

**POWER PURCHASE AND SALE AGREEMENT**

**Between**

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

**and**

**WESTERN GEOPOWER, INC.**

**(as "Seller")**

**Baseload**

POWER PURCHASE AND SALE AGREEMENT

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**EXECUTION COPY**

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**POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

This Power Purchase and Sale Agreement is made as of this May 9, 2007 ("Execution Date"). Seller and Buyer listed below are each individually considered a "Party" and collectively are considered the "Parties" to the Agreement.

Name: Western GeoPower, Inc., a California corporation  
( "Seller" )  
All Notices:

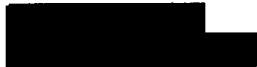
Name: Pacific Gas and Electric Company, a California corporation  
( "Buyer" or "PG&E" )  
All Notices:

Delivery Address:  
5221 Central Avenue, Suite 201  
Richmond, CA 94804-5829

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

Mail Address: (if different from above)  
409 Granville Street, Suite 400  
Vancouver, British Columbia Canada V6C 1T2  
Attn: Kenneth MacLeod, President  
(kmacleod@geopower.ca)  
Phone: (604) 662-3338  
Facsimile: (604) 646-6603

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



**Invoices:**  
Attn: Rupri Khanuja, Chief Financial Officer  
(rupri@geopower.ca)

**Invoices:**  
Attn: Alice Gong (axl3@pge.com)

Phone: (604) 662-3338  
Facsimile: (604) 646-6603  
With an additional copy to:  
Attn: Kenneth MacLeod, President  
Phone: (604) 662-3338  
Facsimile: (604) 646-6603

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

**Scheduling:**  
Attn: Kenneth MacLeod, President  
Phone: (604) 662-3338  
Facsimile: (604) 646-6603

**Scheduling:**  
Attn: Kevin F. Coffee (kfc1@pge.com)  
Phone: (415) 973-7631  
Facsimile: (415) 973-0400

**Payments:**  
Attn: Rupri Khanuja, Chief Financial Officer (rupri@geopower.ca)

**Payments:**  
Attn: Alice Gong (axl3@pge.com)

Phone: (604) 662-3338

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

**EXECUTION COPY**

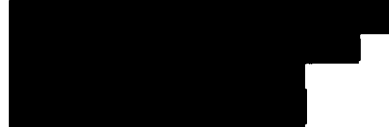
Facsimile: (604) 646-6603  
With an additional copy to:  
Attn: Kenneth MacLeod, President  
Phone: (604) 662-3338

**Wire Transfer:**



Facsimile: (415) 973-2151

**Wire Transfer:**



**Credit and Collections:**

Attn: Rupri Khanuja, Chief Financial  
Officer ([rupri@geopower.ca](mailto:rupri@geopower.ca))  
Phone: (604) 662-3338  
Facsimile: (604) 646-6603

With an additional copy to:  
Attn: Kenneth MacLeod, President  
Phone: (604) 662-3338  
Facsimile: (604) 646-6603

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

Attn: Rupri Khanuja, Chief Financial  
Officer ([rupri@geopower.ca](mailto:rupri@geopower.ca))  
Phone: (604) 662-3338

With an additional copy to:  
Attn: Kenneth MacLeod, President  
Phone: (604) 662-3338  
Facsimile: (604) 646-6603

**Credit and Collections:**

Attn: Credit Risk Management Unit

Phone: (415) 973-2067  
Facsimile: (415) 973-7301

**Contract Manager:**

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

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

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

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

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**Article Three**

New Generation Facility

X Add Section 3.9.  
If not checked, inapplicable.

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**Article Eight**

Credit and Collateral Requirements

8.2 Seller Financial Information:

Option A  
X Option B Specify: Western GeoPower Corp. (parent company)

8.4 Project Development Security; Delivery Term Security

X Applicable  
 Not Applicable

If Applicable:

The following is the "Project Development Security"

8.4 (a)(i) Project Development Security Amount: \$ 75,000.00

8.4 (a)(ii) Project Development Security Amount: \$ 500,000.00

Type of Project Development Security: Cash

The following is the "Delivery Term Security"

8.4(a)(iii) Delivery Term Security Amount: \$17,500,000.00

Type of Delivery Term Security: Letter of Credit

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**Article 10**

**10.1 No Fault Termination**

(a) Seller Termination Right

Not Applicable

Applicable

(b) PGC Funding Termination

Not Applicable

Applicable

(c) Production Tax Credit

Not Applicable

Applicable

**10.7 Confidentiality**

Confidentiality Applicable  
If not checked, inapplicable.

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

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**EXECUTION COPY**

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

Appendix I Form of Letter of Credit

Appendix II Initial Energy Delivery Date Confirmation Letter

Appendix III Milestones Schedule

Appendix IV Project Description Including Description of Site

Appendix V Form of Certification

Appendix VI Commercial Operation Certification Procedure and Procedure for Subsequent Capacity Testing

Appendix VII Form of Monthly Progress Report

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Appendix X Resource Adequacy

Appendix XI Form of Consent to Assignment

**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 12.4.

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, (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 uniform twenty-four (24) hours per day, seven (7) days per week.

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

1.9. "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.

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

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

1.12. "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.

1.13. "CAISO Penalties" has the meaning set forth in Section 4.8.

1.14. "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.

1.15. "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.

1.16. "Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services including, but not limited to, any accounting construct so that the full Contract Capacity of the Project 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 procure at Buyer's expense, Resource Adequacy or other such products.

1.17. "Capacity Factor" has the meaning set forth in Section 4.3.

1.18. "Capacity Test" has the meaning set forth in Appendix VI attached hereto.

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

1.20. "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.

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

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

1.23. "Commercial Operation" means the Project is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement.

1.24. "Commercial Operation Date" means the date on which Seller notifies Buyer that Commercial Operation has occurred and Buyer accepts in writing the results of Seller's initial Capacity Test report in compliance with the Commercial Operation Certification Procedure, as provided in Appendix VI hereto.

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

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

1.27. "Construction Start Date" means the later to occur of the date on which Seller delivers to Buyer (i) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (ii) a written Certification substantially in the form attached hereto as Appendix V.

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

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

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

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

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

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

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

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

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

(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; and

(c) finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by Buyer from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation

to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC Decision 03-06-071, or other applicable law.

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

- 1.36. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's.
- 1.37. "Cure" has the meaning set forth in Section 8.5.
- 1.38. "Daily Delay Damages" means with respect to a Guaranteed Project Milestone, an amount equal to (a) the Project Development Security Amount posted as of the first date that Daily Delay Damages are payable under this Agreement with respect to such Guaranteed Project Milestone, divided by (b) 120.
- 1.39. "Day Ahead Schedule" has the meaning set forth in the CAISO Tariff.
- 1.40. "Declared Contract Capacity" means the generation capacity designated for the Project in Section 3.1(f), net of all auxiliary loads, station electrical uses, and Electrical Losses.
- 1.41. "Defaulting Party" means the Party that is subject to an Event of Default.
- 1.42. "Delivered Energy" means all Energy produced from the Project as measured in MWh at the CAISO revenue meter of the Project based on a power factor of precisely one (1) and net of all Electrical Losses.
- 1.43. "Delivery Point" means the point at which Buyer receives Seller's Product, as set forth in Section 3.1(d).
- 1.44. "Delivery Term" has the meaning set forth in Section 3.1(c).
- 1.45. "Delivery Term Security" shall mean the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.
- 1.46. "Disclosing Party" has the meaning set forth in Section 10.7.
- 1.47. "Disclosure Order" has the meaning set forth in Section 10.7.
- 1.48. "Dispatch Down Period" means (a) curtailments ordered from the CAISO, for reasons including but not limited to any system emergency, as defined in the CAISO Tariff ("System Emergency"); (b) curtailments ordered by Buyer based on any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes Buyer's electric system integrity or the integrity of other systems to which Buyer is connected, as reasonably determined by Buyer in Buyer's sole discretion; (c) curtailments ordered by Buyer due to over generation as defined in the CAISO Tariff; (d) curtailments ordered by Buyer based upon Buyer's forecast of over generation, including, but not limited to, a

request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (e) curtailments ordered by the Participating Transmission Owner; or (f) there is scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point.

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

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

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

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

1.53. "Electrical Losses" means all applicable losses, including, but not limited to, the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; (b) the applicable GMM or any successor method to account for losses or congestion established by the CAISO (or successor organization) and assigned to the Delivery Point for the Project; and (c) the applicable Distribution Loss Factor, if applicable.

1.54. "Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in 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.

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

1.56. "EPC Contract" means the Seller's engineering, procurement and construction contract with the EPC Contractor.

1.57. "EPC Contractor" means a firm with expertise in engineering, procurement, and construction of geothermal power plants, including firms such as Black & Veatch, TIC or Stone & Webster or any other EPC Contractor of equivalent skill and financial status.

1.58. "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.

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

1.60. "Execution Date" has the meaning set forth on the first page of the Cover Sheet.

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

1.62. "Exercise Date" has the meaning set forth in Section 10.1(b)(ii)(B).

1.63. "Exercise Period" has the meaning set forth in Section 10.1(b)(ii)(A).

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

1.65. "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 or the failure of, or caused by, 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) unusual flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, other natural disaster or unusual or extreme adverse weather-related events;

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

(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); or

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

(b) Force Majeure shall not be based on:

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

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

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

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

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

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

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

(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.

1.66. "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.

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

1.68. "Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 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 to determine the value of the Product.

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

1.70. "Good Utility Practice" has the meaning provided in the CAISO Tariff.

1.71. "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.



1.72. "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.

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

1.74. "Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its displacement of conventional Energy generation. Green Attributes include but are not limited to, Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; 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.

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

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

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

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

1.79. "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.

