

**POWER PURCHASE AND SALE AGREEMENT**

**Between**

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

and

**AGUA CALIENTE SOLAR, LLC**  
(as "Seller")

**POWER PURCHASE AND SALE AGREEMENT**

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

Appendix I	Form of Letter of Credit
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## **POWER PURCHASE AND SALE AGREEMENT**

### **PREAMBLE**

This Power Purchase and Sale 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 Agua Caliente Solar, LLC, a Delaware 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 "Actual Availability Report" has the meaning set forth in Section 3.1(m)(i)
- 1.3 "Additional Capacity" means the positive difference, if any, between the Initial Contract Capacity and the Revised Contract Capacity.
- 1.4 "Adjusted Guaranteed Construction Start Date" means the Guaranteed Construction Start Date as adjusted for any extensions claimed by Seller pursuant to Section 3.9(c)(iii)(A).
- 1.5 "Adjusted Guaranteed Commercial Operation Date" means the Guaranteed Commercial Operation Date adjusted for any extensions pursuant to Section 3.9(c)(iii)(B).
- 1.6 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.7 "Agreement" means this Power Purchase and Sale 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.
- 1.8 "Arbitration" has the meaning set forth in Section 12.3.
- 1.9 "As-Available Product" means a Product for which, subject to the terms of this Agreement, (i) Seller is obligated to sell and deliver and (ii) Buyer is obligated to purchase and receive the Energy component of the Product from the Project whenever such Energy is capable of being generated from the Project.
- 1.10 "Available Capacity" means the capacity from the Project, expressed in whole megawatts, that is available to generate Product.

- 1.11 "Availability Workbook" has the meaning set forth in Appendix XIV.
- 1.12 "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, (b) has any such petition filed or commenced against it (which petition is not stayed or dismissed within sixty (60) days), (c) makes an assignment or any general arrangement for the benefit of creditors, (d) seeks to have, and has, a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (e) has any such liquidator, administrator, receiver, trustee, conservator or similar official appointed against it, or (f) is generally unable to pay its debts as they fall due.
- 1.13 "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.
- 1.14 "Buyer" has the meaning set forth in the Preamble.
- 1.15 "CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.
- 1.16 "CAISO Charges" shall mean 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.
- 1.17 "CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO revenue meter.
- 1.18 "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.
- 1.19 "CAISO Penalties" has the meaning set forth in Section 4.5(a).
- 1.20 "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.
- 1.21 "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.
- 1.22 "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.

1.23 "Capacity" means the capability, or planned capability of the Project to generate Product.

1.24 "Capacity Attributes" means any current or future defined characteristic, certificate, tag, or credit, whether general in nature or specific as to the location or any other attribute of the Project that is intended to value any aspect of the capacity of the Project to produce Energy, including, but not limited to, any related 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 be procured at Buyer's expense, Resource Adequacy or other similar products.

1.24a "Cash Collateralization Costs" means the cost to cash collateralize any Letter of Credit secured prior to the date on which Seller obtains construction financing for the Project, which Letter(s) of Credit would not have been available under commercially reasonable terms absent such cash collateralization, which cost shall be equal to the amount of cash posted to collateralize such Letter(s) of Credit multiplied by nine percent (9%) annually (less any interest earned).

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

1.26 "CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Commercial Operation Date, 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.

1.27 "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.

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

1.29 "Commercial Operation Date" means the date on which (a) Commercial Operation has occurred of at least one hundred forty-five (145) MW and (b) Seller provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Appendix V-B, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix VI hereto.

1.30 "Compliance Costs" means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties, including registration fees, volumetric fees, license renewal fees, and external consultant fees, but excluding Seller's internal administrative and staffing costs, to comply with the following, (each a "Compliance Cost Event"): (i) Section 3.1(k) (Greenhouse Gas Emissions); (ii) Section 3.1(l) (WREGIS), but only to the extent caused by changes to the WREGIS Operating Rules or in any applicable WREGIS fees after the Execution Date; (iii) Section 3.3 and Appendix X (Resource Adequacy) but only to the extent required to implement any change or improvement to the Project after the Execution Date in order for Seller to maintain compliance with its obligations under Section 3.3 and Appendix X; (iv) Section 3.4(b)(ii) (Material Changes to EIRP), but only to the extent caused by changes

following the Execution Date; (v) Section 3.5(c) (Reliability Standard) but only to the extent caused by changes to reliability standards following the Execution Date; (vi) Section 3.7(h) (Changes in Operating Procedures) but only to the extent caused by changes to the operating procedures following the Execution Date; (vii) 3.8(a) (Operating Logs) but only to the extent caused by changes to the requirements of Section 3.8(a) following the Execution Date; and (viii) Section 10.2(b) (ERR). The Parties shall agree upon a reasonable allocation, as between Seller and Buyer, over the remaining Term of Compliance Costs that are incurred after the fifteenth (15<sup>th</sup>) Contract Year and that are expected to benefit the Project beyond the Term of this Agreement.

- 1.31 "Compliance Cost Cap" has the meaning set forth in Section 3.1(p).
- 1.32 "Compliance Cost Event" has the meaning set forth in Section 1.30.
- 1.33 "Compliance Cost Excess Notice" has the meaning set forth in Section 3.1(p).
- 1.34 "Compliance Cost Excess Amount Agreement" has the meaning set forth in Section 3.1(p)
- 1.35 "Condition(s) Precedent" has the meaning set forth in Section 11.1.
- 1.36 "Construction Cure Period" has the meaning set forth in Section 3.9(c)(iv)(A).
- 1.37 "Construction Start Date" means the later to occur of the date on which Seller delivers to Buyer (i) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (ii) a written Certification substantially in the form attached hereto as Appendix V-A.
- 1.38 "Contract Capacity" means the generation capacity designated for the Project in Section 3.1(f), as it may be revised pursuant to Section 3.1(g), and net of all auxiliary loads, station electrical uses, and Electrical Losses.
- 1.39 "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.
- 1.40 "Contract Quantity" means the quantity of Delivered Energy expected to be delivered by Seller during each Contract Year as set forth in Appendix XV.
- 1.41 "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Final Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Final Commercial Operation Date.
- 1.42 "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.
- 1.43 "CPUC" or "Commission or successor entity" means the California Public Utilities Commission, or successor entity.



