

Standard contract terms and conditions that “may not be modified” per CPUC Decision 07-11-025 are shown in shaded text.

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as “Buyer”)

and

POTRERO HILLS ENERGY PRODUCERS, LLC
(as “Seller”)

Note 1: This Form of Power Purchase Agreement has been drafted specifically for deliveries to PG&E in NP-15. As provided in the 2009 RPS Solicitation Protocol, PG&E will consider Offers that propose delivery of the Product outside of NP-15 or at the busbar. Accordingly, Participants submitting Offers with a delivery point location other than NP-15 or at the busbar should modify the Power Purchase Agreement as needed.

Note 2: This Form of Power Purchase Agreement may also be used for Short Term Offers from existing ERRs with Delivery Terms of five years or greater but less than ten years, and new ERRs with Delivery Terms of less than ten years.

POWER PURCHASE AGREEMENT

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APPENDICES

The following Appendices constitute a part of this Agreement and are incorporated into this Agreement by reference:

- Appendix I Form of Letter of Credit and Parent Guarantee
- Appendix II Initial Energy Delivery Date Confirmation Letter
- Appendix III Milestones Schedule
- Appendix IV Project Description Including Description of Site
- Appendix VI Commercial Operation Certification Procedure and Procedure for Subsequent Capacity Testing
- Appendix VII Form of Monthly Progress Report
- Appendix VIII Outage Notification Form
- Appendix IX Counterparty Notification Requirements for Outages and Generation Schedules
- Appendix X Resource Adequacy
- Appendix XI Notices List
- Appendix XII Form of Consent to Assignment
- Appendix XIII Seller Documentation Condition Precedent

POWER PURCHASE AGREEMENT

PREAMBLE

This Power Purchase Agreement, together with the appendices and any other attachments referenced herein, is made and entered into between Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”), and Potrero Hills Energy Producers, LLC, a Michigan limited liability company (“Seller”), as of the Execution Date set forth on the signature page hereof. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “AAA” means the American Arbitration Association.

1.2 “Affiliate” means, with respect to any person, any other person (other than an individual) that (i) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or (ii) 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.

1.3 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Preamble, 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. For purposes of Section 10.12, the word “agreement” shall have the meaning set forth in this definition.

1.4 “Arbitration” has the meaning set forth in Section 12.3.

1.5 “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 and fails to cause the same to be dismissed within thirty (30) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

1.6 “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.

1.7 “Buyer” has the meaning set forth in the Preamble.

- 1.8 “Buyer’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).
- 1.9 “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.
- 1.10 “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO revenue meter.
- 1.11 “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.
- 1.12 “CAISO Revenues” means (i) the credits and other payments received by Seller as a result of test energy from the Project delivered to the real-time market by Seller during the Test Period, including revenues associated with CAISO dispatches and (ii) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Project for, or attributable to, scheduling and deliveries from the Project under this Agreement.
- 1.13 “CAISO Tariff” means the CAISO FERC Electric Tariff, First Replacement Volume No. 1, as it may be amended, supplemented or replaced (in whole or in part) from time to time.
- 1.14 “California Renewables Portfolio Standard” means the renewable energy program and policies established by Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.
- 1.15 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, 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.
- 1.16 “Capacity Factor” has the meaning set forth in Section 4.3.
- 1.17 “Capacity Test” and “Capacity Re-Test” have the meanings set forth in Appendix VI attached hereto.
- 1.18 “CEC” means the California Energy Commission or its successor agency.
- 1.19 “CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has been constructed, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio

Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

1.20 “CFannual” has the meaning set forth in Section 5.1(b)(ix).

1.21 “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.

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

1.23 “Commercial Operation Date” means the date on which Seller (a) notifies Buyer that Commercial Operation has commenced and (b) provides a certification of a Licensed Professional Engineer, in the form attached hereto as Attachment A to Appendix VI, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix VI.

1.24 “Condition(s) Precedent” has the meaning set forth in Section 11.1.

1.25 “Construction Cure Period” has the meaning set forth in Section 3.9(c)(iv).

1.26 “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 EP Contractor for the Project, and (ii) a written Certification substantially in the form attached hereto as Appendix V.

1.27 “Contract Capacity” has the meaning set forth in Section 3.1(f).

1.28 “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.

1.29 “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.

1.30 “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.

1.31 “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 in 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.

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

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

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

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

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

1.34 “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.

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

1.36 “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.

1.37 “Damage Payment” means the dollar amount equal to the amount initially posted as Project Development Security pursuant to Section 8.4(a)(ii) (in the event of Seller’s failure to meet the Guaranteed Construction Start Date) or Section 8.4(a)(iii) (in the event of Seller’s failure to meet the Guaranteed Commercial Operation Date) hereof.

1.38 “Day Ahead Schedule” has the meaning set forth in the CAISO Tariff.

1.39 “Defaulting Party” means the Party that is subject to an Event of Default.

1.40 “Deficient Month” has the meaning set forth in Section 3.1(k)(v).

1.41 “Deliverability Assessment” as described in the CAISO’s Business Practices Manual, is an evaluation by the Participating TO, CAISO or a third party consultant to determine a list of facilities, the cost of those facilities, and the time required to construct these facilities, that would ensure a generating facility could provide energy to the CAISO controlled grid at peak Load, under a variety of severely stressed conditions, such that the

aggregate of generation in the local area can be delivered to the aggregate of load on the CAISO controlled grid, consistent with the CAISO's reliability criteria and procedures.

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" has the meaning 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" means 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 the period of time during which there is any of the following: (a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any system emergency, as defined in the CAISO Tariff ("System Emergency"), or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO's electric system integrity or the integrity of other systems to which the CAISO is connected; (b) a curtailment directed by the CAISO due to over generation as defined in the CAISO Tariff, or a forecast or expectation 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; (c) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (d) 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; or (e) a curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

1.49 "Distribution Loss Factor" is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to the 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 Seller's meter is physically located, and the first point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

- 1.50 “Distribution Upgrades” has the meaning set forth in the CAISO Tariff.
- 1.51 “DUNS” means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.
- 1.52 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.53 “Effective Date” means 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.
- 1.54 “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; and (b) the applicable Distribution Loss Factor, if applicable.
- 1.55 “Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner’s electric system for receipt of Energy at the Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if the Participating TO’s electric system is not part of the CAISO Grid.
- 1.56 “Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.
- 1.57 “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of the definition of “Green Attributes,” the word “energy” shall have the meaning set forth in this definition.
- 1.58 “Energy Deviations” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the Final Hour Ahead Schedule (as defined in the CAISO Tariff) for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and (b) Delivered Energy for the Settlement Interval.
- 1.59 “EP Contract” or “EPC Contract” means the Seller’s engineering and procurement contract with the EP Contractor.
- 1.60 “EP Contractor” or “EPC Contractor” means an engineering and procurement contractor, selected by Seller, with substantial experience in the engineering and procurement related to the construction of power plants of the same type of facility as the Seller’s.
- 1.61 “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.
- 1.62 “Event of Default” has the meaning set forth in Section 5.1.

1.63 “Exempt Wholesale Generator” has the meaning provided in 18 CFR Section 366.1, as it may be amended from time to time.

1.64 “Execution Date” means the latest signature date found on the signature page of this Agreement.

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

1.66 “Federal Greenhouse Gas Legislation” means any Law enacted after the Execution Date that has the effect of exempting Seller and the Project from all potential adverse Greenhouse Gas Changes in Law.

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

1.68 “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, blockade, insurrection, revolution, expropriation or confiscation,

(iii) except as set forth in subsection (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 the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy, including Energy to be delivered pursuant to this Agreement; provided that, if a curtailment of the Project pursuant to this subsection (a)(iv) would also meet the definition of a Dispatch Down Period, then it shall be treated as a Dispatch Down Period for purposes of Section 3.1(i).

- (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 EP 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.

1.69 "Force Majeure Construction Extension" has the meaning set forth in Section 3.9(c)(iii)(A).

1.70 "Force Majeure Failure" means either Force Majeure Project Failure or Force Majeure Development Failure, as applicable.

1.71 "Force Majeure Development Failure" has the meaning set forth in Section 5.7(a)(ii).

1.72 "Force Majeure Project Failure" has the meaning set forth in Section 5.7(a)(i).

1.73 "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.

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

1.75 “GEP Cure” has the meaning set forth in Section 3.1(e).

1.76 “GEP Failure” has the meaning set forth in Section 3.1(e).

1.77 “GHG Costs” has the meaning set forth in Section 10.1(a).

1.78 “GHG Notice” has the meaning set forth in Section 10.1().

1.79 “Good Utility Practice” has the meaning provided in the CAISO Tariff.

1.80 “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.

1.81 “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.

1.82 “Governmental Charges” has the meaning set forth in Section 9.2.

1.83 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), 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;¹ (3) the reporting rights to these

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion

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 biogas 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.

1.84 "Greenhouse Gas Change in Law" has the meaning set forth in Section 10.1(a).

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

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

1.87 "Guaranteed Energy Production" has the meaning set forth in Section 3.1(e).

1.88 "Guaranteed Energy Production Event of Default" has the meaning set forth in Section 5.1(b)(vii).

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

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

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

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

1.93 "Interconnection Customer's Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

does not create any right to use those avoided emissions to comply with any GHG regulatory program.

1.94 “Interconnection Facilities” has the meaning set forth in the CAISO Tariff.

1.95 “Interconnection Point” has the meaning set forth in Section 3.1(h).

1.96 “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (i) 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; (ii) multiplied by the Interest Rate in effect for that Interest Period; (iii) multiplied by the number of days in that Interest Period; (iv) divided by 360.

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

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

1.99 “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.

1.100 “Landfill” means the Potrero Hills Landfill in Suisun City, California.

1.101 “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 after the Execution Date; or any binding interpretation of the foregoing. For purposes of Sections 10.2(b), “Seller Representations and Warranties” and 10.12 “Governing Law”, the term “law” shall have the meaning set forth in this definition.

1.102 “Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by (i) a U.S. commercial bank or (ii) a U.S. branch of a foreign commercial bank with sufficient assets in the U.S., as determined by Buyer, with either 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.

1.103 “LGIA” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and the CAISO governing the terms and conditions of Seller’s interconnection with the Participating TO’s Transmission System or the Buyer’s distribution system, including any description of the plan for interconnecting to Participating TO’s Transmission System, or the Buyer’s distribution system.

1.104 “LGIP” means the Large Generator Interconnection Procedures set forth in the CAISO Tariff and associated documents; provided that if the LGIP is replaced by such other successor procedures approved by FERC governing interconnection (a) to the Participating TO’s Transmission System or (b) of generating facilities with an expected net

capacity equal to or greater than the Project's Contract Capacity, the term "LGIP" shall then apply to such successor procedure. The LGIP process must include a Deliverability Assessment and the process and subsequent interconnection must ensure that the Project's Capacity is fully eligible to be counted by Buyer under applicable Resource Adequacy rules. To the extent Seller chooses to use the Small Generator Interconnection Process (SGIP) or connect to the Buyer's distribution system and can ensure that a Deliverability Assessment is performed, in the same manner as if the LGIP had been used, then Seller may use that process. As used in this Agreement, LGIP and LGIA shall mean SGIP and SGIA if the Seller uses the SGIP or signs an SGIA or LGIP or LGIA shall mean PG&E Wholesale Distribution Interconnection Tariff (WDT) if Seller utilizes the WDT.