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

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

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

1.83. "Interconnection Facilities" means the facilities, which include all apparatus installed pursuant to the Participating Transmission Owner's facility connection requirements, to which Seller shall be able to interconnect and deliver Energy from the Project to and at the Delivery Point, including, but not limited to, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required pursuant to Good Utility Practices and in accordance with any agreements entered into by Seller necessary for interconnection to protect the Participating Transmission Owner's electric system (or other systems to which the Participating Transmission Owner's electric system is connected, including the CAISO Grid) and the Participating Transmission Owner's or Transmission Provider's, as applicable, customers from faults occurring at the Project.

1.84. "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.

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

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

1.87. "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.

1.88. "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.

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

1.90. "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of 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 Delivery Term to determine the value of the Product. If the Non-Defaulting Party is the Seller, then "Losses" shall exclude any loss of Production Tax Credits or other federal or state tax credits related to the Project or generation therefrom.

- 1.91. "Lost PGC Funds" has the meaning set forth in Section 10.1(b)(ii)(A).
- 1.92. "Manager" has the meaning set forth in Section 12.2(a).
- 1.93. "Market Price Referent" means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).
- 1.94. "Maximum Performance Adjustment" has the meaning set forth in Section 4.6.
- 1.95. "Milestones" has the meaning set forth in Section 3.9(c)(i).
- 1.96. "Monthly Progress Report" means the report similar in form and content attached hereto as Appendix VII.
- 1.97. "Monthly Period" has the meaning set forth in Section 4.2.
- 1.98. "Monthly TOD Payment" has the meaning set forth in Section 4.4.
- 1.99. "Moody's" means Moody's Investor Services, Inc., or its successor.
- 1.100. "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.
- 1.101. "MWh" means megawatt-hour.
- 1.102. "Negative Imbalance Energy" has the meaning set forth in Section 4.7.
- 1.103. "NERC" means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.
- 1.104. "NERC Holiday" has the meaning set forth in Section 4.2.
- 1.105. "Net Rated Output Capacity" means the Project's Energy production capability as measured at the CAISO revenue meter in any Capacity Test inclusive of deductions for all applicable Electrical Losses.
- 1.106. "New Generation Facility" means a project that (a) has not previously been operational and able to produce and deliver Energy to another entity or (b) must be re-powered or expanded in order to deliver the Product pursuant to the terms set forth in this Agreement.
- 1.107. "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.108. "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).

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

1.110. "Obligor" means the Party breaching the terms of this Agreement.

1.111. "Option" has the meaning set forth in Section 10.1(b)(ii)(A).

1.112. "Option Approval" has the meaning set forth in Section 10.1(b)(ii)(B).

1.113. "Outage Notification Form" means the notice form attached hereto as Appendix VIII, which shall be submitted by Seller to Buyer in accordance with the relevant provisions of Section 3.7. PG&E reserves the right to revise or change the form upon Notice to Seller.

1.114. "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.

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

1.116. "Peaking" means a Product for which Energy must be delivered during hours ending 1300-2000 on Monday-Friday, excluding NERC Holidays, during June through and including September.

1.117. "Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations hereunder and includes Project Development Security and Delivery Term Security.

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

1.119. "Person" means any individual, corporation (including any not-for-profit corporation), partnership, limited liability partnership, joint venture, estate, trust, firm, company (including any limited liability company or joint stock company), association, organization, entity or Governmental Authority.

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

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

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

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

1.124. "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.

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

1.126. "Preschedule Day" has the meaning set forth in Section 3.4(c)(iv).

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

1.128. "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.

1.129. "Project" means all of the Unit, together with all related wells, well pads, steam gathering system and all other equipment, fixtures, structures, and the other assets relating to the Unit, and the Site at which the Unit is located, as more particularly described in Appendix IV.

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

1.131. "Project Development Security" is the collateral required of Seller, as specified in the Cover Sheet, and referred to in Section 8.4(a), together with any Additional Project Development Security delivered by Seller to Buyer pursuant to Section 3.9(c)(iv).

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

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

1.134. "Recording" has the meaning set forth in Section 2.4.

1.135. "Reductions" has the meaning set forth in Section 3.1(d).

1.136. "Referral Date" has the meaning set forth in Section 12.2(a).

1.137. "Remedial Action Plan" has the meaning provided in Section 3.9(c)(ii).

1.138. "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.

1.139. "Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D. 05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

1.140. "Resource Adequacy Requirements" has the meaning set forth in Section 3.3.

1.141. "Restructuring Event" has the meaning set forth in Section 3.1(d).

1.142. "Revocation Notice" has the meaning set forth in Section 10.1(b)(i).

1.143. "Retained Revenues" has the meaning set forth in Section 3.3(b).

1.144. "RFP" means the solicitation from which this Agreement is the result.

1.145. "RMR" or "Reliability Must Run" shall have the meaning set forth in Section 3.3(b).

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

1.147. "Schedule," except as used in Section 3.1(f)(i) has the meaning set forth in the CAISO Tariff. For purposes of Section 3.1(f)(i), "Schedule" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinator, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.

1.148. "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.

1.149. "Scheduled Energy" shall have the meaning set forth in Section 3.4(c).

1.150. "SEC" means the U.S. Securities and Exchange Commission.

1.151. "Seller" shall have the meaning set forth on the Cover Sheet.

1.152. "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 failure to perform, or (c) Dispatch Down Period.

- 1.153. "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.
- 1.154. "Site" shall mean the location of the Project as described in Appendix IV.
- 1.155. "Term" shall have the meaning provided in Section 2.5 of this Agreement.
- 1.156. "Terminated Transaction" means the Transaction terminated in accordance with Section 5.2 of this Agreement.
- 1.157. "Termination Payment" has the meaning set forth in Section 5.2.
- 1.158. "TOD" means time of delivery of Scheduled Energy from Seller to Buyer.
- 1.159. "TOD Factors" shall have the meaning set forth in Section 4.4(a).
- 1.160. "TOD Period" has the meaning set forth in Section 4.2.
- 1.161. "Transaction" means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.
- 1.162. "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.
- 1.163. "Transmission Upgrades" means any additions and/or reinforcements to an electric transmission system that are required as the result of the interconnection of the Project to the Participating Transmission Owner's electric system and/or to permit delivery of the Product to Buyer's Load, as defined in the CAISO Tariff, safely and reliably, in the quantities and at the times at which delivery of such Product may be required under this Agreement, up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project.
- 1.164. "Unit" means the geothermal power plant used to produce the Products, which is identified in Appendix IV for the Transaction entered into under this Agreement.
- 1.165. "WECC" means the Western Electricity Coordinating Council or successor agency.
- 1.166. "WREGIS" means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.
- 1.167. "Work" means (a) all services or operations performed by a Party or on a Party's behalf with respect to the Project, and (b) materials, parts or equipment furnished in connection with such services 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 as provided by law or pursuant to this Agreement.

**ARTICLE TWO: GOVERNING TERMS AND CONDITIONS**

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.

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 (i) the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for twelve (12) months.

2.6 Binding Nature. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under Sections 3.9(a)(vi) and 8.4(a)(i), Section 5.1(a)(ii) only with respect to Section 10.2, and Article Eleven. Upon occurrence of the Effective Date, this Agreement shall be in full force and effect, enforceable and binding in all respects.

### ARTICLE THREE: OBLIGATIONS AND DELIVERIES

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

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

(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 Buyer shall pay Seller the Contract Price in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Imbalance Energy pursuant to Section 4.7. 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 and at the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt from the Delivery Point. The Parties agree that Seller shall arrange and pay independently for any and all necessary costs under 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 electrical interconnection, Scheduling, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

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

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

As used herein, "Delivery Term" shall mean the period of Contract Years specified above beginning on the first date that Seller delivers Product to Buyer from the Project ("Initial Energy Delivery Date") in connection with this Agreement and continuing until the end of the twentieth (20th) Contract Year unless terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall not occur until all of the following have been satisfied: (i) the Commercial Operation Date has occurred; (ii) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; and (iii) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix II on the Initial Energy Delivery Date.

(d) Delivery Point. The Delivery Point shall be NP-15. If the current NP-15 zonal delivery point, which is part of the zonal market structure established by the CAISO that exists as of the date of this Agreement, is materially modified or replaced by the CAISO as a result of MRTU or a successor program ("Restructuring Event"), then the Delivery Point shall be the Interconnection Point with the CAISO Grid as specified in Section 3.1(h)(i) herein. To the extent that Seller is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or losses, whether due to congestion revenue rights or any other hedging instruments associated with the delivery of Product in accordance with the terms of this Agreement (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights 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) Contract Quantity. The Contract Quantity during each Contract Year is expected to be at least 212,211 MWh, which Contract Quantity is subject to increase from an increase in the Declared Contract Capacity as provided in Section 3.1(f)(iii) below.

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

(i) Contract Capacity; Declared Contract Capacity. Except for Seller's right to increase the Declared Contract Capacity pursuant to Section 3.1 (f)(iii) below, the capacity ("Contract Capacity") of the Project at any time shall be the lower of the following: (A) twenty-five and one-half (25.5) MW of Declared Contract Capacity or (B) the Net Rated Output Capacity of the Project. Throughout the Delivery Term, Seller shall sell and Schedule all Product produced by the Project solely to Buyer and in no event shall Buyer be

obligated to receive or pay for, in any hour, any Delivered Energy or Scheduled Energy that exceeds the Contract Capacity by more than two (2) MW.

(ii) Net Rated Output Capacity Testing. Buyer shall have the right to request a Capacity Test as set forth in Appendix VI, to determine the Net Rated Output Capacity. The resulting Net Rated Output Capacity shall remain in effect until the next Capacity Test requested by Buyer. Appendix VI sets forth the agreements of Buyer and Seller with respect to the performance of Capacity Tests.

