energy that was not generated by the Project and fails, within five (5) Business Days of the date on which Buyer gives Seller Notice of the breach, to cure the delivery defect by delivering, pursuant to Section 3.1(o), replacement Green Attributes generated by the Project;

(ii) failure by Seller to meet either of the Guaranteed Project Milestones set forth in Section 3.9(d), in each case after the applicable cure period has expired;

(iii) failure to achieve the Guaranteed Energy Production—Annual Test requirement as set forth in Section 3.1(e) of this Agreement unless Seller pays liquidated damages to Buyer with respect to such failure in accordance with Section 3.1(e), but subject to Seller's limitation to pay liquidated damages equal to no more than 100 GWh in the aggregate during the Delivery Term as set forth in Section 3.1(e)(ii)(A);

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

(v) any event of default by Seller under the Shaping Agreement if Seller does not cure the default within the period specified for such a cure in the Shaping Agreement (as such cure period may be extended by the Shaping Party; *provided* that such extension shall not have an adverse effect on Buyer's rights or duties under this Agreement);

(vi) if, after the Shaping Agreement is executed and delivered, Seller (A) agrees to an amendment of a material term of the Shaping Agreement and the amendment adversely affects Buyer's rights or duties under this Agreement, or (B) Seller consents to the assignment of the Shaping Agreement to a party that is not a permitted assignee of the Shaping Party under the Shaping Agreement; or

(vii) if at any time during the Term of the Agreement, Seller sells any energy (including Net Output, Scheduled Energy and Shaped Energy), Green Attributes or Capacity Attributes produced by or associated with the Project to any party other than Buyer, except as otherwise permitted in accordance with Section 3.1(b)(v) or as a result of an unintended schedule or sale; or

(viii) if at any time during the Delivery Term Shaping Party sells or delivers, on a systematic basis, Scheduled Energy to any party other than Seller (or to Buyer on behalf of Seller).

(c) with respect to Buyer as the Defaulting Party, if at any time during the Delivery Term Buyer fails to purchase or accept delivery of, on a systematic basis, Scheduled Energy.

5.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the right to (a) send Notice to the Defaulting Party, designating a day, no earlier than thirty (30) days after such Notice is deemed to be received and no later than sixty (60) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”); (b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date and collect liquidated damages (“Termination Payment”), which shall be calculated in accordance with Section 5.3 below; (c) withhold any payments due to the Defaulting Party under this Agreement; (d) suspend performance; and (e) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement; *provided, however*, that notwithstanding the termination of this Agreement pursuant to this Section 5.2, Seller shall be obligated to transfer any and all WREGIS Certificates representing any Green Attributes associated with the Product delivered to and purchased by Buyer all in accordance with Section 3.1(o) hereof until all such WREGIS Certificates have been transferred from Seller to Buyer. The Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the “Settlement Amount” is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero.

5.3 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in

the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Product, (c) at the same Delivery Point, and (d) for the remaining Delivery Term, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remaining Delivery Term of the Terminated Transaction and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Transaction. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Notwithstanding the foregoing, Seller's liability for the Settlement Amount and resulting Termination Payment arising from either an Event of Default under Section 5.1(b)(ii) or an Event of Default under Section 3.9 and the termination of this Agreement as a result thereof shall be calculated based on Daily Delay Damages and shall in no event exceed the aggregate cap on Daily Delay Damages (\$4,150,000), minus any Daily Delay Damages previously paid to Buyer pursuant to the terms of this Agreement. If a Party elects to declare an Early Termination because an event of Force Majeure delays a Guaranteed Project Milestone by over one hundred eighty (180) days, Buyer shall not be entitled to Daily Delay Damages (other than those that become due before the Force Majeure event) or to any Termination Payment.

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

5.5 Disputes with Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Without limiting the obligations in this Article Five, disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.6 Right to Seek Payment. Any Party due monies under this Agreement, the amounts of which are not in dispute or if disputed have been the subject of a decision awarding monies, (i) shall have the right to seek payment of such monies in any forum having competent jurisdiction, and (ii) shall possess the right to seek relief directly from that forum without first utilizing the mediation or arbitration provisions of this Agreement and without exercising termination and liquidation rights under this Article Five.

5.7 [INTENTIONALLY OMITTED]

5.8 Damages for Failure to Deliver or Receive Scheduled Energy.

(a) If for any reason other than an excuse specified in Section 3.1(m), the amount of Shaped Energy delivered or received in any hour is less than the amount of Scheduled Energy for that hour, then one Party shall make a payment to the other Party of an amount in dollars equal to the sum of (i) the product of (A) (the quantity of Shaped Energy actually delivered in such hour minus the quantity of Scheduled Energy for that hour), times (B) the Shaping Party Contract Price minus the Resale Price or the Replacement Price, as applicable, plus (ii) (A) in the case of the Resale Price, the amount of transmission charge(s), if any, for firm transmission service upstream of the Delivery Point, that Seller and/or Shaping Party incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Buyer's schedule or receipt of electric energy (based on Seller's reasonable commercial efforts to achieve such reduction), and (B), in the case of the Replacement Price, the amount of transmission charge(s), if any, for firm transmission service downstream of the Delivery Point, that Buyer incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Seller's delivery of electric energy (based on Buyer's reasonable commercial efforts to achieve such reduction), plus (iii) any charges imposed under open access transmission or FERC accepted or approved tariffs for regional organizations on one Party due to the other Party's failure to schedule or deliver or receive (collectively "Section 5.8 Damages"). Section 5.8 Damages shall be payable as follows:

(i) if the result of the calculation above is a positive dollar amount, then Seller shall pay Buyer the sum of (A) the Section 5.8 Damages plus (B) the product of (i) (the quantity of Scheduled Energy for such hour minus the quantity of Shaped Energy actually delivered for that hour) times (ii) the Shaping Party Contract Price.

(ii) if the result of the calculation above is a negative dollar amount, then Buyer shall pay Seller the Section 5.8 Damages and Seller shall pay Buyer the product of (i) (the quantity of Scheduled Energy for such hour minus the quantity of Shaped Energy actually delivered for that hour) times (ii) the Shaping Party Contract Price.

(b) The Party owing any amount under this Section 5.8 shall pay such amount in the billing period as specified in Section 6.1.

(c) Payment of damages under this Section 5.8 constitutes deemed delivery of the quantity of Shaped Energy to the Delivery Point for purposes of the Guaranteed Energy Production calculation and for purposes of Section 3.1(j).

(d) Seller shall, by complying with Section 3.1(o), deliver a quantity of Green Attributes equal on a MWh basis with the quantity of Shaped Energy deemed to have been delivered under this Section 5.8.

(e) Examples illustrating the operation of this Section 5.8 are set forth in Appendix XI.

(f) If the amount of energy that Seller or Shaping Party scheduled or delivered in any hour is less than the applicable hourly Scheduled Energy, Seller and/or Shaping Party shall use good faith efforts, taking into account prevailing industry standards, to collect from the parties that were contractually obligated to deliver the Shaped Energy to, or on behalf of, Shaping Party for such hour, any transmission costs, fees or expenses that are incurred by Buyer in the course of procuring substitute energy in place of the quantity of Shaped Energy that is less than the quantity of Scheduled Energy for such hour. The Parties acknowledge and agree that Seller's and Shaping Party's obligation to use good faith efforts to collect such costs, fees or expenses shall not require that Seller or Shaping Party to take any further action beyond such efforts to collect, including pursuing any remedy available under a written agreement or at law or in equity, except to the extent that such efforts to collect are at that time required by prevailing industry standards.

(g) The Parties agree that the amounts recoverable under this Section 5.8 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy for failure by a Party to schedule or deliver Scheduled Energy or receive Shaped Energy. Further, Seller shall be excused from its obligation hereunder to deliver that amount of Shaped Energy for which it has paid damages under this Section 5.8. Amounts payable under this Section 5.8 are payable for the loss of bargain and the loss of protection against future risks. For the avoidance of doubt, the Parties acknowledge and agree that the amounts payable under this Section 5.8 (1) are not intended to provide Seller with an alternative to the performance of its obligations to schedule and deliver Shaped Energy hereunder, rather such amounts are payable to compensate Buyer for the loss of bargain and the loss of protection against futures risks as a result of Seller's failure to schedule and deliver energy in any hour in an amount equal to the Scheduled Energy for such hour, and (2) are not intended to provide Buyer with an alternative to the performance of its obligations to receive Shaped Energy hereunder, rather such amounts are payable to compensate Seller for the loss of bargain and the loss of protection against futures risks as a result of Buyer's failure to receive energy in any hour in an amount equal to the Scheduled Energy for such hour.

(h) Each Party agrees that it has a duty to mitigate damages in a commercially reasonable manner to minimize any damages it may incur as a result of the other Party's performance or non-performance under this Agreement.

(i) In the event the non-paying Party disputes the calculation of the damages under this Section 5.8, the paying Party shall pay the full amount of the damages to the non-paying Party. If resolution or agreement results in refunds or the need for refunds to the paying Party, such refunds shall be calculated in accordance with Article Six of this Agreement.

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

## ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10<sup>th</sup>) day of each month beginning with the second calendar month of the first Contract Year and every calendar month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of the Project Meter data and other transaction data sufficient to document and verify the generation of Product by the Project for all hours during the preceding month, and (b) an invoice, in the format specified by Buyer, covering (i) the Shaped Energy from the preceding month, (ii) liquidated damages owed by either Party under Section 5.8, (iii) any adjustments of amounts invoiced in prior months resulting from information received after the initial invoice date or otherwise not taken into account in the initial invoice, (iv) any unbilled amounts from prior months, and (v) any amounts in excess of \$10,000 for which Buyer has agreed to reimburse Seller in connection with Seller's performance of its duties in Section 3.1(n). Buyer shall pay the undisputed amount of each such invoice on or before the later of the twenty-fifth (25<sup>th</sup>) 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. If Seller and Buyer each owes an amount to the other in the same month for obligations incurred under this Agreement or other agreements between the Parties, except to the extent provided to the contrary in any such other agreement, the undisputed portion(s) of such amounts shall be aggregated, and the Parties shall satisfy their payment obligations through netting, in which case the Party owing the greater aggregate undisputed amount shall pay to the other Party the difference between the undisputed amounts owed. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate plus two hundred (200) basis points, such interest to be calculated from and including the due date but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail to the addressees in the Cover Sheet.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Seller shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be

made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate plus 200 basis points from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

#### ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED AND ANY WARRANTIES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS



INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER  
CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles; *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 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 financial information shall be provided as specified on the Cover Sheet:

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

Option B: If requested by Buyer, Seller shall deliver to Buyer (i) within one hundred eighty (180) days following the end of each fiscal year, a copy of the audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of the quarterly report containing unaudited consolidated financial statements for such fiscal quarter, in each case for the Person(s) specified on the Cover Sheet; *provided however*, that Seller shall be deemed to have satisfied such delivery requirements if the applicable report is publicly available on [www.edp.pt](http://www.edp.pt). In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; *provided, however*, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever Seller, including any equity or right of purchase or redemption by the Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Project Development Security; Performance Assurance.

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

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

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

(iii) from the Commercial Operation Date until the end of the Term, the Delivery Term Security in the amount set forth in the Cover Sheet with respect

to this subpart (iii); *provided* that the Delivery Term Security may be in the form of (A) a Letter of Credit, (B) a cash deposit, or (C) a guaranty in a form and from a guarantor acceptable to Buyer; *provided, further*, that Seller may leave the existing Project Development Security in place and post additional Performance Assurance equal to the increment between the existing Project Development Security and the Delivery Term Security.

Any such Performance Assurance shall not be deemed a limitation of damages, unless otherwise provided by the terms set forth in this Agreement (including the definition of "Daily Delay Damages" and Section 5.3). Notwithstanding anything to the contrary in this Section 8.4, by giving at least ten (10) days' prior Notice to the Buyer, Seller may from time to time (but no more often than once in each calendar year during the Term) replace any Performance Assurance provided hereunder by posting with Buyer replacement Performance Assurance in the form of a cash deposit, or a Letter of Credit, or a guaranty in a form and from a guarantor acceptable to Buyer, or a combination thereof, in the amount of the undrawn portion of the Performance Assurance existing at the time of such replacement. Upon the posting of such replacement Performance Assurance, Buyer shall release and return to Seller the Performance Assurance being replaced, and all such replaced Performance Assurance shall be deemed terminated.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security posted by Seller for Daily Delay Damages until such time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date. Seller shall have no obligation to replace or replenish any amount drawn under the Performance Assurance.

