

POWER PURCHASE AND SALE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

WADHAM ENERGY L.P.
(as "Seller")

POWER PURCHASE AND SALE AGREEMENT

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POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

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

Name: Wadham Energy L.P., a California limited partnership
(“Seller”)
All Notices:

Delivery Address:
Street: 2420 Camino Ramon Suite 101
City: San Ramon State: CA Zip: 94549

Mail Address: (if different from above)

Attn: General Manager of the Asset Manager for
Wadham Energy LP
Phone: 925 244 1100
Facsimile: 925 244 1101

Duns:
Federal Tax ID Number:

Invoices:

Attn: General Manager of the Asset Manager of
Wadham Energy LP

Phone: 925 244 1100
Facsimile: 924 244 1101

Scheduling:

Attn: Plant Manager of the Asset Manager of
Wadham Energy LP
Phone: 530 473 2831
Facsimile: []

Payments:

Attn: General Manager of the Asset Manager of
Wadham Energy LP

Phone: 925 244 1100
Facsimile: 925 244 1101

Wire Transfer:

BNK:

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

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

Mail Address:
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177
Attn: Kelly A. Everidge (kabd@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-0070
Facsimile: (415) 973-9176

Duns:
Federal Tax ID Number:

Invoices:

Attn: Alice Gong (axl3@pge.com)

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

Scheduling:

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

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

Payments:

Attn: Alice Gong (axl3@pge.com)

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

Wire Transfer:

BNK:

ABA:
ACCT:

ABA:
Acct:

Credit and Collections:

Attn: General Manager of the Asset Manager of
Wadham Energy LP
Phone: 925 244 1100
Facsimile: 925 244 1101

Credit and Collections:

Attn:
Manager, Credit Risk Management
Phone:
Facsimile:

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

Attn: General Manager of the Asset Manager of
Wadham Energy LP _____
Phone: 925 244 1100 _____
Facsimile: 925 244 1101 _____

Contract Manager:

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

With additional Notices of an Event of Default to:

Winston & Strawn LLP
Attn: Joseph M. Karp, Esq.
101 California Street
San Francisco, CA 94111-5894
Phone: (415) 519-1000
Facsimile: (415) 519-1400

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 Eight

8.2 Seller Financial Information:

- Option A
 Option B Specify:

Article 10

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 [RESERVED]

Appendix II Project Description Including Description of Site

Appendix III [RESERVED]

Appendix IV Outage Notification Form


Appendix V Counterparty Notification Requirements for Outages and Generation Schedules

Appendix VI Resource Adequacy


Agreement Execution

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

WADHAM ENERGY L.P.
By its General Partner, Wadham
Environmental Corp.

By: 
Name: Alex A. Sugaoka
Title: Vice President
Date: February 12, 2008

PACIFIC GAS AND ELECTRIC COMPANY 

By: 
Name: ROY M. KUGA
Title: VICE PRESIDENT - ENERGY SUPPLY
Date: Feb. 15, 2008

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

1.2. "AAA" means the American Arbitration Association.

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

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

1.5. "Arbitration" has the meaning set forth in Section 12.3.

1.6. "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 (which, in the case of a petition filed or commenced against it, is not dismissed within ninety (90) days), (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.

1.7. "Baseload" means a Product for which the Energy delivery levels are generally expected to be uniform twenty-four (24) hours per day, seven (7) days per week.

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

1.9. "Buyer" has the meaning set forth on the Cover Sheet.

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

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

1.12. [RESERVED].

1.13. "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.

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

1.15. "Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, that is intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct related thereto so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state law, to require Buyer to procure, or to be procured at Buyer's expense, Resource Adequacy or other similar products.

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

1.17. "Capacity Test" means the test to be conducted pursuant to Appendix VI.1.C.

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

1.19. "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.

1.20. "CFannual" has the meaning set forth in Section 5.1(b)(v).

1.21. "Change in Availability" has the meaning set forth in Section 3.4(a)(iv).

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

1.23. "Condition(s) Precedent" has the meaning set forth in Section 11.1.

1.24. "Contract Capacity" means the generation capacity designated for the Project in Section 3.1(f), which is net of all auxiliary loads and station electrical uses.

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

1.26. "Contract Quantity" means all Delivered Energy to be delivered by Seller during each Contract Year.

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

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

1.29. "Cover Sheet" means the multi-page document that precedes Article One: General Definitions to this Agreement.

1.30. "CPUC" or "Commission or successor entity" means the California Public Utilities Commission, or successor entity.

1.31. "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;

(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.

1.32. "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.

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

1.34. [RESERVED].

1.35. "Declared Contract Capacity" means the generation capacity designated for the Project in Section 3.1(f), net of all auxiliary loads and station electrical uses.

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

1.37. "Delivered Energy" means Energy produced from the Project as measured in MWh at the revenue meter of the Project net of all Electrical Losses.

1.38. "Delivery Point" means the existing Project substation, as shown in the drawing attached to and incorporated into this Agreement as part of Appendix II.

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

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

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

1.42. "Dispatch Down Period" means the period of time during which (a) curtailments are ordered by the CAISO in accordance with the CAISO Tariff, for reasons including but not limited to any system emergency, as defined in the CAISO Tariff ("System Emergency"), (b) curtailments that are ordered by Buyer during non-peak hours due to overgeneration, up to 50 hours in any calendar year; (c) curtailments are ordered by a Transmission Provider in accordance with its tariff; or (d) curtailments that are based on a notice from the CAISO of a threat to the integrity of the transmission grid.