(iii) Increase in Declared Contract Capacity.

(A) Notwithstanding Section 3.1(f)(i)(A) above, if Seller is able to produce and sell Energy in excess of the Declared Contract Capacity ("Increase in DCC") from the Unit(s) or the Site (any such Energy, the "Excess Energy"), then Seller shall have the right to an Increase in DCC and sell and schedule the Excess Energy produced on the Site, and all capacity (including Capacity Attributes) and Environmental Attributes attributable to such Excess Energy to Buyer pursuant to the terms set forth in this Agreement provided that (1) Seller shall notify Buyer of the Increase in DCC specifying the amount of the Increase in DCC no later than one hundred twenty (120) days prior to the Commercial Operation Date and at least sixty (60) days prior to such Increase in DCC ("Increase in DCC Notice"), (2) the Increase in DCC shall in no event be in excess of six (6) MW for a total Declared Contract Capacity of not more than thirty-one and one-half (31.5) MW, and (3) as of the date of the Increase in DCC Notice, Declared Contract Capacity shall include the Increase in DCC and all terms related to Declared Contract Capacity and Contract Quantity shall be adjusted accordingly to reflect the Increase in DCC.

(B) As a condition to the effectiveness of any Increase in DCC, Seller shall (1) at Buyer's option, perform, and deliver to Buyer, the results of a Capacity Test performed by Seller as set forth in Appendix VI, and (2) increase the Project Development Security and the Delivery Term Security, as applicable, to the amount determined by multiplying (i) the amount of the then existing Project Development Security or Delivery Term Security, as applicable, by (ii) a fraction (x) the numerator of which is the new Declared Contract Capacity that will be effective on the Increase in DCC Effective Date, and (y) the denominator of which is the existing Declared Contract Capacity. The effective date of any Increase in DCC shall be the latest to occur of all of the following ("Increase in DCC Effective Date"): (i) sixty (60) days after the date that Buyer receives an Increase in DCC Notice and specifying the total amount to which the Declared Contract Capacity will be increased, subject to the results of Seller's Capacity Test, (ii) the date that Buyer receives the results of a Capacity Test performed by Seller as set forth in Appendix VI, and (iii) the date that Buyer receives the increased Project Development Security or Delivery Term Security, as applicable. If Seller's Capacity Test demonstrates a Net Rated Output Capacity that is different from the amount set forth in Seller's Increase in DCC Notice to Buyer, then on the Increase in DCC Effective Date the resulting Declared Contract Capacity shall be equal to the demonstrated Net Rated Output Capacity. As of the Increase in DCC Effective Date, the Declared Contract Capacity which includes the Increase in DCC shall never decrease below such amount.

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Except as otherwise permitted pursuant to Section 3.1(f)(iii), 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. The Project is further described in Appendix IV.

(h) Interconnection Facilities.

(i) Interconnection Point. The interconnection point is the first point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

(ii) Seller Obligations. Seller shall, at its sole expense, be obligated to (A) maintain the Interconnection Facilities, including metering facilities; and (B) perform all necessary (1) Transmission Upgrades and (2) Network Upgrades, as defined in the CAISO Tariff, which shall include Delivery Network Upgrades and Reliability Network Upgrades, as such terms are defined in the CAISO Tariff, in order to satisfy Seller's Transmission Upgrade obligation in subpart (B)(1) of this Section 3.1(h).

(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. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce delivery amounts as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Dispatch Down Period, provided that for a Dispatch Down Period as described in Section 1.48(b) through (d), such Dispatch Down Period shall be no more than fifty (50) hours during any Contract Year.

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

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

(k) WREGIS. Prior to the Commercial Operation Date, Seller shall register the Project in the WREGIS, and take all other actions necessary to ensure that the Energy or Green Attributes produced from the Project are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer. In the event that WREGIS is not in operation as of the Commercial Operation Date, Seller shall perform its obligations, as required per this subsection, as soon as WREGIS is in operation.

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

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

3.2 Green Attributes. Seller hereby provides and conveys all Green Attributes 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, from the Project to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe ("Resource Adequacy Requirements"). Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Seller agrees that during the Delivery Term Seller shall, at a minimum, comply with the terms set forth in Appendix X to enable Buyer to use all of the capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements.

(b) Reliability Must Run Contract Obligation. If Seller hereafter enters into any new RMR contract affecting the Project, Seller shall assign the revenues from such RMR contract, except for Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch ("Retained Revenues"), as each is defined in the applicable RMR contract to Buyer. If the CAISO and/or Seller wish to negotiate an RMR contract that pertains to Unit(s) under this Agreement that are not covered by an RMR contract as of the date of the Execution Date, Seller shall include PG&E in any 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 and at 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 all CAISO costs and charges, including imbalance charges due to deviations from the Schedule, regardless of the cause thereof, electric transmission losses and congestion to and at the Delivery Point. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement, Meter Service Agreement and PTO Generator Special Facilities Agreements, if applicable, 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, 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. During the Delivery Term, Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion from the Delivery Point.

(c) Scheduling

(i) Scheduling Coordinator. Each of Seller and Buyer shall be its own Scheduling Coordinator with respect to this Transaction or designate a qualified third party to fulfill such role. Throughout the Delivery Term, Seller shall designate a SC trade for delivery of Energy generated from the Project, up to the Contract Capacity, solely to Buyer's SC, based on a final Schedule ("Scheduled Energy"). During the Delivery Term, each Party or each Party's SC shall conduct all Scheduling in full compliance with the applicable CAISO Tariff, protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff. Conduct of deliveries through SC-to-SC trades shall be in compliance with the CAISO Tariff.

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

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

(iv) Daily Delivery Schedules. During the Delivery Term, Seller shall provide the Day-Ahead Schedule to Buyer via Buyer's internet site, as provided in Appendix IX, no later than fourteen (14) hours before the beginning of the "Preschedule Day" as defined by the WECC. The current industry standard Preschedule Day timetable in the WECC is as follows:

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

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website ([www.wecc.biz](http://www.wecc.biz)) under the document title, "Prescheduling Calendar." Each Day-Ahead Schedule shall clearly identify, for each hour, all amounts of Energy to be delivered and sold to Buyer pursuant to this Agreement. Seller shall deliver Energy in accordance with its Day-Ahead Schedule, which shall accurately reflect the expected generation of the Project, subject to the applicable CAISO Tariff, and may not change such schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO. Seller shall promptly provide Buyer with a

copy of any and all updates to such Schedule indicating a change in Scheduled Energy from the then-current Schedule which is provided to the CAISO. These notices and changes to the Schedule shall be sent to both Buyer's internet site and Day-Ahead Trading Desk email notification address:

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

If Seller fails to provide Buyer with a Day-Ahead Schedule as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery schedule provided in the Monthly Delivery Forecast and Seller shall be liable for such delivery based on the Monthly Delivery Forecast.

(v) Hourly Delivery Schedules. In the event of a Forced Outage or a scheduling change imposed by Buyer or CAISO, which results in a change to the Project's deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator to provide any and all changes to the Day-Ahead Schedule and provide a revised schedule as soon as possible, but in no event later than (1) hour before Buyer's Scheduling Coordinator is required to submit Hour-Ahead schedules to the CAISO. With respect to any Forced Outage, Seller shall (a) use commercially reasonable efforts to notify Buyer, orally, of such outage within ten (10) minutes of the occurrence of such outage, (b) provide a written estimate of the expected duration of such outage within one (1) hour after submittal of the initial notification pursuant to clause (a) of this Section, and (c) submit an Outage Notification Form, as provided in Appendix VIII of this Agreement, to Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Unit during or after the end of such outage. These notices and changes to the Schedule shall be sent to both Buyer's internet site and Hour-Ahead Trading Desk email notification address:

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

### 3.5 Standards of Care

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

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

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

Electrical Generating Facilities,” and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner. Seller shall enter into and comply with the WECC Reliability Management System (Generator) Agreement, or successor agreement, as of the Commercial Operation Date and throughout the Delivery Term.

3.6 Metering. All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project’s CAISO revenue meter to be eligible for payment under this Agreement. 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 acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, pursuant to the provisions of the CAISO Tariff Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification.

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

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a completed Outage Notification Form in accordance with the provisions set forth in Appendix IX no later than August 1<sup>st</sup> of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer’s approval, which approval may not be unreasonably withheld or conditioned. Notwithstanding the submission of the Outage Notification Form described in the previous sentence, Seller shall also submit a completed Outage Notification Form in accordance with the provisions set forth in Appendix IX below no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of January, June through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage Schedule without Buyer’s approval, not to be unreasonably withheld or conditioned. 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 associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially



reasonable efforts to accommodate Buyer's request. Unless Buyer is transmitting a CAISO order to Seller once a Planned Outage schedule has been finalized by Buyer and Seller, Buyer may not change Seller's Planned Outage schedule without Seller's approval.

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

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

(e) **Force Majeure.** Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. Seller shall not substitute Products from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

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

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

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

requirements, outage notification procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer.

### 3.8 Operations Logs and Access Rights.

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

(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, PG&E Interconnection Handbook, 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. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

### 3.9 New Generation Facility.

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

- (i) Design and construct the Project.
- (ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the Participating Transmission Owner for the Interconnection Facilities to Schedule and deliver the Product.
- (iii) Acquire all permits and other approvals necessary for the construction, operation, and maintenance of the Project.
- (iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project.
- (v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any changes in the Project and provide to Buyer specifications and design drawings of any such changes, including any modified or new specifications and design drawings relating to a permitted Increase in DCC pursuant to Section 3.1(f)(iii).
- (vi) Within fifteen (15) days after the close of each month from the first month following the Execution Date until the Commercial Operation Date, provide to Buyer a Monthly Progress Report and agree to regularly scheduled meetings between representatives of

Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The Monthly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

(b) Buyer shall have the right, but not the obligation, to:

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

(ii) Inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable notice.