1.44 "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.

1.45 "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.

1.46 "Cure" has the meaning set forth in Section 8.5(a).

1.47 "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) 180.

1.48 "Day-Ahead Availability Notice" has the meaning set forth in Section 3.4(c)(iii)(C).

1.49 "Day Ahead Schedule" has the meaning set forth in the CAISO Tariff.

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

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

1.52 "Delivery Point" means the point at which Buyer receives Seller's Product, as set forth in Section 3.1(d).

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

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

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

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

1.57 "Dispatch Down Period" means the period of time during which there is any of the following: (a) the CAISO directs 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"), (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 of Energy deliveries directed by the CAISO due to Overgeneration as defined in the CAISO Tariff; (c) a curtailment of Energy deliveries in response to a request by the CAISO to manage Overgeneration 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; (d) a curtailment of Energy deliveries ordered by the Interconnection Service Provider, Transmission Provider or distribution operator (if interconnected to distribution or sub-transmission system) in accordance with the applicable entity's tariff for reasons including, but not limited to, any situation that affects normal function of such entity's 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; (e) a curtailment of Energy deliveries ordered by the Interconnection Service Provider or distribution operator (if interconnected to distribution or sub-transmission system) in response to any warning, forecast or anticipation of conditions or situations that jeopardize that entity's electric system integrity or the integrity of other systems to which such entity is connected; (f) scheduled or unscheduled maintenance on the Transmission Owners' transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; (g) a curtailment in accordance with Seller's obligations under its LGIA; or (h) curtailment due to Buyer's exercise of the Curtailment Option pursuant to Section 3.1(i)(iii). There shall be no limit on the number of Dispatch Down Period hours, provided that, notwithstanding the foregoing, any curtailments ordered under sub-sections (c) and (e) above shall be limited to a total of 50 hours per Contract Year.

1.58 "Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

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

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

1.61 "EIRP Hour Ahead Forecast" means the Hour Ahead Forecast (as defined in the CAISO Tariff) generated for each hour in which the Project is participating in EIRP.

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

1.63 "Electrical Losses" means all applicable losses to the Delivery Point, including, but not limited to, any transmission or transformation losses between the CAISO revenue meter and the Delivery Point, except to the extent the CAISO revenue meter is already adjusted to reflect such losses.

1.64 "Electric System Upgrades" means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the Interconnection

Service Provider to physically and electrically interconnect the Project to the Transmission Owner's electric system for receipt of Energy at the Interconnection Point, but not including any Transmission Upgrades.

1.65 "Eligible Intermittent Resource Program" or "EIRP" means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

1.66 "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.

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

1.68 "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.

1.69 "Energy Tax Credit" means the tax credit for solar energy property described in Section 48(a)(3)(A)(i) of the Internal Revenue Code of 1986, as amended (the "Code"), and accelerated depreciation pursuant to Section 168 of the Code determined by utilizing the double declining balance method, pursuant to Section 168(b) of the Code, and a 5-year recovery period, pursuant to Sections 168(c) and 168(e)(3)(B)(vi)(I) of the Code, in each case, as such provision of the Code may be amended or supplemented from time to time.

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

1.71 "EPC Contractor" means the engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of interconnection facilities or power plants of the same type as the Seller's.

1.72 "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.

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

1.74 "Exclusivity Period" has the meaning set forth in each of Sections 3.1(g), 3.9(c)(iv)(B), and 5.6.

1.75 "Exempt Wholesale Generator" has the meaning provided in 18 CFR Section 366.1.

1.76 "Execution Date" means the latest signature date found on the signature page of this Agreement.

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

1.78 "Existing Zone Generation Trading Hub" shall have the meaning set forth in the CAISO Tariff.

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

1.80 "Final Commercial Operation Date" means the earliest of (a) the date on which Commercial Operation has occurred of two hundred ninety (290) MW and Seller provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Appendix V-C, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix VI hereto or (b) 180 days after the Adjusted Guaranteed Commercial Operation Date, pursuant to Section 3.9(c)(v), or (c) the date that Seller notifies PG&E in writing that it has reached maximum installation but no less than one hundred forty-five (145) MW and provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Appendix V-C, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix VI hereto.

1.81 "Financing Delay" has the meaning set forth in Section 3.9(c)(iii)(A)(III).

1.82 "Forecasting Penalties" has the meaning set forth in Section 4.5(c)(iii).

1.83 "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, government rationing, 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(j).

- (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 affecting only Seller's activities at the construction site or in connection with items unique to the Project and limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof, or any other third party employed by Seller to work on the Project;
  - (viii) any disturbance to the Site or the Project as a result of the exercise by a third party of the rights expressly excepted from the legal description of the Site, as described in Attachment 1 to Appendix IV;
  - (ix) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; or
  - (x) inability to pay, except if caused by a physical failure of equipment or facilities necessary to make such payment that would otherwise qualify as an event of Force Majeure.

1.84 "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.

1.85 "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.

1.86 "GEP Liquidated Damages" has the meaning provided in Section 3.1(e).

1.87 "Good Industry Practice" means those practices, methods and acts that would be implemented and followed by prudent operators of electric transmission facilities (with respect to Buyer) or prudent operators of electric generation facilities similar to the Project (with respect to Seller) in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and applicable Law. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

1.88 "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 construction and operation of the Project.

1.89 "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.

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

1.91 "GDP-IPD" means the Gross Domestic Product Implicit Price Deflator (the GDP-IPD, Table 1.1.9 Line 1, as published by the U.S. Chamber of Commerce, Bureau of Economic Analysis).