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are owed to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Project Development Security and any amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date shall be returned to Seller, including any payment of interest due thereon pursuant to Section 8.4(d), within five (5) Business Days of Seller's provision of the Delivery Term Security; *provided however*, that Seller may, by giving Notice to Buyer, elect to apply the remaining Project Development Security toward the Delivery Term Security, if any, provided pursuant to this Section 8.4. If Seller has not elected to apply the Project Development Security toward the Delivery Term Security prior to the Commercial Operation Date and Seller has posted the Delivery Term Security, the Project Development Security shall be deemed terminated hereunder and thereunder effective as of the Commercial Operation Date, and Buyer shall have no further rights to, under or through the Project Development Security and shall execute any documents reasonably requested by Seller or the Person providing such Project Development Security to effect and confirm such termination and release. If this Agreement is terminated prior to the Commercial Operation Date, Buyer shall return the unused portion of Project Development Security, including the payment of any interest due thereon pursuant to Section 8.4(d), to Seller promptly after the later of (i) six (6) months after the termination of the Agreement or (ii) the resolution of all pending

disputes pursuant to, in connection with, relating to or arising out of this Agreement, and the Person(s) that provided or issued such Project Development Security shall be released from all obligations under such Project Development Security, and Buyer shall execute any documents reasonably requested by Seller or such Person to effect and confirm such release.

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

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon pursuant to Section 8.4(d) above, to Seller promptly after the later of (i) six (6) months after the termination or expiration of the Agreement or (ii) the resolution of all pending disputes pursuant to, in connection with, relating to or arising out of this Agreement, and the Person(s) that provided or issued such Delivery Term Security shall be released from all obligations under such Delivery Term Security, and Buyer shall execute any documents reasonably requested by Seller or such Person to effect and confirm such release.

#### 8.5 Letter of Credit.

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

(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.

**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.

(a) Allocation of Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Product or the Transaction arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. Notwithstanding the foregoing, each Party shall be responsible for its own taxes calculated based on the income or profits generated in connection with the Transaction.

(b) Resale Certificate. At Seller’s request, Buyer shall attempt to obtain, and if obtained provide Seller with, a state resale certificate or other similar certificate. If Buyer fails to obtain, and provide Seller with, a state resale certificate or other similar certificate, or such certificates or other exemptions are not otherwise available for or permitted by Buyer to obtain, Buyer shall pay or cause to be paid any sales taxes, transfer taxes or other taxes or fees of any nature imposed on the sale of Product from Seller to Buyer at the Delivery Point.

(c) Remittance and Returns. The responsible Party shall remit the tax to the appropriate taxing authority and file the required returns. The responsible Party shall cooperate with the paying Party if the paying Party is required to remit such tax or file such returns. If Seller is required by Law to remit or pay Governmental Charges that are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law to remit or pay Governmental Charges that are Seller’s responsibility hereunder, Buyer may deduct such amounts from payments due to Seller under this Agreement. If Buyer elects not to deduct such amounts, Seller shall promptly reimburse Buyer for such amounts upon request.

(d) Exemptions. 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.

(e) Tax Minimization. Each Party shall use commercially reasonable efforts to administer this Agreement in a manner that will minimize the imposition of Governmental Charges, including by providing a certificate of exemption or other evidence of exemption from any Governmental Charge as may be reasonably requested by the other Party.

## ARTICLE TEN: MISCELLANEOUS

10.1 No Fault Termination – Production Tax Credit.

(a) Failure to Enact PTC Legislation. If legislation providing for an extension to at least December 31, 2009 of the date by which a Wind Turbine must satisfy the Placed In Service Requirement in order to qualify for Section 45 PTCs on the same or better economic terms and conditions as are in effect on the Execution Date (“PTC Legislation”) is not enacted by September 30, 2008, Seller shall on or before October 15, 2008 by Notice to Buyer propose an amendment to this Agreement that gives effect to the covenants and conditions set forth in Section 10.1(b) (the “Post-PTC Amendment”).

(b) Post-PTC Amendment.

(i) Terms of Post-PTC Amendment. On or before October 15, 2008, Seller shall give Notice to Buyer stating the Contract Price at which Seller is willing to sell the Net Output and associated Green Attributes and Capacity Attributes (the “Post PTC Product”) generated by the Project pursuant to this Agreement assuming that Section 45 PTCs will not be available with respect to the Project’s Net Output (the “Post PTC Offer”). Seller shall set the offered Contract Price forth in the proposed Post-PTC Amendment. The offered Contract Price specified by Seller in the Post-PTC Amendment shall equal the original Contract Price plus the amount per MWh required to offset the loss of the Section 45 PTCs on an after-tax basis, as such amount is reasonably determined by Seller. The Notice required by this section shall include a reasonably detailed explanation of Seller’s calculation of the amount per MWh required to offset the loss of the Section 45 PTCs on an after-tax basis, including explanations of the following items (the “Adjustment Factors”): (1) the tax rate used in the calculation; (2) the production schedule upon which the amount of the loss of PTCs is based, (3) the effect upon Seller’s calculation of any tax credits or other tax benefits applicable to the Project that (x) are legislated by the U.S. Congress within one year of the lapse of the Section 45 PTC and/or (y) are enacted to be in lieu of the Section 45 PTC, and (4) if applicable, the effect upon the Seller’s calculation of the availability of the Section 45 PTC but at reduced economic terms.

(ii) Exercise of Post PTC Option. Buyer, in its sole discretion, shall have the right, but not the obligation to purchase the Post PTC Product on the terms and conditions set forth in the Post-PTC Offer as described in Section 10.1(b)(i) (the “Post-PTC Option”). Buyer shall exercise the Post-PTC Option, if at all, by doing both of the following on or before December 15, 2008: (A) giving Notice to Seller of Buyer’s irrevocable exercise of the Post PTC Option, which shall be subject to proposed adjustments pursuant to Sections 10.1(b)(iv) through (vii), and (B) delivering to Seller duplicate originals of the Post-PTC Amendment (as such amendment may have been changed by mutual written agreement of the Parties during the Post-PTC Exercise Period), duly executed by Buyer’s authorized representative(s). The period between Seller’s Notice of the Post-PTC Amendment and December 15, 2008 is the “Post-PTC Exercise Period”. During the Post-PTC Exercise Period, Buyer may propose such

changes to the Post-PTC Amendment (including proportional adjustments to the amount of Performance Assurance), as are reasonably required to give effect to the terms and conditions set forth in this Section 10.1(b). The Parties shall engage in any negotiations concerning the Post-PTC Amendment in good faith during the Post-PTC Exercise Period.

(iii) Execution of Post-PTC Amendment by Seller. No later than December 17, 2008, after receiving Buyer's Notice of exercise and signed duplicate originals of the Post-PTC Amendment under Section 10.1(b)(ii), Seller shall cause the duplicates of the Post-PTC Amendment to be duly executed by Seller's authorized representative(s) and shall return one fully executed Post-PTC Amendment to Buyer.

(iv) Proposed Adjustment to Post-PTC Amendment Due to PTC Legislation Prior to CPUC Approval. The Post-PTC Amendment shall provide that if Buyer files for the CPUC Amendment Approval (as defined in Section 10.1(b)(viii)) and if PTC Legislation is enacted before obtaining the CPUC Amendment Approval such that all of the Wind Turbines qualify for the Section 45 PTCs on the same or better economic terms and conditions as are in effect on the Execution Date, Seller shall propose by Notice to Buyer an adjustment to the Contract Price in the Post-PTC Amendment to reflect the value of the Section 45 PTCs, as reasonably determined by Seller (*provided* that the Contract Price shall in no case be reduced below \$76.75 per MWh). In such Notice, Seller shall provide to Buyer a reasonably detailed explanation of its calculation of the adjustment contemplated by this Section 10.1(b)(iv). Seller's proposed adjustment shall be subject to Buyer's concurrence, which Buyer shall not unreasonably withhold, condition or delay. Buyer shall set forth any objections to Seller's determination of the value of the Section 45 PTC and the resulting adjustment to the Contract Price under this Section 10.1(b)(iv) by Notice given to Seller no later than ten (10) days after Seller gives Notice to Buyer under this Section 10(b)(iv). Buyer's failure to give timely Notice of any objections shall constitute Buyer's acceptance of Seller's proposed adjustment. Notwithstanding the foregoing, if PTC Legislation is extended (A) before any of the Wind Turbines have satisfied the Placed in Service Requirement, or (B) on or before the Commercial Operation Date, such that all of the Wind Turbines qualify for the Section 45 PTC on the same or better economic terms and conditions as are in effect on the Execution Date, the Contract Price shall automatically revert to \$76.75 per MWh. Other than as provided in the preceding sentence, if Buyer timely objects to Seller's proposed adjustment under this Section 10.1(b)(iv), this Agreement as amended by the Post-PTC Amendment shall be adjusted according to Seller's Notice pursuant to this Section 10.1(b)(iv) pending resolution of any dispute of the adjustment pursuant to Article XII. If the Contract Price automatically reverts to \$76.75 per MWh, Buyer shall withdraw its filing for the CPUC Amendment Approval.

(v) Proposed Adjustment Due to PTC Legislation Prior to 2011. Subject to Section 10.1(b)(vi), any Post-PTC Amendment shall provide that if PTC Legislation is enacted after the execution date of the Post-PTC Amendment, but on or before December 31, 2010 such that all of the Wind Turbines qualify for the Section 45 PTCs on the same or better economic terms and conditions as are in effect on the Execution Date, Seller shall propose by Notice to Buyer an adjustment to the Contract Price in the Post-PTC Amendment to reflect the value of the Section 45 PTCs, as

reasonably determined by Seller (*provided* that the Contract Price shall in no case be reduced below \$76.75 per MWh), and this Agreement as amended by the Post-PTC Amendment shall remain in effect in accordance with its terms. In such Notice, Seller shall provide to Buyer a reasonably detailed explanation of its calculation of the adjustment contemplated by this Section 10.1(b)(v). Seller's proposed adjustment shall be subject to Buyer's concurrence, which Buyer shall not unreasonably withhold, condition or delay. Buyer shall set forth any objections to Seller's determination of the value of the Section 45 PTC and the resulting adjustment to the Contract Price under this Section 10.1(b)(v) by Notice given to Seller no later than ten (10) days after Seller gives Notice to Buyer under this Section 10(b)(v). Buyer's failure to give timely Notice of any objections shall constitute Buyer's acceptance of Seller's proposed adjustment. Notwithstanding the foregoing, if PTC Legislation is extended on or before the Commercial Operation Date such that all of the Wind Turbines qualify for the Section 45 PTCs on the same or better economic terms and conditions as are in effect on the Execution Date, the Contract Price shall automatically revert to \$76.75 per MWh. Other than as provided in the preceding sentence, if Buyer timely objects to Seller's proposed adjustment under this Section 10.1(b)(v), this Agreement as amended by the Post-PTC Amendment shall be adjusted according to Seller's Notice pursuant to this Section 10.1(b)(v) pending resolution of any dispute of the adjustment pursuant to Article XII.

(vi) Use of PTC Legislation If Enacted in 2011 or After. The Post-PTC Amendment shall further provide that, if PTC Legislation or a federal law is enacted after December 31, 2010, but during the Delivery Term, that extends the date by which Wind Turbines must satisfy the Placed in Service Requirement to a date that is on or after the date on which all of the Wind Turbines at the Project were actually placed in service (such that the Wind Turbines at the Project are eligible to use such post-December 31, 2010 Section 45 PTCs), Seller, its Affiliates or any other Person affiliated with the Project ("Seller Parties") shall not use or seek to use such post December 31, 2010 Section 45 PTCs in connection with the energy generated by the Project; *provided, however,* that Seller Parties shall always have the right to use or seek to use such Section 45 PTCs as long as Seller proposes by Notice to Buyer an adjustment to the Contract Price to reflect the value of such Section 45 PTCs to Seller Parties, as such adjustment is reasonably determined by Seller, and Buyer and Seller agree to such adjustment by executing a further amendment to this Agreement which is mutually agreeable to the Parties. The Notice shall include a reasonably detailed explanation of Seller's calculation of its calculation of the adjustment contemplated by this Section 10.1(b)(vi), including explanations of the Adjustment Factors. In the event the Parties do not agree on the adjustment and do not execute a further amendment pursuant to this Section 10.1(b)(vi), this Agreement as amended by the Post-PTC Amendment shall remain in effect in accordance with its terms and Seller Parties shall continued to be restricted pursuant to this Section 10.1(b)(vi).