(c) Construction Milestones.

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

(ii) If Seller misses three (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan"), which shall provide a detailed description of Seller's course of action and plan to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, then subsection (iv) below shall apply.

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

(A) The Construction Start Date shall occur no later than September 30, 2008 (the "Guaranteed Construction Start Date"); and

(B) Seller shall have demonstrated Commercial Operation per the terms of Appendix VI no later than April 1, 2010 (the "Guaranteed Commercial Operation Date").

(iv) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date or the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable (as may be delayed on a day by day basis by Force Majeure up to ninety (90) days for either Guaranteed Project Milestone), Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (A) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of sixty (60) days ("Project Cure Period"); or (B) the Construction Start Date occurs after the Guaranteed Construction Start

Date, as applicable, up to a total of sixty (60) days ("Construction Cure Period"). Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone, would be difficult or impossible to predict with certainty, and (II) the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the Guaranteed Construction Start Date, only if Seller meets the Guaranteed Commercial Operation Date (as may be extended by Force Majeure as described above), as provided further in Section 8.4(c) of this Agreement. For sake of certainty, Buyer shall retain all Daily Delay Damages drawn as a result of Seller's failure to meet the Guaranteed Commercial Operation Date (as may be extended by Force Majeure, as described above) and the Guaranteed Construction Start Date, if Seller fails to meet the Guaranteed Commercial Operation Date.

#### ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

##### 4.1 Contract Price.

- (a) If federal legislation providing for an extension of Production Tax Credits ("PTC Legislation") for a period of at least ten (10) years from the Guaranteed Commercial Operation Date for a geothermal facility placed in service before April 1, 2010 is enacted by the Commercial Operation Date, the Contract Price for each MWh of Scheduled Energy in each Contract Year shall be \$83.25/MWh.
- (b) If such PTC Legislation is not enacted by the Commercial Operation Date, the Contract Price for each MWh of Scheduled Energy in each Contract Year shall be \$86.50/MWh.
- (c) If, during the Delivery Term, Seller is being paid the Contract Price for Scheduled Energy of \$86.50/MWh due to a failure to enact PTC Legislation by the Commercial Operation Date, neither Seller, its Affiliates, or any other Person shall apply for, seek, claim, or accept the benefit of, Production Tax Credits associated with the Project, provided that (i) if Seller reasonably determines during the Delivery Term and while being paid the Contract Price of \$86.50/MWh that Seller, its Affiliates or any other Person affiliated with the Project could benefit from and are eligible for Production Tax Credits associated with the Project, and (ii) Seller provides Notice to Buyer that Seller, its Affiliates or any other Person affiliated with the Project wishes to apply for, seek, claim or accept the benefit of, Production Tax Credits, then Seller and Buyer agree that the parties shall negotiate a reduction in the Contract Price to reflect the value of the then current PTC Legislation and amend this Agreement solely with respect to a new Contract Price.
- (d) The Parties agree that Buyer may examine Seller's records pursuant to Section 10.9 to verify compliance with Section 4.1(c).
- (e) The Parties acknowledge that Seller may deliver the Product to Buyer prior to the Initial Energy Delivery Date or during the Delivery Term in connection with Capacity Tests pursuant to Appendix VI ("Test Product"). Buyer shall purchase any Test Product delivered by Seller subject to the terms and conditions of this Agreement, provided that the Contract Price for the Test Product shall be \$83.25/MWh subject to adjustment pursuant to Section 4.4, unless Seller provides Buyer with Notice prior to the delivery of the Test Product that the PTC Legislation is not enacted and in such case the Contract Price for the Test Product shall be \$86.50/MWh subject to adjustment pursuant to Section 4.4.

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.

Notwithstanding anything to the contrary in this Section 4.2, NERC Holidays shall be calculated as “Shoulder” hours for all non-“Night” hours and any remaining hours shall be calculated as “Night” hours.

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

4.3 **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”):

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

provided, however, that Contract Capacity shall never be less than eighty-five (85%) of Declared Contract Capacity for purposes of calculating the Capacity Factor.

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 Scheduled Energy shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified TOD Periods in which Scheduled Energy is delivered:

**TOD FACTORS FOR EACH TOD PERIOD**

Monthly Period	Super-Peak	Shoulder	Night
June – Sep.	1.959	0.903	0.626
Oct.- Dec.; Jan. & Feb.	1.471	1.03	0.731
Mar. – May	1.319	0.843	0.584

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

$$\text{Monthly TOD Payment} = \sum_{\text{hour}=1}^n \text{Contract Price} \$ * \text{TOD Factor} * \text{Scheduled Energy MW}_{\text{hour}}$$

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 each of the TOD Periods (“Performance Requirements”):

**Performance Requirements**

Monthly Period	Capacity Factor For Each TOD Period		
	1. Super-Peak	2. Shoulder	3. Night
A. June – September	95%	90%	80%
B. Oct. – Dec.; Jan. & Feb.	90%	85%	65%
C. Mar. – May	80%	75%	65%

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

4.6 **Performance Adjustments.** For each TOD Period, if the Capacity Factor were assumed to be precisely one hundred percent (100%), then the maximum TOD Payment (“Maximum Performance Adjustment”) due to Seller shall be defined as follows:

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

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 each 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	1. Super-Peak	2. Shoulder	3. Night
A. June – September	3.00	2.00	1.25
B. Oct. – Dec., Jan. & Feb.	2.50	1.75	1.25
C. Mar. – May	1.50	1.25	1.00

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

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

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

For the purpose of calculating the Performance Adjustment in Periods B and C, the Capacity Factor shall be measured, calculated, and settled for each individual month and then be true-up on an aggregated basis for the entire TOD Period in the month immediately following the last month of the completed Period B or C, as applicable, which shall include all months constituting the applicable period. The Performance Adjustment true-up for Periods B and C shall be reflected in the invoice provided by Seller to Buyer submitted in April with respect to Period B and July with respect to Period C, or if the Transaction has been terminated or the last year of the Delivery Term has occurred, then the last month prior to the expiration or termination of the Transaction. The Party owing payment as a result of such true-up shall pay the other Party the undisputed amount no later than fifteen (15) days after receipt of such invoice; subject to the payment provisions in Section 6.1 hereof. All disputes shall be subject to Section 6.2 hereof.

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

4.7 Imbalance Energy. Seller shall be responsible for settlement of Imbalance Energy with the CAISO. Seller shall also be responsible for any imbalance penalties or other charges that CAISO may assess in connection with Imbalance Energy. On or about the tenth (10<sup>th</sup>) day of each month, beginning with the second month of the first Contract Year and continuing every month thereafter, including the first month following the end of the Delivery Term, Seller will provide to Buyer complete records for the applicable settlement interval of Delivered Energy and Scheduled Energy for the preceding month on or about the tenth (10<sup>th</sup>) day of each month. Seller and Buyer agree to use the Imbalance Prices that the CAISO has posted on or about the fifth (5<sup>th</sup>) day of the month, following the delivery month and to true-up the imbalance calculations pursuant to section (e) below; if such day is not a Business Day, then such price posted on the next following Business Day. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered "Positive Imbalance Energy"; when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the "Negative Imbalance Energy". Buyer shall receive all Green Attributes for all Delivered Energy received by Buyer, regardless of whether any or all of such energy was sold to Buyer directly pursuant to an SC-to-SC trade.

(a) Imbalance Price. For each CAISO settlement time interval in any month in which there is Positive Imbalance Energy, the "Imbalance Price" shall be the 10-Minute Settlement Interval Average Price as published by the CAISO with respect to positive uninstruced imbalance energy charges for the applicable CAISO settlement time interval. For each CAISO settlement time interval in any month in which there is Negative Imbalance Energy, the "Imbalance Price" shall be the 10-Minute Settlement Interval Average Price as published by the CAISO with respect to negative uninstruced imbalance energy charges for the applicable time interval and zone.

(b) True Up Adjustment for Positive Imbalance Energy (Over Deliveries). For each CAISO settlement time interval in which there is Positive Imbalance Energy and the Imbalance Price is higher than the product of the Contract Price and the applicable TOD Factor, Buyer shall deduct from the Monthly TOD Payment to Seller an amount equal to the product of the (i) quantity of Positive Imbalance Energy and (ii) the difference between (A) the Imbalance Price and (B) the product of the Contract Price and the applicable TOD Factor.

(c) True Up Adjustment for Negative Imbalance Energy (Under Deliveries). For each CAISO Settlement time interval in which there is Negative Imbalance Energy and the Imbalance Price is lower than the product of Contract Price and (A) the applicable TOD Factor, Buyer shall deduct from Monthly TOD Payment to Seller the amount equal to the product of (i) the quantity of the Negative Imbalance Energy and (ii) the difference between (A) the Imbalance Price and (B) the product of the Contract Price and the applicable TOD Factor.



(d) Billing. Monthly billing for Imbalance Energy, as defined above, shall be accomplished using the Imbalance Price and formulae described in this Section 4.7. Beginning in the first month in which the Imbalance Price becomes available for the applicable month, there shall be a true-up adjustment for the Imbalance Price payable for the Imbalance Energy, as provided herein, in the monthly invoice, provided pursuant to Section 6.1 of this Agreement.

(e) Imbalance Energy Adjustments. Because the Parties recognize that the Imbalance Price retrieved from the CAISO on or about the fifth (5<sup>th</sup>) day of each month, as provided in 4.7 above, may not be the final posted price, either Party shall have the right to request a true-up on the Imbalance Energy calculations once the CAISO has posted the final price for that month, which shall not be more than ninety (90) days from the date on which the initial Imbalance Price was retrieved. Any Such adjustment shall be netted against the next following invoice.