1.43. "Distribution Loss Factor" is a multiplier factor that adjusts the amount of Delivered Energy produced by a Project connecting to PG&E's distribution system to account for the electrical distribution impacts, including those related to distribution and transformation, occurring between the point of Interconnection, as defined in the PG&E Wholesale Distribution Interconnection Tariff, at the point where PG&E's meter is physically located, and the first point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

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

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

1.46. "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.

1.47. "Electrical Losses" means the applicable GMM assigned to the Project; provided that upon the implementation of MRTU, no Electrical Losses shall be allocated to Seller.

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

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

1.50. "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.

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

1.52. "Execution Date" means the date upon which this Agreement is fully executed, which may be effected using counterparts.

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

1.54. [RESERVED].

1.55. [RESERVED].

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

1.57. "Financial Incentives" means any PGC Funding Awards, PTCs or other financial benefit, for which the Project or Seller qualifies, now or in the future, not including Green Attributes.

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

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

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

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

(iii) except as set forth in subpart (b)(vii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable), theft, casualty, accident or equipment breakdown to the extent not caused by the negligence of the claiming party;

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

(v) actions or inactions of any Governmental Authority.

- (b) Force Majeure shall not be based on:
- (i) Buyer's inability economically to use or resell the Product purchased hereunder;
 - (ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;
 - (iii) Seller's inability to obtain approvals of any type for the operation, or maintenance of the Project;
 - (iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;
 - (v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
 - (vi) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;
 - (vii) a strike, work stoppage or labor dispute directly affecting either Buyer or Seller;
 - (viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; or
 - (ix) any inability of Buyer to pay for the Product.

1.59. "Forced Outage" means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part from a Unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a Unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

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

1.61. "Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable

transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term and include the value of Green Attributes.

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

1.63. "Good Utility Practice" has the meaning provided in the CAISO Tariff as of the Execution Date; provided that, except in connection with Buyer's obligations under Section 3.5(b)(iii), rather than meeting the standards applicable to electric utilities, such definition shall be interpreted to apply the standards applicable to independent power producers.

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

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

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

1.67. "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_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a 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.

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

1.69. "Imbalance Energy" means the amount of Energy, in any given hour, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

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

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

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

1.73. "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.

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

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

1.76. "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.

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

1.78. "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product. If the Non-Defaulting Party is the Seller, then "Losses" shall include any loss of Production Tax Credits or other federal or state tax credits related to the Project or generation therefrom.

- 1.79. "Lost PGC Funds" has the meaning set forth in Section 10.1(b)(ii).
- 1.80. "Manager" has the meaning set forth in Section 12.2(a).
- 1.81. [RESERVED].
- 1.82. "Maximum Performance Adjustment" shall have the meaning set forth in Section 4.6.
- 1.83. "Monthly Period" has the meaning set forth in Section 4.2.
- 1.84. "Monthly TOD Payment" has the meaning set forth in Section 4.3.
- 1.85. "Moody's" means Moody's Investor Services, Inc., or its successor.
- 1.86. "MRTU" or "Market Redesign and Technology Upgrade" means the locational marginal pricing market system to be governed by the CAISO MRTU Tariff approved by FERC.
- 1.87. "MWh" means megawatt-hour.
- 1.88. "Negative Imbalance Energy" has the meaning set forth in Section 4.7.
- 1.89. "NERC" means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.
- 1.90. "NERC Holiday" has the meaning set forth in Section 4.2.
- 1.91. "Net Rated Output Capacity" means the Project's Energy production capability as measured at the revenue meter in any Capacity Test inclusive of deductions for all applicable Electrical Losses.
- 1.92. "Non-Defaulting Party" has the meaning set forth in Section 5.2.
- 1.93. "Notice" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).
- 1.94. "Obligor" means the Party breaching the terms of this Agreement.
- 1.95. "Option" has the meaning set forth in Section 10.1(b)(ii).
- 1.96. "Option Approval" has the meaning set forth in Section 10.1(b)(ii).
- 1.97. "Outage Notification Form" means the notice form attached hereto as Appendix IV, 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 upon Notice to Seller.
- 1.98. "Participating Transmission Owner" or "Participating TO" means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the

CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.

1.99. "Party" or "Parties" means the Buyer or Seller individually, or to both collectively.

1.100. "Peaking Product" means a Product for which the Performance Requirements apply during hours ending 1300-2000 on Monday-Friday, excluding NERC Holidays, during June through and including September.

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

1.102. "PGC Fund Amount" has the meaning set forth in Section 10.1(a)(i).

1.103. [RESERVED].

1.104. [RESERVED].

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

1.106. "Positive Imbalance Energy" has the meaning set forth in Section 4.7.

1.107. "Preschedule Day" shall have the meaning set forth in Section 3.4(c)(iv).

1.108. "Product" means the Energy, capacity and all electricity related ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project, including, without limitation, renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

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

1.110. "Project" means the Unit(s) at the Site (but not including the Site) that comprise generation facility as more particularly described on Appendix II.

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

1.112. [RESERVED].

1.113. "Qualifying Facility" has the meaning provided in Public Utility Regulatory Policies Act ("PURPA") and in regulations of the Federal Energy Regulatory Commission ("FERC"), 18 C.F.R. §§ 292.201 through 292.207.