1.92 "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 (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;<sup>1</sup> (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or 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.

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

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

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

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

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

1.98 "Increment" has the meaning set forth in Section 3.1(c)(i).

1.99 "Initial Contract Capacity" has the meaning set forth in Section 3.1(f).

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

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

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<sup>1</sup> 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 does not create any right to use those avoided emissions to comply with any GHG regulatory program.

- 1.102 "Interconnection Customer's Interconnection Facilities" has the meaning set forth in the Interconnection Service Provider tariff.
- 1.103 "Interconnection Delay" has the meaning set forth in 3.9(c)(iii)(B).
- 1.104 "Interconnection Facilities" has the meaning set forth in the Interconnection Service Provider tariff.
- 1.105 "Interconnection Point" has the meaning set forth in Section 3.1(i)(i).
- 1.106 "Interconnection Service" means the service provided by the Interconnection Service Provider associated with interconnecting the Project to the Transmission Owners' transmission system and enabling it to receive electric energy and capacity from the Project at the Interconnection Point, pursuant to the terms of the LGIA and, if applicable, the Interconnection Service Provider's tariff.
- 1.107 "Interconnection Service Provider" means the entity providing Interconnection Service to the Project. As of the Execution Date, Arizona Public Service Company (APS) is the Interconnection Service Provider.
- 1.108 "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 day; (iii) multiplied by the number of days in that Interest Period; (iv) divided by 360.
- 1.109 "Interest Payment Date" means the last Business Day of each calendar year.
- 1.110 "Interest Period" means the monthly period beginning on the first day of each month and ending on the last day of each month.
- 1.111 "Interest Rate" means for any date the rate per annum equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day, then on the most recent preceding day on which published), plus one percent (1%), except that in the case of interest owed pursuant to Section 8.4(d) in respect of Performance Assurance posted in the form of cash pursuant to Section 8.4(a), "Interest Rate" means for any date the 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.
- 1.112 "Interim Operation Period" means the period between the Initial Energy Delivery Date and the Final Commercial Operation Date.
- 1.113 "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 1.44, 1.91, 10.2(b), and 10.12, the term "law" shall have the meaning set forth in this definition.



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

1.115 "LGIA" means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) governing the terms and conditions of Seller's interconnection with the Transmission Owners' transmission system, including any description of the plan for interconnecting to the Transmission Owners' transmission system.

1.116 "LGIP" means the Large Generator Interconnection Procedures set forth in the Interconnection Service Provider tariff and associated documents; provided that if the LGIP is replaced by such other successor procedures approved by FERC governing interconnection of the Project, the term "LGIP" shall then apply to such successor procedure.

1.117 "Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in Arizona, (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.

1.118 "Limited Operation" means the interconnection of the Project to the Transmission Owners' transmission system under a Limited Operation Plan.

1.119 "Limited Operation Plan" has the meaning set forth in Section 3.1(i)(iii)(A).

1.120 "Limited Operations Study" has the meaning set forth in Section 3.1(i)(iii)(A).

1.121 "Locational Marginal Price" or "LMP" has the meaning set forth in the CAISO Tariff.

1.122 "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, and termination occurs prior to the Commercial Operation Date, the term "Losses" shall include any loss of Energy Tax Credits on an after tax basis related to the Project or generation therefrom which losses Seller has not been able to mitigate after use of reasonable efforts. For the avoidance of doubt, after the Commercial Operation Date, the term "Losses" shall not include any loss of Energy Tax Credits or other federal or state tax credits or benefits related to the Project or generation therefrom. Notwithstanding the foregoing, Seller may not

claim lost Energy Tax Credits as a component of Seller's Losses if (i) Seller in fact has been able to obtain Energy Tax Credits; or (ii) Seller would not, had Seller performed its obligations and this Agreement remained in effect, have been able to obtain Energy Tax Credits.

1.123 "Lost Output" means the amount of Product that would have been generated by the Project for delivery to the Delivery Point absent any curtailments resulting from Limited Operation which amount shall be presumed to be the output calculated using the equation described in Section 3.1(m)(i)(H).

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

1.125 "Maximum Project Capacity" means one hundred five percent (105%) of the Revised Contract Capacity.

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

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

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

1.129 "Monthly TOD Payment" has the meaning set forth in Section 4.3(b).

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

1.131 "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.

1.132 "MWh" means megawatt-hour.

1.133 "Network Upgrades" has the meaning set forth in the Interconnection Service Provider tariff.

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

1.135 "NERC Holiday" has the meaning set forth in Section 4.2.

1.136 "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.

1.137 "NOAA" means National Oceanic and Atmospheric Administration or successor thereto.

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

1.139 "Notice" shall, unless otherwise specified in the Agreement, mean written communications required or permitted to be delivered hereunder 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.

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

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

1.142 "Outage Notification Form" means the Notice described in Appendix IX, 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.

1.143 "Partial Completion Daily Delay Damages" has the meaning set forth in Section 3.9(c)(v).

1.144 "Partial Completion Damages" has the meaning set forth in Section 3.9(c)(vi)

1.145 "Participating Intermittent Resource" or "PIRP" shall have the meaning set forth in the CAISO Tariff.

1.146 "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.

1.147 "Party" or "Parties" means the Buyer or Seller individually, or to both collectively. For purposes of Section 10.12, the term "party" or "parties" shall have the meaning set forth in this definition.

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

1.149 "Performance Measurement Period" has the meaning set forth in Section 3.1(e)(i).

1.150 "Performance Tolerance Band" shall be calculated as set forth in Section 4.5(c)(ii).

1.151 "Planned Outage" means the removal of equipment from service availability for inspection, maintenance, repair, 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.

1.152 "Preamble" means the paragraph that precedes Article One: General Definitions to this Agreement.

1.153 "Product" means the Energy, Renewable Energy Credits, Capacity Attributes and Green Attributes, and any other products, services, or attributes similar to the foregoing which are produced by or associated with the Project, or any portion thereof, but excluding any tax benefits or credits granted or available to any party other than Buyer.