4.8 CAISO Charges. Seller shall assume all liability and pay for all congestion charges up to and at the Delivery Point. Seller shall also assume all liability and reimburse Buyer for any and all charges, including CAISO Penalties, as defined below, incurred by Buyer as a result of Seller's failure to abide by the CAISO Tariff and all applicable protocols. Seller shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller's responsibilities for payment for all imbalance and congestion charges and CAISO Penalties, as defined below, under this Agreement. As used herein, "CAISO Penalties" means any fees, liabilities, assessments, or similar charges assessed by the CAISO.

4.9 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to Transmission Upgrades as contemplated in Section 3.1(h)(ii).

**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;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after Notice;

(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 (“Change in Control”), 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 such as a consent to assignment substantially in the form attached hereto as Appendix XI; provided that a merger for purposes of mere reincorporation or the sale of securities of a Party in a financing, merger or stock acquisition, where as a result of such event the shareholders of the Party prior to such event continue to own at least fifty percent (50%) of the voting power of the surviving entity or resulting entity, shall not be deemed to be a Change in Control for purposes of this Agreement.

(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) an outage resulting from an event of Force Majeure that prevents the Project from delivering at least sixty percent of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months;

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

(iv) Net Rated Output Capacity at and any time after the Commercial Operation Date is less than seventy percent (70%) of the Declared Contract Capacity.

(v) the Capacity Factor of the Project is less than seventy percent (70%) for twelve (12) consecutive months, for reasons other than Seller Excuse Hours. The Parties agree that the Capacity Factor over a (12) consecutive month period (“CFannual”) shall be the weighted average of the Capacity Factors for each monthly TOD Period, such weighting to be an adjustment for the number of hours as reduced for Seller Excuse Hours in the applicable TOD Period for each month:

$$CF_{annual} = \left\{ \sum_{month=1}^{12} [(CapacityFactorSuperPeak * SuperPeakHours) + (CapacityFactorShoulder * ShoulderHours) + (CapacityFactorNight * NightHours)] \right\} / (8760)$$

;or

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

5.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”)

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

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

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

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

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

#### ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10<sup>th</sup>) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy or amount of any Reductions, and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Section 4.4, as adjusted for Imbalance Energy pursuant to Section 4.7 (which may include preceding months). Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25<sup>th</sup>) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made; 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.

**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 AND COLLATERAL REQUIREMENTS**

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on [www.pge-corp.com](http://www.pge-corp.com) or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

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

Option A: If requested by Buyer, Seller shall deliver (i) within one hundred twenty days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year 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 Seller shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available at [www.geopower.ca](http://www.geopower.ca) or on the SEDAR information retrieval system; further provided, 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 statements are provided to Buyer upon their completion and filing with the Canadian Securities Administrators the relevant entity diligently pursues the preparation, certification and delivery of the statements.

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

8.4 Project Development Security; Performance Assurance.

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

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

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

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

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

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

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

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

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

8.5 Letter of Credit.

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

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

**ARTICLE NINE: GOVERNMENTAL CHARGES**

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

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

**ARTICLE TEN: MISCELLANEOUS**

10.1 No Fault Termination. **ARTICLE 10.1 IS NOT APPLICABLE.**

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

(i) If Seller's Bid Price exceeds the Market Price Referent, Seller may seek a PGC Funding Award from the CEC for an amount (in \$ per MWh) equal to the



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

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

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

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

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

(ii) Right of First Refusal Option.

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

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

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

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

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

(c) Production Tax Credit. Intentionally omitted.

10.2 Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

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 Governmental Approvals necessary for it to legally perform its obligations under this Agreement and the Transaction;
- (iii) it shall perform its obligations under this Agreement and the Transaction in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; and
- (iv) it shall maintain its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code (for so long as such term has the same definition as in effect as of the date of this Agreement).

(b) Seller Covenants.

- (i) Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer’s ability to rely on the Project in order to satisfy its Resource Adequacy Requirements; and
- (ii) Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns, have or will have ownership of, or a demonstrable exclusive right to control, the Project.

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

10.5 Indemnities.

(a) Indemnity by Seller. 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 attorneys’ 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 by the willful misconduct or negligence of Buyer, its agents, employees, directors, or officers. Seller shall further indemnify Buyer for all penalties assessed against Buyer by the CPUC pursuant to the Renewable Portfolio Standard, Public Utilities Code Section 399 et. seq., to the extent caused by Seller’s failure to deliver the Product to the Delivery Point and such

failure by Seller was directly attributable to an Event of Default by Seller pursuant to Sections 5.1(a)(ii) or (iii) or 5.1(b) which was declared by Buyer in the Contract Year for which the CPUC assessed penalties against Buyer for failure to satisfy the Renewable Portfolio Standards requirements and without which such penalties would not have been assessed. In the event that Seller's Event of Default was such a precipitating factor causing Buyer to be assessed penalties by the CPUC pursuant to the Renewable Portfolio Standard, but other sellers of power upon which Buyer was relying upon to satisfy the Renewable Portfolio Standard failed to satisfy their contractual obligations to Buyer, Seller shall only be required to indemnify Buyer for an amount equal to Seller's pro rata portion of the penalties assessed against Buyer with respect to the failure of these sellers of renewable power to satisfy their respective delivery requirements to Buyer. If an Event of Default has not occurred, Seller shall not be required to indemnify Buyer for penalties assessed against Buyer for failure of Buyer to satisfy the Renewable Portfolio Standard requirements.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorneys' 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 by the willful misconduct or 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 assets or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

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

10.7 Confidentiality. Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party's employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 10.8 of this Agreement; (v) in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable

regulation, rule, or order of the CPUC, CEC, or the FERC. In connection with requests made pursuant to clause (v) of this Section 10.7 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

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

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy or Scheduled Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived, provided further that if an adjustment is made to the Contract Price pursuant to Section 4.1 such waiver shall not apply.

10.10 Insurance. Before commencing performance of Work, Seller shall, at its sole cost and expense, obtain and maintain the following applicable insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, 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) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller (Insurance Services Office Form CG2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;"

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

(C) include a severability of interest clause.

(c) Business Auto.

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

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

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

(iv) Non-owned and hired automobile coverage limit of liability shall be no less than \$5,000,000 each accident for bodily injury or property damage.

(d) Aircraft Liability.

(i) If the scope of Work involves aircraft, coverage for bodily injury, property damage, including injury sustained by any passenger, applying to all aircraft owned, furnished or used by the Seller in the performance of this Agreement shall be maintained by Seller or by the Person furnishing or using the aircraft in connection with or at the Project ("Aircraft Provider"). Work that involves chemical spraying shall include coverage for pesticide and herbicide application.

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

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of Work performed by or for the Seller in the event there is no Aircraft Provider.

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

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

(e) Intentionally Omitted.

(f) Seller's Pollution Liability.

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

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

(iii) The policy shall endorse 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 and delayed opening coverage. 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.

(h) Professional Liability Insurance.

(i) Errors and Omissions Liability insurance appropriate to either the Seller's or its subcontractors' profession, as determined in Seller's reasonable discretion in light of Seller's and its subcontractors' relative professions and scope of services shown in the Agreement. Such coverage shall be for a professional error, act or omission arising out of the scope of services shown in the Agreement for either the Seller or its subcontractors, including coverage for bodily injury, property damage, and consequential financial loss.

(ii) The limit shall not be less than \$3,000,000 per claim; and



(iii) Coverage shall be endorsed to specify that the Seller's or its subcontractors' insurance, as the case may be, is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it.

(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 which approval shall not be unreasonably withheld or delayed.

(j) Form And Content.

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

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

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

10.11 Access to Financial Information. Intentionally omitted.

10.12 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED,

ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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

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 facsimile will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

#### ARTICLE ELEVEN: CONDITIONS PRECEDENT

11.1 Conditions Precedent. Subject to Section 2.6 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 (collectively "Conditions Precedent").

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.

## 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 either Party through a two-step dispute

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

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

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

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

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

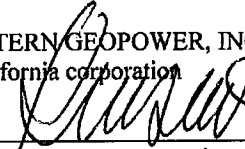
13.1 Notices. Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified herein; provided, however, that notices of Outages or other Scheduling or dispatch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

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Agreement Execution

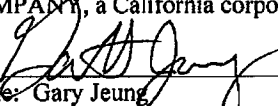
In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date set forth below:


WESTERN GEOPOWER, INC.,  
a California corporation

By:   
Name: Kenneth MacLeod  
Title: President

Date: MAY 4, 2007

PACIFIC GAS AND ELECTRIC,  
COMPANY, a California corporation

By:   
Name: Gary Jeung  
Title: Director, Structured Transactions

Date: May 9, 2007 

APPENDIX I

LETTER OF CREDIT

ISSUING BANK LETTERHEAD ADDRESS

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

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

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

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

Account Party: \_\_\_\_\_  
[insert Account Party's address] \_\_\_\_\_  
\_\_\_\_\_

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

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

We hereby issue our Irrevocable Standby Letter of Credit ("Letter of Credit") at this office in your favor at the request of the Applicant and for the account of the Account Party. Payments under this Letter of Credit are payable at sight against the following documents:

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

AND

2. Beneficiary's signed statement certifying:

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

OR

EXECUTION COPY

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

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

Special Conditions:

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

We hereby engage with you that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored if drawn and presented for payment at any time before the close of business [INSERT TIME] at our counters located at [INSERT ADDRESS] on or before the Expiration Date or in the event of Force Majeure, as defined under Article 17 of the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500 ("UCP"), that interrupts our business, within fifteen (15) days after resumption of our business, whichever is later. Except as otherwise stated herein, this credit is subject to the UCP and, with respect to matters not so covered, this Letter of Credit is subject to and governed by the laws of the State of New York.