(vii) Proposed Adjustment Due to Less than All Wind Turbines Placed in Service or PTC Legislation Retroactively Extended. The Post-PTC Amendment shall also provide that if (A) some but fewer than all forty-nine (49) of the Wind Turbines meet the Placed in Service Requirement on or before December 31, 2008, and/or (B) the Placed in Service Requirement of Section 45 PTC is retroactively extended



on or before December 31, 2010 to at least December 31, 2009, such that the Wind Turbines at the Project are eligible to use such Section 45 PTCs on terms and conditions that are less favorable to the Seller than those in effect on the Execution Date, Seller shall propose by Notice to Buyer an adjustment to the Contract Price in the Post-PTC Amendment to reflect the value to Seller produced by the Wind Turbines that have qualified for the Section 45 PTC, and/or the Wind Turbines that have qualified for the Section 45 PTC extension (*provided* that the Contract Price shall not be reduced below \$76.75 per MWh). In such Notice, Seller shall provide to Buyer a reasonably detailed explanation of its calculation of the adjustment contemplated by this Section 10.1(b)(vii). Seller's proposed adjustment shall be subject to Buyer's concurrence, which Buyer shall not unreasonably withhold, condition or delay. Buyer shall set forth any objections to Seller's determination of the value of the Section 45 PTC and the resulting adjustment to the Contract Price under this Section 10.1(b)(vii) by Notice given to Seller no later than ten (10) days after Seller gives Notice to Buyer under this Section 10(b)(vii). Buyer's failure to give timely Notice of any objections shall constitute Buyer's acceptance of Seller's proposed adjustment. Notwithstanding the foregoing, if PTC Legislation is extended on or before the Commercial Operation Date such that all of the Wind Turbines qualify for the Section 45 PTCs on the same or better economic terms and conditions as are in effect on the Execution Date, the Contract Price shall automatically revert to \$76.75 per MWh. Other than as provided in the preceding sentence, if Buyer timely objects to Seller's proposed adjustment under this Section 10.1(b)(vii), this Agreement as amended by the Post-PTC Amendment shall be adjusted according to Seller's Notice pursuant to this Section 10.1(b)(vii) pending resolution of any dispute of the adjustment pursuant to Article XII.

(viii) Filing of Post-PTC Amendment with CPUC. No later than January 23, 2009, Buyer shall (unless it determines that such approval is not required) file the fully executed Post-PTC Amendment with the CPUC. Buyer shall have a further one hundred eighty (180) days in which to obtain any final, nonappealable order from the CPUC that is required to approve Buyer's entry into this Agreement as amended by the Post-PTC Amendment and the rate recovery of the payments to be made by Buyer thereunder (the "CPUC Amendment Approval").

(ix) Sale of Post PTC Product During Approval Period. During the period following the Commercial Operation Date and pending receipt of any necessary CPUC Amendment Approval (if Buyer files for such approval), Seller shall sell to Buyer the Post PTC Product from the Project on mutually agreeable terms and conditions. Seller shall not be required to sell any pre-Commercial Operation Date test energy from the Project to Buyer, as Seller intends to sell all such test energy to Shaping Party pursuant to the Shaping Agreement. If Buyer is not able to purchase or is not interested in purchasing the Post PTC Product on an interim basis during the Approval Period, or if the Parties are unable to reach written agreement on the terms and conditions of such interim sale and purchase of Post PTC Product on or before January 31, 2009, Seller shall have the right to sell the Post-PTC Product to one or more third parties pursuant to one or more transactions having a term of less than one (1) year subject to early termination upon commencement of purchases and sales pursuant to this Agreement as amended by the Post-PTC Amendment.

(c) Seller's Right to Terminate.

(i) Due to Post-PTC Option. If any of the following occurs, then Seller shall have the right to terminate this Agreement and the Transaction by Notice given to Buyer at any time after January 1, 2009 and on or before January 9, 2009: (A) Buyer provides timely Notice to Seller rejecting the Post-PTC Option, or (B) Buyer fails to provide timely Notice exercising the Post-PTC Option together with executed duplicates of the Post-PTC Amendment on or before the last day of the Post-PTC Exercise Period in accordance with Section 10.(b)(v). If Seller has the right to terminate this Agreement and the Transaction pursuant to this Section 10.1(c)(i), Seller's right to terminate this Agreement under this Section 10.1(c)(i) shall nonetheless be waived if any of the following occurs: (x) Seller fails to give Buyer a Notice of termination under this Section 10.1(c)(i) on or before January 9, 2009, (y) all forty-nine (49) of the Wind Turbines satisfy the Placed in Service Requirement on or before December 31, 2008, or (z) PTC Legislation is enacted on or before December 31, 2008.

(ii) Due to Failure to Obtain Timely CPUC Amendment Approval. If Buyer timely exercises the Post-PTC Option but does not receive any required CPUC Amendment Approval within one hundred eighty (180) days after Buyer files the Post-PTC Amendment in accordance with Section 10.1(b)(v) ("Approval Period"), Seller shall have the right to terminate this Agreement as amended by the Post-PTC Amendment by giving Notice of termination to Buyer within 30 days following the expiration of the Approval Period. Seller's right to terminate this Agreement under this Section 10.1(c)(ii) shall nonetheless be waived if Seller fails to give Buyer of Notice of termination under this Section 10.1(c) on or before the 30<sup>th</sup> day following the expiration of the Approval Period or either of the events in Section 10.1(c)(i)(y) or (z) occur. Filing of the Post-PTC Amendment shall be deemed to have occurred on the later to occur of the actual filing date or fifteen (15) days after receiving the fully executed Post-PTC Amendment from Seller.

(d) Effect of Termination, Rejection, Objection or Failure to Respond. Seller's termination of this Agreement pursuant to this Section 10.1, or Buyer's rejection of or failure to provide notice exercising, the Post-PTC Option pursuant to this Section 10.1 shall be without liability to either Party. Buyer's objection to any proposed adjustment to a Post-PTC Amendment as provided in Sections 10.1(b)(iv) through (vii) shall be without liability to either Party, except to the extent such objection results in a dispute and is resolved pursuant to Article Twelve.

10.2 Representations and Warranties.

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

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

(ii) it has all regulatory authorizations necessary for it to perform its obligations under this Agreement, except for (i) CPUC Approval in the case of Buyer, and (ii) in the case of Seller, (A) all permits necessary to install, operate and maintain the Project, and (B) Exempt Wholesale Generator status and market-based rate authority under Section 205 of the Federal Power Act, each of which Seller shall obtain in the ordinary course before delivering energy under this Agreement;

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

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

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

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

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

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

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

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

to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(c) Further Seller Representations and Warranties. Seller, if applicable, its successors, represents and warrants that:

(i) as of the Execution Date, Seller has not received any notice under the Shaping Agreement that a Shaping Party Default has occurred or is occurring and Seller has no knowledge of any Shaping Party Default or anticipated event of such default; and

(ii) as of the Execution Date, Seller has obtained pre-certification of the Project under the California Renewables Portfolio Standard as set forth in the CEC's Renewables Portfolio Standard Eligibility Guidebook (2<sup>nd</sup> Edition) or any applicable successor publication.

10.3 Covenants.

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

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

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

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

(iv) this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

(b) Seller Covenants.

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

(ii) If Seller gives the Shaping Party a notice of a default under the Shaping Agreement, Seller shall also give Buyer a Notice describing such Shaping Party default; and

(iii) Not less than ten (10) Business Days prior to entering into an amendment of a material term of the Shaping Agreement or a consent to a permitted

assignment by the Shaping Party under the Shaping Agreement, Seller shall provide Buyer written notice of such amendment or consent to assignment.

(c) Buyer Covenants. As part of Buyer's advice letter filing or other application process by which Buyer is requesting approval of this Agreement, Buyer shall submit to the CPUC the schematic diagram and narrative description attached hereto as Appendix XV of the delivery structure contemplated by the Shaping Agreement and this Agreement. Upon execution of this Agreement, Buyer has acknowledged the receipt of certified copies of the Shaping Agreement from Seller in accordance with Appendix XVI.

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

10.5 Indemnities.

(a) Indemnity by Seller.

(i) Seller shall release, indemnify and hold harmless Buyer, its directors, officers, agents, and representatives ("Buyer Indemnified Parties") against and from any and all Claims asserted by third parties with respect to (A) the Shaped Energy delivered to and at the Delivery Point and the Green Attributes delivered to and at the Delivery Point, under this Agreement, (B) Seller's operation and/or maintenance of the Project, or (C) Seller's actions or inactions with respect to this Agreement, including, without limitation, any Claims for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claims as may be caused solely by the willful misconduct or gross negligence of Buyer Indemnified Parties.

(ii) Seller shall further indemnify Buyer for all penalties assessed against Buyer by the CPUC pursuant to the Renewable Portfolio Standard requirements, to the extent caused by Seller's failure to deliver the Product to the Delivery Point, but only if:

(A) Seller's failure to deliver Product was directly attributable to an Event of Default by Seller pursuant to Sections 5.1(a)(ii) or (iii) or 5.1(b) (other than an Event of Default under Section 5.1(b)(ii) and/or Section 3.9), and such Event of Default was declared by Buyer by Notice to Seller in the Contract Year for which the CPUC assessed penalties against Buyer for failure to satisfy the Renewable Portfolio Standards requirements; and

(B) The penalties would not have been assessed against Buyer but for the Event of Default that was declared by Buyer; and

(C) Buyer used commercially reasonable efforts to mitigate its penalties and damages.

If Seller's Event of Default resulted in Buyer being assessed penalties by the CPUC pursuant to the Renewable Portfolio Standard as provided above, but other sellers of power on which Buyer was relying 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 sellers of renewable power to satisfy their respective delivery requirements to Buyer. If a Seller Event of Default has not occurred, Seller shall not be required to indemnify Buyer for penalties assessed by the CPUC against Buyer for Buyer's failure to satisfy the Renewable Portfolio Standard requirements.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives ("Seller Indemnified Parties") against and from any and all Claims asserted by third parties with respect to the Product after the Delivery Point, under this Agreement, including Claims for or on account of injury, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claims as may be caused solely by the willful misconduct or gross negligence of Seller Indemnified Parties. Buyer's indemnity excludes damages paid to Seller by insurance.

(c) Indemnification Procedure. The Indemnified Party shall promptly notify the Indemnifying Party of any Claim and the Indemnifying Party shall have the right to assume the investigation and defense of the Claim, including employing legal counsel. If the Indemnifying Party does not promptly assume the investigation and defense of the Claim, the Indemnified Person may do so, including employing legal counsel of its choice, at the Indemnifying Party's expense. In any case, the Indemnifying Party shall pay or reimburse the Indemnified Party for all court costs, reasonable and necessary attorneys' fees and experts' fees relating to the Claim and post any appeals bonds. If the Indemnifying Party assumes the defense of a Claim, the Indemnified Person has the right to employ at its expense separate legal counsel and participate in the defense of the Claim, but the Indemnifying Party shall not be liable for any settlement of a Claim without its written consent to the settlement, which consent shall not be unreasonably withheld. In addition, the Indemnifying Party may settle the Claim, provided it does not agree, without the consent of the Indemnified Party, to any compromise or settlement that is not an unconditional release of the Indemnified Party from all liabilities other than the payment of any money that will be paid by the Indemnifying Party. To prevent double recovery for a Claim, the Indemnified Party shall reimburse the Indemnifying Party for payments or costs incurred by the Indemnifying Party in an indemnity claim with the proceeds of any judgment, insurance, bond, surety or other recovery by the Indemnified Party to the extent the Indemnified Party otherwise recovered the full amount to which it was entitled to indemnity. If the Indemnified Party fails to perform any of its obligations under this Section 10.5(c) and the failure prejudices the Indemnifying Party in its defense of the Claim, the Indemnifying Party's obligation to indemnify shall remain in effect but shall be reduced to the extent, if any, that it is so prejudiced.

(d) No Effect on Buyer's Sole and Exclusive Remedies. For the avoidance of doubt, no Buyer Indemnified Parties shall be indemnified under this Section

10.5 for any Claims sustained or incurred by them for which this Agreement provides a certain remedy described herein as Buyer's sole and exclusive remedy.

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

10.6 Assignments.

(a) General. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; *provided, however*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to Financing Parties and the Financing Parties shall assume the obligations provided under this Agreement with respect to the transferring Party and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

(b) Execution and Delivery of Consent and Agreement.

(i) If requested by Seller, Buyer shall execute and deliver to Seller and its Financing Parties a Consent and Agreement in substantially the form of Appendix XII, Part A (with such changes and modifications thereto as may be reasonably requested by such Financing Parties and agreed to by Buyer in its sole discretion) in favor of Financing Parties to which Seller desires to make a collateral assignment of this Agreement.

(ii) If requested by Seller, Buyer shall execute a Consent and Agreement in substantially the form of Appendix XII, Part B (with such changes and modifications thereto as may be reasonably requested by any Financing Party and agreed to by Buyer in its sole discretion) in favor of any Financing Parties that do not receive a collateral assignment of this Agreement.

(iii) In connection with the delivery of a Consent and Agreement, Buyer shall at Seller's request deliver to an opinion of counsel addressed to the Financing Parties in form mutually acceptably to such Financing Parties and Buyer. Seller shall reimburse Buyer for reasonable attorneys' fees incurred in the preparation of such an opinion and the execution and delivery of a Consent and Agreement to the extent required due to the changes and modifications requested by any Financing Party.