1.154 "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 in Appendix IV.

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

1.156 "Project Development Security" is the collateral required of Seller, as specified and referred to in Section 8.4(a).

1.157 "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.

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

1.159 "Qualifying Protocols" has the meaning set forth in Section 3.4(b)(i).

1.160 "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.

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

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

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

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

1.165 "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 applicable Resource Adequacy obligations established by any other entity with jurisdiction, including the CAISO.

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

1.167 "Revised Contract Capacity" has the meaning set forth in Section 3.1(g).

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

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

1.170 "Schedule" means the actions of Buyer and/or its designated representatives, including its Scheduling Coordinator and Transmission Providers, if applicable, of notifying, requesting and confirming the quantity of Product to be delivered on any given day or days at the Delivery Point.

1.171 "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.

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

1.173 "Seller" shall have the meaning set forth in the Preamble.

1.174 "Seller Excuse Hours" means those hours during which Seller is unable to schedule or deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer's negligence, fault, or Event of Default, or (c) a Dispatch Down Period.

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

1.176 "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.).

1.177 "Settlement Interval Actual Available Capacity" means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.

1.178 "Site" shall mean the location of the Project as described in Appendix IV.

1.179 "Test Period" means the period commencing on the first date that the Interconnection Service Provider informs Seller in writing that Seller may deliver Test Energy from the Project to the Delivery Point and ending when Seller meets the requirements for the occurrence of the Initial Energy Delivery Date set forth in Section 3.1(c)(i).

1.180 "Test Energy" means energy delivered by Seller to the Delivery Point during the Test Period.

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

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

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

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

- 1.185 "TOD" means time of delivery of Delivered Energy from Seller to Buyer.
- 1.186 "TOD Factors" shall have the meaning set forth in Section 4.3(a).
- 1.187 "TOD Period" has the meaning set forth in Section 4.2.
- 1.188 "Transaction" means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.
- 1.189 "Transmission Owners" means the owners of the electric system at the Interconnection Point. As of the Execution Date, the Transmission Owners are Arizona Public Service Company (APS), Imperial Irrigation District (IID), and SDG&E.
- 1.190 "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 of this Agreement the Transmission Provider is CAISO.
- 1.191 "Transmission Upgrades" means any additions and/or reinforcements to an electric transmission system that are required in accordance with the CAISO Tariff to permit delivery of the Product to Buyer such that said deliveries (i) qualify for Full Capacity Deliverability Status, as defined in the CAISO Tariff, and (ii) occur in the quantities and at the times at which delivery of such Product is contemplated under this Agreement, up to and including quantities that can be produced utilizing up to two hundred fifty (250) MW of the Contract Capacity of the Project.
- 1.192 "Unit" means the photovoltaic systems used to produce the Products, which are identified in Appendix IV for the Transaction entered into under this Agreement.
- 1.193 "WECC" means the Western Electricity Coordinating Council or successor agency.
- 1.194 "WREGIS" means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.
- 1.195 "WREGIS Certificate Deficit" has the meaning set forth in Section 3.1(l)(v).
- 1.196 "WREGIS Certificates" shall have the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for demonstrating compliance with the California Renewables Portfolio Standard.
- 1.197 "WREGIS Operating Rules" shall mean 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.
- 1.198 "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 July 11, 2008, entered into between the Parties in connection with the RFP.

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 that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

2.5 Term. The Term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 11.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to Sections 3.9(c)(iv)(B), 5.2, 5.6 or 11.2 of this Agreement (the "Term"); provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due).

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)(v);
- (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 10.2, 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 an As-Available Product. Buyer has no right under this Agreement to dispatch the Project or require Seller to provide any ancillary services.



(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, the Product to the Delivery Point, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement. Buyer shall have no obligation to receive or purchase Product from Seller prior the Initial Energy Delivery Date or after the end of the Delivery Term. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt at and from the Delivery Point. The Parties agree that Seller shall arrange for any required interconnection agreement in accordance with the LGIP. 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 services (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. The Parties further agree that Buyer shall arrange and pay independently for any and all necessary Scheduling services, and for all distribution and/or transmission services (and any regulatory approvals required for the foregoing), required to allow Buyer to receive the Product at and from 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) Project Deliveries.

(i) Interim Operation Period. The Parties acknowledge and agree that, as a result of the manner in which the Project will be constructed, portions of the Project will achieve Commercial Operation at various times between the Construction Start Date and the Final Commercial Operation Date. The Initial Energy Delivery Date shall be the date on which Product is first delivered by Seller to Buyer and all of the following have been satisfied: (A) Seller shall have obtained the requisite CEC Certification and Verification for the Project, subject to Section 3.1(p); (B) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing by both Parties, (C) Seller has met all its obligations under this Agreement to allow Buyer to receive delivery of the Product, including but not limited to Seller's requirements under Section 3.1(i) (Interconnection Facilities), Section 3.1(l) (WREGIS), Section 3.1(m) (Access to Data and Installation and Maintenance of Weather Station), Section 3.4 (Transmission and Scheduling), and 3.6 (Metering); and (D) Seller has materially met all CAISO requirements for delivery of Product to the ISO grid, including satisfactory completion of all required testing. 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. Notwithstanding anything herein to the contrary, certification as a Participating Intermittent Resource is not a condition for the Project to achieve its Initial Energy Delivery Date. Following the Initial Energy Delivery Date, Seller will notify Buyer at least ten (10) days and not more than thirty (30) days prior to the date each portion of the Project with a generation capacity of at least ten (10) MW but not more than twenty (20) MW (each an "Increment") will be completed and commence operation. After the Initial Energy Delivery Date, Buyer will purchase and receive, and Seller will sell and deliver the Product generated by the Project including all Increments and all other portions of the Project that may not yet in the aggregate constitute an Increment of 10 MW as they are completed, on the terms and conditions provided herein, including payment of the Contract Price for all Product from such available capacity; provided, however, that, Buyer shall not be obligated to receive or pay for, any Energy in a given hour in excess of the Maximum Project Capacity.