If you have any questions regarding this Letter of Credit, please call [Telephone No.].

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

APPENDIX II

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ ("Agreement") by and between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller"), this letter ("Initial Energy Delivery Date Confirmation Letter") serves to document the parties further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and Buyer has received the Product, as specified in the Agreement, as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. This letter shall confirm that the Initial Energy Delivery Date as the date set forth in the preceding sentence (the Initial Energy Delivery Date<sup>3</sup>). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

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

By:

By: Pacific Gas and Electric Company

Name:

Name:

Title:

Title:

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

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



**APPENDIX III**  
**MILESTONES SCHEDULE**

<b>Identify Milestone</b>	<b>Estimated Date for Completion</b>
File CEC Certification and Verification Application	Completed
Submit Interconnection Application	Completed
File PRMD Permit	September 2007
Execute EPC Contract	November 2007
Order Major Equipment for Facility	November 2007
Receive Completed System Impact Study	June 2008
Begin Construction of Facility	September 2008
Receive Conditional Use Permit	September 2008
Receive Completed Interconnection Facility Study	January 2009
Receive Authority to Construct Permit	July 2009
Achieve Initial Operation	April 2010

APPENDIX IV

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

PROJECT DESCRIPTION

Project name Western GeoPower Unit 1

Site name: The Geysers Geothermal Area

Site physical address: Healdsburg – Geysers Road, Cloverdale, CA

Total number of Units at the Site (committed and not committed to Buyer) One (1)

Technology Type: Geothermal

Substation: Fulton

The term “Site” as defined in the Agreement means the following real property upon which the Project is located:

Mayacamas Energy Leasehold

Real property located in the County of Sonoma, State of California, as more fully set forth in the legal description attached hereto as attachment A.

Filley Leasehold

Real property in the County of Sonoma, State of California, as more fully set forth in the legal description attached hereto as attachment A.

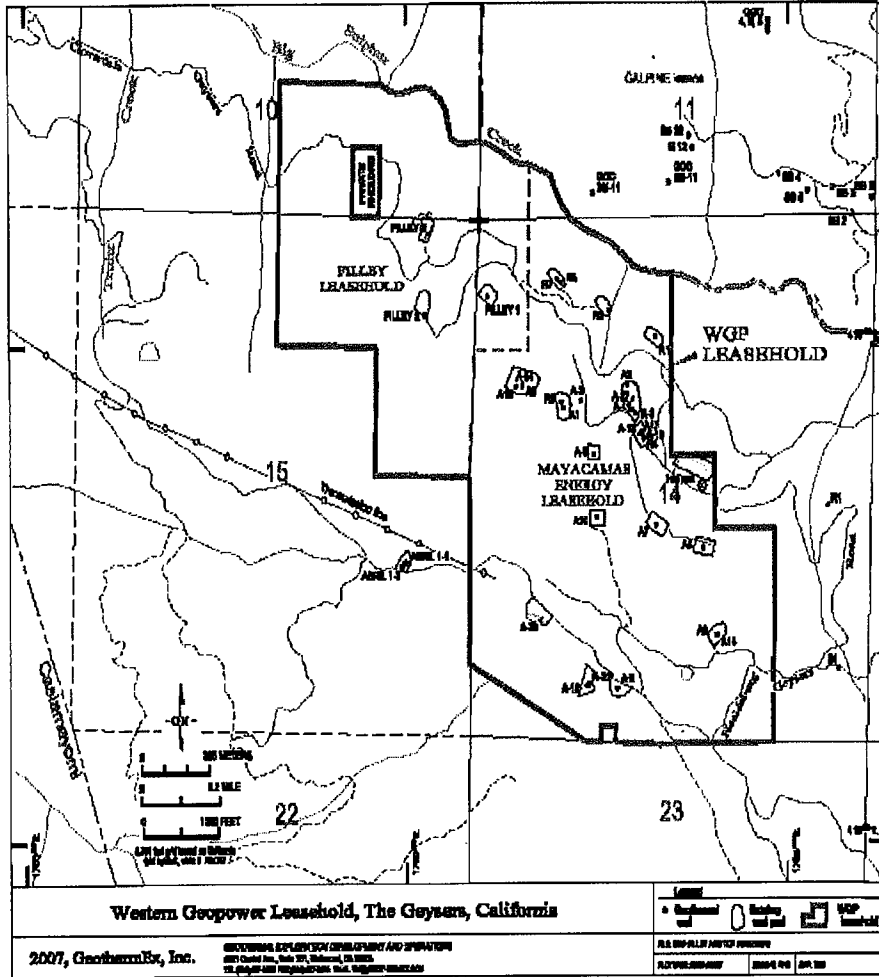
Filley-Brown Leasehold

Real property in the Unincorporated Area, County of Sonoma, State of California, as more fully set forth in the legal description attached hereto as attachment A.

The nameplate capacity of the Project is 25.5 megawatts.

The Project is generally described in Section 1.129:

The major items of equipment for the Western GeoPower Unit 1 will consist of a 25.5 MW nominal turbine-generator unit using a dual-inlet single-flow top-exhausting geothermal steam turbine, a conventional turbine approach proven in geothermal service worldwide. Principal plant ancillary systems will include a direct-contact condenser and wet cooling tower, with cooling water make-up supplied by condensate. The Unit will include a multistage non-condensable gas extraction system using ejectors and a liquid ring vacuum pump. There will be primary and secondary H<sub>2</sub>S abatement system. A mercury removal system will also be included if, after drilling and testing the resource, it is determined that it is required.



APPENDIX IV  
Attachment A – Legal Description of Site

**Mayacamas Energy Leasehold:**

**DESCRIPTION:**

All that certain real property situated in the County of Sonoma, State of California, described as follows:

**PARCEL ONE:**

Lots 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14 and 16 of Section 14, Township 11 North, 8 Range 9 West, M.D.B.&M., according to the official plat thereof.

SAVING AND EXCEPTING THEREFROM, that portion of Lots 3, 4, and 16, lying northerly of the center of Big Sulpher Creek.

ALSO, SAVING AND EXCEPTING THEREFROM, that portion thereof conveyed to Frank Albert Dewey, et ux, by Deed dated September 2, 1950 and recorded September 11, 1950 as Recorder's Serial No. D-22340, Sonoma County Records.

ALSO, SAVING AND EXCEPTING THEREFROM, the mining rights reserved by Walter Wayne Woods, et al, in Deed to Frank Albert Dewey, et ux, dated September 2, 1950 and recorded September 11, 1950 as Recorder's Serial No. D-22340, Sonoma County Records.

ALSO, SAVING AND EXCEPTING THEREFROM, that portion of Lots 9 and 14 conveyed to Daniel J. Nielsen, et ux, by Deed dated January 25, 1950 and recorded February 1, 1950 as Recorder's Serial No. D-6082, Sonoma County Records.

ALSO SAVING AND EXCEPTING THEREFROM, that portion thereof lying within the bounds of the lands described in the Deed to Reagan B. Kidd, et ux, dated November 25, 1951 and recorded December 7, 1951 and Recorder's Serial No. D-55754, Sonoma County Records.

ALSO SAVING AND EXCEPTING the West ½ of Lot 4, as granted to G. William Filley, by Deed dated June 20, 1962 and recorded July 9, 1962 in Book 1900 of Official Records at page 39, as Recorder's Serial No. G-99005, Sonoma County Records.

Also, excepting therefrom that portion thereof conveyed to Pacific Gas and Electric Company, a California corporation recorded November 14, 1978 in Book 3482 of Official Records at page 825, Sonoma County Records, and by Instrument recorded November 14, 1978 in Book 3482 of Official Records at page 833, Sonoma County Records.

**PARCEL TWO:**

All that parcel of land located in Section 14, Township 11 North, Range 9 West, M.D.B. & M., lying west of the centerline of the creek closest to the west boundary of the Dewey property and south of the county road to Cloverdale, all as the location of these landmarks existed on July 30, 1951 and as the above described parcel was granted to Buckman Inc., a corporation by Deed dated July 30, 1951 and recorded August 7, 1951 as Recorder's Serial No. D-47201, Sonoma County Records.

**PARCEL THREE:**

The Southwest ¼ of the Northeast ¼ and the Southeast ¼ of the Northeast ¼ of Section 15, in Township 11 North, Range 9 West, M.D.B. & M., according to the official plat thereof.

SAVING AND EXCEPTING THEREFROM, all mineral rights in the Southeast ¼ of the Northeast ¼, as same were granted to C. William Filley, by Deed dated June 20, 1962, and recorded July 9, 1962 in Book 1900 of Official Records at page 39, as Recorder's Serial No. G-99005, Sonoma County Records.

**PARCEL FOUR:**

That portion of the East ½ of the Southwest ¼ of the Southwest ¼ of Section 11, Township 11 North, Range 9 West, according to the official plat thereof, lying southerly of Big Sulpher Creek.

**EXECUTION COPY**

**Filley Leasehold:**

**DESCRIPTION:**

All of that certain real property situated in the County of Sonoma, State of California, described as follows:

**PARCEL ONE:**

The Northeast quarter of the Northeast quarter of Section 15 Township 11 North, Range 9 West, M.D.B.& M.

**PARCEL TWO:**

All that portion lying South of the centerline of Big Sulphur Creek of the Southeast one-quarter of the Southeast, one-quarter of Section 10, Township 11 North, Range 9 West, M.D.B & M.