1.114. "RA Capacity" means the maximum megawatt amount that the CAISO recognizes from a Project that qualifies for Buyer's Resource Adequacy Requirements and is associated with the Project's Capacity Attributes.

- 1.115. "Recording" has the meaning set forth in Section 2.4.
- 1.116. "Reductions" has the meaning set forth in Section 3.1(d).
- 1.117. "Referral Date" has the meaning set forth in Section 12.2(a).
- 1.118. "Remedial Action Plan" has the meaning provided in Section 3.9(c)(ii).
- 1.119. "Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Law.
- 1.120. "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.
- 1.121. "Resource Adequacy Requirements" has the meaning set forth in Section 3.3.
- 1.122. "Restructuring Event" has the meaning set forth in Section 3.1(d).
- 1.123. [RESERVED].
- 1.124. "Retained Revenues" has the meaning set forth in Section 3.3(b).
- 1.125. "RMR" or "Reliability Must Run" shall have the meaning set forth in Section 3.3(b).
- 1.126. "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.127. "Schedule" has the meaning set forth in the CAISO Tariff.
- 1.128. "Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time-to-time.
- 1.129. "Scheduled Energy" shall have the meaning set forth in Section 3.4(c).
- 1.130. "SEC" means the U.S. Securities and Exchange Commission.
- 1.131. "Seller" shall have the meaning set forth on the Cover Sheet.
- 1.132. "Seller Excuse Hours" means those hours during which Seller is unable to schedule or deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer's negligence or failure to perform its obligations under this Agreement, or (c) a Dispatch Down Period.

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

1.134. "Site" shall mean the location of the Project as described in Appendix II.

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

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

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

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

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

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

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

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

1.143. "Unit" means the biomass fueled steam generator used to produce the Products, which are identified in Appendix II for the Transaction entered into under this Agreement.

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

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

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

ARTICLE TWO: GOVERNING TERMS AND TERM

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

2.2 Interpretation. The following rules of interpretation shall apply:

(a) The term "month" shall mean a calendar month unless otherwise indicated, and a "day" shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing

Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a "day" may be 23 or 25 hours on those days on which daylight savings time begins and ends.

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

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

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

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

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

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

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

2.4 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. In the event of any dispute between the Parties, a Party in possession of any Recording shall furnish a copy of such Recording to the other Party upon request and at the requesting Party's cost.

2.5 Term. The Term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 11.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to Section 5.2, or Section 11.2 of this Agreement (the "Term"); provided however, that this Agreement shall remain in

effect until 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). All indemnity rights shall survive the termination or expiration of this Agreement for twelve (12) months.

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

2.7 Seller's QF Status. As of the Execution Date, Seller is a Qualifying Facility ("QF") as defined in the Public Utility Regulatory Policies Act ("PURPA") and in regulations of the Federal Energy Regulatory Commission ("FERC"), 18 C.F.R. sections 292.201 through 202.207. This Agreement is not intended to modify or alter that status, and no provision of this Agreement is contingent upon Seller's continued status as a QF.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations

(a) Product. Subject to the Performance Requirements, Seller shall sell and deliver, on an as available basis, and Buyer shall purchase and receive all Product generated by the Project during the Delivery Term.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and, subject only to Section 3.1(i) ("Performance Excuses"), Buyer shall pay Seller the Contract Price only for the amount of Product actually delivered by Seller to Buyer at the Delivery Point. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Imbalance Energy pursuant to Section 4.7. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product at and after its receipt from the Delivery Point. The Parties agree that Seller shall arrange for any interconnection agreement with the Participating Transmission Owner. In accordance with Section 3.4, the Parties agree that Seller shall arrange and pay independently for any and all necessary distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Buyer shall arrange for and bear all costs associated with the Scheduling, distribution and transmission (and any regulatory approvals required for the foregoing) sufficient to allow Buyer to receive the Product at, and transmit the Product after, the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

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

X Delivery shall be for a period of ten (10) Contract Years.

- Delivery shall be for a period of fifteen (15) Contract Years.
- Delivery shall be for a period of twenty (20) Contract Years.

As used herein, "Delivery Term" shall mean the number of Contract Years specified above beginning on the next calendar day after the Initial Energy Delivery Date, as defined below, and continuing until and including May 31, 2018 unless terminated earlier as provided by the terms of this Agreement. The Initial Energy Delivery Date shall be June 1, 2008; provided that (1) if the conditions precedent set forth in Section 11.1 have not been satisfied or waived before June 1, 2008 but are subsequently satisfied or waived, then (in accordance with Section 2.5 this Agreement shall not be effective until such conditions precedent are satisfied or waived and, upon such satisfaction or waiver, the provisions of Sections 4.1 through 4.4 shall be applied retroactively to June 1, 2008 through a billing adjustment that is (A) in relation to payments received under Seller's existing power purchase agreement with Buyer and (B) made in Buyer's first monthly payment under this Agreement; and (2) if this Agreement is terminated under Section 11.2, then the Initial Energy Delivery Date shall be deemed to have not occurred. Upon the Initial Energy Delivery Date, this Agreement shall supersede and replace in its entirety the existing QF contract between the Parties, and that QF contract shall terminate automatically on that date without further action by either Party.