(ii) 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 Final Commercial Operation Date and continuing until the end of the twenty-fifth (25<sup>th</sup>) Contract Year unless terminated as provided by the terms of this Agreement.

(d) Delivery Point. The Delivery Point shall be the first point of interconnection with the CAISO Grid.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity and Guaranteed Energy Production. The Contract Quantity during each Contract Year of the Delivery Term is set forth in Appendix XV (Contract Quantity by Contract Year). Upon establishment of a Revised Contract Capacity pursuant to Section 3.1(g), the Contract Quantities shown in Appendix XV shall be revised for each Contract Year to equal the Contract Quantities specified by Seller in a Notice provided to Buyer on or before the Final Commercial Operation Date, provided that the Contract Quantities specified by Seller shall be no less than the product of (A) the original Contract Quantity for such Contract Year and (B) the quotient of Revised Contract Capacity divided by the Initial Contract Capacity, and no greater than 105% of the original Contract Quantities. Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in any two consecutive Contract Years beginning with the first full Contract Year following the Final Commercial Operation Date ("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 70% of the sum of the Contract Quantities for the two (2) Contract Years comprising a Performance Measurement Period, and (Y) is the quotient of the difference between (I) and (II), 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.

After the Final Commercial Operation Date, if Seller delivers less than the Guaranteed Energy Production in any Performance Measurement Period ("GEP Shortfall"), then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall notify Seller of such failure. For the Contract Year beginning at the end of the Performance Measurement Period in which Seller fails to achieve GEP (the "Cure Year"), Seller may cure such failure by providing Buyer at least 85% of the Contract Quantity for such year set forth in Appendix XV, as adjusted by (1) a factor to account for the difference between actual insolation at the Site from the expected insolation at the Site for an average year and (2) a factor to account for the difference between the actual average ambient temperature at the Site and the expected

average ambient temperature, each as set forth in Appendix XVI. For clarity, Seller's cure with respect to a Performance Measurement Period by providing Buyer at least 85% of the Contract Quantity in the Cure Year shall be deemed achievement of the Guaranteed Energy Production, and the Cure Year shall be the first year in a new two-year Performance Measurement Period. If at the end of the Cure Year Seller has failed to achieve at least 85% of the Contract Quantity for such year as adjusted, Seller shall pay GEP Liquidated Damages (not as a penalty) for its GEP Shortfall. Within forty-five (45) days of the end of the Cure Year, Buyer shall provide Notice to Seller in writing of the amount of the GEP Liquidated Damages, if any, which Seller shall pay within sixty (60) days of receipt of the Notice. If Seller does not pay the GEP Liquidated Damages within the sixty (60) day time period, or if Seller is ineligible to pay GEP Liquidated Damages because Seller has already paid to Buyer aggregate GEP Liquidated Damages equal to the Maximum Cure Amount, Buyer may, at its option, declare an Event of Default, provided that Buyer provides Seller Notice of such declaration within one hundred fifty (150) days after the end of the Cure Year. For clarity, Seller's cure by payment of GEP Liquidated Damages with respect to a Performance Measurement Period shall be deemed achievement of the Guaranteed Energy Production, and the next following Contract Year shall be the first year in a new two-year Performance Measurement Period. The maximum aggregate amount of GEP Shortfall during the Delivery Term that may be cured through payment of GEP Liquidated Damages may not exceed the Contract Quantity in the first Contract Year ("Maximum Cure Amount").

(ii) Calculation of GEP Liquidated Damages. For each instance of GEP Shortfall, the GEP Liquidated Damages payment shall be calculated as follows:

$$(GEP - DE) \times [RP - CP]$$

Where

GEP = the Guaranteed Energy Production for the Performance Measurement Period, in MWh

DE = the Delivered Energy for the Performance Measurement Period, in MWh

GEP - DE = the amount of the "GEP Shortfall" for the Performance Measurement Period, in MWh

RP = Replacement Price defined as the unweighted average over all days of the Performance Measurement Period of the market price of RPS-eligible energy, in \$/MWh.

CP = the unweighted Contract Price specified in Section 4.1 for the Performance Measurement Period, in \$/MWh

RP - CP = the amount by which the Replacement Price exceeds the Contract Price, but not less than zero.

If the Parties cannot agree on an appropriate source for RP, then RP shall be equal to [(MP - CP) + GP]

Where

MP = The simple average over all settlement intervals in the Performance Measurement Period of the day-ahead LMP for the Existing Zone Generation Trading Hub associated with the current SP15 zone.

GP = a "green premium" equal to (i) at such time as a liquid market for Renewable Energy Credits exists in California, the unweighted average price over the Performance Measurement Period of an index to be agreed upon by the Parties that best reflects the price of Renewable Energy Credits within the relevant geographic area, in \$/MWh, or (ii) if no such liquid market exists or if the Parties are unable to agree on an appropriate index, then \$30/MWh.

(iii) GEP Measurement In Subsequent Performance Periods. If Buyer does not declare an Event of Default with respect to Seller's failure to meet the Guaranteed Energy Production requirement under the options and procedures set forth above, then Buyer shall be deemed to have waived its right to declare an Event of Default based on Seller's failure with respect to the Performance Measurement Period which served as the basis for the default. For sake of certainty, in the event that Buyer waives, or is deemed to have waived, its right to declare an Event of Default with respect to the Performance Measurement Period which served as the basis for such default, Buyer shall again have the right to declare an Event of Default, subject to the conditions set forth in this subsection (e), if, as of the last day of the Contract Year following such Performance Measurement Period, Seller again fails to achieve the Guaranteed Energy Production requirement for the Performance Measurement Period just concluded.