**PARCEL THREE:**

All that portion lying Southwesterly of the centerline of Big Sulphur Creek in the West one-half of the Southwest one-quarter of the Southwest, one-quarter of Section 11 Township 11 North, Range 9 West, M.D.B. & M.

**PARCEL FOUR:**

West one-half of the Northwest one-quarter of the Northwest of Section 14 Township 11 North, Range West M.D.B. M.

Together with all mineral rights in the Southeast quarter of the Northeast quarter of Section 15, Township 11 North, Range 9 West M.D.B. & M.

**Filley-Brown Leasehold:**

**DESCRIPTION:**

All that real property situated in the Unincorporated Area, County of Sonoma, State of California, described as follows:

THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 10 AND THE NORTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 15, TOWNSHIP 11 NORTH, RANGE 9 WEST, M.D.B. & M., EXCEPTING THEREFROM THAT PORTION OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 10, TOWNSHIP 11 NORTH, M.D.B. & M., DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON STAKE SET AT THE SOUTHEAST CORNER OF SAID SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 10, THENCE NORTH 700 FEET ALONG THE EASTERLY LINE OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 10, TO AN IRON STAKE; THENCE WEST 350 FEET TO A POINT; THENCE SOUTH 700 FEET TO A POINT IN THE SOUTH LINE OF SAID SECTION 10; THENCE EAST 350 FEET ALONG SAID SECTION LINE TO THE POINT OF BEGINNING.

APPENDIX V

FORM OF CERTIFICATION

This certification ("Certification") is delivered by Western GeoPower, Inc. ("Seller") to Pacific Gas and Electric Company ("Buyer") in accordance with Section 1.27 the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

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

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

By: Western GeoPower, Inc.

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

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

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

APPENDIX VI

COMMERCIAL OPERATION CERTIFICATION PROCEDURE  
AND PROCEDURE FOR SUBSEQUENT CAPACITY TESTING

Initial and Subsequent Capacity Test Principles

A. Test Procedures and Protocols; Commercial Operation Certification Procedures. The following outlines the principles that will form the commercial basis for the detailed criteria, protocols, schedule and conditions to be agreed to by Buyer and Seller for the initial capacity demonstration test to demonstrate Commercial Operation and any subsequent tests (each, a "Capacity Test"), as required by this Agreement. Seller shall be responsible for and bear the costs of any Capacity Test, whether requested by Buyer or by Seller, and Buyer will pay for the Scheduled Energy in accordance with Article Four of the Agreement.

1. The principle for the Capacity Test performance criteria will be generation and delivery of the Declared Contract Capacity over the specified duration of the Capacity Test. In order to provide for the ambient conditions at the time the Unit is actually tested, Seller and Buyer agree that there should be an allowance to correct the output for wetbulb temperature and the power factor requirement in accordance with the standard industry procedures and instruments used in these types of tests at the time of the testing.
2. The Capacity Test will require the Unit(s) to demonstrate a test capacity which results in a Net Rated Output Capacity equal to or greater than the specified requirements of Section 3.1(f)(i). To calculate the test capacity, the total number of Megawatt-hours (MWh) generated during the test period shall be divided by the total number of consecutive hours in the test period. The test period shall not be less than one hundred and twenty (120) consecutive hours. The Net Rated Output Capacity shall be the sum of the total Delivered Energy for five (5) days divided by 120 hours (24 hours x 5 days).
3. Buyer shall have the right to attend, and be present at all times during, any Capacity Test, including any Re-Test (as defined below).
4. Seller shall deliver to Buyer a written report of the Capacity Test results within fifteen (15) days of completion of the Capacity Test. The Net Rated Output Capacity resulting from the Capacity Test shall be effective beginning the first day of the month immediately following the date that the written report is delivered to Buyer, and shall continue in effect until the date that the Net Rated Output Capacity changes as a result of any subsequent Capacity Test permitted pursuant to this Agreement; provided, that with respect to a Capacity Test that establishes the Commercial Operation Date, the Net Rated Output Capacity shall be effective on the Commercial Operation Date.
5. Seller shall have the right to perform as many Capacity Tests as it deems necessary to establish Commercial Operation prior to expiration of the Project

Cure Period. In order to establish Commercial Operation, Seller shall deliver to Buyer the written Capacity Test report set forth above before expiration of the Project Cure Period. Notwithstanding anything to the contrary in this Agreement, Seller shall not have the right to re-test after expiration of the Project Cure Period in order to establish Commercial Operation.

B. Buyer's Right to Request Capacity Test. If Seller does not meet its performance requirements as set forth in Section 4.5 for any two TOD Periods in any rolling six (6) month period, Buyer shall have the right to request a Capacity Test to determine the Net Rated Output Capacity by scheduling Deliveries from the facility for five (5) consecutive days as set forth above. Buyer shall provide Seller thirty (30) days' notice within which Seller must begin the Capacity Test requested by Buyer. Seller shall (i) begin to perform any Capacity Test requested by Buyer by the thirtieth (30th) day of such notice period and (ii) pay all costs associated with any such Capacity Test. Buyer will pay for the Scheduled Energy in accordance with Article Four of the Agreement.

C. Retesting by Seller If Net Rated Output Capacity Is Less than 85% of Declared Contract Capacity. If the Net Rated Output Capacity as a result of any Capacity Test requested by Buyer as set forth above is less than eighty-five percent (85%) of the Declared Contract Capacity (a "Failed Test"), Seller shall submit to Buyer, within ten (10) Business Days of such failed Capacity Test, a Remedial Action Plan, which shall provide a detailed description of Seller's course of action and plan to achieve, at a minimum, eighty-five percent (85%) of the then-applicable Declared Contract Capacity. If there is a Failed Test, Seller shall have the right, but not the obligation, to elect to perform one or more retests (each, a "Re-Test"), using identical protocol and criteria as the original Capacity Test, within ninety (90) days of the date that Seller was required to submit its Failed Test results to Buyer. Seller shall bear all costs for any Re-Test and Buyer shall pay for the Scheduled Energy in accordance with Article Four of the Agreement. If Seller fails to deliver to Buyer within such ninety (90) day period a new Capacity Test report demonstrating that the Net Rated Output Capacity is at least eighty-five percent (85%) of the Declared Contract Capacity, then starting with the first TOD Period following the ninety (90) day period, the calculation of Capacity Factor in Section 4.3 of the Agreement shall use 85% of the Declared Contract Capacity as the Contract Capacity.



**APPENDIX VII  
FORM OF MONTHLY  
PROGRESS REPORT**

**Monthly Progress Report  
of**

**("Seller")**

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

**[Date]**

**1.0 Instructions.**

Any capitalized terms used in this report which are not defined herein shall have the means ascribed to them in the Power Purchase and Sale Agreement by and between Western GeoPower, Inc. ("Seller") and Pacific Gas and Electric Company dated April 9, 2007 (the "Agreement").

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

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

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

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

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

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

Seller shall complete, certify, and deliver this form of Monthly Progress Report to Jeanette Woo, Manager, Contract Management by email to JxW7@pge.com, together with all attachments and exhibits, with one (1) copy of this report delivered to Terry Goodell by email at TLG4@pge.com.

**2.0 Executive Summary.**

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

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

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

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

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

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

**3.0 Permitting.**

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

The following describes each of the Major Governmental Approvals required for the construction of the Project and the status thereof:

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

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

DESCRIPTION	STATUS

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

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

DESCRIPTION	STATUS

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

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

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

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

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

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

**4.0 Design Activities.**

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

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

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

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

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

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

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

**5.0 Property Acquisition Activities.**

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

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

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


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

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

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

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

**6.0 Engineering Activities.**

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

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

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

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

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

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

Please provide a three-month look ahead engineering schedule.

**7.0 Major Equipment Procurement.**

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

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

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

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

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

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

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

**8.0 Construction and Interconnection Activities.**

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

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

ACTIVITY	EPC CONTRACTOR/SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE


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

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

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

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

**8.4 EPC Contractor Monthly Progress Report.**

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

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

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

**9.0 Milestones.**

**9.1 Milestone schedule.**

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

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

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

- 9.2.1 Missed Milestone
- 9.2.2 Plans to achieve missed Milestone
- 9.2.3 Plans to achieve subsequent Milestone
- 9.2.4 Delays in engineering schedule



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

### 9.2.5 Delays in Major Equipment procurement

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 7.1, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

### 9.2.6 Delays in construction and interconnection schedule

Please explain in detail any delays beyond the scheduled completion dates stated in Section 8.1, any impact from the delays on the construction and interconnection schedule, and Seller's plans to remedy such impact.

## 10.0 Safety and Health Reports

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

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

**10.3 Work stoppage impact on construction of the Project:**

**EXECUTION COPY**

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

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

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

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

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



**PLEASE DO NOT ALTER THIS**

APPENDIX VIII

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

SEND VIA FAX

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

To Pacific Gas & Electric Company

Attention: Manager Electric Settlements

FAX NUMBER: (415) 973-2151

Attention: Outage Coordinator

FAX NUMBER: (415) 973-5333

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

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

**NOTIFICATION OF:**

SCHEDULED OUTAGE / FORCED OUTAGE / CURTAILMENT / PROLONGED OUTAGE

The Unit will shut down for SCHEDULED OUTAGE from:

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

(Date and Time)

(Date and Time)

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

\_\_\_\_\_

(Date and Time)

(Date and Time)

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

(Date and Time)

(Name of PG&E Individual)

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

\_\_\_\_\_

Outage Notification Form submitted by: \_\_\_\_\_ Phone #: \_\_\_\_\_

(Print Name)

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

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

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

- Call for permission to parallel before any start-up at the appropriate Area Control Centers. Contact the Fulton Control Center at (707) 579-6103.
- Call your Area Control Center again after start-up with parallel time.
- Call your Area Control Center after any separation and report separation time as well as date and time estimate for return to service.