1.105 "Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in California, (ii) has training and experience in the power industry specific to the technology of the Project, (iii) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (iv) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (v) is licensed in an appropriate engineering discipline for the required certification being made.

1.106 "Limited Operation" means the interconnection of the Project to the CAISO Grid under a Limited Operation Plan

1.107 "Limited Operation Plan" has the meaning set forth in Section 3.1(h)(ii).

1.108 "Limited Operations Study" has the meaning set forth in Section 3.1(h)(ii).

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

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

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

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

- 1.113 “Monthly Period” has the meaning set forth in Section 4.2.
- 1.114 “Monthly TOD Payment” has the meaning set forth in Section 4.4.
- 1.115 “Moody’s” means Moody’s Investor Services, Inc., or its successor.
- 1.116 “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.
- 1.117 “MWh” means megawatt-hour.
- 1.118 “NERC” means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.
- 1.119 “NERC Holiday” has the meaning set forth in Section 4.2.
- 1.120 “Net Rated Output Capacity” means the Project’s Energy production capability as measured in the Capacity Test or Capacity Re-Test, if applicable.
- 1.121 “Network Upgrades” has the meaning set forth in the CAISO Tariff.
- 1.122 “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.
- 1.123 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.124 “Notice,” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Appendix XI contains the names and addresses to be used for Notices.
- 1.125 “Notice to Proceed” means the notice provided by Seller to the EP Contractor following execution of the EP Contract between Seller and such EP Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EP Contractor to begin construction of the Project without any delay or waiting periods.
- 1.126 “Obligor” means the Party breaching the terms of this Agreement.
- 1.127 “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 written Notice to Seller.
- 1.128 “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.

1.129 “Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 10.12, Governing Law, the word “party” or “parties” shall have the meaning set forth in this definition.

1.130 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security.

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

1.132 “Performance Tolerance Band” shall be calculated as set forth in Section 4.5(c)(ii).

1.133 “Permitting Delay” has the meaning set forth in Section 3.9(c)(iii)(A).

1.134 “Permitted Extensions” means extensions to the Guaranteed Project Milestones due to Permitting Delay, Transmission Delay, Force Majeure Construction Extension, or Force Majeure occurring after Construction Start Date as applicable to each Guaranteed Project Milestone pursuant to Section 3.9(c)(iii)(A) or (B).

1.135 “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.

1.136 “PNode” has the meaning set forth in the CAISO Tariff.

1.137 “Preamble” means the paragraph that precedes Article One: General Definitions to this Agreement.

1.138 “Preschedule Day” has the meaning set forth in Section 3.4(c)(iii).

1.139 “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.

1.140 “Project” means all of the Unit(s), the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including but not limited to the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described on Appendix IV. For purposes of Section 1.68, “Green Attributes,” the word “project” shall have the meaning set forth in this definition.

- 1.141 “Project Cure Period” has the meaning set forth in Section 3.9(c)(iv).
- 1.142 “Project Development Security” is the collateral required of Seller, as specified and referred to in Section 8.4(a).
- 1.143 “Project Maximum Capacity” is 120% of the Contract Capacity.
- 1.144 “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Project is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Contract Capacity.
- 1.145 “Qualifying Facility” has the meaning provided in the Public Utility Regulatory Policies Act (“PURPA”) and in regulations of the FERC at 18 C.F.R. §§ 292.201 through 292.207, as they may be amended from time to time.
- 1.146 “RA Capacity” means the maximum megawatt amount that the CAISO recognizes from a Project that qualifies for Buyer’s Resource Adequacy Requirements and is associated with the Project’s Capacity Attributes.
- 1.147 “Recording” has the meaning set forth in Section 2.4.
- 1.148 “Reductions” has the meaning set forth in Section 3.1(d).
- 1.149 “Referral Date” has the meaning set forth in Section 12.2(a).
- 1.150 “Remedial Action Plan” has the meaning provided in Section 3.9(c)(ii).
- 1.151 “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.
- 1.152 “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.
- 1.153 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.
- 1.154 “Restructuring Event” has the meaning set forth in Section 3.1(d).
- 1.155 “Retained Revenues” has the meaning set forth in Section 3.3(b).
- 1.156 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.157 “Satisfaction Date” has the meaning set forth in Section 2.5.

1.158 “Schedule” has the meaning set forth in the CAISO Tariff.

1.159 “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.

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

1.161 “Seller” has the meaning set forth in the Preamble.

1.162 “Seller Excuse Hours” means those hours during which Seller is unable to schedule or deliver Delivered Energy to Buyer, or during which the amount of such Delivered Energy is reduced, as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, (c) a Dispatch Down Period or (d) the unavailability of landfill gas, to the extent not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid. For purposes of Section 3.1(e)(ii)(A), Seller Excuse Hours in any Performance Measurement Period shall also include the lesser of: (a) actual Planned Outage hours taken; or (b) 720 hours.

1.163 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

1.164 “Settlement Amount” has the meaning set forth in Section 5.2.

1.165 “Settlement Interval” means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).

1.166 “SGIA” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner (or, if applicable, PG&E as distribution provider), and the CAISO (if applicable) governing the terms and conditions of Seller’s interconnection with the Participating TO’s Transmission System (or, if applicable, PG&E’s distribution system), including any description of the plan for interconnecting to Participating TO’s Transmission System (or, if applicable, PG&E’s distribution system).

1.167 “SGIP” means the Small Generator Interconnection Procedures set forth in the CAISO Tariff (or, if applicable, the WDT Tariff or the PG&E Tariff) and associated documents; provided that if the SGIP is replaced by such other successor procedures approved by FERC governing interconnection (a) to the Participating TO’s Transmission System (or, if applicable, PG&E’s distribution system) or (b) of generating facilities with an expected net capacity equal to the Project’s Contract Capacity, the term “SGIP” shall then apply to such successor procedure.

1.168 “Site” means the location of the Project as described in Appendix IV.

1.169 “System Emergency” has the meaning provided in Section 1.59.

1.170 “Term” has the meaning provided in Section 2.5.

1.171 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2 of this Agreement.

1.172 “Termination Payment” has the meaning set forth in Section 5.2.

1.173 “Test Period” means the period of not more than one hundred eighty (180) consecutive days commencing on the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Project to the CAISO Grid and ending when Seller advises Buyer of the occurrence of the Initial Energy Delivery Date; provided, however, that the Test Period shall not extend beyond five (5) consecutive days after the Commercial Operation Date.

1.174 “Third-Party SC” means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement.

1.175 “TOD” means time of delivery of Delivered Energy from Seller to Buyer.

1.176 “TOD Factors” has the meaning set forth in Section 4.4(a).

1.177 “TOD Period” has the meaning set forth in Section 4.2.

1.178 “Transaction” means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.

1.179 “Transmission Delay” has the meaning set forth in Section 3.9(c)(iii)(A).

1.180 “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.

1.181 “Unit” means the engines with ancillary facilities used to produce the Products, which are identified in Appendix IV for the Transaction entered into under this Agreement.

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

1.183 “WREGIS” means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

1.184 “WREGIS Certificate Deficit” has the meaning set forth in Section 3.1(k)(v).

1.185 “WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

1.186 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of June 4, 2007, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties. Nothing herein modifies, alters or affects in any way the Parties’ obligations under the Confidentiality Agreement, dated December 9, 2008, entered into between the Parties in connection with the solicitation from which this Agreement is a result.

2.2. Interpretation. The following rules of interpretation shall apply in addition to those set forth in Section 10.13:

(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 existing 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 agrees 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. (a) 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 unless terminated sooner pursuant to Section 5.2, Section 10.1(d) or Section 11.2 of this Agreement (the “Term”); provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (the “Satisfaction Date”).

(b) Notwithstanding anything to the contrary in this Agreement, all rights under Section 10.5 (Indemnities) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months, and all rights and obligations under Section 10.7 (Confidentiality) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years.

2.6 Binding Nature.

(a) Upon Execution Date. 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:

- (i) Sections 3.9(a)(vi), 5.1(a)(iv)-(v), and 5.1(b)(vi);
- (ii) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.6;
- (iii) Sections 5.2 through 5.6;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;

- (v) Sections 10.1, 10.2, 10.6 through 10.8, and Sections 10.12 through 10.15; and
- (vi) Articles One, Two, Seven, Eleven, Twelve and Thirteen.

(b) Upon Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

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 one hundred percent (100%) of the output of the Project, less Station Energy use, and all attributes, including, but not limited to, Capacity Attributes and Green Attributes associated therewith; provided that Seller may retain such Capacity Attributes and Green Attributes (a) to the extent that they are required by the Project to meet a requirement of Applicable Law or an order by a Governmental Authority and (b) retention of those attributes by the Seller does not reduce the Renewable Energy Credits required to be provided by Seller pursuant to Section 3.1 (k) associated with Energy generated by the Project or the Capacity Attributes required to permit Buyer to count the full Contract Capacity of the Project towards its Resource Adequacy requirement.

(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 of this Agreement. 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 Energy delivered to Buyer in connection with Energy Deviations. 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, 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 twenty-five (25) 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 twenty-fifth Contract Year, unless terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall occur as soon as practicable once 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; (iii) Seller shall have obtained the requisite CEC Certification and Verification for the Project; and (iv) 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 the PNode designated by the CAISO for the Project's nearest point of interconnection into the CAISO system. To the extent that Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or losses ("Congestion Revenue Rights" or "CRRs"), whether due to CRRs or any Locational Marginal Price ("LMP") adjustments (as defined or required for MRTU under the CAISO Tariff), market adjustments, invoice adjustments, 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 and Guaranteed Energy Production.

(i) Contract Quantity. The Contract Quantity during each Contract Year is the product of 80% multiplied by the Contract Capacity and the hours in the Contract Year during which that Contract Capacity applied. The Contract Quantity shall be updated based on the results of semi-annual Capacity Testing performed in accordance with Section 3.1(f)(ii). For example, the Contract Quantity for any Contract Year in which the Contract Capacity as tested is 10 MWs for the first 6 months and 9.5 MWs for the second six months is 68,328MWhs calculated as (10 MWs * 4,380 hours + 9.5 MWs * 4,380 hours)*80%.

(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Contract Year except as set forth in Section 3.1(e)(ii)(B) during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” means an amount of Energy, as measured in MWh, equal to the product of (x) and (y), where (x) is 90% of the Contract Quantity, and (y) is the difference between (I) and (II), with the difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period, which Guaranteed Energy Production is described by the following formula:

$$\text{Guaranteed Energy Production} = 90\% * \text{Contract Quantity in MWh} * \left[\frac{\text{Hours in Performance Measurement Period} - \text{Seller Excuse Hours}}{\text{Hours in Performance Measurement Period}} \right]$$

(B) Within thirty (30) days after the last day of the last month of a Performance Management Period, Seller shall provide Buyer a calculation of Energy production, including whether the facility met the Guaranteed Energy Production, during the applicable Performance Measurement Period for Buyer’s review. If Seller delivers less than the Guaranteed Energy Production in any Performance Measurement Period (“GEP Failure”), then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall promptly notify Seller of such failure. Seller shall be entitled to cure the GEP Failure by delivering to Buyer no less than ninety percent (90%) of the Contract Quantity over the Contract Year following the applicable Performance Measurement Period (“GEP Cure Period”). However, in the event that the GEP Failure is caused by an event that begins in the last quarter of the Performance Measurement Period and such event is continuing on the last day of such Performance Measurement Period, then the commencement of the GEP Cure Period and the next Performance Measurement Period shall be postponed until the first day of the fourth month following the expiration of the Performance Measurement Period in which the GEP Failure occurred and ending twelve (12) months later. The GEP Cure Period may be extended for an additional GEP Cure Period, if Seller (a) notifies Buyer in writing at least thirty (30) days before the end of the GEP Cure Period that it will be unable to deliver at least ninety percent (90%) of the Contract Quantity; (b) Seller provides Buyer with a mitigation plan that clearly demonstrates how it will meet the Guaranteed Energy Production if allowed an additional GEP Cure Period, and (c) Buyer, at its sole discretion, approves such plan. If Seller elects to pursue the GEP Cure or is allowed to pursue an additional GEP Cure Period but fails, Buyer shall have a period of forty-five (45) days from the end of the GEP Cure Period or any additional GEP Cure Period, whichever is later, to notify Seller of such failure. If during the applicable forty-five (45) day period, Buyer elects not to (I) notify Seller of the GEP Failure or (II) declare an Event of Default pursuant to Section 5.1(b)(vii) if Seller has failed to cure the GEP Failure, then Buyer shall waive its right to declare an Event of Default based on Seller’s failure with respect to the Performance Measurement Period which served as the basis for the notice of GEP Failure or default.