(f) Initial Contract Capacity. The Initial Contract Capacity of the Project shall be two hundred ninety (290) MW. Throughout the Interim Operation Period and the Delivery Term, Seller shall sell all Product produced by the Project solely to Buyer (except as set forth in Section 5.2), but in no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds 105% of the Revised Contract Capacity per hour.

(g) Revised Contract Capacity. Buyer acknowledges that as of the Final Commercial Operation Date the installed Capacity of the Project could be different from the Initial Contract Capacity. If the installed Capacity of the Project at the Final Commercial Operation Date is different from the Initial Contract Capacity, then within thirty (30) days Seller and Buyer shall amend this Agreement to specify a Revised Contract Capacity, as certified in writing by a Licensed Professional Engineer, provided that the Revised Contract Capacity shall not be greater than one hundred five percent (105%) of the Initial Contract Capacity. If the Revised Contract Capacity is less than the Initial Contract Capacity, Buyer shall have, pursuant to the terms of Appendix XIII, a right of first offer for the duration of the Exclusivity Period to purchase all Product produced by the Additional Capacity of the Project. For purposes of this Section 3.1(g), the Exclusivity Period shall be thirty-six (36) months from the date this Agreement is amended to specify a Revised Contract Capacity.

(h) Project. 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 change to the Initial Contract Capacity, Revised Contract Capacity, or the anticipated output of the Project without Buyer's prior written consent. Notwithstanding the foregoing, Buyer's consent shall not be required for maintenance, repair, or replacement of facilities or equipment in accordance with Good Industry Practice. In addition, subject to Section 3.1(g), Seller may add new units at the Site so long as it does not increase capacity in excess of one hundred five percent (105%) of the Initial Contract Capacity. The Project is further described in Appendix IV. Notwithstanding anything to the contrary in this Agreement, within thirty (30) days after delivery of a certification from a Licensed Professional Engineer that the installed

Capacity of the Project is equal to or greater than the Initial Contract Capacity, Seller may revise the Project and the Site to remove any portion of the original Site that is not required to support the Initial Contract Capacity, or Revised Contract Capacity if greater than the Initial Contract Capacity, by providing Notice to Buyer, including a revised Appendix IV, which shall be effective upon receipt.

(i) Interconnection Facilities.

(i) Interconnection Point. The Interconnection Point is the first point of interconnection with the Transmission Owners' electric system, as specified in the applicable interconnection agreement.

(ii) Seller Obligations. Seller shall, at no cost or expense to Buyer and in accordance with applicable tariffs, 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 to the Interconnection Point, 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) If, in accordance with the LGIA, Seller is notified by the Interconnection Service Provider that the Transmission Owners' Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Guaranteed Commercial Operation Date, then within thirty (30) days of Seller's receipt of such notification Seller shall request that the Interconnection Service Provider conduct a study, at Seller's expense, of limited operation as provided in the LGIA ("Limited Operations Study"). Seller will provide Notice to Buyer if the study cost estimate from the Interconnection Service Provider exceeds Fifty Thousand Dollars (\$50,000), and Buyer will have thirty (30) days (or sooner if required by the Interconnection Service Provider) to elect to pay for the costs of the study in excess of Fifty Thousand Dollars (\$50,000). If Buyer declines to pay for such excess costs, or if Buyer fails to provide Notice to Seller of Buyer's election within thirty (30) days, then Seller shall not be obligated to proceed with the Limited Operations Study. If the Limited Operations Study is conducted, then 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 Transmission Owners' electric system on the limited basis set forth in the LGIA ("Limited Operation Plan") by the Guaranteed Commercial Operation Date then Buyer shall have the right, but not the obligation, to direct Seller to interconnect the Project under the Limited Operation Plan, so long as Buyer also agrees to pay Seller the Contract Price for the Lost Output (the "Curtailment Option"). If Buyer elects to exercise the Curtailment Option, it shall provide written Notice to Seller and Seller must agree to pursue the Limited Operation Plan and interconnect the Project to the Transmission Owners' electric system under that plan; provided, however, that Seller shall not be obligated to pursue the Limited Operation Plan if it would cause Seller to incur unreimbursed out-of-pocket costs.

(B) Regardless of whether Buyer exercises the Curtailment Option, Seller shall, in accordance with applicable tariffs, pursue diligently the timely completion of all necessary Electric System Upgrades as set forth in Section 3.1(i)(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) solicit Buyer's comments on such activities; (C) provide to Buyer copies of all material correspondence related thereto; (D) to the extent reasonably practicable, provide Buyer with updates on its negotiations of its LGIA; and (E) provide Buyer with written reports of the status of the LGIA and Electric System Upgrades, if applicable, on a monthly basis. 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.

(j) 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 Event of Default, or (C) during Dispatch Down Periods.

(iii) Dispatch Down/Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(j), Seller shall reduce delivery amounts during any Dispatch Down Period; provided that, Seller shall not be obligated to reduce Delivered Energy in response to any economic curtailment or reduction.

(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.

(k) Greenhouse Gas Emissions. 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, or tracking such emissions. Within a reasonable period of time following Buyer's written request, Seller agrees to provide any and all documents or information in Seller's possession with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any.

(l) WREGIS. Seller shall, subject to the Compliance Cost Cap in Section 3.1(p), 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 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 Initial Energy Delivery Date, Seller shall register the Project with WREGIS. During the Interim Operation Period and 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 ("Buyer's WREGIS Account"). Subject to the Compliance Cost Cap in Section 3.1(p), 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 use commercially reasonable efforts to cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates are expected to 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 use commercially reasonable efforts to 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 with 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(l). 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 Energy generated by the Project for the same calendar month, as determined after WREGIS has completed its normal reconciliation process and any disputes between Seller and WREGIS have been resolved. If any WREGIS Certificate Deficit is caused by Seller, or the result of any action or inaction by Seller, then Seller shall owe to Buyer an amount equal to the product of (A) the WREGIS Certificate Deficit, multiplied by (B) the "green premium" calculated pursuant to Section 3.1(e)(ii). 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.