10.7 Confidentiality. Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party's employees, lenders, investors, acquirers (direct or indirect), Affiliates, potential lenders (including any potential Financing Party), counsel, accountants or

advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) by Seller to any potential purchaser of (a) the Project, (b) Seller or (c) any Affiliate having a direct or indirect ownership interest in Seller, and such potential purchaser has agreed to keep such terms confidential, (iii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D.02-08-071 and made applicable to this Agreement by CPUC Decision D.04-06-015, subject to a confidentiality agreement, (iv) to the CPUC under seal for purposes of review, (v) disclosure of terms specified in and pursuant to Section 10.8 of this Agreement; (vi) in order to comply with any applicable Law, including any exchange or control area rules or the rules or instructions of any taxing authority, 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 (vii); or (vii) in order to comply with any applicable regulation, rule, or order of BPA, CPUC, CEC, or the FERC. In connection with requests made pursuant to clause (vi) of this Section 10.7 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) limit such disclosure or seek to have the information disclosed treated as confidential. After using such reasonable efforts, the Disclosing Party shall not be (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

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

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

10.10 Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors maintaining sufficient limits of the appropriate insurance coverage, *provided* that Seller shall be required to maintain the insurance coverages described in this Section 10.10 only to the extent that such coverages are available on commercially reasonable terms in the commercial insurance markets.



(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where the Project is located.

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

(b) Commercial General Liability.

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

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

(iii) Coverage shall:

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

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

(C) include a severability of interest clause.

(c) Business Auto.

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

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

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

(d) Seller's Pollution Liability.

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

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

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

(e) All Risk Property Insurance.

(i) An All Risk Property insurance policy including earthquake and flood shall be maintained from the Construction Start Date through the end of the Delivery Term. Such insurance shall be on a "replacement cost" basis and include removal of debris and the full replacement value of the buildings, structures, machinery, equipment, facilities, fixtures and other properties constituting a part of the Project, subject at a minimum to an annual aggregate limit of Ten Million Dollars (\$10,000,000) for flood coverage and for earthquake coverage;

(ii) The All Risk Property insurance policy shall provide testing and start-up coverage to include testing and commissioning of all Wind Turbines; and

(iii) The deductible shall not exceed \$1,000,000 per occurrence.

(f) Professional Liability Insurance.

(i) Errors and Omissions Liability insurance appropriate to the Seller's profession. Coverage shall be for a professional error, act or omission arising out of the scope of services shown in the Agreement, including coverage for bodily injury, property damage, and consequential financial loss.

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

(iii) Coverage shall:

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

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

(g) Additional Insurance Provisions.

(i) Prior to the earlier of the Effective Date or the Construction Start Date, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller.

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

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

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

(iv) Reviews of such insurance may be conducted by Buyer on an annual basis and, in addition, Buyer may inspect the original policies or require complete certified copies at any time.

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

(vi) The insurance carrier or carriers and form of policy shall be subject to review and approval by Buyer.

(h) Form and Content. All policies or binders with respect to insurance maintained by Seller shall:

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

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

10.11 Access to Financial Information. Buyer believes that Generally Accepted Accounting Principles and SEC rules may require Buyer to evaluate if Buyer must consolidate Seller's financial information. In the event Buyer believes that SEC rules may require such financial consolidation, Buyer will require access to financial records and personnel, at a mutually convenient and agreeable time, to determine if consolidated financial reporting is required. If Buyer determines that such financial consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

(a) Complete financial statements and such information as is reasonably requested by Buyer to enable it to prepare its own notes to its quarterly financial statements with respect to the Project and this Agreement; and

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

Any information provided to Buyer pursuant to this Section 10.11 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties. Persons who have access to Seller's financial records and personnel shall have access to and may use such information only for purposes of complying with Generally Accepted Accounting Principles and SEC rules as provided in this Section 10.11, and such information shall not be shared with any non-accounting personnel of Buyer or used for any commercial purpose.

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

10.13 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party, including the Shaping Party (other than a permitted successor or assignee bound to this Agreement or any Indemnified Party in connection with their right to indemnification hereunder). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; *provided* that at the request of either Party, the other Party will confirm

facsimile or PDF signatures by signing an original document. This Agreement shall be binding on each Party's successors and permitted assigns.

10.14 Federal Power Act. The standard of review the FERC shall apply when acting on proposed modifications to this Agreement, either on FERC's own motion or on behalf of a signatory or a non-signatory, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) rather than the "just and reasonable" standard of review. 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; *provided, however*, that neither Party shall seek to revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC of Section 205 or 206 of the Federal Power Act.

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

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

## ARTICLE ELEVEN: CONDITIONS PRECEDENT

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

- (a) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;
- (b) CPUC Approval has been obtained; and
- (c) The CPUC Approval 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 or waived in writing by both Parties on or before one hundred eighty (180) days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement without liability for such termination effective upon receipt of Notice by the other Party.

11.3 Buyer's Duty to Seek CPUC Approval. Buyer shall promptly after the Execution Date give Seller Notice of any Seller-related information that Buyer requires for the filing of this Agreement for CPUC Approval and for the approval contemplated by Section 11.1(c). Subject to Buyer having received from Seller all Seller-related information required for the filing of this Agreement for such approvals, Buyer shall file this Agreement with the CPUC for CPUC Approval and the approval contemplated by Section 11.1(c) no later than the later of (a) forty-five (45) days after the Execution Date or (b) thirty (30) days after Buyer's receipt of all Seller related information required for such filing.

## ARTICLE TWELVE: DISPUTE RESOLUTION

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

### 12.2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's authorized representative under Section 2.3, or such other Person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) 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 relevant information and to attempt to resolve the dispute.

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

(d) If the matter is not resolved within forty-five (45) calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to subpart (b) above, refuses or does not meet within the ten (10) Business Day period specified in

subpart (b) above, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the 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 Denver, Colorado. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation.

12.4 Arbitration. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by arbitration conducted by an arbitrator from the AAA panel conducted in Denver, Colorado administered by and in accordance with AAA’s Commercial Arbitration Rules and the Federal Arbitration Act, 9 U.S.C. § 1 *et. seq.* The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate arbitration by filing with the AAA a Notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

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

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

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

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

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

(f) Either Party may apply to AAA to consolidate, or join a party to, an arbitration arising under this Agreement with an arbitration arising under the PG&E Agreement in accordance with the criteria set forth in FRCP 42(a). PG&E, Shaping Party and Horizon shall have fifteen (15) days after demand for joinder or consolidation by any party in which to stipulate to a consolidation or joinder of such arbitrations. In the absence of such a stipulation, then at either Party's request, the AAA shall directly appoint a single arbitrator for the limited purpose of deciding whether the arbitrations should be consolidated or joined under the criteria set forth in FRCP 42(a). The AAA shall take reasonable administrative action to accomplish the consolidation or joinder of arbitrations as directed by the arbitrator.

### ARTICLE THIRTEEN: NOTICES

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



**APPENDIX I**

**FORM OF LETTER OF CREDIT**

[ISSUING BANK LETTERHEAD 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 Power Purchase and Sale Agreement dated May 28, 2008 (“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) days or less and Account Party has not provided alternate security acceptable to Pacific Gas and Electric Company pursuant to the terms of that certain Power Purchase and Sale Agreement dated May 28, 2008 (“Agreement”) by and between Account Party and Beneficiary.”

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 36 of the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (“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: \_\_\_\_\_



### APPENDIX III

#### PERMITTING AND CONSTRUCTION MILESTONES SCHEDULE

<b>Identify Milestone</b>	<b>Date for Completion</b>
Receipt of Permits Required to Commence Construction	May 31, 2008
Guaranteed Construction Start Date, as evidenced by issuance of a (i) Notice to Proceed to Turbine Supplier; (ii) Notice to Proceed to Electrical Contractor; and (iii) Notice to Proceed to Balance of Plant Contractor	June 30, 2008
Guaranteed Commercial Operation Date	August 31, 2009

**APPENDIX IV**

**PROJECT DESCRIPTION**

**FACILITY DESCRIPTION**

Facility name: Rattlesnake Road Wind Power Project

Facility physical address:

Rattlesnake Road Wind Farm  
72184 Rattlesnake Road  
Arlington, OR 97812

Total number of Wind Turbines at the facility: 49

Technology Type: Wind Turbines

Substation: BPA Jones Canyon 230 kv

The nameplate capacity of the Project is 102.9 MW.

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


Suzlon 2.1 MW turbines


**SITE DESCRIPTION**

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

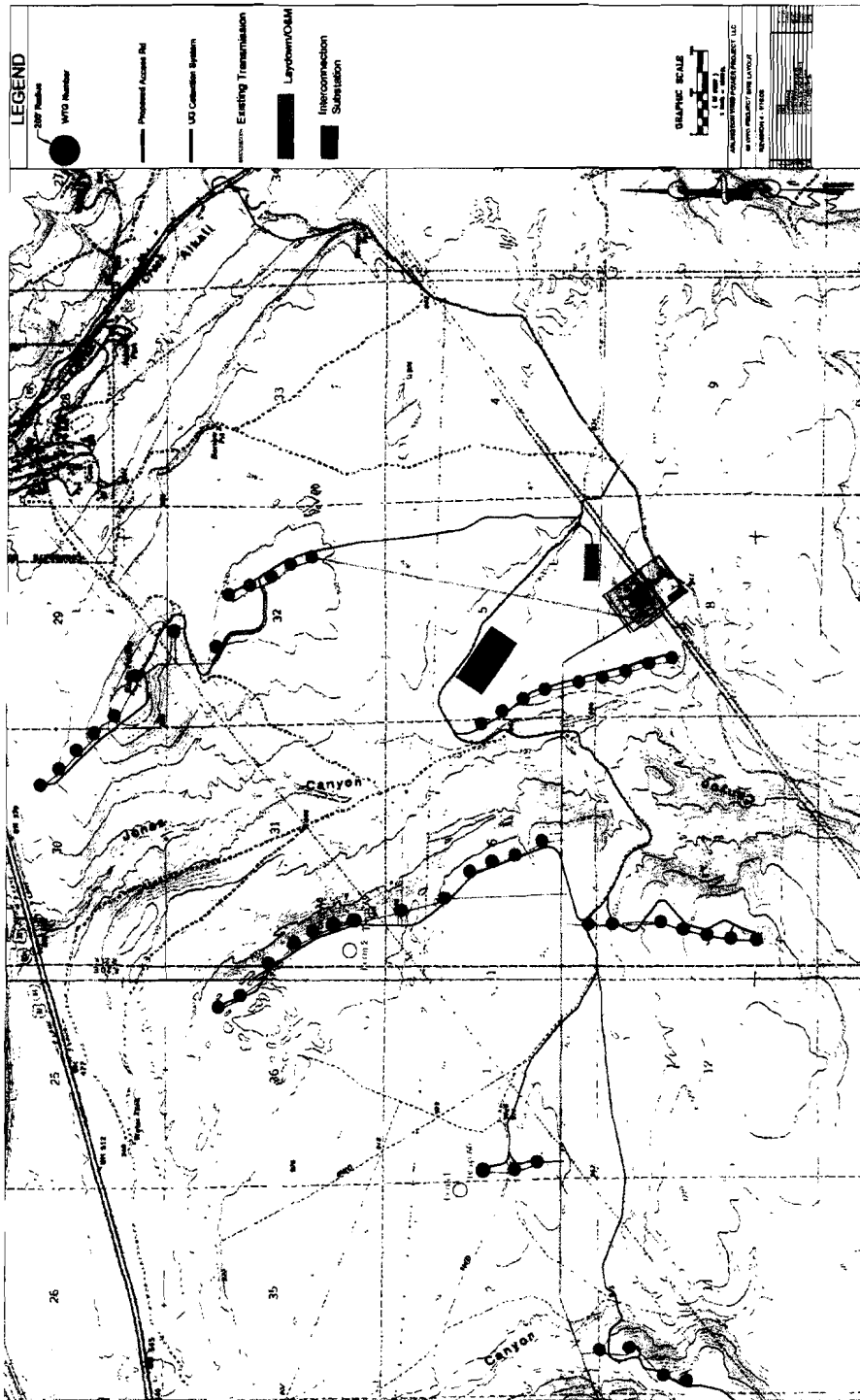
THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF GILLIAM, STATE OF OREGON:

***Legal Descriptions of Lands under Long Term Lease with Permittee***

<b>Landowner</b>	<b>Legal Description</b>
	Township 3 North, Range 20 East, WM Section 25: All land which lies southerly of United States Interstate Highway 84. Section 26: Land which lies southerly of United States Interstate Highway 84. Section 35: All Section 36: All Tax lot 200

	<p>Township 2 North, Range 20 East, WM  Section 1: All  Section 2: All  Section 11: N ½  Section 12: N ½  Tax lot 100</p> <p>Township 3 North, Range 21 East, WM  Section 29: All land which lies southerly of  United States Interstate Highway 84.  Section 30: All land which lies southerly of  United States Interstate Highway 84.  Section 31: All  Section 32: All  Tax lots 1200, 1300, 1302,1303</p> <p>Township 2 North, Range 21 East, WM  Section 5: All  Section 6: All  Section 7: N1/2; N1/2 S1/2; Except land  south and east of the County Road  Tax lots 200</p>
<p>Arlington Wind Power Project LLC  53 SW Yamhill St.  Portland Oregon 97204</p>	<p>Township 2 North, Range 21 East, WM  Section 8: Tax lot 501 only</p>
	<p>Township 2 North, Range 21 East, WM  Section 8: N1/2, Except tax lots 501, 502,  503  Tax lot 500</p>

Map of Project:





**APPENDIX V**

**FORM OF CERTIFICATION**

**[CONSTRUCTION START DATE CERTIFICATION]**

**[COMMERCIAL OPERATION DATE CERTIFICATION]**

This certification ("Certification") is delivered by Arlington Wind Power Project LLC ("Seller") to Pacific Gas and Electric Company ("Buyer") in accordance with the terms of that certain Power Purchase and Sale Agreement dated May 28, 2008 ("Agreement") by and between Seller and Buyer. All initially 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 that:

*For Construction Start Date Certification:*

As contemplated by Appendix III of the Agreement, Seller delivered (i) a Notice to Proceed to Turbine Supplier; (ii) a Notice to Proceed to Electrical Contractor; and (iii) a Notice to Proceed to Balance of Plant Contractor.