(C) In every hour throughout the Delivery Term, to the extent Seller or any of its Affiliates develops additional electrical generating facilities at the Landfill using landfill gas as fuel, Seller shall ensure that the Project at all times receives first priority on all available landfill gas from the Landfill up to the amount of landfill gas necessary for

the Project to produce up to 8 MWs and to maximize the amount of Delivered Energy hereunder consistent with the terms and provisions of this Agreement.

(f) Contract Capacity

(i) Contract Capacity Definition. The Contract Capacity for the Project shall be the Net Rated Output Capacity of the Project as established in the Capacity Test or Capacity Re-Test, if applicable (the “Contract Capacity”) performed at or prior to the start of each Performance Measurement Period, or as adjusted within 45 days of the start in the case of a Capacity Re-Test. Throughout the Delivery Term, Seller shall sell and Schedule all Product produced by the Project solely to Buyer, except as provided in Section 3.1(a).

(ii) Capacity Testing. Prior to Commercial Operation, Seller shall schedule the Capacity Test to determine the Net Rated Output Capacity as set forth in Appendix VI. Seller shall have the option to schedule a second Capacity Test (“Capacity Re-Test”) by providing written notice to Buyer within ten (10) Business Days after the initial Capacity Test. If Seller exercises its option, the Capacity Re-Test shall be performed within forty-five (45) days after the initial Capacity Test. If the results of the Capacity Test and Capacity Re-Test are different, the Net Rated Output Capacity shall be deemed to be the higher of the two results. On a semi-annual basis throughout the Delivery Term, within 30 days before the start of each Performance Measurement Period (commencing with the second Performance Measurement Period), or in the fifth month of any Performance Measurement Period (commencing with the first Performance Measurement Period), Buyer or Seller may update the Contract Capacity by requesting a Capacity Test, which would be subject to a retest at the request of either party, for the purpose of updating the Contract Capacity. The results of such Capacity Test, as adjusted by a Capacity Re-Test, if applicable, would re-set the Contract Capacity at either: a) the start of the next Performance Measurement Period (in the case of a test requested within 30 days before the start thereof), or b) the last six months of the applicable Performance Measurement Period (in the case of a test requested in the fifth month thereof). Seller shall use commercially reasonable efforts, when performing any Capacity Test or Capacity Re-Test, to maximize the Contract Capacity established thereby up to 8 MWs.

(iii) Facility Expansions. Seller intends to install the engines to match the available Landfill Gas at the Landfill. Seller’s initial Facility installation will occur pursuant to the Milestone Schedule. During the first ten (10) years of the Term, Seller may add additional Units to the Facility, provided that the maximum nameplate capacity of the Facility will be determined by the number of Units installed on the ten-year anniversary of the Commercial Operation Date unless Seller requests an increase in writing and Buyer in its sole judgment approves such increase in writing.

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project which results in a reduction of the Contract Capacity or an increase or decrease in the Project Maximum Capacity without Buyer’s prior written consent, unless such alteration or modification is required by Applicable Law or to comply with an order from a Governmental Authority. The Project is further described in Appendix IV.

(ii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Section 10.6(b).

(h) Interconnection Facilities.

(i) Interconnection Point. The interconnection point is the point of interconnection with the CAISO Grid (or Buyer's distribution system, as appropriate) at which Seller delivers Product pursuant to the LGIA.

(ii) Seller Obligations. Seller shall, at its sole expense, be obligated to (A) maintain the Interconnection Customer's Interconnection Facilities, including metering facilities; (B) comply with the procedures set forth in the LGIP and applicable agreements or procedures provided under the LGIP in order to obtain the applicable Electric System Upgrades and (C) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project during the times at which such delivery is anticipated under this Agreement.

(iii) Limited Operation.

(A) Seller may request that the Participating Transmission Operator or CAISO, as applicable, conduct a study, at Seller's expense, of limited operation as provided in the LGIA ("Limited Operations Study") for the purpose of achieving commercial operations on or before the Guaranteed Commercial Operation Date. Seller shall promptly provide the results of the Limited Operations Study to Buyer. If the Limited Operations Study provides that the Project can be interconnected to the CAISO Grid on the basis set forth in the LGIA ("Limited Operation Plan") by the Guaranteed Commercial Operation Date then Buyer shall pay Seller the Contract Price for output at the facility, subject to the limitations set forth in 3.1(h)(iii)(B).

(B) Regardless of whether Seller pursues interconnection until a Limited Operations Plan, Seller shall, at its sole expense, pursue diligently the timely completion of all necessary Electric System Upgrades as set forth in Section 3.1(h)(ii) above.

(iv) Coordination with Buyer. Seller shall (A) coordinate with Buyer in connection with the Electric System Upgrades, if applicable, and development of the LGIA; (B) to the extent reasonably practicable, solicit Buyer's comments on such activities; (C) provide to Buyer copies of all material correspondence related thereto; (D) to the extent reasonably practicable, include Buyer in its negotiations with the CAISO and the Participating Transmission Owner of its LGIA; and (E) provide Buyer with written reports of the status of the LGIA and Electric System Upgrades, upon written request of Buyer. The foregoing shall not preclude Seller from executing an LGIA that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law.

(i) Performance Excuses.

(i) Seller Excuses. Seller shall be excused from achieving the Guaranteed Energy Production 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.

(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) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any.

(k) WREGIS. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Energy generated by the Project, including all Energy generated during the Test Period, are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall comply with all Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

(i) Prior to the Commercial Operation Date, Seller shall register the Project with WREGIS. During the Delivery Term, Seller shall establish and maintain an account with WREGIS ("Seller's WREGIS Account"). Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. As of the Execution Date, the WREGIS Certificates are expected to be created no later than ninety (90) calendar days after the end of each calendar month for Energy generated by the Project in that calendar month, including for Energy generated by the Project during the Test Period. For example, for Energy generated by the Project in

January 2009, the WREGIS Certificates will be created in WREGIS no later than April 30, 2009. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Energy generated by the Project for such calendar month as evidenced by the Project's metered data.

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 6, Buyer shall make an invoice payment for a given month in accordance Article 6 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.1(k). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 6.

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller (and not caused by or the result of an error by WREGIS or any action or inaction of Buyer), then Seller shall pay to Buyer, as liquidated damages, an amount equal to the product of (A) the amount of the WREGIS Certificate Deficit multiplied by (B) the difference obtained by taking the Contract Price and subtracting an amount equal to 80% of the weighted average nodal energy price at the Delivery Point for such Deficient Month, if such difference is a positive number. In addition, the MWhs associated with the WREGIS Certificate Deficit shall not count toward Seller's energy production for the purposes of Guaranteed Energy Production for the Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller pursuant to Article 6. If Seller notifies Buyer that it believes that any WREGIS Certificate Deficit is the result of an error or omission by WREGIS or an action or inaction of Buyer, Seller shall have up to ninety (90) days to correct such error or omission or demonstrate such action or inaction of Buyer before any amounts are deducted from Buyer's payments to Seller hereunder. If any amounts are deducted from Buyer's payments to Seller pursuant to this Section 3.1(k)(v) and, even after such 90-day period has elapsed, Seller corrects such error or omission or demonstrates such action or inaction of Buyer, Buyer shall credit such deducted amounts to Seller in Buyer's next payment to Seller hereunder.

(vi) Without limiting Seller's obligations under this Section 3.1(k), if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(vii) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(k) after the Execution Date, the Parties promptly shall modify this Section 3.1(k) as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a

quantity of WREGIS Certificates for each given calendar month that corresponds to the Energy generated by the Project in the same calendar month.

(viii) Notwithstanding Article 3.2, Seller specifically agrees to convey any Green Attributes associated with Energy generated during the Test Period, even if Buyer is not purchasing the Product during the Test Period.

(ix) Seller warrants that all necessary steps have been taken to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System.

(l) Access to Data and Installation.

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the following data on a real-time and historical basis: (A) read-only access to transformer availability, any other facility availability information, and energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project; (B) read-only access to the Project's CAISO revenue meter and all Project meter data at the Site; (C) full, real time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application; (D) electrical output of each electrical generator; (E) auxiliary power consumption, by Unit and Facility; and (F) net plant electrical output at each Electric Revenue Meter.

(ii) [Intentionally Omitted]

(iii) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 3.1(l)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(iv) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

(B) Seller shall maintain the telecommunications path, hardware, and software necessary to provide quality data to Buyer. Seller shall promptly repair and replace as necessary such telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data

(C) If Buyer notifies Seller of the need for maintenance, repair or replacement of the telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(D) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of communication (i.e, cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail) until the telecommunications link is re-established.

(v) Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least thirty (30) days prior to the Initial Energy Delivery Date.

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

(n) Obtaining and Maintaining CEC Certification and Verification. Seller shall file an application for pre-certification with the CEC no later than the Construction Start Date, and 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 associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

3.3 Reliability Obligations.

(a) Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, 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.

3.4 Transmission and Scheduling.

(a) Transmission.

(i) 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 beyond the Performance Tolerance Band specified in Section 4.5(c) 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 the 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.

(ii) 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.

(b) Scheduling Coordinator. Buyer shall act as the Scheduling Coordinator for the Project. In that regard, Buyer and Seller shall agree to the following:

(i) Designation as Scheduling Coordinator.

(A) At least sixty (60) days before the Initial Energy Delivery Date, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller's Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller's Scheduling Coordinator. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Period and Delivery Term.

(ii) Buyer's Responsibilities as Scheduling Coordinator. During the Delivery Term, Buyer or Third-Party SC shall comply with all obligations as Seller's Scheduling Coordinator under the CAISO Tariff and shall conduct all Scheduling in full compliance with the terms and conditions of this Agreement, the applicable CAISO Tariff, and protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff

(iii) Forecasting. Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast the expected production of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including but not limited to automated forecast and outage submissions.

(A) Annual Forecasts of expected energy production. No later than (A) the earlier of September 1 of the first Contract Year or forty-five (45) days before the first day of the first Contract Year of the Delivery Term, if applicable, and (B) September 1 of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly expected energy production for an average day in each month of the following 10 calendar years in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of expected energy production. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly expected energy production for each day of the following month in a form reasonably acceptable to Buyer.