(vi) Without limiting Seller's obligations under this Section 3.1(l), 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(l) after the Execution Date, the Parties promptly shall modify this Section 3.1(l) 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 purchased by Buyer in the same calendar month.

(viii) Notwithstanding anything to the contrary herein, Seller's satisfaction of its obligations under this Section 3.1(l) is subject to the Compliance Cost Cap.

(m) Access to Data and Installation and Maintenance of Weather Station.

(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 meteorological measurements, inverter and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (H) of this list, 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) read-only real time access to the Project's Scheduling and Logging for the CAISO ("SLIC") client application; (D) electrical output of each inverter; (E) auxiliary power consumption, by Unit and Facility; (F) net plant electrical output at each electric revenue meter; (G) time-average data including 10-minute and hourly values of global horizontal and global collector plane insolation, total global radiation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and visibility in winter fog areas by facility; and (H) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of solar insolation and temperature. Such equation shall take into account the expected availability of the facility. For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Settlement Interval Actual Available Capacity of the Project for each month in the form set forth in Appendix XIV ("Actual Availability Report"). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. If any access or data required under this Section 3.1(m)(i) is unavailable, Seller shall use reasonable efforts to restore such access or data as quickly as reasonably practicable.

(ii) If some or all of the data Seller is obligated to provide pursuant to Section 3.1(m)(i) is missing for any given time period, Buyer shall make commercially reasonable efforts to utilize information publicly available from NOAA and nearby weather stations and substitute such data for the missing data in order for Buyer to fulfill its scheduling and settlement obligations. If Buyer determines that some or all data Seller is obligated to provide pursuant to Section 3.1(m)(i) is inconsistent with the publicly available data for any given time period, Buyer shall nevertheless use the data provided by Seller for scheduling purposes, but will notify Seller of the inconsistency.

(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(m)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute 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 one (1) stand-alone meteorological station[s] at the Site to monitor and report the meteorological data required in Section 3.1(m)(i) of this Agreement; provided that, Seller shall install and maintain more than one (1) meteorological station if, and as, required under the EIRP. 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(m)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide quality data to Buyer or Third-Party SC (as applicable). Seller shall promptly repair and replace as necessary such meteorological stations, 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 meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice, or as soon thereafter as is reasonably practicable.

(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 required for or relevant to performance of its duties as SC for Seller, including from San Diego Gas and Electric ("SDG&E"). Seller hereby voluntarily consents to allow SDG&E and other necessary third parties to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide SDG&E and such third parties with written confirmation of such voluntary consent at least thirty (30) days prior to the Initial Energy Delivery Date.

(vi) No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide a minimum of one (1) year of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (A) global horizontal and global collector plane insolation, total global radiation, air temperature, wind speed and direction, precipitation, barometric pressure, visibility (forward scatter sensor) and humidity at the Site, as well as time-average data including 10-minute and hourly values of insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and visibility in winter fog areas; and (B) elevation, latitude and longitude of the weather station.

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

(o) 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 reasonably 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.

(p) Compliance Cost Cap. The Parties agree that the Compliance Costs Seller shall be required to bear during the Interim Operation Period and the Delivery Term to

comply with Compliance Cost Events shall be capped at a total of One Million Five Hundred Thousand Dollars (\$1,500,000) over the Term of this Agreement ("Compliance Cost Cap"). Within 90 days after the end of each Contract Year, Seller shall provide Buyer with a report of the Compliance Costs that Seller incurred during that Contract Year and the total Compliance Costs Seller has incurred to date under this Agreement. If after one or more Compliance Cost Events have occurred, and Seller determines that it will incur costs in excess of the Compliance Cost Cap to comply with the Compliance Cost Events, Seller shall notify Buyer and provide documentation and calculations to support the expected excess costs ("Compliance Cost Excess Notice"). Buyer shall then have ninety (90) days after receipt of the Compliance Cost Excess Notice to verify or dispute Seller's documentation and calculation. Once the Parties have agreed in writing on the amount by which Seller will exceed the Compliance Cost Cap to comply with the Compliance Cost Events ("Compliance Cost Excess Amount Agreement"), Buyer may then: (1) elect to pay Seller the amount set forth in the Compliance Cost Excess Amount Agreement and notify Seller of such election, and Seller shall, upon receipt of such payment from Buyer, comply with the Compliance Cost Events; or (2) elect not to pay Seller for the amount set forth in the Compliance Cost Excess Amount Agreement and notify Seller of such decision, in which case this Agreement shall continue in full force and effect and Seller shall continue to be excused from performing any obligation that causes, or would cause, Seller to incur such Compliance Costs in excess of the Compliance Cost Cap. Seller shall have no obligation, and shall be free from liability under this Agreement if it fails, to take any action that causes, or would cause, Seller to incur Compliance Costs in excess of the Compliance Cost Cap unless and until Seller receives payment from Buyer in the amount specified in the Compliance Cost Excess Amount Agreement.

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

3.3 Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, from the Project for Buyer to apply towards meeting its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe ("Resource Adequacy Requirements"). Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Seller agrees that during the Interim Operation Period and the Delivery Term Seller shall comply with the terms set forth in Appendix X for Buyer to apply all of the Contract Capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement towards meeting Buyer's Resource Adequacy Requirements. Notwithstanding the foregoing, Seller shall not be required to incur Compliance Costs in excess of the Compliance Cost Cap specified in Section 3.1(p) in connection with Buyer's Resource Adequacy Requirements.

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller Obligations. During the Delivery Term, Seller shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, to the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment. Seller shall be

responsible for electric transmission losses and congestion to the Delivery Point. Subject to Section 4.1(b), Seller shall fulfill all contractual, metering and applicable interconnection requirements, including, to the extent applicable, those set forth in the Transmission Owners' 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 Delivery Point.