*OR*

*For Commercial Operation Date Certification:*

As contemplated by Section 5 of Appendix VI of the Agreement, Seller has satisfied the requirements of Sections 1 through 4 of Appendix VI with respect to the Project and each installed Wind Turbine.

**Arlington Wind Power Project LLC**

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

**Printed Name:** \_\_\_\_\_

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

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

## APPENDIX VI

### **COMMERCIAL OPERATION DATE CERTIFICATION PROCEDURE**

The Commercial Operation Date shall occur after all of the following conditions have been satisfied:

1. Wind Turbines with an aggregate nameplate capacity of at least ninety percent (90%) of the total capacity of the Wind Turbines to be installed at the Project (i.e., 92 MW) have been installed and commissioned at the Project.
2. All Seller and BPA Interconnection Facilities have been installed, tested and are able to accept and transmit the energy to the Interconnection Point in a safe and reliable manner.
3. Seller has delivered to Buyer a true and correct copy of the “Commissioning Completion Certificate” received from the turbine supplier for each Wind Turbine that has been commissioned in accordance with the terms of Seller’s turbine supply agreement, together with a complete copy of the associated “Commissioning Completion Checklist” for each such Wind Turbine.
4. All systems necessary for the operation of the Wind Turbines commissioned under Section 3 above are complete, any testing of the commissioned Wind Turbines required pursuant to the Interconnection Agreement has been completed, and the Project is available for operation in all material respects in accordance with applicable Laws.
5. Seller shall have delivered to Buyer a “Commercial Operation Date Certification” signed by an officer of Seller certifying that the requirements of Sections 1 through 4 of this Appendix have been satisfied with respect to the Project and each installed Wind Turbine.

Seller shall give the Buyer a Notice of the Seller’s proposed Commercial Operation Date no later than five (5) Business Days prior to the proposed Commercial Operation Date.

These Commercial Operation Date requirements are to be used solely for purposes of determining when the Project has achieved its Commercial Operation Date. They are not intended to affect in any way when Wind Turbines are deemed to have been “placed in service” for purposes of PTC eligibility.

**APPENDIX VII**

**FORM OF MONTHLY  
PROGRESS REPORT**

**Monthly Progress Report  
of**

**Arlington Wind Power Project LLC  
("Seller")**

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

[Date]

## 1.0 Instructions.

Any capitalized terms used in this report which are not defined herein shall have the means ascribed to them in the Power Purchase and Sale Agreement by and between Arlington Wind Power Project LLC (“Seller”) and Pacific Gas and Electric Company dated \_\_\_\_\_, 2008 (the “Agreement”).

Seller shall review the status of each Guaranteed Project Milestone in the construction schedule (the “Schedule”) for the 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 Guaranteed Project 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 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 Progress Report to [\_\_\_\_], together with all attachments and exhibits, with three (3) copies of this report delivered to [\_\_\_\_] and [\_\_\_\_\_].

**2.0 Executive Summary.**

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

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

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

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

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

- 2.2.1 Design
- 2.2.2 Property Acquisition
- 2.2.3 Engineering

---

<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.

- 2.2.3 Major Equipment procurement
- 2.2.4 Construction and Interconnection
- 2.2.5 Milestone report
- 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(s) or subcontractor(s)) and the status thereof:

DESCRIPTION	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 (or Seller’s contractor(s) or subcontractor(s))) and the status of each.

DESCRIPTION	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.**

Please attach to this Monthly Progress Report copies of any notices related to permitting activities received from contractors or 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.

<b>ACTIVITY</b>	<b>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.**



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

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

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

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

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

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

**7.0 Major Equipment Procurement.**

**7.1 Table of major equipment to be procured by Seller or contractors or subcontractors.**

The following table lists major equipment to be procured by Seller or contractors or subcontractors:

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


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

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

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

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

**8.0 Construction and Interconnection Activities.**

**8.1 Table of construction and interconnection activities to be performed by Seller or its contractors or subcontractors.**

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

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

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

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

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

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

**8.4 Contractor Monthly Progress Report.**

Please attach a copy of the Monthly Progress Reports received during the previous calendar month from any contractor pursuant to a construction contract between Seller and any contractor, certified by the 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 Guaranteed Project Milestone schedule.**

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

**10.0 Safety and Health Reports**

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

**10.2 Please list any work stoppage from the previous calendar month:**

**10.3 Please list any 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 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 VIII**

**OUTAGE NOTIFICATION FORM**

SEND VIA EMAIL

To Pacific Gas & Electric Company

Attention: Horizon Arlington Wind Settlements	email: Bilat_Settlements@pge.com
Attention: Horizon Arlington Wind Scheduling	email: DAenergy@pge.com

Unit/Project Name: \_\_\_\_\_

**NOTIFICATION OF:**

[PLANNED OUTAGE/MAJOR FORCED OUTAGE]

The Unit will shut down for PLANNED OUTAGE from:

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

The Unit experienced a MAJOR FORCED OUTAGE from:

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

The MAJOR FORCED OUTAGE was confirmed via telephone on

\_\_\_\_\_ (Date and Time) with \_\_\_\_\_  
(Name of PG&E Individual).

COMMENTS: Description and Cause of Planned Outage/Forced Outage

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

Outage Notification Form submitted by: \_\_\_\_\_ (Printed Name)

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

**APPENDIX IX**  
**COUNTERPARTY NOTIFICATION REQUIREMENTS FOR**  
**OUTAGES**

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

Prior to paralleling to or after disconnecting from the electric system, ALWAYS follow your designated Control Area Rules and Regulations.

**B. LOGS OF COMMUNICATION RECORDS WITH THE BPA CONTROL AREA**

Seller shall maintain written records of all communiqués with BPA 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.

## APPENDIX X

### RESOURCE ADEQUACY

1. Document Preparation. Seller shall prepare and execute any and all documents or instruments that are required to be prepared by a generation owner or operator and that are reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Buyer shall prepare and execute any and all other documents or instruments as are required to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such documents may include, but are not limited to, those necessary for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following the documentation requirements the CPUC has established and may establish in the future, for the calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and for the delivery of the RA Capacity to the Interconnection Point and/or the Delivery Point. If Buyer needs information from Seller to complete the documents that Buyer is required to prepare and execute to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements, Seller shall provide such information as and when reasonably requested by Notice from Buyer.

2. Reporting Requirements. Seller shall, or shall cooperate with Buyer's efforts to, comply with the following Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff:

- A. Registering the Project with the CAISO.
- B. Coordinating with Buyer with regard to the submission of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff, to the CAISO.
- C. Complying with the applicable reporting requirements as provided in Section 1 of this Appendix X.

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

# APPENDIX XI

## Examples

### Section 3.1(j) Examples:

HOURLY GENERATION

Gen Week	Day	Date	Delivered Energy (MWh) from Unit Commitment Confirmation																								MLM	LLM		
			HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24			HE25	
1	Monday	6/2/2008	19	9	6	16	24	23	30	43	39	27	29	26	48	42	40	42	86	53	68	50	35	23	26	39	0	483	164	
1	Tuesday	6/3/2008	21	20	21	9	7	13	19	12	11	11	6	13	8	2	0	0	0	0	0	1	1	1	2	1	0	85	104	
1	Wednesday	6/4/2008	0	0	0	0	1	2	0	1	0	0	0	0	0	0	0	10	21	16	9	7	10	18	20	0	74	41		
1	Thursday	6/5/2008	30	39	30	23	47	44	25	54	54	29	0	0	0	0	0	0	0	0	0	0	1	0	0	0	163	213		
1	Friday	6/6/2008	0	0	0	0	0	0	0	0	0	0	0	0	0	0	9	42	37	69	52	30	17	35	19	60	295	79		
1	Saturday	6/7/2008	35	77	42	32	66	71	73	99	61	72	79	73	68	81	88	58	79	87	70	75	84	88	79	78	0	1,193	480	
1	Sunday	6/8/2008	79	67	29	28	24	19	15	11	14	15	19	26	28	55	60	78	61	55	86	87	87	70	88	76	0	0	1,175	
2	Monday	6/9/2008	59	93	93	87	82	81	89	84	79	79	67	56	77	70	58	51	35	34	60	25	6	7	8	5	0	879	508	
2	Tuesday	6/10/2008	15	7	7	7	3	3	3	7	10	7	6	0	0	0	3	1	0	0	0	0	0	0	3	9	0	37	54	
2	Wednesday	6/11/2008	4	2	9	23	49	68	60	11	11	0	1	2	0	0	0	0	2	0	0	0	0	0	0	0	0	109	151	
2	Thursday	6/12/2008	15	7	7	7	3	3	3	7	10	7	6	0	0	0	3	1	0	0	0	0	0	0	3	9	0	37	54	
2	Friday	6/13/2008	40	40	40	44	43	40	40	40	40	40	40	40	40	41	43	41	41	51	53	51	44	40	40	0	685	377		
2	Saturday	6/14/2008	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	4	
2	Sunday	6/15/2008	7	11	14	17	13	13	4	2	2	14	23	26	62	77	75	84	92	93	93	91	92	92	91	54	0	0	1,146	
3	Monday	6/16/2008	0	0	0	0	0	0	0	0	1	7	5	8	4	2	1	1	1	0	0	0	0	1	0	0	0	34	0	
3	Tuesday	6/17/2008	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	1	1	2	
3	Wednesday	6/18/2008	2	0	1	2	1	7	14	6	15	7	3	0	0	0	0	0	1	0	1	0	1	4	2	0	0	58	13	
3	Thursday	6/19/2008	49	83	83	77	72	71	79	74	69	69	57	46	67	80	48	41	25	24	50	15	0	0	0	0	0	724	435	
3	Friday	6/20/2008	0	0	12	40	4	0	0	0	0	0	0	0	0	0	8	7	0	0	0	1	13	24	0	0	3	0		
3	Saturday	6/21/2008	24	28	27	23	30	23	21	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	0	321	195	
3	Sunday	6/22/2008	0	0	0	1	1	0	0	0	0	0	11	53	40	59	67	48	35	31	41	53	7	8	11	14	0	0	500	
4	Monday	6/23/2008	25	19	21	26	19	26	25	22	15	17	18	25	28	26	22	17	15	15	16	15	15	15	15	15	0	306	166	
4	Tuesday	6/24/2008	39	73	73	67	62	61	69	64	59	59	47	36	57	50	38	31	15	14	40	5	0	0	0	0	0	584	375	
4	Wednesday	6/25/2008	20	24	23	19	28	19	17	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	0	257	163	
4	Thursday	6/26/2008	13	13	14	15	13	13	13	13	13	13	13	13	13	13	13	15	15	20	32	30	21	19	13	11	11	0	269	107
4	Friday	6/27/2008	52	52	64	92	58	52	52	52	52	52	52	52	52	60	59	52	52	52	53	85	76	52	52	55	0	885	477	
4	Saturday	6/28/2008	7	8	14	23	17	30	56	82	82	65	56	76	82	57	56	64	52	93	99	95	73	56	45	36	0	1,124	178	
4	Sunday	6/29/2008	32	32	44	79	38	32	32	32	32	32	32	32	32	40	39	32	32	32	33	45	56	32	32	35	0	0	882	
5	Monday	6/30/2008	0	0	0	0	0	0	0	0	1	7	5	6	4	2	1	3	1	1	0	0	0	1	0	0	0	34	0	
5	Tuesday	7/1/2008	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	1	1	2	
5	Wednesday	7/2/2008	49	83	83	77	72	71	79	74	69	69	57	46	67	80	48	41	25	24	50	15	0	0	0	0	0	724	435	
5	Thursday	7/3/2008	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
5	Friday	7/4/2008	0	0	12	40	4	0	0	0	0	0	0	0	0	0	8	7	0	0	0	1	13	24	0	0	3	0		
5	Saturday	7/5/2008	4	8	7	3	10	3	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
5	Sunday	7/6/2008	0	0	0	1	1	0	0	0	0	0	11	53	40	59	67	48	35	31	41	53	7	8	11	14	0	0	500	
6	Monday	7/7/2008	10	4	6	11	4	11	10	7	0	7	10	13	11	7	2	0	0	1	0	0	0	0	0	0	0	44	46	
6	Tuesday	7/8/2008	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	5	9	27	23	6	0	0	0	0	0	0	0	
6	Wednesday	7/9/2008	0	0	1	2	0	0	0	0	0	0	0	0	0	0	2	2	7	19	17	8	6	0	0	0	0	0	0	
6	Thursday	7/10/2008	0	0	0	0	0	0	0	2	3	4	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	4	
6	Friday	7/11/2008	20	20	21	20	0	0	0	0	0	0	1	0	0	0	0	1	2	2	8	4	2	1	6	21	0	21	108	
6	Saturday	7/12/2008	11	11	8	8	12	4	9	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	10	55	
6	Sunday	7/13/2008	1	0	8	17	11	24	50	78	78	59	50	70	76	51	50	58	28	87	93	89	67	50	39	30	0	0	1,158	
7	Monday	7/14/2008	15	9	11	16	9	16	15	12	5	7	8	15	18	16	12	7	5	5	6	5	5	5	5	5	0	146	86	
7	Tuesday	7/15/2008	39	73	73	67	62	61	69	64	59	59	47	36	57	50	38	31	15	14	40	5	0	0	0	0	0	584	375	
7	Wednesday	7/16/2008	10	14	13	9	16	9	7	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	0	97	83	
7	Thursday	7/17/2008	10	10	11	12	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	0	221	83	
7	Friday	7/18/2008	24	28	27	23	30	23	21	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	0	321	195	
7	Saturday	7/19/2008	1	0	8	17	11	24	50	76	76	59	50	70	76	51	50	58	28	87	93	89	67	50	39	30	0	1,028	130	
7	Sunday	7/20/2008	7	7	19	47	13	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	0	0	282	