(C) Daily Delivery Schedule. During each month of the Delivery Term, Seller or Seller's agent shall provide a firm "Day-ahead Schedule" to Buyer or Third-Party SC (as applicable) via Buyer's internet site, as provided in Appendix IX, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day; provided, however, that the Day-Ahead Schedule for Tuesday (Preschedule Day of Monday) may be delivered prior to 10:00 am PPT on the preceding Friday. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (1) Monday – Preschedule Day for Tuesday
- (2) Tuesday – Preschedule Day for Wednesday
- (3) Wednesday – Preschedule Day for Thursday
- (4) Thursday – Preschedule Day for Friday and Saturday
- (5) 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) under the document title, "Prescheduling Calendar." Each Day-Ahead Schedule shall clearly identify, for each hour, Seller's forecast of all amounts of expected energy production pursuant to this Agreement. Seller shall promptly provide Buyer with Notice of any changes in expected energy production, whether due to Forced Outage, Force Majeure or other cause, at the same time as such information is provided to the CAISO. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in expected energy production, the expected end date and time of such event, the expected energy production in MW hours, and any other information required by the CAISO as communicated to Seller by Buyer or Third-Party SC (as applicable). These notices shall be sent to Buyer's internet site. If Buyer's internet site is unavailable or at Buyer's direction, notices shall be sent to Buyer's Day-Ahead Trading Desk email notification address:

Day-Ahead Trading Desk
Email: daenergy@pge.com

If Seller fails to provide Buyer with a Day-Ahead Schedule as required herein, then, until Seller provides a Day-Ahead Schedule, Buyer may rely on the Monthly Forecast of expected energy production pursuant to Section 3.4(c)(iii)(B).

(D) Hourly Availability Notices. During the Delivery Term, Seller shall notify Buyer of any changes in expected energy production, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible and shall provide a revised schedule as soon as possible, and to the extent reasonably possible no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit Hour-Ahead schedules to the CAISO. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in expected energy production, the expected end date and time of such event, the expected energy production in MW hours, and any other information required by the CAISO as communicated to Seller by Buyer or Third-Party SC (as applicable). With respect to any Forced Outage, Seller shall (I) use commercially reasonable efforts to notify Buyer, orally, of such outage within ten (10) minutes of the occurrence of such outage and, to the extent applicable, update expected Energy production via SLIC (scheduling logging for the ISO of California), (II) provide a written estimate of the expected duration of such outage within one (1) hour after submittal of the initial notification pursuant to (D)(I) of this Section 3.4(b)(iii)), and (III) submit an Outage Notification Form, in the form provided in Appendix VIII of this Agreement, to Buyer in accordance with the instructions provided in Appendix IX of this Agreement. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Project 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
Email: realtime@pge.com

(iv) Replacement of Scheduling Coordinator.

(A) At least forty-five (45) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller's SC. These actions include (I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(B) Buyer shall submit, or if applicable cause the Third-Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (I) thirty (30) days prior to the end of the Delivery Term or (II) the date of any early termination of this Agreement.

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, 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 1st 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.

Add Section 3.9.

If not checked, this Section 3.9 is inapplicable.

(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 (or with Buyer, as appropriate) 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.

(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 the review 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) Milestones. The Parties 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 may 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) Remedial Action Plan. 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. "Guaranteed Project Milestones" are as follows:

(A) The Construction Start Date shall occur no later than the later of 42 months from the date of execution of this agreement or 12/15/2013 (the "Guaranteed Construction Start Date"); provided that the Guaranteed Construction Start Date may be extended on a day for day basis for not more than:

(I) three hundred sixty (360) days if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Project, but is unable to obtain such permits due to delays beyond Seller's reasonable control ("Permitting Delay");

(II) five hundred forty (540) days if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of

required documents and payment of all applicable fees) to have the Project physically interconnected to the CAISO Grid and to complete all Electric System Upgrades needed, if any, in order to interconnect the Project to the CAISO Grid, but fails to secure any necessary commitments from CAISO or the Participating Transmission Owner for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"); provided that if Seller interconnects the Project to the CAISO Grid under a Limited Operation Plan or through the Small Generator Interconnection Process, then Seller may not claim any Transmission Delay extension days beyond the date on which the Project is so interconnected to the CAISO Grid;

(III) three hundred sixty (360) days in the event of Force Majeure ("Force Majeure Construction Extension") without regard to Transmission Delay or Permitting Delay; provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request; or

Notwithstanding the foregoing, if Seller claims Permitting Delay and Transmission Delay, such extensions cannot cumulatively exceed five hundred forty (540) days and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days; and

(B) Seller shall have demonstrated Commercial Operation per the terms of Appendix VI no later than the later of 60 months from the date of execution date of this agreement or **June 15, 2015**, (the "Guaranteed Commercial Operation Date"), provided that (I) the Guaranteed Commercial Operation Date shall be extended on a day for day basis equal to any extension claimed by Seller pursuant to and in accordance with Section 3.9(c)(iii)(A), and (II) the Guaranteed Commercial Operation Date may be extended on a day for day basis for Force Majeure occurring after the Construction Start Date provided that the total number of such extension days shall not exceed three hundred sixty (360) days.

(iv) Cure Period and Delay Damages.

(A) 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 prior to January 1, 2012. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions or the Construction Start Date occurs after the Guaranteed Construction Start Date after giving effect to Permitted Extensions, then Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions for up to a total of sixty (60) days ("Project Cure Period"); or (II) the Construction Start Date occurs after the Guaranteed Construction Start Date after giving effect to Permitted Extensions for up to a total of sixty (60) days ("Construction Cure Period"). The Parties agree that Buyer's receipt of Daily Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 5.1 and (y) not limit Buyer's right to receive a Termination Payment upon exercise of Buyer's default right pursuant to Section 5.2.

(B) Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to Seller's delay in achieving either of the Guaranteed Project Milestones 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 Permitted Extensions) as provided further in Section 8.4(c) of this Agreement. For sake of certainty, Buyer shall retain all Daily Delay Damages drawn (or which Buyer is entitled to draw) as a result of Seller's failure to meet the Guaranteed Commercial Operation Date and the Guaranteed Construction Start Date (both as may be extended by Permitted Extensions), if Seller fails to meet the Guaranteed Commercial Operation Date (as may be extended by Permitted Extensions).

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

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

Contract Year	Contract Price (\$/MWh)
1-25	\$132.90

In the event that the Commercial Operation Date occurs in 2013, the Contract Price shall be \$129.15/MWh in each Contract Year; in the event that the Commercial Operation Date occurs in 2012, the Contract Price shall be \$125.09/MWh in each Contract Year; and in the event that the Commercial Operation Date occurs in 2015, the Contract Price shall be \$136.90/MWh.

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

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

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

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

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

1. **Super-Peak** (5x8) = hours ending 13 – 20 (Pacific Prevailing Time (PPT)) Monday – Friday (*except* NERC Holidays) in the applicable Monthly Period.
2. **Shoulder** = hours ending 7 – 12, 21 and 22 PPT Monday – Friday (except NERC Holidays); and hours ending 7 – 22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.
3. **Night** (7x8) = hours ending 1 - 6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

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

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”):

Capacity Factor = Delivered Energy / (Contract Capacity x (Hours in TOD Period minus Seller Excuse Hours)).

4.4 TOD Factors and Monthly TOD Payment.

(a) TOD Factors. In accordance with all other terms of this Article Four, the Contract Price for Delivered Energy shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified TOD Periods in which Delivered Energy is generated; provided however, the TOD Factors shall not apply to any Delivered Energy that exceeds the Contract Capacity. Delivered Energy beyond the Contract Capacity, but not more than the Project Maximum Capacity in any Settlement Interval, will be paid the Contract Price as stated in Article 4.1, without TOD adjustment. Delivered Energy beyond the Project Maximum Capacity in any Settlement Interval will be paid the seventy five (75%) percent of the Contract Price as stated in Article 4.1, without TOD adjustment.

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June – September	2.01	1.14	0.72
B. Oct. – Dec.; Jan. & Feb.	1.09	0.96	0.78
C. Mar. – May	1.13	0.86	0.63

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

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

4.5 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties, as defined below, incurred by Buyer as a result of Seller’s actions. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties, as defined below, incurred by Seller as a result of Buyer’s actions. As used herein, “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or as a result of a Party’s failure to follow Good Utility Practices, but shall not include costs and charges related to Scheduling and imbalances (which are addressed in Section 4.5(b) below).

(b) Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling (including Day-Ahead Scheduling) and imbalances except as provided in Section 4.5(c) below. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller’s and Buyer’s respective responsibilities for payment for imbalance and congestion charges and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(c) Commencing on the Initial Energy Delivery Date and continuing throughout the Delivery Term, Seller shall be responsible for all costs and charges assessed by the CAISO that are incurred during any Settlement Intervals where Energy Deviations exceed the Performance Tolerance Band, which shall equal in any Settlement Interval five (5) percent multiplied by Contract Capacity, divided by the number of Settlement Intervals in the

hour. Buyer shall pass through to Seller such costs and charges assessed by the CAISO for the Project incurred during any Settlement Intervals where Energy Deviations exceed the Performance Tolerance Band, using the preliminary CAISO invoices with true-ups based on the final invoices. Buyer may net such amounts from subsequent Monthly TOD Payments to Seller under this Agreement.

4.6 Test Period Payments. For Seller's full compensation under this Agreement during the Test Period, Buyer shall forward to Seller the CAISO Revenues during the Test Period.

4.7 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 Electric System 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 written Notice is received by the Party failing to make such payment;

(ii) subject to Section 10.16, any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.2(b), becomes false or misleading in any material respect during the Delivery Term;

(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, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

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

(i) if at any time during the Term of this 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 Energy delivered to Buyer in connection with Energy Deviations;

(ii) Failure to interconnect and pass a CAISO Deliverability Assessment so that Project's Capacity is fully eligible to be counted by Buyer under applicable Resource Adequacy rules within twelve (12) months of the Guaranteed Commercial Operation date.

(iii) failure by Seller to meet the Guaranteed Construction Start Date as extended by Permitted Extensions, if any, and after the applicable cure period has expired due solely to Seller's inability, after the use of commercially reasonable efforts, to obtain any of the following in time to achieve the Guaranteed Construction Start Date: (A) permits necessary to construct or operate the Project, or (B) a LGIA that provides for the Project being physically interconnected to the CAISO Grid and for the completion of any necessary Electric System Upgrades;

(iv) failure by Seller to meet the Guaranteed Commercial Operation Date as extended by Permitted Extensions, if any, and after the applicable cure period has expired due solely to Seller's inability, after the use of commercially reasonable efforts, to achieve by the Guaranteed Commercial Operation Date either the physical interconnection of the Project to the CAISO or any necessary Electric System Upgrades;

(v) failure by Seller for any reason other than those explicitly provided in Sections 5.1(b)(iii) and (iv) above to meet either of the Guaranteed Project Milestones as may be extended by Permitted Extensions and in each case after the applicable cure period has expired

(vi) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to (A) Sections 8.3 or 8.4 of this Agreement or (B) Section 8.5 of this Agreement within the times provided therein;

(vii) failure by Seller to achieve the Guaranteed Energy Production requirement, subject to all applicable GEP Cure Periods, as set forth in Section 3.1(e)(ii) of this Agreement ("Guaranteed Energy Production Event of Default");

(viii) Net Rated Output Capacity from the Initial Capacity Test is determined to be less than 3 MW by the Capacity Test and Capacity Re-Test, if applicable.