(d) Delivery Point. The Delivery Point shall be the Project substation. To the extent that Seller is reimbursed for or receives any refunds for congestion charges or losses with the costs assessed to Buyer for delivery of Product in accordance with the terms of this Agreement (collectively, any such reimbursements of refunds are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions.

(e) Contact Quantity. The Contract Quantity during each Contract Year is expected to be at least 140,800 MWh. The Parties acknowledge that actual deliveries of Delivered Energy may be more or less than the Contract Quantity.

(f) Contract Capacity/Declared Contract Capacity/Net Rated Output Capacity.

(i) Contract Capacity; Declared Contract Capacity. The "Contract Capacity" at any time, shall be, net of all auxiliary loads, station electrical uses, transformation and line losses to the revenue meter, and Electrical Losses, if any, the lower of the following: (A) twenty-three (23) MW of Declared Contract Capacity or (B) the Net Rated Output Capacity of the Project. Throughout the Delivery Term, so long as Buyer is in compliance with its obligations to purchase, receive and pay for Product hereunder, Seller shall sell all Product produced by the Project solely to Buyer and in no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy or Scheduled Energy, that exceeds the Contract Capacity by more than three and one-half (3.5) MW.

(ii) [RESERVED].

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only (other than imbalance energy provided by CAISO). Seller shall not make any alteration or modification to the Project which results in a change to the Net Rated Output Capacity of the Project without Buyer's prior written consent, except in connection with maintenance, repair or replacement of Project equipment in accordance with Good Utility Practice or to prevent or remedy an unsafe condition in accordance with Good Utility Practice. Notwithstanding the foregoing or anything to the contrary in this Agreement, Seller may add new units to the Project, or otherwise expand the capacity of the project, and sell the incremental capacity, energy, environmental attributes and all associated products to third parties so long as Seller (i) employs physical or other reliable means to separate the incremental capacity and output from the original capacity and output, (ii) does not sell any incremental output to Buyer without Buyer's consent, and (iii) Seller insures that the addition of such new capacity does not degrade Seller's performance under this Agreement. The Project is further described in Appendix II.

(h) [RESERVED].

(i) Performance Excuses.

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

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

(iii) Dispatch Down/Curtailment. Seller shall reduce delivery amounts as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Dispatch Down Period.

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

(j) [RESERVED].

(k) WREGIS. Prior to the Commercial Operation Date, Seller shall register the Project in the WREGIS, and take all other actions necessary to ensure that the Energy or Green Attributes produced from the Project are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer. In the event that WREGIS is not in operation as of the Commercial Operation Date, Seller shall perform its obligations, as required per this subsection, as soon as WREGIS is in operation. In the event that compliance with the foregoing costs Seller more than \$10,000 in any year, Buyer shall reimburse Seller for such excess costs.

(l) [RESERVED].

(m) Obtaining and Maintaining CEC Certification and Verification. Seller shall take all commercially reasonable 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.

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 Reliability Obligations.

(a) Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, to be used by Buyer in meeting its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe ("Resource Adequacy Requirements"). Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Seller agrees that during the Delivery Term Seller shall comply with the terms set forth in Appendix VI to enable Buyer to use all of the capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement in meeting Buyer's Resource Adequacy Requirements, but Seller does not warrant that the capacity does or will continue to meet Buyer's Resource Adequacy Requirements. Notwithstanding the foregoing, if and to the extent that Seller is obligated to hold or maintain any Capacity Attributes in connection with its ownership or operation of the Project, Seller shall be permitted to retain only the amount of Contract Capacity and Capacity Attributes specifically required to meet such obligation.

(b) Reliability Must Run. If the CAISO and/or Seller wishes to negotiate an RMR Contract that pertains to all or any portion of the Project that is not covered by an RMR Contract on the Execution Date of this Agreement, Seller shall inform Buyer of such negotiations and provide periodic updates as to the progress of such negotiations.

3.4 Transmission and Scheduling.

(a) Seller's Transmission Service Obligations. During the Delivery Term, Seller shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, to the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment. Seller shall be responsible for any and all CAISO costs and charges and electric transmission losses to the Delivery Point. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including, if applicable, those in the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, to the extent applicable, executing applicable interconnection agreements, Participating Generator Agreement and Meter Service Agreement so as to be able to deliver Energy to the CAISO Grid.

(b) Buyer's Transmission Service Obligations. During the Delivery Term, Buyer shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, at and from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment. During the Delivery Term, Buyer shall Schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Point, and shall be responsible for all CAISO costs and charges, including imbalance energy charges, except as set forth in Section 3.4(c)(iv). During the Delivery Term, Buyer shall be responsible for all CAISO costs and charges (including respecting congestion) and electric transmission losses at and from the Delivery Point.

(c) Scheduling

(i) Scheduling Coordinator. Buyer shall be the Scheduling Coordinator with respect to this Transaction or designate a qualified third party to fulfill such role. During the Delivery Term, Buyer or Buyer's SC shall conduct all Scheduling in full compliance with the applicable CAISO Tariff, protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff.

(ii) Weekly Schedule. No later than 10:00 A.M. (Pacific Prevailing Time) each Thursday during the Delivery Term, Seller shall provide PG&E with a non-binding weekly schedule forecast of Delivered Energy from the Project for the following Saturday through Friday. The format for this weekly schedule shall be as agreed by the Parties and must be sent by Seller via e-mail to qfschedules@pge.com.