MLM - On Peak  
LLM - Off-Peak



REDELIVERY CALCULATION

Gen Week 1		Redelivery Week 3		Formulaic rounding (to the nearest 25 MW) of the "Week 3 available for Delivery (aMW)"					
Week 1 Generation (MWh)		Banked Energy (MWh)		Week 3 Delivery Schedule (aMW)		Week 3 Delivery Schedule (MWh)		New Banked Energy (MWh)	
HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH
2,495	2,256	0	0	25	25	2400	1,800	95	456
Week 3 Hours		Week 3 Available for Delivery (aMW)		Week 4 Delivery Schedule (aMW)		Week 4 Delivery Schedule (MWh)		New Banked Energy (MWh)	
HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH
96	72	25.9896	31.3333	25	50	2400	3,600	-558	-900
Gen Week 2		Redelivery Week 4		The banked energy quantities are calculated as the difference between (the total mwh generation for each bucket - HLH or LLH - from 2 weeks ago and the banked energy quantity used in the current week's redelivery) minus the actual mwh quantity redelivered in the current week.					
Week 2 Generation (MWh)		Banked Energy (MWh)		Week 5 Delivery Schedule (aMW)		Week 5 Delivery Schedule (MWh)		New Banked Energy (MWh)	
HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH
1,747	2,244	95	456	0	0	0	0	634	306
Week 4 Hours		Week 4 Available for Delivery (aMW)		Week 6 Delivery Schedule (aMW)		Week 6 Delivery Schedule (MWh)		New Banked Energy (MWh)	
HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH
96	72	19.1875	37.5000	0	25	4800	1,800	-741	854
Gen Week 3		Redelivery Week 5							
Week 3 Generation (MWh)		Banked Energy (MWh)		Week 7 Delivery Schedule (aMW)		Week 7 Delivery Schedule (MWh)		New Banked Energy (MWh)	
HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH
1,192	1,206	-558	900	0	25	0	1,800	52	140
Week 5 Hours		Week 5 Available for Delivery (aMW)		Week 8 Delivery Schedule (aMW)		Week 8 Delivery Schedule (MWh)		New Banked Energy (MWh)	
HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH	HLH	LLH
80	88	7.9250	3.4773	0	0	0	0		
Gen Week 4		Redelivery Week 6							
Week 4 Generation (MWh)		Banked Energy (MWh)							
HLH	LLH	HLH	LLH						
3,425	2,348	634	306						
Week 6 Hours		Week 6 Available for Delivery (aMW)							
HLH	LLH	HLH	LLH						
96	72	42.7813	36.8611						
Gen Week 5		Redelivery Week 7							
Week 5 Generation (MWh)		Banked Energy (MWh)							
HLH	LLH	HLH	LLH						
793	1,086	-741	854						
Week 7 Hours		Week 7 Available for Delivery (aMW)							
HLH	LLH	HLH	LLH						
96	72	0.5417	26.9444						

HLH - On Peak  
LLH - Off-Peak

**Section 5.8 Examples:**

- Assumptions: Shaped Energy = 40 MW
- Scheduled Energy = 50 MW
- Period of time = one hour
- Replacement or Resale Price = \$93.60/MWh; assume no transmission charges
- Shaping Party Contract Price = \$83.60/MWh
- Section 5.8 Damages = (40 MW - 50 MW) x (\$83.60/MWh - \$93.60/MWh)
- Section 5.8 Damages = \$100.00

Since Section 5.8 Damages > 0, then Seller pays Buyer \$100.00 plus (50 MW - 40 MW) x \$83.60/MWh or \$936.

If the "Replacement or Resale Price" (stated in the assumptions above) is \$73.60/MWh instead of \$93.60/MWh, then the calculations are as follows:

- Section 5.8 Damages = (40 MW - 50 MW) x (\$83.60/MWh - \$73.60/MWh)
- Damages = <\$100.00>

Since Section 5.8 Damages < 0, then Buyer pays Seller \$100.00 and Seller pays Buyer (50 MW - 40 MW) x \$83.60/MWh or \$836.00.

**Final Reference Value Calculation Examples:**

Wednesday, March 19, 2008			
COB/Mid-C Indicative Midpoint Prices for Cal 2009 - Cal 2013			
	Cal 09 On-peak	Cal 09 Off-peak	Cal 09 7x24
ICAP \$	6.25	\$ 2.50	\$ 4.60
Prebon \$	6.75	\$ 3.00	\$ 5.10
TFS \$	6.25	\$ 3.00	\$ 4.82
Tullett \$	6.50	\$ 2.75	\$ 4.85
	Cal 2009 7x24 Average:		\$ 4.85
	Cal 10 On-peak	Cal 10 Off-peak	Cal 10 7x24
ICAP \$	6.00	\$ 2.50	\$ 4.46
Prebon \$	6.50	\$ 2.75	\$ 4.85
TFS \$	6.25	\$ 3.00	\$ 4.82
Tullett \$	6.50	\$ 2.75	\$ 4.85
	Cal 2010 7x24 Average:		\$ 4.75
	Cal 11 On-peak	Cal 11 Off-peak	Cal 11 7x24
ICAP \$	6.00	\$ 2.50	\$ 4.46
Prebon \$	6.25	\$ 2.75	\$ 4.71
TFS \$	6.25	\$ 3.00	\$ 4.82
Tullett \$	6.25	\$ 2.75	\$ 4.71
	Cal 2011 7x24 Average:		\$ 4.68
	Cal 12 On-peak	Cal 12 Off-peak	Cal 12 7x24
ICAP \$	6.00	\$ 2.75	\$ 4.57
Prebon \$	6.25	\$ 2.75	\$ 4.71
TFS \$	6.00	\$ 2.50	\$ 4.46
Tullett \$	6.25	\$ 2.75	\$ 4.71
	Cal 2012 7x24 Average:		\$ 4.61
	Cal 13 On-peak	Cal 13 Off-peak	Cal 13 7x24
ICAP \$	6.00	\$ 2.75	\$ 4.57
Prebon \$	6.25	\$ 2.75	\$ 4.71
TFS \$	6.00	\$ 2.50	\$ 4.46
Tullett \$	6.25	\$ 2.75	\$ 4.71
	Cal 2013 7x24 Average:		\$ 4.62
Cal 09-13 COB/Mid-C 7x24 Average:			\$ 4.70

WECC Trading Hours by Year					
	On-peak	% On-peak Hours	Off-peak	% Off-peak Hours	Total Hours
Cal 2009	4,912	56.07%	3,848	43.93%	8,760
Cal 2010	4,912	56.07%	3,848	43.93%	8,760
Cal 2011	4,912	56.07%	3,848	43.93%	8,760
Cal 2012	4,912	55.92%	3,872	44.08%	8,784
Cal 2013	4,912	56.07%	3,848	43.93%	8,760

hour-weighted average of broker quotes  
broker quotes

**Guaranteed Energy Production Examples:**

“Contract Quantity” = 240,000 MWhs

“Guaranteed Energy Production – Annual Test” = (65% \* 240,000MWhs) \* ((Total Hours in Contract Year – Seller Excuse Hours in Contract Year)/Total Hours in Contract Year))

<b>Contract Year</b>	<b>Seller Excuse Hours (hrs)</b>	<b>Total Hours in Contract Year (hrs)</b>	<b>Guaranteed Energy Production -- Annual Test (MWhs)</b>
1	10	8760	155,822
2	80	8760	154,575
3	15	8760	155,733
4	25	8784	155,556
5	50	8760	155,110
6	250	8760	151,548
7	0	8760	156,000
8	90	8784	154,402
9	100	8760	154,219
10	50	8760	155,110
11	85	8760	154,486
12	350	8784	149,784
13	25	8760	155,555
14	35	8760	155,377
15	45	8760	155,199

APPENDIX XII

PART A

**FORM OF CONSENT AND AGREEMENT (SECURED FINANCING PARTIES)**

**CONSENT AND AGREEMENT**

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [\_\_\_\_\_, 2\_\_\_], between PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”), ARLINGTON WIND POWER PROJECT LLC (“Seller”), and [\_\_\_\_\_] , in its capacity as collateral agent under the Financing Agreement referred to below (together with its successors, designees and assigns in such capacity, the “Financing Provider”).

**Recitals**

A. Seller and PG&E have entered into that certain Power Purchase and Sale Agreement dated as of May 28, 2008 (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the “Assigned Agreement”).

B. Seller has entered into that certain [Financing Agreement] dated as of [\_\_\_\_\_] (as amended, restated, supplemented, refinanced or otherwise modified from time to time, the “Financing Agreement”), pursuant to which the lenders thereunder (together with the Financing Provider and other lender parties thereunder, the “Financing Parties”) will make loans to and/or extend other credit in favor of Seller (the “Credit Extensions”). The Financing Parties have made or committed to make the Credit Extensions in reliance upon, among other things, the execution and delivery by PG&E of the Assigned Agreement and this Consent and Agreement.

C. As security for the Credit Extensions and all other obligations of Seller under the Financing Agreement and the related financing documents (as amended, restated, modified, refinanced or otherwise supplemented from time to time, the “Financing Documents”), Seller has granted a security interest in certain of its assets to and in favor of the Financing Provider pursuant to the [Security Agreement] dated as of [\_\_\_\_\_] (as amended, restated, supplemented or otherwise modified from time to time, the “Security Agreement”) from Seller to the Financing Provider for the secured parties referred to therein (collectively, the “Secured Parties”). In particular, Seller has collaterally assigned all of its rights, titles and interests in, to and under, and granted a security interest, in the “Assigned Agreement General Intangibles” and the “Assigned Agreement Accounts,” each as defined below, to the Financing Provider for the benefit of the Secured Parties pursuant to the Security Agreement to secure Seller’s obligations in connection with such financing.

D. Pursuant to Seller’s rights under the Assigned Agreement and in consideration for the Seller’s execution and delivery of the Assigned Agreement, PG&E

has agreed to enter into this Consent and Agreement for the benefit of Seller, the Financing Provider and the Secured Parties.

### **Agreement**

1. Definitions. Any defined term (as indicated by initial capitalization) used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

2. Consent. Subject to the terms and conditions below, PG&E consents to and approves the assignment for security purposes by Seller to the Financing Provider for the benefit of the Secured Parties of (a) the Assigned Agreement (the "Assigned Agreement General Intangibles"), and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the "Assigned Agreement Accounts").