(ix) the Capacity Factor of the Project is less than fifty percent (50%) for twelve (12) consecutive months, for reasons other than Seller Excuse Hours and Force Majeure Hours; provided however, Seller shall not be in default of this Section 5.1(b)(ix) if: (A) Seller provides Buyer timely notice that it has experienced a significant event that is expected to result in the reduction of Project output below fifty percent (50%) for a period in excess of thirty (30) days and is likely to result in a GEP Failure; (B) Seller

has been operating at a Capacity Factor of greater than seventy percent (70%) prior to the occurrence of a significant event; and (C) within ten (10) days from initial notice Seller presents Buyer with a detailed plan for mitigation of the significant event, including timelines, which plan is commercially reasonable, as evidenced by written approval of such plan by a Licensed Professional Engineer. For significant events that meet all of the above terms (A) –(C), the Capacity Factor during the mitigation plan period, which shall extend from the occurrence of the significant event up to a maximum of six (6) months, shall not be counted for the purposes of this Capacity Factor calculation. The Parties agree that the Capacity Factor over a twelve (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 by Seller Excuse Hours in the applicable TOD Period for each month:

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

5.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and is 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, (c)(i) in the event of an Event of Default pursuant to Section 5.1(b)(iii) or 5.1(b)(iv), draw upon and retain the Project Development Security in the amount of the Damage Payment as liquidated damages, or (ii) in the event of any other Event of Default, collect liquidated damages (“Termination Payment”), which shall be calculated in accordance with Section 5.3 below; (d) withhold any payments due to the Defaulting Party under this Agreement; (e) suspend performance, and (f) exercise its rights pursuant to Section 8.3 to draw upon and retain Performance Assurance. 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.

5.7 Force Majeure Termination Event.

(a) Force Majeure Failure. Buyer shall have the right, but not the obligation, upon no less than forty-five (45) days prior written Notice to Seller, to terminate this Agreement after the occurrence of the following:

(i) if after the Commercial Operation Date, the Project fails to deliver at least forty percent (40%) of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project ("Force Majeure Project Failure"); provided that:

(A) if the Project may be capable of resuming normal production, and Buyer sends any such termination Notice, then Seller shall be entitled to an additional period of time (not to exceed six (6) additional months) to remedy the Force Majeure if within forty-five (45) days of receipt of such termination Notice from Buyer, Seller presents Buyer with a plan for mitigation of the effect of the Force Majeure, which plan is commercially reasonable and reasonably satisfactory to Buyer, as evidenced by

Buyer's written acknowledgement of such plan, and Seller diligently pursues such mitigation plan throughout said additional period; and

(B) if the Project is destroyed (in whole or substantial part) or rendered inoperable by a Force Majeure constituting a casualty event or otherwise caused by a catastrophic natural disaster, upon Seller's written request to Buyer, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and if such report (which shall be provided to Buyer at no cost to Buyer) determines that such repair or replacement is reasonably feasible within such twenty-four (24) additional months, then Seller shall have twenty-four (24) additional months to make such repairs or replacements.

(ii) if prior to the Construction Start Date or Commercial Operation Date, as applicable, Seller is unable, due solely to a Force Majeure event, to achieve the Construction Start Date or place the Project into Commercial Operation by either of the Guaranteed Milestones, after applicable extensions or cure periods have run, as set forth in Sections 3.9(c)(iii) and (iv) (in either case a "Force Majeure Development Failure"); provided that in the event of a Force Majeure constituting a casualty event or otherwise caused by a catastrophic natural disaster, upon Seller's written request to Buyer, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of achieving Commercial Operation within twenty-four (24) additional months and if such report (which shall be provided to Buyer at no cost to Buyer) determines that achieving Commercial Operation is reasonably feasible within such twenty-four (24) additional months, then Seller shall have twenty-four (24) additional months to achieve Commercial Operation.

(b) Seller's Termination Right. If Buyer does not elect to terminate this Agreement in the event of a Force Majeure Project Failure as set forth in Section 5.7(a) above within ninety (90) days after the Force Majeure Project Failure, and Seller determines that Seller will not be able to reach Commercial Operation as described in Section 5.7(a)(ii) above, then, after such ninety day period has passed, Seller may provide to Buyer an independent third party engineer's estimate of the costs to rebuild the Project. Buyer shall have sixty (60) days to review any estimate provided by Seller and to notify Seller in writing that Buyer intends to pay the costs to rebuild the Project and keep this Agreement in place. If Buyer either notifies Seller that Buyer does not intend to pay the costs to rebuild the Project or if Buyer provides no notification at all to Seller, then Seller may terminate this Agreement upon written notice to Buyer, which termination shall be effective immediately and the parties shall not have any liability to the other after the date of such termination.

(c) Right of First Offer.

(i) If Seller exercises its termination right in connection with the Force Majeure Failure, then for a period of three (3) years from the effective date of such termination ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers in writing (the "First Offer") to sell to Buyer such Products from the Project for the same terms being offered to such third party and

Buyer rejects such First Offer or fails to enter into a new agreement in accordance with the provisions herein.

(ii) If Buyer desires to accept the First Offer, Buyer shall Notify Seller within thirty (30) days after receipt of the First Offer subject only to any required CPUC Approvals (“Buyer’s Notice”), and then the Parties shall have not more than ninety (90) days from the date of Buyer’s Notice to enter into a new power purchase agreement, on the terms being offered to such third party and subject to CPUC Approval, if necessary.

(iii) If Buyer rejects or fails to accept Seller’s First Offer within thirty (30) days of receipt of such offer, or if despite Seller's good faith diligent efforts to enter into a new agreement the Parties fail to enter into a new agreement within ninety (90) days following Buyer's acceptance of Seller's First Offer, then Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer.

(iv) Along with any First Offer, Seller shall deliver to Buyer a certificate of an authorized officer of Seller summarizing the material terms and conditions of the applicable proposed third party agreement.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) 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 the 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 Sections 4.3 and 4.4, as adjusted for CAISO Charges pursuant to Section 4.5 (which may include preceding months), and, if applicable, Section 4.6. Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) 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. 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. 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 EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN. 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 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 under either Option A or Option B described in this Section 8.2. The Option selected is indicated below:

- Option A
- Option B

Option A: If requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of 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 (120) days following the end of each fiscal year, a copy of the Seller's annual report containing unaudited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of 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 shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority 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 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 the 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 Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Performance Assurance.

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

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of \$96,000 and in the form of a Letter of Credit delivered within ten (10) Business Days after the Execution Date of this Agreement until Seller posts Project Development Security pursuant to Section 8.4(a)(ii) below with Buyer;

(ii) Project Development Security pursuant to this Section 8.4(a)(ii) in the total amount of \$640,000 and in the form of a Letter of Credit posted according to the following schedule:

- (A) \$96,000 delivered within ten (10) Business Days after the Execution Date.
- (B) An additional \$352,000 delivered within ten (10) Business Days after the issuance of CPUC Approval.
- (C) An additional \$96,000 delivered ten (10) Business Days following the issuance by the Bay Area Air Quality Management District to Seller of a air permit or, 24 months from the Execution Date, whichever occurs first.

- (D) An additional \$96,000 delivered ten (10) Business Days following the execution of an interconnection agreement or, 36 months from the Execution Date, whichever occurs first.

The total Project Development Security in the amount of \$640,000 shall remain in effect until Seller posts Delivery Term Security pursuant to Section 8.4(a)(iii) below with Buyer; provided that if Buyer collects or is entitled to collect Daily Delay Damages from Seller during the Construction Cure Period for failure to achieve the Guaranteed Construction Start Date (after giving effect to Permitted Extensions), Seller agrees that within ten (10) Business Days following the end of the Construction Cure Period it shall replenish the Project Development Security by an amount equal to the encumbered Project Development Security; provided further that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Project Development Security posted pursuant to this Section 8.4(a)(ii); and

(iii) Delivery Term Security pursuant to this Section 8.4(a)(iii) in an amount determined as follows: $\text{Contract Capacity} \times 80\% \text{ Capacity Factor} \times 8760 \text{ hours} \times \text{price/MWh} \times 9.5/12$; provided, however, that the Contract Capacity for the purpose of this calculation shall be the greater of the actual tested Contract Capacity or 6.4 MW. The Contract Capacity may only be adjusted annually for the purpose of this provision. The Delivery Term Security shall take the form of either a DTE Energy Company Guarantee, a Letter of Credit or cash. If the Delivery Term Security is in the form of a DTE Energy Company Guarantee and DTE Energy Company withdraws the Guarantee during the Delivery Term, Seller shall replace the Guarantee with a Letter of Credit or cash in the same amount as the most recent guarantee amount, and the Delivery Term Security shall be in the form of a Letter of Credit or cash for the remainder of the Term. In the event that the Delivery Term Security is in the form of a DTE Energy Company Guarantee and the credit rating of DTE Energy Company drops below BBB- from Standard & Poor's or Baa3 from Moody's, Seller must, within ten (10) calendar days of Buyer's request therefor, provide a Letter of Credit or cash in the full amount of the Delivery Term Security. 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 due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). If Seller has met the Guaranteed Commercial Operation Date, then the Project Development Security returned shall include amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date. The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) toward the Delivery Term Security posted pursuant to Section 8.4(a)(iii). Project Development Security posted pursuant to Section 8.4(a)(i) shall be returned to Seller within ten (10) Business Days of notification that the

application for CPUC Approval is rejected or has been withdrawn. In the event that the Agreement is terminated pursuant to Section 10.1, GHG Change in Law, all Project Development Security posted pursuant to this Agreement shall be returned to Seller within ten (10) Business Days.

(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; provided that, such interest shall be retained by Buyer until Seller posts the Delivery Term Security pursuant to Section 8.4(a)(iii). Upon Seller's posting of the Delivery Term Security, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix XI, Notices List. After Seller posts the Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for such Delivery Term Security.

(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: (i) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including compensation for CAISO Charges pursuant to Section 4.5, 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 (i) fails to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall cure such default by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after Buyer receives Notice of such refusal (all of which is considered the "Cure"):

(A) providing 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) posting cash.

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 the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction at and from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller’s payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party’s exemption is lost or reduced, each Party’s responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

ARTICLE TEN: MISCELLANEOUS

10.1 Greenhouse Gas Change in Law. Seller shall use commercially reasonable efforts to qualify the Project as a renewable facility that is RPS compliant on the State and Federal Levels and considered a zero emission facility, or “carbon neutral”. If, however, despite such efforts, the Project is adversely impacted by a Greenhouse Gas Change in Law (defined below), the following provisions shall apply:

(a) Definition and Notice. “Greenhouse Gas Change in Law” shall be defined as any Law imposed or arising from efforts to reduce or control the emission of carbon dioxide or other so-called greenhouse gases which include, but are not limited to, taxes on emissions of carbon dioxide or other greenhouse gases from the operation of the Project, requirement to obtain carbon dioxide or greenhouse gas allowances, credits or offsets for operation of the Project, caps on greenhouse gas emissions from the Project or regulatory conditions imposed on the Project due to its greenhouse gas emissions. In the event that a Greenhouse Gas Change in Law is enacted or becomes effective after January 15, 2011 and materially burdens either: (a) Seller’s performance under this Agreement or materially impact the costs to operate or maintain the Project, or (b) Buyer’s total cost of power from the

Project (if such cost is directly imposed on Buyer) then the affected party, either Buyer or Seller, shall provide written notice to the other Party to this Agreement within forty-five (45) days of such Greenhouse Gas Change in Law (the “GHG Notice”). Such GHG Notice shall include a good faith proposal to comply with the Greenhouse Gas Change in Law, including the estimated cost to achieve such compliance on Buyer and Seller, net of any allowances that were specifically allocated to either Buyer or Seller with respect to the Project (the “GHG Costs”).