(iii) Hour-Ahead Schedule Changes. Seller shall notify Buyer of any actual and anticipated changes from the weekly schedule of more than five (5) MW of Delivered Energy as soon as possible. These changes, called "Hour-Ahead Changes" for this purpose, must be communicated to Buyer's real-time traders by telephone at (415) 973-4500. When contacting Buyer's real-time traders, Seller should be prepared to provide the following information: (a) start time of the new schedule; (b) the actual amount of Delivered Energy under the new schedule; and (c) the expected date and time of return to the weekly schedule. Seller shall also notify Buyer via e-mail at qfschedules@pge.com of any such changes to the weekly schedule, including all the same information, within three hours of the change.

(iv) Imbalance Energy. If Seller does not comply with the forecasting obligations set forth herein, it shall reimburse Buyer, by setoff or otherwise, for all imbalance energy charges imposed by the CAISO, to the extent those charges are caused by or result from Seller's failure to comply. Buyer shall be responsible for all other imbalance energy charges.

3.5 Standards of Care

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

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

(c) Reliability Standard. Notwithstanding any other provision of this Agreement, Seller agrees to operate the Project in accordance with Good Utility Practice, applicable laws, including without limitation those applicable to generator operators and owners, and, to the extent applicable, (i) CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities", and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner.

3.6 Metering. All output from the Project per the terms of this Agreement must be delivered through a single revenue meter (if applicable, a CAISO revenue meter), and that meter

must be dedicated exclusively to the Project described herein. All Delivered Energy must be measured by the Project's revenue meter. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and, if applicable, consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports, and Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall provide updated meter data to Buyer and submit revised monthly invoices, if necessary, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. If applicable, Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification.

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

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a completed Outage Notification Form in accordance with the provisions set forth in Appendix V no later than August 1st of each year during the Delivery Term. Notwithstanding the submission of the Outage Notification Form described in the previous sentence, Seller shall also submit a completed Outage Notification Form in accordance with the provisions set forth in Appendix V no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of June through September, or in the month of December. Seller shall contact Buyer with any changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs or foregone revenues associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs or foregone revenues. If Buyer agrees to pay the incremental costs or foregone revenues resulting from a schedule change requested by Buyer, Seller shall use commercially reasonable efforts to accommodate Buyer's request. For purposes of the subsection "foregone revenues" means any revenues that Seller can demonstrate with reasonable specificity would have been received by Seller but for the schedule change.

(c) Forced Outages. Seller shall, in accordance with the provisions set forth in Appendix V, (i) use commercially reasonable efforts to notify Buyer of any Forced Outage within 1 hour of the occurrence of such outage, (ii) provide a written estimate of its expected duration of the outage within 24 hours thereafter, and (iii) submit a completed Outage Notification Form to Buyer in accordance with the instructions provided therein. Seller shall not substitute Energy from any other source for the output of the Project during a Forced Outage, other than CAISO imbalance energy.

(d) [RESERVED].

(e) Force Majeure. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. Seller shall not substitute Products from any other source for the output of the Project during an outage resulting from Force Majeure, other than CAISO imbalance energy. 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. To the extent that the period of a Force Majeure outage is not to be counted as part of Seller's performance obligation, Buyer shall not be required to pay for Product that is not delivered by Seller during such an outage.

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

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

(h) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7 or 3.8 or Appendix V, Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, outage notification procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to use commercially reasonable efforts to implement any such changes as reasonably deemed necessary by Buyer; provided that Buyer reimburses Seller for any increased cost or lost revenues resulting therefrom.

3.8 Operations Logs and Access Rights.

(a) [RESERVED].

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by law, or its tariff schedules, Electric Rule 21, and rules on file with the CPUC. Buyer shall make reasonable efforts to coordinate its

emergency activities with the safety and security departments, if any, of the Project operator and shall at all times comply with Seller’s safety and security requirements when on the Site. Seller shall keep Buyer advised of current procedures for contacting the Project operator’s safety and security departments.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price. The Contract Price for each MWh of Delivered Energy in each Contract Year shall be as follows:

Contract Year	Contract Price (\$/MWh)
1 (June 1, 2008 through May 31, 2009)	\$81.00/MWh
2 (June 1, 2009 through May 31, 2010)	\$81.81/MWh
3 (June 1, 2010 through May 31, 2011)	\$82.63/MWh
4 (June 1, 2011 through May 31, 2012)	\$83.45/MWh
5 (June 1, 2012 through May 31, 2013)	\$84.29/MWh
6 (June 1, 2013 through May 31, 2014)	\$85.13/MWh
7 (June 1, 2014 through May 31, 2015)	\$85.98/MWh
8 (June 1, 2015 through May 31, 2016)	\$86.84/MWh
9 (June 1, 2016 through May 31, 2017)	\$87.71/MWh
10 (June 1, 2017 through May 31, 2018)	\$88.59/MWh

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

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

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

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

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

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

3. **Night (7x8)** = hours ending 1 - 6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

“NERC Holidays” mean the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “NERC Holiday” remains on that Saturday.