3. Limitations on Assignment.

a. General. Subject to Section 3.b of this Consent and Agreement, PG&E consents to the transfer of Seller's right, title and interest in, to and under the Assigned Agreement General Intangibles and the Assigned Agreement Accounts to the Financing Provider, or its designee, or to a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure or other sale, whether by a conveyance by Seller in lieu of foreclosure, by a plan of liquidation in bankruptcy or otherwise (the Financing Provider, such designee, purchaser or grantee, a "Transferee"), and agrees that, upon such transfer, PG&E shall recognize the Transferee as "Seller" under the Assigned Agreement and that the Transferee shall be substituted as "Seller" under the Assigned Agreement.

b. Assignment and Assumption. The Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any security or other agreement executed by Seller, the Financing Provider shall not sell or otherwise dispose of the Assigned Agreement General Intangibles (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such sale or disposition, the Financing Provider or any other Transferee, as the case may be, purchasing or otherwise acquiring the Assigned Agreement General Intangibles (i) cures any Existing Payment Default of Seller under the Assigned Agreement as provided below, (ii) executes and delivers to PG&E a written assumption of all of Seller's rights and obligations under the Assigned Agreement for the period on and after the date of such transfer in form and substance reasonably satisfactory to PG&E, (iii) otherwise satisfies and complies with all requirements of the Assigned Agreement on and after the date of such transfer, (iv) provides such tax and enforceability assurance as PG&E may reasonably request, and (v) is a Permitted Transferee (as defined below); *provided, however*, that the Transferee shall not be subject to any claims, defenses or offsets as a result of a default relating to the period before such acquisition, except the Existing Payment Defaults. The Financing Provider further acknowledges that the assignment of the Assigned Agreement General Intangibles and the Assigned Agreement Accounts are for security purposes only and that the Financing Provider has no rights under the Assigned Agreement General Intangibles or the

Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement General Intangibles or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Agreement (a “Financing Default”). Upon acquisition of Seller’s right, title and interest in, to and under the Assigned Agreement in connection with the assignment of the Assigned Agreement to the Transferee, the Transferee shall: (A) cure, within the relevant cure period established in the Assigned Agreement, as extended by Section 4 of this Consent and Agreement, all payment defaults of Seller under the Assigned Agreement (the “Existing Payment Defaults”); (B) maintain or replace Seller’s Performance Assurance in compliance with, but only to the level required by, the provisions governing such Seller’s Performance Assurance under the Assigned Agreement; and (C) perform all other Seller obligations under the Assignment Agreement during the period such Transferee holds title to the Project arising on or after the date of such transfer to the Transferee. Following an acquisition by a Transferee in accordance with the foregoing requirements, PG&E shall not be entitled to terminate or suspend its performance under the Assigned Agreement, and the Transferee shall not be subject to any claims, defenses or offsets, in each case, as a result of a default relating to the period before such acquisition (except the Existing Payment Defaults).

c. Permitted Transferee. “Permitted Transferee” means any Person who, as of the date of the transfer, has (i) at least five (5) years experience in operating wind energy generating facilities comparable to the Project or (ii) entered into a binding agreement to operate the Project with a Person that has at least five (5) years experience in operating wind energy generating facilities comparable to the Project; *provided, however,* that PG&E shall have the right to reject any proposed transferee if such proposed transferee, based on PG&E’s determination in its reasonable discretion, (A) has a history of, or on-going, poor relations with PG&E, or (B) does not have a net worth equal to or greater than the net worth of the Seller as of the date of this Consent and Agreement.. To facilitate the Financing Provider’s identification of a Permitted Transferee, at the request of the Financing Provider, PG&E shall provide informal feedback concerning PG&E’s views of any proposed transferee. Following the occurrence of a Financing Default, the Financing Provider shall notify PG&E in writing of the identity of a proposed transferee of the Assigned Agreement General Intangibles, which proposed transferee may include the Financing Provider, in connection with the enforcement of the Financing Provider’s security interest in the Assigned Agreement General Intangibles, and PG&E shall, within thirty (30) business days of its receipt of such written notice, confirm to the Financing Provider whether or not such proposed transferee is a “Permitted Transferee” (together with a written statement of the reason(s) for any negative determination) it being understood that if PG&E shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a “Permitted Transferee”.

d. Nonrecourse to Financing Provider. If the Financing Provider elects to perform Seller’s obligations under the Assigned Agreement pursuant to Section 4.b, the Financing Provider shall not have personal liability to PG&E for the performance of such obligations, and the sole recourse of PG&E in seeking the enforcement of such obligations shall be to the Project and Seller’s assets directly related thereto.

4. Cure Rights.

a. Notice to the Financing Provider by PG&E. PG&E shall concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an “Event of Default”) to Seller (a “Default Notice”), provide a copy of such Default Notice to the Financing Provider pursuant to Section 7.a of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to the Financing Provider the next Business Day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

b. Cure Period Available to the Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4.a, PG&E shall not terminate the Assigned Agreement unless it or Seller provides the Financing Provider with notice of the Event of Default and affords the Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. Upon receipt of a Default Notice from PG&E or Seller, the Financing Provider shall be entitled to exercise Seller’s rights under the Assigned Agreement and to cure such Event of Default on behalf of the Seller under the Assigned Agreement. For purposes of this Agreement “Additional Cure Period” means (i) with respect to a monetary default, ten (10) days in addition to the cure period if any provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period if any provided to Seller in the Assigned Agreement.

c. Cure Period Available to the Financing Provider In Connection with a Bankruptcy Default. In the case of that certain default enumerated in Section 5.1(a)(iv) of the Assigned Agreement, such default may (without limiting other potential cures) be cured by securing within sixty (60) days of the commencement of the bankruptcy case, a “Bankruptcy Order,” which shall mean an order in form and substance reasonably satisfactory to PG&E from a court (the “Bankruptcy Court”) in which Seller is a debtor in a case under Title 11 of the United States Code, as amended (the “Bankruptcy Code”), that (x) authorizes Seller to grant to PG&E an administrative expense claim in the amount of all obligations owed to PG&E (whether such claims accrue or arise before or after the commencement of Seller’s bankruptcy case) which administrative expense claim (i) will have priority over any and all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, and (ii) be secured by (a) a first priority lien on Seller’s unencumbered property, senior and superior to all other liens encumbering such property, or (b) by an irrevocable, unconditional direct pay letter of credit payable to PG&E in form and substance satisfactory to PG&E and that is issued by a United States bank with a long-term Credit Rating of at least “Aa” from Moody’s Investors Service, “AA” from Standard & Poor’s Ratings Group, or “AA” from Fitch, Inc.; and (y) authorizes PG&E to terminate, without additional court approval, the Assigned Agreement upon a subsequent default by Seller or immediately upon the conversion of Seller’s case under chapter 11 of the Bankruptcy Code to a case under chapter 7 of the Bankruptcy Code or the appointment of a trustee in the chapter 11 case, and to exercise rights of netting or setoff of obligations upon such termination, in each case without regard to Section 362 of the Bankruptcy Code and

without regard to whether the amounts to be netted or setoff were incurred pre-petition or post-petition; and (z) provides that the Bankruptcy Order shall be binding upon the Seller, any trustee appointed in respect of the Seller and any committee appointed in the Seller's bankruptcy case and that the rights of Seller specified in the foregoing clause (x) are not subject to being modified, stayed, avoided or otherwise limited by any further order of the Bankruptcy Court or any court proceeding under the Bankruptcy Code.

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

e. Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for the Financing Provider to cure an Event of Default and the Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving notice of an Event of Default from PG&E or Seller, whichever is received first, the Financing Provider shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) days; *provided, however*, that the Financing Provider shall provide a written notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from PG&E or Seller, whichever is received first. In the event the Financing Provider succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3.

f. Replacement Agreement. If the Assigned Agreement is rejected or terminated as a result of any insolvency proceeding involving Seller, the Financing Provider may, within thirty (30) days after such rejection or termination, certify in writing to PG&E that it or its Transferee intends to perform and is capable of performing the obligations of Seller arising after the date of such certification upon the terms and conditions of the Assigned Agreement. Provided that PG&E has been reimbursed by any Person for the Existing Payment Defaults and the proposed Transferee is a Permitted Transferee, PG&E shall execute and deliver to the Financing Provider or its Transferee a new agreement (a "Replacement Agreement") which shall be for the balance of the remaining term under such rejected Assigned Agreement. The Replacement Agreement shall contain the same conditions, agreements, terms, provisions and limitations as the original Assigned Agreement (except for any requirements which have been fulfilled by Seller and PG&E before, or otherwise relate to the period before, such rejection or termination), and except that, in the Replacement Agreement, the Financing Provider or its Transferee will be substituted where "Seller" appears in the Assigned Agreement.



5. Setoffs and Deductions. Each of Seller and the Financing Provider agrees that PG&E shall have the right to set off or deduct from payments due to Seller each and every amount due PG&E from Seller whether or not arising out of or in connection with the Assigned Agreement. The Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement General Intangibles and the Assigned Agreement Accounts subject to any defenses or causes of action PG&E may have against Seller.

6. Representations and Warranties.

a. PG&E Makes No Representation or Warranty Regarding Seller's Right, Title and Interest in the Assigned Agreement. Seller and the Financing Provider each recognize and acknowledge that PG&E makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement General Intangibles or the Assigned Agreement Accounts. The Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement.

b. PG&E Representations and Warranties. As of the date of this Consent and Agreement, PG&E hereby represents and warrants to Seller, the Financing Provider and each of the Secured Parties: PG&E's representations and warranties in Section 10.2(a)(i) through (ix) of the Assigned Agreement remain true and correct, except that PG&E received the CPUC Approval on \_\_\_\_\_, 2008.

7. **[Intentionally Omitted]**

8. Miscellaneous.

a. Notices. Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Financing Provider:

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

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

\_\_\_\_\_

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

Telephone: \_\_\_\_\_

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

Email: \_\_\_\_\_

If to PG&E:

Pacific Gas and Electric Company  
77 Beale Street, Mail Code N12E  
San Francisco, CA 94105-1702  
Attention: Kelly A. Everidge  
Ph: (415) 973-0070  
Fax: (415) 973-9176

with a copy to:

Pacific Gas and Electric Company  
Law Department  
77 Beale Street, Mail Code N12E  
San Francisco, CA 94105-1702  
Attention: Renewables Portfolio Standard Attorney  
Ph: (415) 973-4377  
Fax: (415) 973-5952

If to Seller:

Arlington Wind Power Project LLC  
c/o Horizon Wind Energy LLC  
808 Travis, Suite 700  
Houston, TX 77002  
Attention: Chief Operating Officer  
Ph: (713) 265-0244  
Fax: (713) 265-0365

with a copy to:

Horizon Wind Energy LLC  
808 Travis, Suite 700  
Houston, TX 77002  
Attention: General Counsel  
Ph: (713) 265-0252  
Fax: (713) 265-0365

Whenever this Consent and Agreement requires or permits delivery of a “notice” (or requires a party to “notify”), the party with such right or obligation shall provide a written communication in the manner specified in this Consent and Agreement. A notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day), and a notice sent by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving party or parties. Any party to this Consent and Agreement may periodically change any address, phone number, e-mail,

or contact to which notice is to be given it by providing notice of such change to the other parties.

b. Assignment. This Consent and Agreement shall bind and benefit PG&E, the Financing Provider, the Secured Parties, and their permitted successors and assigns. Neither Seller nor PG&E may assign this Consent and Agreement to any Person, except to an assignee of the Assigned Agreement. Neither Seller nor PG&E may assign the Assigned Agreement, except to the extent permitted under the Assigned Agreement. In addition, neither PG&E nor Seller may assign the Assigned Agreement to any Person without also assigning this Consent and Agreement, which the assignee shall assume in a form reasonably acceptable to the Financing Provider.

c. No Modification. To the extent there is any conflict between the terms, conditions and provisions of this Consent and Agreement and the Assigned Agreement, the terms, conditions and provisions of this Consent and Agreement shall prevail. Except to the extent necessary to give effect to the preceding sentence, this Consent and Agreement shall not modify or amend the Assigned Agreement.

d. Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

e. No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

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

g. No Third Party Beneficiaries. The Secured Parties are intended third party beneficiaries of this Consent and Agreement; *provided, however*, that any rights of the Secured Parties hereunder shall be enforceable solely by the Financing Provider on their behalf. Other than the Secured Parties, there are no third party beneficiaries to this Consent and Agreement.

h. Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

i. Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all parties hereto.

9. Payments under the Assigned Agreement. PG&E shall pay all amounts (if any) payable by it under the Assigned Agreement directly into the account specified in Exhibit A, or to such other Person, entity or account as shall be specified from time to time by thirty (30) days prior notice from the Financing Provider to PG&E in writing, with a copy of such written notice to the Company.

10. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, PG&E, SELLER AND THE FINANCING PROVIDER HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER.

11. Entire Agreement. This Consent and Agreement (including any attached exhibits, which are incorporated by this Agreement) supersedes all oral negotiations and prior writings between the parties to this Consent and Agreement with respect to the subject matter of this Consent and Agreement.

IN WITNESS WHEREOF, each of PG&E, Seller and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

PACIFIC GAS AND ELECTRIC  
COMPANY (PG&E)

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

[ \_\_\_\_\_ ]  
(Financing Provider)

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

**Arlington Wind Power Project LLC**

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

**Exhibit A  
Consent and Agreement**

Payment Instructions

Any and all amounts owed to [●] shall be paid to the following account:

FED-WIRE Instructions: [\_\_\_\_\_]

The Financing Provider shall be permitted to modify the account information set forth above upon thirty (30) days' prior written notice to PG&E and Seller.