(b) Good Faith Negotiations. Following the issuance of a GHG Notice, the Parties shall negotiate in good faith to reach agreement as to the amount that should be paid to reimburse the impacted Party for well documented GHG Costs and a timely method for such reimbursement. If the Parties fail to agree on such GHG Costs or a method of reimbursement after negotiating the matter for forty-five (45) days from the date of the GHG Notice, either Party shall have the right to terminate this Agreement effective sixty (60) days from the date of the GHG Notice; provided however this right to terminate shall not apply if the non-terminating Party agrees to pay the documented GHG Costs.

(c) Seller Termination Option. (i) If Federal Greenhouse Gas Legislation is not enacted by January 15, 2011, Seller shall have the right to provide written notice to the Buyer of its intent to terminate this Agreement. Buyer shall have ten (10) days to respond to Seller’s termination notice and request a forty-five (45) day negotiation period in which both Parties would enter into good faith negotiations to address the risks and issues related to potential GHG Costs. If the Parties fail to agree on a resolution, or if Buyer does not agree to pay the full GHG Costs, then the termination of this Agreement will become effective sixty (60) days following Seller’s written notice of its intent to terminate this Agreement.

(d) Rights Upon Termination. Termination of this Agreement pursuant to Section 10.1(b) or (c) shall not be considered an Event of Default pursuant to Section 5.1 and no Termination Payment shall be payable by either Party. Upon such termination, neither Party shall have any other obligation or liability to the other except for the payment of amounts due for performance rendered prior to termination. Any Performance Assurance posted pursuant to Section 8.4 shall be returned to Seller upon termination pursuant to Section 10.1(b) or (c).

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 (A) CPUC Approval in the case of Buyer, and (B) FERC acceptance of Seller’s request to transfer authority to make sales of power at market based rates with customary waivers and authorizations without any adverse

conditions and 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;

(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; and

(x) in the case of Seller, Seller represents and warrants to Buyer, that Seller and/or its Affiliates have contractual rights to control all of the landfill gas produced at the Landfill for the duration of the Term of this Agreement.

(b) Seller Representations and Warranties.

- (i) 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.

- (ii) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

10.3 Covenants.

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

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

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

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

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

(b) Seller Covenants.

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

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements applicable to an Interconnection Customer (as defined in the CAISO Tariff) and shall take any other necessary action, including but not limited to payment of fees and

submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the Commercial Operation date or as soon as practicable thereafter.

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 Affiliates, or Buyers' and Affiliates' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to and at the Delivery Point, or (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 to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

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

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.5(a) and 10.5(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.6 Assignment.

(a) General Assignment. Except as provided in Sections 10.6 (b) and (c), 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 so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound

by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing and except as provided in Section 10.6(b), consent shall not be required for an assignment of this Agreement where the assigning Party remains subject to liability or obligation under this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, and (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior written notice of the assignment.

(b) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent shall not be unreasonably withheld. If Buyer gives its consent, then such consent shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix XII provided that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix XII, including but not limited to extension of any cure periods or additional remedies for financing providers, and (ii) Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including without limitation attorneys' fees.

(c) Assignment in Connection with a Change in Control. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld. In no event shall a direct or indirect change in control be deemed to have occurred so long as DTE Biomass Energy, Inc. and/or any of its respective Affiliates continue to own in the aggregate, directly, or indirectly, 50% or more of the equity interests in Seller.

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.6 is void.

10.7 Confidentiality.

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

Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (a) the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (b) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement, (c) to the CPUC under seal for purposes of review, (d) disclosure of terms specified in and pursuant to Section 10.8 of this Agreement; (e) 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 (f); or (f) 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 (e) 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. Buyer has the right to access to the Project and Site and to data that could be used to verify how all gas used at the Site is burned including records of gas used by other generation at the Site or gas flared. 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. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10. Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages.

(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 or “claims made” form. If a claims-made form is provided, upon cancellation, Contractor will provide “basic extended tail” coverage for five (5) years after the termination of this Agreement. The retroactive date should be the same as, or earlier than, the policy inception date. If Contractor changes coverage from a claims-made form to an occurrence form, sufficient nose coverage, inclusive of the commencement date of the PG&E contract, shall be procured.

(ii) The limit shall be \$10,000,000 each occurrence for bodily injury, property damage, personal injury and products/completed operations. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OCP) policy.

(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. Such insurance shall not exceed the lesser of (1) the coverage and/or limits of the insurance policy required herein; or (2) the coverage and/or limits required by this Agreement.

(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.

(d) Not used.

(e) Not used

(f) Not used.

(g) Not used.

(h) Not used.

(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 written Notice has been given to PG&E.

(iii) PG&E uses a third party vendor, Exigis, to confirm and collect insurance documents. The process starts with the PG&E Contract Administrator submitting negotiated insurance terms in the Exigis website. An e-mail will be generated from "Exigis.com" that will include a login, password, and link to the web-portal requesting specific information from the vendor.

Vendor provides insurance broker information, which will trigger an e-mail to the insurance broker.

The insurance broker provides insurance information and sends pdf or fax of insurance documents to Exigis.

Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to bind coverage on its behalf, and submitted through the Exigis website at: <https://prod1.exigis.com/pge> Helpline: 1 (888) 280-0178

Certificate Holder:
Pacific Gas and Electric Company
c/o Exigis
<https://prod1.exigis.com/pge>

(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.

(j) Form And Content.

All policies or binders with respect to insurance maintained by Seller shall 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.

10.11 Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Buyer may require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

(a) Complete unaudited financial statements ; and

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

Any information provided to Buyer pursuant to this Section 10.11 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed in Buyer's financial statements on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

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 and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.15. 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 fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10.16 Change in Law. Subject to the provisions of Section 10.1 (which exclusively shall address the matters referenced therein), in the event of a change in Law following the Execution Date that prohibits Seller’s performance under this Agreement or production at the Site, excluding all changes in Law that cause only economic hardship, (a) such change in Law shall excuse both Buyer and Seller from their performance obligations under this Agreement without liability and (b) if Seller is not able to overcome (or would not reasonably be expected to overcome) such change in Law through reasonable efforts within twelve months, then either Party shall have the right to terminate this Agreement by Notice to the other. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination, but following any such

termination by Seller, the provisions of Section 5.7(c) (entitled Right of First Offer) shall apply, provided, however, that the Right of First Offer in this Section 10.16 shall not be limited by time but shall remain in place for the remainder of the original Term of this Agreement.

10.17 Right of First Offer. If Seller develops additional generation at the Landfill, Seller agrees to provide Notice thereof to Buyer and offer the output from such additional generation to Buyer. Following any such Notice, Seller shall be obligated to negotiate with Buyer in good faith for a period of ninety (90) days, provided that following such ninety (90) day period Seller shall be free to negotiate and enter into agreements with any other third parties.

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;
- (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; and
- (d) Buyer receives from Seller the documentation listed in Appendix XIII.

11.2 Failure to Meet All Conditions Precedent.

- (a) If the Conditions Precedent set forth in Sections 11.1(b) and (c) are not satisfied or waived in writing by both Parties on or before eighteen (18) months after the date on which Buyer files a CPUC application and this Agreement for CPUC Approval, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.
- (b) If the Conditions Precedent set forth in Sections 11.1(b) and (c) are not satisfied or waived in writing by both Parties on or before a target date that is eight (8) months following the date that is 30 days after the Execution Date, then the expected Initial Energy Delivery Date and each Milestone shall be extended day for day for each day commencing on such target date until the date such Conditions Precedent are satisfied or waived in writing by both Parties.

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 to, be held 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 written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange 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 subsection (a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a) above, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the AAA. As the first step, the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by Arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration"). 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 this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

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

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

ARTICLE THIRTEEN: NOTICES

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

SIGNATURES

Agreement Execution

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

POTRERO HILLS ENERGY PRODUCERS, LLC, a Michigan limited liability company

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

Signature: Mark Cousino

Signature: [Signature]

Name: MARK COUSINO

Name: Roy Kuga

Title: PRESIDENT

Title: VP, Energy Supply Management

Date: 1/29/10

Date: 2/2/10

Reviewed
by Acctg
[Signature]

[Signature]

APPENDIX I

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [insert issue date]

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

Applicant: [Insert name and address of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. “Pursuant to the terms of that certain Power Purchase Agreement (“PPA”), dated _____, between Beneficiary and **[insert name of Seller under the PPA]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the PPA]** under the PPA; or

B. "Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the PPA]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
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. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended (without an amendment hereto) for a period of one (1) year from the Expiry Date or any future Expiry Date, unless **[insert name of Seller under the PPA]** has provided replacement security acceptable to Beneficiary, or Beneficiary has returned this Letter of Credit to **[insert name of Seller under the PPA]** prior to the Expiry Date.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
 Authorized Signature

Name: _____ **[print or type name]**

Title: _____

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

GUARANTY AGREEMENT

1. Guaranty. For valuable consideration, DTE Energy Company (“Guarantor”) unconditionally guarantees payment to Pacific Gas and Electric Company (“PG&E”), its successors and assigns, of all amounts owed to PG&E by Potrero Hills Energy Producers, LLC (“Potrero”) under the Power Purchase Agreement (the “Agreement”) dated _____, 2009 between PG&E and Potrero. The liability of Guarantor hereunder is a continuing guaranty of payment when any amount is owing or when the Agreement is breached, without regard to whether such payment obligation is contingent or absolute, liquidated or unliquidated, or whether recovery may be or has become barred by any statute of limitations or otherwise may be unenforceable.

2. Guaranty Limit. The liability of Guarantor hereunder shall not exceed at any one time the sum of \$14,311,000 in US dollars for principal, plus all interest that has accrued on any amount owed hereunder, to be paid to PG&E, its successors and assigns, and Guarantor hereby binds itself, its heirs, executors, administrators, successors and assigns, jointly and severally. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys’ fees and all other costs and expenses incurred by PG&E in enforcing this agreement or any action or proceeding arising out of or relating to this agreement.

3. Independent Liability. The obligations of Guarantor hereunder are independent of the Obligations of Potrero. The liability of Guarantor hereunder is independent of any security for or other guaranty of payment received by PG&E in connection with the Agreements and is not affected or impaired by (a) any indebtedness of Potrero to PG&E that exceeds Guaranty’s liability hereunder, or (b) any other guaranty as to amounts owed to PG&E by Potrero, or (c) any partial payment by Potrero or any other party acting under a separate guaranty, or (d) any dissolution, reorganization, or insolvency of Potrero, or (e) any payment to PG&E by Potrero that PG&E subsequently returns to Potrero pursuant to court order in any bankruptcy or other debtor-relief proceeding, or (f) any indemnity agreement Potrero may have from any party, or (g) any insurance that may be available to cover any loss. Guarantor waives any right to the deferral or modification of Guarantor’s obligations hereunder by virtue of any such debtor-relief proceeding involving Potrero.