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

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

4.4 TOD Factors and Monthly TOD Payment.

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

Period	TOD FACTORS FOR EACH TOD PERIOD		
	1. Super-Peak	2. Shoulder	3. Night
A. June – September	1.959	0.903	0.626
B. Oct.- Dec.; Jan. & Feb.	1.471	1.030	0.731
C. Mar. – May	1.319	0.843	0.584

(b) **Monthly TOD Payment.** For each month, Buyer shall pay Seller for Delivered Energy in each TOD Period (“Monthly TOD Payment”) the amount resulting from multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the Energy delivered in each hour:

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

4.5 **Performance Requirements.** To avoid incurring any Performance Adjustments, as defined below herein, Seller shall cause the Unit(s) to deliver no less than the following Capacity

Factors over all the hours comprising the Monthly Period A-1 Super-Peak TOD Period (“Performance Requirements”):

Performance Requirements

Monthly Period	Capacity Factor For Each TOD Period		
	1. Super-Peak	2. Shoulder	3. Night
A. June – September	95%		
B. Oct. – Dec.; Jan. & Feb.			
C. Mar. – May			

Performance Requirements notwithstanding, Seller shall use reasonable efforts to cause the Unit(s) to be available for Resource Adequacy Requirements in accordance with Appendix VI. Seller agrees that the above-listed Performance Requirements are inclusive of Seller’s expected Planned Outages.

4.6 Performance Adjustments. For Monthly Period A-1 Super-Peak TOD Period, if the Capacity Factor were assumed to be precisely 100 percent (100%), then the maximum TOD Payment (“Maximum Performance Adjustment”) due to Seller shall be defined as follows:

$$\text{Maximum Performance Adjustment} = \text{Contract Price} \times \text{TOD Factor} \times 1.0000 \times \text{Contract Capacity} \times (\text{Hours in applicable TOD Period} \text{ minus Seller Excuse Hours}).$$

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

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

**Performance Adjustment Factors
For Each TOD Period**

Monthly Period	TOD PERIOD		
	1. Super-Peak	2. Shoulder	3. Night
A. June – September	3.00		
B. Oct. – Dec., Jan. & Feb.			
C. Mar. – May			

If the applicable Capacity Factor in the Monthly Period A-1 Super-Peak TOD Period is less than the applicable Performance Requirement, then the Performance Adjustment for such TOD Period shall be calculated as follows:

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

For the purpose of calculating the Performance Adjustment for any month in Period A-1, the Capacity Factor will be measured, calculated, and settled on a monthly basis for each month in Period A-1.

In no event shall the applicable Performance Adjustment exceed the amount of the applicable Maximum Performance Adjustment.

4.7 Imbalance Energy. Except as provided in Section 3.4(c)(iv), Buyer shall be responsible for settlement of Imbalance Energy with the CAISO and for any imbalance penalties or other charges that CAISO may assess in connection with Imbalance Energy. That is, Buyer shall pay the CAISO for negative imbalance energy and shall retain payment from the CAISO for positive imbalance energy.

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, and as a result, the Non-Defaulting Party is materially harmed;

(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 or failures for which a separate remedy – such as the payment of liquidated damages – is expressly provided in this Agreement), if such failure is not remedied within thirty (30) days after Notice; provided that if the remedy may not be affected within such thirty (30)-day period and the non-performing Party uses reasonable efforts to affect such remedy within ninety (90) days of the advance written notice, then the cure period shall be ninety (90) days;

(iv) such Party becomes Bankrupt; or

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

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

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

(ii) any failure by the Project to generate at least 70,400 MWh (the "Minimum Annual Generation Requirement") in any Contract Year; provided that, the Minimum Annual Generation Requirement shall be reduced pro rata for each Seller Excuse Hour (e.g., if there are 24 Seller Excuse Hours in a given Contract Year that is not a leap year, the Minimum Annual Generation Requirement for that Contract Year shall be 70,207 MWh);

(iii) [RESERVED];

(iv) [RESERVED]; or

(v) failure by Seller to satisfy the creditworthiness requirements agreed to pursuant to Article VIII of this Agreement.

5.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date"), (b) to accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date and collect liquidated damages ("Termination Payment"), which shall be calculated in accordance with Section 5.3 below; (ii) withhold any payments due to the Defaulting Party under this Agreement; (c) suspend performance; and (d) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. The Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the "Settlement Amount" is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement, discounted, where applicable, to present value, and taking into account any unpaid amounts due from or to either Party under 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, no Termination Payment shall be due to the Defaulting Party and if the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, if any, resulting from the termination of this Agreement, the Termination Payment shall be due to the Non-Defaulting Party. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve; provided that the Non-Defaulting Party shall pay for any prior performance.

5.3 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Product, (c) at the same Delivery Point, and (d) for the remaining Delivery Term, or in any

other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remaining Delivery Term of the Terminated Transaction and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Transaction. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made within fifteen (15) Business Days after such Notice is effective.

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

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

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) access to or records of metered data, including, if applicable, CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, and (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy or amount of any Reductions. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Buyer shall provide to Seller a statement covering the services provided in the preceding month determined in accordance with Section 4.4, as adjusted for Imbalance Energy pursuant to Section 4.7 (which may include preceding months). Buyer shall pay on the later of the thirtieth (30th) day of each month and twenty (20) days after delivery of the statement. If either the statement date or payment date is not a Business Day, then such statement or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of both the disputed and

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. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment or return of overpayment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made; provided that such waiver shall not apply to any adjustment or dispute related to Seller's performance under any applicable RMR contract. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

6.3 Accelerated Payments. Notwithstanding anything herein to the contrary, in the event that Buyer's Credit Rating falls below Baa3 by Moody's and BBB - by S&P, Buyer shall pay Seller on the fourteenth (14th) and the twenty-eight (28th) day of each month for Energy expected to be delivered during the immediately preceding two (2) week (plus any day of the month after the twenty-eight (28th) day) period. Such payments shall be based upon the amounts set forth in the most recent monthly forecast provided under Section 3.4(c)(iii). During any such accelerated payment period, Buyer shall not withhold any payments, including disputed payments. Seller shall reconcile payments based upon estimated amounts hereunder to actual amounts owing in the first invoice following receipt of all relevant data.