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

1. Send Day Ahead Schedule by the following method:
  - a. Internet site. Access and your password to this web site to be provided upon execution of the related power purchase and sale agreement; or
  - b. E-mail. If the Internet site is not available, then send data via e-mail with an attached Excel spreadsheet in the format provided by PG&E. The spreadsheet must contain the following information: assigned log # of unit in first column; date and time (i.e., Hour Ending) in second column; and, generation level in kW in third column. Contact your designated PG&E Settlement Analyst or the Manager of Electric Settlements if you encounter any issue; or
  - c. Via Facsimile, Attention: Manager of Electric Settlements. If e-mail is not available, then the send via facsimile, a spreadsheet in the format specified above in subpart (b), submit your Project schedules and be sure to include the name and phone number of the individual that is providing this information. This method is discouraged as it involves additional steps, one of which may be manual data entry if the document cannot be scanned and read properly.
2. Send Hour Ahead notification of changes to Day Ahead Schedules by both of the following methods:
  - a. Internet site. Access and your password to this web site to be provided upon execution of the power purchase and sale agreement; and
  - b. Phone: Call PG&E's Hour-Ahead Trading Desk with any changes to the schedule or notifications at least 30 minutes prior to the CAISO scheduling hour-ahead deadline for that delivery hour.

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

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

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

**I. Submission of Outages, Generation**

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 (707) 579-6103. 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 X

RESOURCE ADEQUACY

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

APPENDIX XI

FORM OF CONSENT TO ASSIGNMENT

(Form of Consent and Agreement)

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT ("Consent and Agreement") is entered into as of [\_\_\_\_\_, 2\_\_\_\_], between PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"), and [\_\_\_\_\_] (the "Financing Provider").

**Recitals**

A. Pursuant to that certain Power Purchase and Sale Agreement dated as of \_\_\_\_\_, 2\_\_\_\_ (as amended, modified, supplemented or restated from time to time, including all related agreements, instruments and documents, collectively, the "Assigned Agreement") between PG&E and [\_\_\_\_\_] ("Seller"), PG&E has agreed to purchase energy from Seller.

B. Financing Provider has provided or has agreed to provide financing to Seller, and requires that Seller grant to Financing Provider a security interest in the "Assigned Agreement General Intangibles" and the "Assigned Agreement Accounts," each as defined below, to secure Seller's obligations in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, PG&E has agreed to enter into this Consent and Agreement for the benefit of Seller.

**Agreement**

1. **Definitions.** Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. **Consent.** Subject to the terms and conditions below, PG&E consents to and approves the assignment for security purposes by Seller to Financing Provider of (a) the Assigned Agreement (the "Assigned Agreement General Intangibles"), and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the "Assigned Agreement Accounts").
3. **Limitations on Assignment.** Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any security or other agreement executed by Seller, Financing Provider shall not sell or otherwise dispose of the Assigned Agreement General Intangibles (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such sale or disposition, Financing Provider or any third party, as the case may be, purchasing or otherwise acquiring the Assigned Agreement General Intangibles (i) cures any and all defaults of Seller under the Assigned Agreement, (ii) executes and delivers to PG&E a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (iii) otherwise satisfies and complies with all requirements of the Assigned Agreement, (iv) provides such tax and enforceability assurance as PG&E may reasonably request, and (v) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement General Intangibles and the Assigned Agreement



Accounts are for security purposes only and that Financing Provider has no rights under the Assigned Agreement General Intangibles or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement General Intangibles or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the [security agreement] between Seller and Financing Provider (a "Financing Default").

"Permitted Transferee" means any person who is reasonably satisfactory to PG&E. Financing Provider may from time to time, following the occurrence of a Financing Default, notify PG&E in writing of the identity of a proposed transferee of the Assigned Agreement General Intangibles, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider's security interest in the Assigned Agreement General Intangibles, and PG&E shall, within thirty (30) business days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if PG&E shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a "Permitted Transferee".

4. Cure Rights.

(a) Notice to Financing Provider by PG&E. PG&E shall concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an "Event of Default") to Seller (a "Default Notice"), provide a copy of such Default Notice to Financing Provider pursuant to Section 8(a) of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a), PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement "Additional Cure Period" means (i) with respect to a monetary default, [thirty (30)] days in addition to the cure period if any provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, [sixty (60)] days in addition to the cure period if any provided to Seller in the Assigned Agreement.

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

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving notice of an Event of Default from PG&E or Seller, whichever is received first,

Financing Provider shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed [ninety (90)] days; provided, however, that Financing Provider shall provide a written notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3.

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

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that PG&E makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement General Intangibles or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Financing Provider releases PG&E from any liability resulting from the assignment for security purposes of the Assigned Agreement General Intangibles and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that PG&E may agree with Seller to modify or amend the Assigned Agreement, and that PG&E is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases PG&E from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Miscellaneous.

(a) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile or other electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties., at the address set forth below:

If to Financing Provider:

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

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

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

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

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

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

If to PG&E:

EXECUTION COPY

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

(b) No Assignment. Financing Provider hereby agrees that it will not assign its rights, title or interest in and to the Assigned Agreement without the prior written consent of PG&E.

(c) No Modification. This Consent and Agreement is neither a modification of nor an amendment to the Assigned Agreement.

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

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

(f) Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

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

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

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

PACIFIC GAS AND ELECTRIC COMPANY  
(PG&E)

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

**EXECUTION COPY**

\_\_\_\_\_  
(Financing Provider)

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

**ACKNOWLEDGEMENT**

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from PG&E to Financing Provider the next business day after receipt by Seller, and confirms that the Financing Provider identified above has provided or is providing financing to the undersigned.

\_\_\_\_\_ [name of Seller]

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

Amendment

**FIRST AMENDMENT TO THE MAY 9, 2007 POWER PURCHASE AND SALE AGREEMENT BETWEEN WESTERN GEOPOWER, INC. AND PACIFIC GAS AND ELECTRIC COMPANY**

THIS FIRST AMENDMENT ("First Amendment") is entered into by and between Western GeoPower, Inc. ("Seller") and Pacific Gas and Electric Company ("Buyer"). Seller and Buyer are sometimes referred to herein individually as "Party" and collectively as "Parties".

**RECITALS**

A. Seller and Buyer are parties to that certain Power Purchase and Sale Agreement, dated May 9, 2007 ("Purchase Agreement").

B. Buyer and Seller desire to amend the Purchase Agreement to conform certain terms and conditions with the California Public Utilities Commission's Decision (D.) 07-11-025 dated November 16, 2007.

In consideration of the mutual promises and covenants contained herein, the Parties agree to amend the Purchase Agreement as follows:

1. **Rules of Construction.** Capitalized terms used herein and not otherwise defined shall be used as defined in the Purchase Agreement.

2. **Amendments to Purchase Agreement.**

a. Section 1.35 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

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

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

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

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

b. Section 3.2 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

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.

c. Section 5.1(a)(ii) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

any representation or warranty made by such Party herein is false or misleading in any material respect when made; provided however that, if a change in law occurs after execution of this Agreement that causes the representation and warranty made by Seller in Section 10.2(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b) shall not be an Event of Default provided that Seller has used commercially reasonable efforts to comply with such change in law during the Delivery Term in order to make the representation and warranty no longer false or misleading.

d. Section 10.2(b) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

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

3. **CPUC Approval.**

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

- a. CPUC Approval; and
- b. PG&E's receipt of a final and non-appealable CPUC order that finds that PG&E's entry into the Purchase Agreement as amended by the First Amendment is reasonable and that payments to be made by Buyer under the Purchase Agreement as amended by this First Amendment are recoverable in rates.

4. **No Other Modifications.** Except as otherwise expressly modified hereby, the Purchase Agreement remains in full force and effect. If there is a conflict between the terms of the Purchase Agreement and those of this First Amendment, this First Amendment shall control.

5. **Miscellaneous.**

a. **Governing Law.** This First Amendment shall be governed by Section 10.12 of the Purchase Agreement. The Parties agree to comply with Article Twelve of the Purchase Agreement with respect to any dispute relating to this First Amendment.

b. **Headings.** Headings in this First Amendment are included herein for convenience of reference only and shall not constitute a part of this First Amendment for any other purpose.

c. **Counterparts.** This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature provided via facsimile shall have the same legal effect as an original.

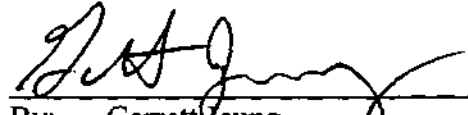
d. **Any Amendments or Modifications.** This First Amendment may only be amended or otherwise modified in writing signed by each of the Parties.

**[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.]**



**IN WITNESS WHEREOF**, the Parties have caused this First Amendment to be executed by their duly authorized representatives, effective as of the latest date set forth in the signature block below. By signing this First Amendment, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

**PACIFIC GAS AND ELECTRIC COMPANY    WESTERN GEOPower, INC.**

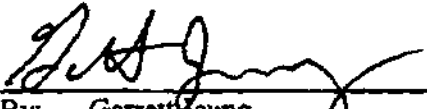



By: Garrett Jeung  
Title: Director, Structured Transactions  
Date: 11/28/22

By: Rupi Khanuja  
Title: Chief Financial Officer  
Date:

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their duly authorized representatives, effective as of the latest date set forth in the signature block below. By signing this First Amendment, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

PACIFIC GAS AND ELECTRIC COMPANY      WESTERN GEOPower, INC.

  
By: Garrett Yeung  
Title: Director, Structured Transactions  
Date: 11/28/07

  
By: Rupi Khanuja  
Title: Chief Financial Officer  
Date: 11/29/2007