4. Termination. The term of this Guaranty is continuous unless terminated in accordance with the following requirements. This Guaranty may be terminated with regard to future transactions; provided that, Guarantor must provide PG&E with written notice of such termination, and any such termination shall become effective no earlier than sixty (60) calendar days from the date PG&E receives such written notice from Guarantor. Unless otherwise agreed in writing by PG&E, no such notice or termination shall release Guarantor from any liability as to any amount or performance that is at the time or may subsequently become owing under any Agreement entered into by PG&E and Potrero while this Guaranty was in effect.

5. Waivers of Defenses by Guarantor. (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this agreement or the enforcement of this agreement. (b) Guarantor waives any right to require PG&E to (i) proceed against Potrero, (ii) proceed against or exhaust any security held from Potrero or any other party acting under a separate agreement, or (iii) pursue any other remedy available to PG&E. (c) Guarantor waives any defense based on or arising out of any defense of Potrero other than payment in full of the amount(s) owed or full and satisfactory performance of Potrero’s obligations under the Agreements, including without limitation any defense based on or arising out of the disability of Potrero, the unenforceability of the indebtedness from any cause, or the cessation from any cause of the liability of Potrero other than

payment in full of the amount(s) owed or full and satisfactory performance of Potrero's obligations. (d) PG&E may, at its election, foreclose on any security held by PG&E, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to PG&E without affecting or impairing in any way the liability of Guarantor under this agreement, except to the extent the amount(s) owed to PG&E by Potrero have been paid. (e) Guarantor waives all rights and defenses arising out of an election of remedies by PG&E, even though that election of remedies may impair or destroy Guarantor's rights of subrogation and reimbursement against Potrero by operation of Section 580d of the California Code of Civil Procedure or otherwise. (f) Until all amounts owed by Potrero to PG&E are paid in full, even though such amounts may in total exceed Guarantor's liability hereunder, Guarantor shall have no right of subrogation, waives any right to enforce any remedy that PG&E has or may have against Potrero, and waives any benefit of and any right to participation in any security from Potrero now or later held by Guarantor. (g) Guarantor assumes all responsibility for keeping itself informed of Potrero's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and PG&E shall have no duty to advise Guarantor of information known to it regarding such risks.

6. Intentionally Blank.

7. No Waiver of Rights By PG&E. No right or power of PG&E under this agreement shall be deemed to have been waived by any act or conduct on the part of PG&E, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of PG&E hereunder shall continue in full force and effect until specifically waived or released in a written document executed by PG&E.

8. Governing Law. This agreement is made under and shall be governed in all respects by the laws of the State of California, and its provisions may not be waived, altered, modified or amended except in writing executed by an officer of each of Guarantor and PG&E. If any provision of this agreement is held invalid under the laws of California, this agreement shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

9. Construction. All parties to this agreement are represented by legal counsel. The terms of this agreement and the language used in this agreement shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this agreement. No rule of strict construction will be applied against any person.

10. Notice. Any notice given hereunder by either Guarantor or PG&E shall be made by facsimile to the person and at the address specified by each party for this purpose. Such notice shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

For Guarantor:

By: _____

Title: _____

Date: _____

Agreed to by PG&E for purposes of establishing the creditworthiness of Potrero, as partial security for the Agreements.

For PG&E:

By: _____

Title: _____

Date: _____

APPENDIX III
MILESTONES SCHEDULE

Identify Milestone	Date for Completion (the later of):	
	Date	Months from Execution of this PPA
Final Air Permit Received	6/15/2012	30 Months
Interconnect Agreement Executed	6/15/2013	42 Months
Begin Ordering Equipment	6/15/2013	42 Months
Construction Begins	12/15/2013	48 Months
Final Completion (Commercial Operation)	6/15/2015	66 Months

***Note that these milestones only apply to the construction of the initial facility and not to any additional engines installed pursuant to the terms of the Agreement.**

APPENDIX IV

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

FACILITY DESCRIPTION

Facility name: Potrero Hills Landfill

Facility Site name: Potrero Hills Landfill

Facility physical address:

3675 Potrero Hills Lane
Suisun, CA 94585

Total number of Units at the facility (committed and not committed to Buyer) 6
Units, all committed to Buyer

Technology Type: IC Engine

Substation: N/A

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

3675 Potrero Hills Lane
Suisun, CA 94585

The nameplate capacity of the Project is 8 MW.

The Unit utilized as generation assets as part of the Project is described below:
Each Unit is a Caterpillar 3520, 1.6 MW internal combustion engine generator with a net generation export to the system of 8 MWs.

Site Map



APPENDIX V

FORM OF CERTIFICATION

This certification ("Certification") is delivered by _____ ("Seller") to Pacific Gas and Electric Company ("Buyer") in accordance with the terms of that certain Power Purchase 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:

[To be developed by Buyer and Seller]

APPENDIX VI

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

AND PROCEDURE FOR SUBSEQUENT CAPACITY TESTING

As provided in Section 3.1(f), Seller shall conduct a Capacity Test of the Project, in order to establish achievement of Commercial Operation and from time to time to determine the Net Rated Output Capacity. The Capacity Test shall consist of the following:

1. The Net Rated Output Capacity will be determined as the average instantaneous net plant generation as metered by the Project's CAISO revenue meter, and shall be calculated as the total metered generation delivered to the CAISO grid divided by the Capacity Test Period (defined below).
2. The Capacity Test Period shall consist of six (6) consecutive hours of continuous Project generation.
3. All Project equipment shall be operating normally, and fuel supply fully available and being utilized by the Project, for the duration of the Capacity Test Period.
4. The CAISO meter shall have been calibrated within the twelve (12) months prior to the start of the Capacity Test Period.
5. The CAISO meter reads shall not be corrected for ambient conditions.
6. The Buyer has the right but not the obligation to witness the Capacity Test, including inspection of the Project's equipment, systems, and records, to assess normal operations.
7. The Seller will deliver written results of the Capacity Test to Buyer within forty-eight (48) hours of completing the Capacity Test, which include the resulting Net Rated Output Capacity, CAISO raw meter reads for the Capacity Test Period in electronic file format approved by the Buyer, and a copy of the latest CAISO meter calibration certificate.

Attachment A to Appendix VI
[Form of]
Certification of Commercial Operation Date

The undersigned, Potrero Hills Energy Producers, LLC (“Seller”), hereby delivers this Certificate of Commercial Operation with respect to the Project to Pacific Gas & Electric Company (“Buyer”). All capitalized terms not defined herein shall have the meanings set forth in that certain Power Purchase Agreement dated [_____] (the “Agreement”) between Seller and Buyer.

In accordance with its obligation to declare and have Buyer recognize that the Project is operating and able to produce and deliver Energy to Buyer in accordance with the terms of the Agreement (“Commercial Operation”), Seller hereby certifies and represents to Buyer that Commercial Operation has been achieved with respect to the Project and that the following statements are true as of the date set forth herein:

1. The construction and installation of the Project have been substantially completed. Without limiting the preceding sentence, the Project has been substantially physically and mechanically installed, commissioning of the Project has been completed, the electrical and control systems for the Project have been energized and tested, and the Project is released for electrical generation of power.

2. In accordance with the definition of Commercial Operation set forth in the Agreement, the Project is operating and able to produce and deliver Energy to Buyer in accordance with the terms of the Agreement.

3. The initial Capacity Test (or Capacity Re-test, as applicable) has been completed and the Net Rated Output Capacity (and the Contract Capacity) established thereby is _____ MW.

Potrero Hills Energy Producers, LLC

By: _____
Name: _____
Title: _____
Date: _____

The undersigned has inspected the Project and reviewed the results of the initial Capacity Test (or Capacity Re-test, as applicable) referenced above, and such other data as [he/she/it] deems necessary. Based on such review, it is the undersigned’s opinion that the foregoing certification is correct.

[Licensed Professional Engineer]

By: _____
Name: _____
Title: _____
Date: _____

APPENDIX VII

Monthly Construction Progress Report

For:

[Project Name]

By:

[Counterparty name] (“Seller”)

On:

[Report Date]

For month of:

[Report Month]

Provided to:

Pacific Gas & Electric Company (“Buyer”)

GENERAL PROJECT SPECIFICATIONS

Site Address, City, State:

Project Technology (*Biomass, Biogas, Geothermal, Hydro, Solar PV, Solar Thermal, Wind*):

Megawatt capacity:

Site size (*acres, square miles, square feet*):

1. Instructions

- 1.1. Please complete the form monthly and forward it to your PG&E Contract Manager by the 15th of each month.
- 1.2. You may add new information to the prior month's report without editing the prior month's information to reflect current status. For ease of review, please add a date in parenthesis in front of each new entry.
ie: (11/4/09) Grading has started for the roads and turbine sites.
(10/4/09) Construction of maintenance buildings has been completed.
- 1.3. See the Requirements for this report in Section 18.

2. Executive Summary

Please provide a general project overview statement.

3. Major activities performed and/or completed - Inception to date

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Project (provide details in subsequent sections of this report).

- 3.1. Milestones
- 3.2. Financing
- 3.3. Permitting and Governmental Approvals
- 3.4. Site Control
- 3.5. Design and Engineering
- 3.6. Major Equipment Procurement
- 3.7. Construction
- 3.8. Interconnection
- 3.9. Startup Testing and Commissioning

4. Major activities planned for next month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Project (provide details in subsequent sections of this report).

- 4.1. Milestones
- 4.2. Financing
- 4.3. Permitting and Governmental Approvals

4.4. Site Control

4.5. Design and Engineering

4.6. Major Equipment procurement

4.7. Construction

4.8. Interconnection

4.9. Startup Testing and Commissioning

5. Milestones

5.1. Milestone schedule

Please list all Milestones specified in the Agreement and state the current status of each.

Milestone	Milestone Date Specified in the Agreement	Status (e.g., on schedule, delayed due to [specify reason]; current expected completion date)

6. Milestone Remedial Action Plan (if applicable)

Seller has failed and/or expects to fail to achieve any Milestone by the Milestone Date, please explain in detail each of the following aspects of Seller's Remedial Action Plan.

6.1. Missed Milestone

6.2. Plans to achieve missed Milestone

6.3. Plans to achieve subsequent Milestones

6.4. Delays in engineering schedule and plans to remedy delays

6.5. Delays in major equipment procurement and plans to remedy delays

6.6. Delays in construction and interconnection schedule and plans to remedy

7. FINANCING

Please provide the schedule Seller intends to follow to obtain financing for the project. Include information about each stage of financing.

Activity (e.g., obtain \$xx for yy stage from zz)	Completion Date
	___/___/___ (expected / actual)
	___/___/___ (expected / actual)

8. PROJECT SCHEDULE

Please provide a copy of the current version of the overall project schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for governmental approvals, design and engineering, procurement, construction, interconnection and testing.

9. PERMITTING AND GOVERNMENTAL APROVALS

9.1. Environmental Impact Review

Please provide information about the primary environmental impact review for the Project. Indicate whether dates are expected or actual.

Agency [e.g., the lead agency as required under the California Environmental Quality Act (CEQA)]	
Date of application/submission	___/___/___ (expected / actual)
Date application/submission deemed complete by agency	___/___/___ (expected / actual)
Date of initial study (if applicable)	___/___/___ (expected / actual)
Process (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report)	
Date of Notice of Preparation	___/___/___ (expected / actual)
Date of Draft Negative Declaration – Mitigated Negative Declaration - Environmental Impact Report	___/___/___ (expected / actual)
Date Notice of Determination filed at CA Office of Planning and Research or County Clerk	___/___/___ (expected / actual)

9.2. Federal, State, Regional, County or Local Governmental Approvals

Please describe each of the major Governmental Approvals to be obtained by Seller and the status of each.