ARTICLE SEVEN: LIMITATIONS

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

UNDER ANY INDEMNITY PROVISION OR OTHERWISE. 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 REQUIREMENTS

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

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

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

Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

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

ARTICLE TEN: MISCELLANEOUS

10.1 [RESERVED].

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 CPUC Approval in the case of Buyer;

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

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

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

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

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

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

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

(b) Seller Representations and Warranties. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as 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.

10.3 Covenants.

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

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

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

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

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

(b) Seller Covenants.

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

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

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

10.5 Indemnities.

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

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

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

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

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

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

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

10.10 Insurance. 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.

(a) Workers' Compensation and Employers' Liability.

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

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

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, 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 (OPC) policy. Limits shall be on a per project basis.

(iii) Coverage shall:

(A) include Buyer as "Additional Insureds;"

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

(C) include a severability of interest clause.

(c) Business Auto.

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

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

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

(d) [RESERVED]

(e) [RESERVED]

(f) Seller's Pollution Liability.

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

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

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

(g) All Risk Property Insurance.

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

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

(iii) [RESERVED].

(h) [RESERVED].

(i) Additional Insurance Provisions.

(i) Before commencing performance of the Work, Seller shall furnish PG&E 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 PG&E.

(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 PG&E on an annual basis and, in addition, PG&E 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 PG&E.

(j) Form And Content.

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

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

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

10.11 [RESERVED].

10.12 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.13 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either party, the other party will confirm facsimile or PDF signatures by signing an original document. This Agreement shall be binding on each Party's successors and permitted assigns. Each Party irrevocably waives its rights, including its rights under §§ 205-206 of the Federal Power Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Agreement or any other agreements entered into in connection with this Agreement or any Transaction thereunder, including any credit, security, margin, guaranty or similar agreement (collectively with this Agreement, the "Covered Agreements"). By this provision, each Party expressly waives its right to seek or

support: (i) an order from FERC finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the Parties in the Covered Agreements are unjust and unreasonable; or (ii) any refund with respect thereto. Each Party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter. Absent the agreement of the Parties to a proposed change, the standard of review for changes to any section of any Covered Agreement proposed by a Party (to the extent that any waiver herein is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, 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) (the "Mobile-Sierra" doctrine). The Parties agree that, if and to the extent that FERC adopts a final rule in Docket No. RM05-35, Standard of Review for Modifications of Jurisdictional Contracts ("Final Rule"), which: (1) states that FERC will interpret contractual silence on the standard of review applicable to unilateral attempts to modify any of the rate(s), charges, classifications, terms or conditions of this Agreement as an intent to invoke the Mobile-Sierra public interest standard of review; and (2) requires that Parties seeking to reserve their right, or the right of a non-party or FERC, to seek unilateral modification of this Agreement under a just and reasonable standard of review must do so explicitly in the Agreement in accordance with the terms prescribed by FERC, then, without further action of either Party, this Section shall be deemed amended in any manner necessary to reflect the Parties' intent to exclude application of the just and reasonable standard under the Mobile-Sierra doctrine, and, without further action of either Party, this Section shall be deemed amended to incorporate the specific language in the Final Rule that requires the public interest standard of review.

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

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

ARTICLE ELEVEN: CONDITIONS PRECEDENT

11.1 Conditions Precedent. Subject to Sections 2.6 and 3.1(c) hereof, the Term shall not commence until the occurrence of all of the following:

- (a) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;
- (b) CPUC Approval has been obtained; and

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

Buyer shall submit this Agreement for CPUC Approval within thirty (30) days of the Execution Date and shall diligently pursue such approval thereafter. Seller agrees to use its best efforts to support such approval.

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 effective upon receipt of Notice by the other Party; provided that such Notice is given within two hundred ten (210) days from the date on which Buyer files this Agreement for CPUC Approval .

ARTICLE TWELVE: DISPUTE RESOLUTION

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

12.2 Management Negotiations.

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

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

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

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

12.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the AAA. As the first step, the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by Arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration") as set forth in Section 12.4 below. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the AAA a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

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

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer.

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

(c) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362

(1994) and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law. The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

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

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

ARTICLE THIRTEEN: NOTICES

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

APPENDIX I

[RESERVED].

APPENDIX II

PROJECT AND SITE DESCRIPTION

PROJECT DESCRIPTION

Project name Wadham Energy L. P.

Project Site name: Wadham Energy L.P.