**APPENDIX XII**

**PART B**

**FORM OF CONSENT AND AGREEMENT (UNSECURED FINANCING PARTIES)**

**CONSENT AND AGREEMENT**

(Unsecured Financing)

This CONSENT AND AGREEMENT (as the same may be amended, modified or supplemented from time to time, this "Consent"), dated as of [                    ], is made by and among PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (together with its permitted successors and assigns, "Contracting Party"), and ARLINGTON WIND POWER PROJECT, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Company"), and [                    ], a [                    ] (together with its successors, designees and assigns in such capacity, the "Unsecured Financing Party").

**PRELIMINARY STATEMENTS**

A. The Company and the Contracting Party have entered into that certain Power Purchase and Sale Agreement, dated as of May 28, 2008 (as amended, restated, modified or otherwise supplemented from time to time, the "Power Purchase Agreement").

B. [Describe agreement between the Company and the Unsecured Financing Party giving rise to the condition to obtain extended cure rights].

C. Pursuant to the Company's rights under the Power Purchase Agreement, the Contracting Party and the other parties hereto execute and deliver this Consent.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree, notwithstanding anything in the Power Purchase Agreement to the contrary, as follows:

1. Right to Cure.

(a) General. The Contracting Party hereby agrees that if the Company defaults in the performance of any of its obligations under the Power Purchase Agreement, or upon the occurrence or non-occurrence of any event or condition under the Power Purchase Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Contracting Party to terminate or suspend its performance under the Power Purchase Agreement (each hereinafter a "default"), the Contracting Party shall not terminate or suspend its performance under the Power Purchase Agreement until it first gives written notice of such default to the Unsecured Financing Party (the "Unsecured Financing Party Notice") and affords the Unsecured Financing Party or its designee the right to cure such default

during the same cure period in the Power Purchase Agreement for such default (provided that, if such cure period is measured from notice of default from Contracting Party, it shall not begin to run for purposes of this Section 1 until the Unsecured Financing Party Notice is given by Contracting Party to the Unsecured Financing Party hereunder).

(b) Cure Period Available to the Financing Provider In Connection with a Bankruptcy Default. In the case of that certain default enumerated in Section 5.1(a)(iv) of the Power Purchase Agreement, such default may (without limiting other potential cures) be cured by securing within sixty (60) days of the commencement of the bankruptcy case, a “Bankruptcy Order,” which shall mean an order in form and substance reasonably satisfactory to Contracting Party from a court (the “Bankruptcy Court”) in which the Company is a debtor in a case under Title 11 of the United States Code, as amended (the “Bankruptcy Code”), that (x) authorizes the Company to grant to Contracting Party an administrative expense claim in the amount of all obligations owed to Contracting Party (whether such claims accrue or arise before or after the commencement of the Company’s bankruptcy case) which administrative expense claim (i) will have priority over any and all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, and (ii) be secured by (a) a first priority lien on the Company’s unencumbered property, senior and superior to all other liens encumbering such property, or (b) by an irrevocable, unconditional direct pay letter of credit payable to Contracting Party in form and substance satisfactory to Contracting Party and that is issued by a United States bank with a long-term Credit Rating of at least “Aa” from Moody’s Investors Service, “AA” from Standard & Poor’s Ratings Group, or “AA” from Fitch, Inc.; and (y) authorizes Contracting Party to terminate, without additional court approval, the Power Purchase Agreement upon a subsequent default by the Company or immediately upon the conversion of the Company’s case under chapter 11 of the Bankruptcy Code to a case under chapter 7 of the Bankruptcy Code or the appointment of a trustee in the chapter 11 case, and to exercise rights of netting or setoff of obligations upon such termination, in each case without regard to Section 362 of the Bankruptcy Code and without regard to whether the amounts to be netted or setoff were incurred pre-petition or post-petition; and (z) provides that the Bankruptcy Order shall be binding upon the Company, any trustee appointed in respect of the Company and any committee appointed in the Company’s bankruptcy case and that the rights of the Company specified in the foregoing clause (x) are not subject to being modified, stayed, avoided or otherwise limited by any further order of the Bankruptcy Court or any court proceeding under the Bankruptcy Code.

2. Delivery of Notices. The Contracting Party hereby agrees to promptly deliver to the Unsecured Financing Party duplicates or copies of all notices of default, suspension or termination delivered under or pursuant to the Power Purchase Agreement.

3. No Assignment. The Contracting Party will not assign the Power Purchase Agreement to any Person without also assigning (and such assignee assuming in a form reasonably acceptable to the Unsecured Financing Party) this Consent.

4. Representations and Warranties.

a. Contracting Party Makes No Representation or Warranty Regarding the Company’s Right, Title and Interest in the Power Purchase Agreement. The Company and the Financing Provider each recognize and acknowledge that Contracting Party makes no



representation or warranty, express or implied, that the Company has any right, title, or interest in the Power Purchase Agreement. The Financing Provider is responsible for satisfying itself as to the existence and extent of the Company's right, title, and interest in the Power Purchase Agreement.

b. Contracting Party Representations and Warranties. As of the date of this Consent, Contracting Party hereby represents and warrants to the Company, the Financing Provider and each of the Secured Parties: Contracting Party's representations and warranties in Section 10.2(a)(i) through (ix) of the Power Purchase Agreement remain true and correct, except that Contracting Party received the CPUC Approval on \_\_\_\_\_, 2008.

5. Miscellaneous.

5.1 Notices. Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to the Company:

Arlington Wind Power Project, LLC  
c/o Horizon Wind Energy LLC  
808 Travis, Suite 700  
Houston, TX 77002  
Attention: Chief Operating Officer  
Ph: (713) 265-0244  
Fax: (713) 265-0365

with a copy to:

Horizon Wind Energy LLC  
808 Travis, Suite 700  
Houston, TX 77002  
Attention: General Counsel  
Ph: (713) 265-0252  
Fax: (713) 265-0365

If to the Contracting Party:

Pacific Gas and Electric Company  
77 Beale Street, Mail Code N12E  
San Francisco, CA 94105-1702  
Attention: Kelly A. Everidge  
Ph: (415) 973-0070  
Fax: (415) 973-9176

with a copy to:

Pacific Gas and Electric Company  
Law Department  
77 Beale Street, Mail Code N12E  
San Francisco, CA 94105-1702  
Attention: Renewables Portfolio Standard Attorney  
Ph: (415) 973-4377  
Fax: (415) 973-5952

If to the Unsecured Financing Party:

[            ]

Whenever this Consent requires or permits delivery of a “notice” (or requires a party to “notify”), the party with such right or obligation shall provide a written communication in the manner specified in this Consent. A notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day), and a notice sent by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving party or parties. Any party to this Consent may periodically change any address, phone number, e-mail, or contact to which notice is to be given it by providing notice of such change to the other parties.

5.2 Governing Law; Submission to Jurisdiction. This Consent shall be construed in accordance with and governed by the laws of the State of New York, excluding any choice of law or conflicts of law rules or principles that would result in application of the laws of a different jurisdiction. Each party hereto irrevocably and unconditionally consents and submits to the exclusive jurisdiction of the federal and state courts located in the County of New York, State of New York with respect to any dispute arising out of or related to or touching upon this Consent, and, in any such dispute, waives the right to demand trial by jury. Each party consents to service of process by certified mail at its address effective pursuant to Section 4.1.

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

5.4 Captions. The captions of the various articles and sections of this Consent are for convenience and reference only and do not limit or define any terms and provisions of this Consent.

5.5 Severability. In the event any provision of this Consent is determined to be void, unlawful, or otherwise unenforceable, that provision shall be severed from the remainder of the Consent, and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Consent, as so modified, shall continue to be in full force and effect.

5.6 No Third Party Beneficiaries. The Unsecured Financing Party is an intended third party beneficiary of this Consent. Other than the Unsecured Financing Party, there are no other third party beneficiaries to this Consent.

5.7 No Modification. To the extent there is any conflict between the terms, conditions and provisions of this Consent and the Power Purchase Agreement, the terms, conditions and provisions of this Consent shall prevail. Except to the extent necessary to give effect to the preceding sentence, this Consent shall not modify or amend the Power Purchase Agreement.

5.8 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified, except by an instrument in writing signed by the Contracting Party, the Company and the Unsecured Financing Party.

5.9 Successors and Assigns. This Consent shall bind and benefit the Contracting Party, the Unsecured Financing Party, and their respective successors and assigns. The Contracting Party may not assign this Consent to any Person, except to an assignee of the Power Purchase Agreement.

5.10 WAIVER OF TRIAL BY JURY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTING PARTY, THE COMPANY AND THE UNSECURED FINANCING PARTY HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER.

5.11 Entire Agreement. This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings between the parties hereto in respect of the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument (including the Power Purchase Agreement), the terms, conditions and provisions of this Consent shall prevail.

5.12 Termination. This Consent shall terminate upon the earlier to occur of (a) the satisfaction in full of all obligations under the [refer to relevant agreement] and (b) the termination of the Power Purchase Agreement in accordance with its terms and the terms of this Consent.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed and delivered by their respective authorized officers as of the date first written above.

**PACIFIC GAS AND ELECTRIC  
COMPANY**

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

**ARLINGTON WIND POWER  
PROJECT, LLC**

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

**[UNSECURED FINANCING PARTY]**

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

**APPENDIX XIII**  
**[INTENTIONALLY OMITTED]**

## **APPENDIX XIV**

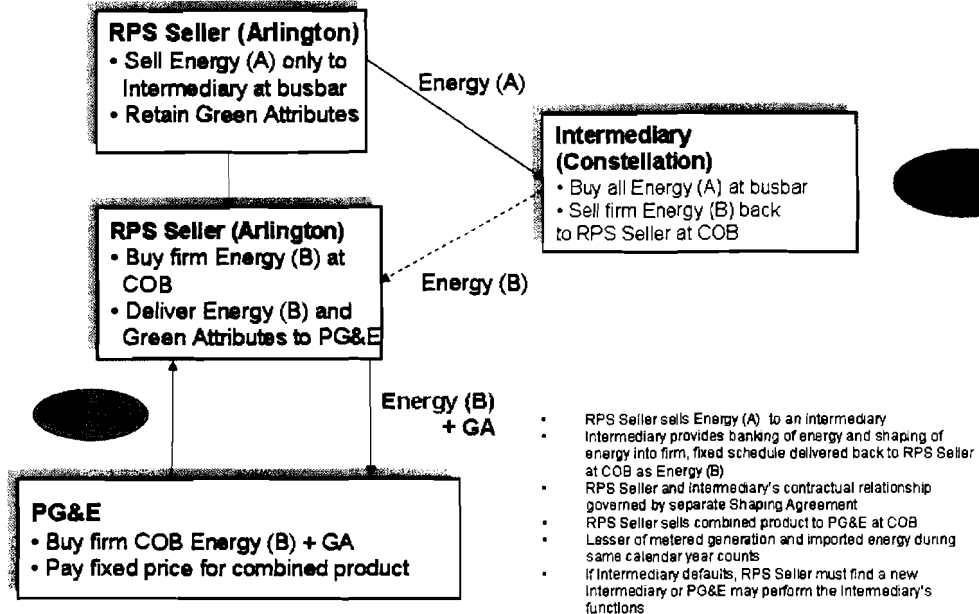
### **Cost Components of Buyer's Shaping Party Fee and Adjusted Shaping Fee**

Wind forecasting and scheduling; energy scheduling; energy marketing; credit and settlement services; management of generation imbalance; managing the Mid C-COB spread risk; managing the On-Peak Energy and Off-Peak Energy spread risk; firm or non-firm transmission costs, including losses, for energy sold by Shaping Party at the busbar and to the redelivery point at the California ISO intertie; and price spread between each Project Delivery Period and the corresponding Redelivery Period.

APPENDIX XV

DIAGRAM OF DELIVERY STRUCTURE

# Diagram of Delivery Structure



**Appendix XVI**

**Certification of Delivery and Receipt of Shaping Agreement**

This certification ("Certification") is delivered by Arlington Wind Power Project LLC ("Seller") to Pacific Gas and Electric Company ("Buyer") in accordance with the terms of that certain Power Purchase and Sale Agreement dated May 28, 2008 ("Agreement") by and between Seller and Buyer. All initially 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 that:

The attached "Master Power Purchase and Sale Agreement" between Arlington Wind Power Project LLC and Constellation Energy Commodities Group, Inc., dated May 28, 2008 is a true and correct copy of the Shaping Agreement.

**Arlington Wind Power Project LLC**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PG&E hereby acknowledges receipt of the Shaping Agreement in the form attached to this Certification.

**Pacific Gas And Electric Company**

By: \_\_\_\_\_  
Printed Name: Kelly A. Everidge  
Title: Director, Energy Contract Management and Settlements  
Date: \_\_\_\_\_