Agency / Approval	Status Summary

<i>e.g., California Energy Commission (CEC) / Application for Certification (AFC)</i>	<i>e.g., dates of application / hearing / notice / etc. (note whether dates are anticipated or actual); major activities (indicate whether planned, in progress and/or completed); primary reasons for possible delay, etc.</i>
<i>[name] County / Conditional Use Permit (CUP)</i>	

9.3. Governmental Approval activities recently performed
Please list all Governmental Approval activities that occurred since the previous report.

9.4. Governmental Approval activities expected during the current month
Please list all Governmental Approval activities that are expected to occur during the current month.

9.5. Governmental Approval Notices received from EPC Contractor
Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from governmental agencies.

10. SITE CONTROL

10.1. Table of site control schedule
Please provide the schedule Seller intends to follow to obtain control of the project site (e.g., purchase, lease).

Activity	Completion Date
	/ / (expected / actual)
	/ / (expected / actual)

10.2. Site Control activities recently performed
Please explain in detail the property acquisition activities that were performed since the previous report.

10.3. Site Control activities expected during the current month.
Please explain in detail the site control activities that are expected to be performed during the current month.

11. DESIGN and ENGINEERING

11.1. Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		__/__/__ (expected / actual)
		__/__/__ (expected / actual)

11.2. **Design and engineering activities recently performed**

Please explain in detail the design and engineering activities that were performed since the previous report.

11.3. **Design and engineering activities expected during the current month**

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

12. MAJOR EQUIPMENT PROCUREMENT

12.1. **Major equipment to be procured**

Please list all major equipment to be procured by Seller or the EPC Contractor.

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		__/__/__ (expected / actual)	__/__/__ (expected / actual)
		__/__/__ (expected / actual)	__/__/__ (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

12.2. **Major Equipment procurement activities recently performed**

Please explain in detail the major equipment procurement activities that were performed since the previous report.

12.3. **Major Equipment procurement activities expected during the current month**

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

13. CONSTRUCTION**13.1. Construction activities**

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		__/__/__ (expected / actual)
		__/__/__ (expected / actual)

13.2. Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

13.3. Construction activities expected during the current month

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

13.4. EPC Contractor Monthly Construction Progress Report.

Please attach a copy of the Monthly Construction Progress Reports received since the previous report 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.

14. INTERCONNECTION AND TRANSMISSION**14.1. Interconnection activities**

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/__ (expected / actual)
		__/__/__ (expected / actual)

14.2. Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

14.3. Interconnection activities expected during the current month

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

15. STARTUP TESTING AND COMMISSIONING

15.1. **Startup testing and commissioning activities**

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/__ (expected / actual)
		__/__/__ (expected / actual)

15.2. **Startup testing and commissioning activities recently performed**

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

15.3. **Startup testing and commissioning activities expected during the current month**

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

16. SAFETY AND HEALTH REPORT

16.1. **Accidents**

Please describe all project-related accidents reported since the previous report.

16.2. **Work stoppages**

Please describe all project-related work stoppages that occurred since the previous report.

Please describe the effect of work stoppages on the project schedule.

17. CERTIFICATION

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

By: _____

Name: _____

Title: _____

Date: _____

18. REQUIREMENTS

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

Seller shall review the status of each Critical Milestone and other significant milestone as discussed herein (“Milestone”) of the construction schedule (the “Schedule”) for the Units 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, 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 Units 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 Units or related Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Monthly Construction Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form of Monthly Construction Progress Report to Buyer, together with all attachments and exhibits.

For the purpose of this report, “EPC Contractor” means the contractor responsible for engineering, procurement and construction of the Project, including Seller if acting as contractor, and including all subcontractors.



PLEASE DO NOT ALTER THIS

APPENDIX VIII

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

SEND VIA FAX
To Pacific Gas & Electric Company

DATE: _____

Attention: Manager Electric Settlements
2151

FAX NUMBER: (415) 973-

Attention: Outage Coordinator

FAX NUMBER: (415) 973-5333

PG&E LOG NUMBER: _____

Unit/Project Name: _____

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

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

I. 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 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:

- 2.1 Internet site. Access and your password to this web site to be provided upon execution of the power purchase agreement; and

- 2.2 Phone: Call PG&E's Hour-Ahead Trading Desk with any changes to the schedule or notifications at least 30 minutes prior to the ISO scheduling hour-ahead deadline for that delivery hour.
3. Send the Outage Notification Form by the following method:
 - 3.1 Internet site. Access and your password to this web site to be provided upon execution of the power purchase agreement; or
 - 3.2 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
 - 3.3 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 Whenever the Unit experiences an outage, plans to schedule maintenance, or is subject to a curtailment, PG&E's web site which contains the Outage Notification Form or its equivalent, is to be used to comply with the notification requirements under the contract. The Outage Notification Form or its equivalent shall be used when reporting outages or curtailment. The Outage Notification Form or its equivalent must be completely filled out, including date and start time of event, cause of the outage or curtailment, expected duration, expected time and date of return to service or full output and transmitted to Power Trading and Power Settlements.

1. Testing the Unit(s) During an Outage. Notify the designated PG&E Control Center by telephone and the Power Settlements Department as provided above before testing the Unit(s) during an Outage. Indicate on the original Outage Notification Form if testing will be conducted during an Outage.
2. Communication with PG&E Control Center. Seller shall maintain operating communications with the PG&E Control Center at _____. The operating communications shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled Outages,

equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.

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

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 CAISO and/or 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. Seller shall comply with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff as may be changed from time to time, including but not limited to the following:
 - A. Taking all actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity;
 - B. Coordinating with Buyer on the submission to the CAISO of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff;
 - C. Complying with the dispatch requirements applicable to the Project's resource type, as set forth in Section 40 of the CAISO Tariff; and
 - D. Complying with the applicable reporting requirements, such as submitting Supply Plans to the CAISO.
3. 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

NOTICES LIST

Name: Potrero Hills Energy Producers, LLC,
a Michigan limited liability company
("Seller")
All Notices:

Delivery Address:
Street: 425 S. Main St, Suite 201
City: Ann Arbor State: MI Zip: 48104

Mail Address: (if different from above)
425 S. Main Street, Suite 201
Ann Arbor, MI 48104
Attn: Asset Management

Phone: (734) 913-2080
Facsimile: (734) 668-1541

DUNS:
Federal Tax ID Number:

Invoices:

Attn:
Accounting Department
Phone: (734) 913-2080
Facsimile: (734) 668-1541

Scheduling:

Attn: Plant Manager
Phone: (734) 913-2080
Facsimile: (734) 668-1541

Payments:

Attn:
Accounting Department
Phone: (734) 913-2080
Facsimile: (734) 668-1541

Wire Transfer:

BNK:
ABA:
ACCT:

Credit and Collections:

Attn: Risk Manager – Trading &
Marketing

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

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

Mail Address:
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177
Attn: Ted Yura
Senior Manager

Phone: (415) 973-8660
Facsimile: (415) 973-2151

DUNS:
Federal Tax ID Number:

Invoices:

Attn: Amol Patel (AxPx@pge.com)
Manager, Bilateral Settlements
Phone: (415) 973-6510
Facsimile: (415) 973-2151

Scheduling:

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

Payments:

Attn: Amol Patel (AxPx@pge.com)
Manager, Bilateral Settlements
Phone: (415) 973-6510
Facsimile: (415) 973-2151

Wire Transfer:

BNK:
ABA:
ACCT:

Credit and Collections:

Attn:
Manager, Credit Risk Management

Phone: (734) 887-2134
Facsimile: (734) 887-4065

Phone: (415) 973-9099
Facsimile:

Contract Manager:
Attn: Director, Asset Management

Contract Manager:
Attn: Ted Yura (THY1@pge.com)
Manager, Contract Management

Phone: (734) 913-2080
Facsimile: (734) 668-1541

Phone: (415) 973-8660
Facsimile: (415) 973-2207

With additional Notices of an Event of
Default to

With additional Notices of an Event of Default to:

DTE Biomass Energy, Inc.
Attn: Assistant General Counsel
Phone: (734) 913-2080
Facsimile: (734) 913-5582

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

APPENDIX XII

FORM OF CONSENT TO ASSIGNMENT

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 [_____] , as collateral agent² (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”).

Recitals

A. Pursuant to that certain Power Purchase Agreement dated as of _____, 2___ (as amended, modified, supplemented or restated from time to time, as 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. The Secured Parties have provided or have agreed to provide financing (including a financing lease) pursuant to one or more agreements (the “Financing Documents”) to Seller, and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, 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 pledge and assignment by Seller to Financing Provider pursuant to the [Security Agreement] of (a) the Assigned Agreement, 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 Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) 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, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as PG&E may reasonably request, and (e) is a Permitted Transferee (as

² This form assumes that a collateral agent will hold the security on behalf of a syndicate of lenders and therefore, the consent would be signed by the collateral agent in such capacity for the benefit of the secured parties. If that is not the case, please modify.

defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

“Permitted Transferee” means any person who is reasonably acceptable 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, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider’s rights under the Financing Documents, 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 9(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, ten (10) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) 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 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 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 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. Payments under Assigned Agreement. PG&E shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [_____], as depository agent, to ABA No. [_____], Account No. [_____], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, PG&E and Financing Provider agrees that each such payment by PG&E to such depository agent of amounts due to Seller from PG&E under the Assigned Agreement shall satisfy PG&E's corresponding payment obligation under the Assigned Agreement.

9. 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:

Name: _____
Address: _____

Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

(b) No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of PG&E, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under the [loan agreement] and [security agreement].

(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: _____

[_____]]
(Financing Provider), as collateral agent

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 and the Secured Parties have provided or are providing financing to the undersigned.

[_____] **[[name of Seller]**

By: _____
Name: _____
Title: _____

APPENDIX XIII

SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer, pursuant to the terms of Section 11.1 of the Agreement, all of the following documentation at least five (5) Business Days after the Execution Date:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, "Charter Documents") as in effect on the Execution Date.
2. A certificate signed by an authorized officer of Seller, dated the Execution Date, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of the Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms) satisfactory to Buyer.
5. A copy of the most recent financial statements (which may be unaudited) from Seller together with a certificate from the Chief Financial or equivalent officer of Seller, dated the Execution Date, to the effect that, to the best of such officer's knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.

APPENDIX XIV ATTACHMENT 1

Form of Microsoft Excel Worksheet

Expected Energy Schedule

All amounts are in MWs

<u>Settlement Interval No.</u>	<u>Date</u>	<u>H E 1</u>	<u>H E 2</u>	<u>H E 3</u>	<u>H E 4</u>	<u>H E 5</u>	<u>H E 6</u>	<u>H E 7</u>	<u>H E 8</u>	<u>H E 9</u>	<u>HE 10</u>	<u>HE 11</u>	<u>HE 12</u>	<u>HE 13</u>	<u>HE 14</u>	<u>HE 15</u>	<u>HE 16</u>	<u>HE 17</u>	<u>HE 18</u>	<u>HE 19</u>	<u>HE 20</u>	<u>HE 21</u>	<u>HE 22</u>	<u>HE 23</u>	<u>HE 24</u>
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