Project physical address: 6247 Myers Rd, Williams CA 95987

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

Technology Type: biomass fueled steam generator

Substation: See Point of Delivery (i.e. Delivery Point) per attached sketch F-2

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

Colusa County, parcel number 2 and 3, parcel map 82-11-3

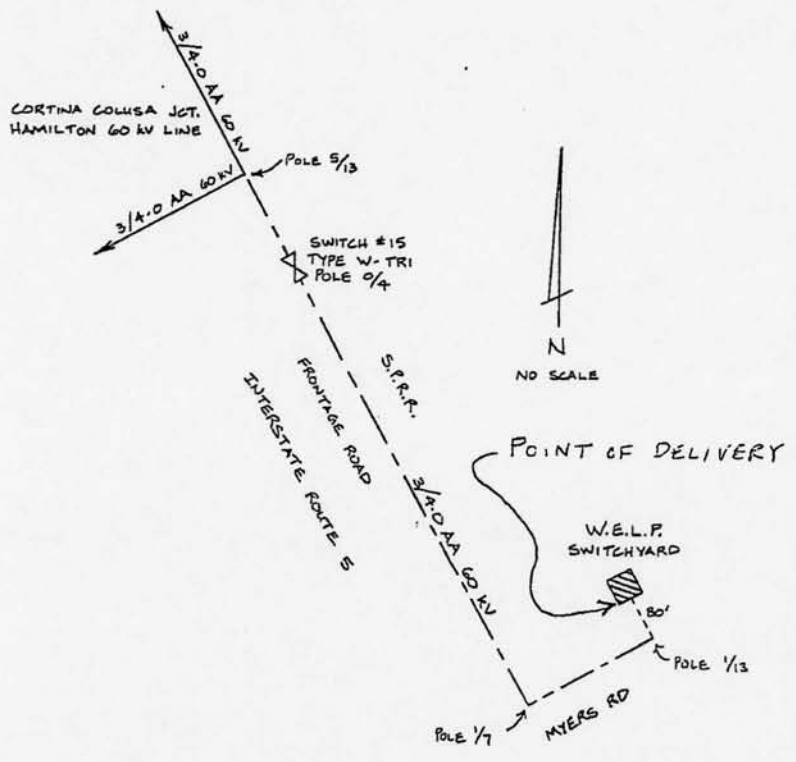
The capacity of the Project is (26,500 kW net).

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

Biomass fueled steam generator with a single steam turbine-generator and condenser system.

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F-2 POINT OF DELIVERY LOCATION SKETCH



WADHAM ENERGY LIMITED PARTNERSHIP
26.5 MW SMALL POWER PRODUCTION
T15N, R2W, Sec. 32 M.D.B. & M.

F-3

APPENDIX III

[RESERVED].



PLEASE DO NOT ALTER THIS

APPENDIX IV

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

SEND VIA FAX
To Pacific Gas & Electric Company

DATE: _____

Attention: Manager Electric Settlements
Attention: Outage Coordinator

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

PG&E LOG NUMBER: _____

Unit/ProjectName: _____

NOTIFICATION OF:

SCHEDULED OUTAGE / FORCED OUTAGE / CURTAILMENT / PROLONGED OUTAGE

The Unit will shut down for SCHEDULED OUTAGE from:

_____ to _____

(Date and Time)

(Date and Time)

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

(Date and Time)

(Date and Time)

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

(Date and Time)

(Name of PG&E Individual)

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

Outage Notification Form submitted by: _____ Phone #: _____

(Print Name)

APPENDIX V
COUNTERPARTY NOTIFICATION REQUIREMENTS FOR
OUTAGES AND GENERATION SCHEDULES

A. NOTIFICATION REQUIREMENTS FOR START-UP AND SHUTDOWN

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

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

B. REASONS TO SEND NOTIFICATION AND TIMING REQUIREMENTS

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

I. Submission of Outages, Generation

1. Whenever the Unit experiences an outage, plans to schedule maintenance, or is subject to a curtailment, PG&E's web site which contains the Outage Notification Form or its equivalent, is to be used to comply with the notification requirements under the contract. The Outage Notification Form or its equivalent shall be used when reporting outages or curtailment. The Outage Notification Form or its equivalent must be completely filled out, including date and start time of event, cause of the outage or curtailment, expected duration, expected time and date of return to service or full output and transmitted to PG&E's Power Trading and Power Settlements.
2. Testing the Unit(s) During an Outage. Notify the designated PG&E Control Center by telephone and PG&E's Power Settlements Department as provided above before testing the Unit(s) during an Outage. Indicate on the original Outage Notification Form if testing will be conducted during an Outage.
3. Communication with PG&E Control Center. Seller shall maintain operating communications with the PG&E Control Center at _____. The operating communications shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled Outages, equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.

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

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

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

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

APPENDIX VI

RESOURCE ADEQUACY

1. Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to, the following:
 - A. Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the CAISO Interconnection Point; and
 - B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.
 - C. Performing a capacity test to establish or verify the Net Capacity Output if such a test is necessary to insure that Buyer obtains credit for RA Capacity. Any such test will be performed at Seller's expense, will be performed in accordance with whatever test parameters are specified by the CAISO, the CPUC, or other entity with jurisdiction and will have no effect upon payments to be made under the Agreement..

Notwithstanding the foregoing, Seller shall not be obligated to incur any unreimbursed capital costs or to modify its construction, or operation or maintenance of the Project.

2. Seller shall comply with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff, including but not limited to the following:
 - A. Taking all actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity.
 - B. Coordinating with Buyer with regard to the submission of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff, to the CAISO.
 - C. Complying with the applicable reporting requirements.
3. RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Delivery Point for the Project.