(ii) Buyer Obligations. During the Delivery Term, Buyer shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, at and from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages, congestion costs, or curtailment. During the Delivery Term, Buyer shall Schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at and from the Delivery Point. During the Delivery Term, Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point.

(b) EIRP Requirements.

(i) Participating Intermittent Resource.

The intent of this Agreement is that the Project shall be a certified Participating Intermittent Resource (as such term is defined in the CAISO Tariff). The Parties acknowledge that as of the Execution Date, the CAISO has not yet established protocols for scheduling solar power to permit solar projects to participate in EIRP ("Qualifying Protocols"). As soon as practicable, but not more than ninety (90) days after Qualifying Protocols are finalized and made effective by the CAISO, Seller shall file all documentation reasonably necessary to, and thereafter use commercially reasonable and expeditious efforts to, cause the Project to become certified as a Participating Intermittent Resource including negotiating and executing all necessary documents to become a Participating Intermittent Resource (each as defined by the CAISO Tariff). Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Project as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. Following certification and whenever applicable, Seller and Buyer shall comply with EIRP, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during the Delivery Term.

(ii) Material Changes to EIRP. If either, (a) EIRP is no longer in effect or (b) EIRP is materially changed, then the Parties shall use commercially reasonable efforts to negotiate a mutually acceptable successor arrangement and modify this Agreement, as necessary, to arrive at a mutually agreeable amendment that will provide a scheduling or other arrangement for the delivery of Energy from the Project to Buyer during the Delivery Term. Unless and until such mutually agreeable amendment is executed and effective, each of the Parties' obligations under this Agreement shall continue in full force and effect, including, but not limited to, the Parties' obligations under Section 4.5. Notwithstanding the foregoing, Seller shall not be required to incur Compliance Costs in excess of the Compliance Cost Cap specified in Section 3.1(p) in connection with material changes to EIRP.

(c) Scheduling

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 ninety (90) days before the beginning of the Test Period, 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, Interim Operation Period, and Delivery Term.

(ii) Buyer's Responsibilities as Scheduling Coordinator.

(A) During the Test Period, Interim Operation Period, and 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, all requirements of EIRP (if applicable), and protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff. In addition, during the Test Period, Buyer shall cause output from Seller's facility to be scheduled with the CAISO and settled at the real-time imbalance energy price.

(B) In the event that Seller reasonably requires Buyer to provide CAISO settlement data to Seller so that Seller may meet its obligations or validate any cost or charge incurred by Seller or revenue passed-through to Seller under this Agreement, Buyer shall provide the required data promptly upon request by Seller. Buyer shall cooperate with Seller to prosecute, if practicable, any reasonable dispute of a CAISO Charge, CAISO Revenue or CAISO Penalty allocated to Seller under this Agreement in accordance with the procedures set forth under the CAISO Tariff.

(C) Buyer as Scheduling Coordinator will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller's compliance with the NERC reliability standards referenced above. Buyer's cooperation will include providing to Seller, or such other Person as Seller designates in writing, information in Buyer's possession that Buyer as Scheduling Coordinator has provided to the CAISO related to the Generating Facility or actions that Buyer has taken as Scheduling Coordinator related to Seller's compliance with the NERC reliability standards referenced above (e.g., Seller's notices and updates provided by Buyer to the CAISO via SLIC). Buyer may, in its reasonable discretion (depending upon the quantity of information requested by Seller and the timeframe established by Seller for compliance), comply with the requirement to provide information set forth in the previous sentence, by making such information available for inspection by Seller or by providing responsive summaries or excerpts of same, so long as the foregoing enables Seller to comply with

the NERC reliability standards. In addition, Buyer may redact any information or data that is confidential to Buyer from materials or information to be supplied to Seller.

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include Project availability and updated status of photovoltaic panels, inverters, transformers, and any other equipment that may impact availability. Without limiting Section 4.5(c) of this Agreement, Seller shall use commercially reasonable efforts to forecast the capacity available from the Project ("Available Capacity") 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 Seller, Buyer, Third-Party SC (if applicable) and the CAISO, including but not limited to automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. 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 Available Capacity for an average day in each month of the following calendar year in a form reasonably acceptable to Buyer.

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

(C) Daily Forecast of Available Capacity. During each month of the Delivery Term, Seller or Seller's agent shall provide a non-binding day-ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") 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. As of the Execution Date, 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](http://www.wecc.biz)) under the document title, "Prescheduling Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. Seller shall promptly provide Buyer with Notice of any changes in Available Capacity. If the forecast of Available Capacity changes by one (1) MW or more after fourteen

(14) hours before the Preschedule Day, but before the CAISO deadline for submitting Day-Ahead Schedules, then Seller shall notify Buyer of such changes by telephone and shall send a revised notice to Buyer's internet site. Such notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

Day-Ahead Trading Desk  
Primary Telephone: 415.973.6222  
Backup Telephone: 415.973.4500

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Availability Notice submitted for the prior day, and Seller may be subject to the forecasting penalties in accordance with Section 4.5(c) of this Agreement.

(D) Hourly Forecast of Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in the forecast Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible and shall provide a revised forecast of Available Capacity 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. Available Capacity changes after this time, but before the CAISO deadline for Hour-Ahead Schedules, shall also be reported by Seller to Buyer. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, 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 update Available Capacity via SLIC, (II) provide a written estimate of the expected duration of such outage within one (1) hour after submittal of the initial notification pursuant to Section 3.4(c)(iii)(D)(I), and (III) submit an Outage Notification Form 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 Available Capacity shall be communicated by telephone to Buyer's Hour-Ahead Trading Desk (Primary Telephone: 415-973-4500) and shall be sent to Buyer's internet site.

(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) sixty (60) 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 Industry Practice.

(c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC, and CAISO reliability requirements, and CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities", if and to the extent applicable, and (ii) all applicable requirements regarding interconnection of the Project in accordance with the LGIA.

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 Delivered Energy 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 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 1<sup>st</sup> of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Notwithstanding the submission of the Outage Notification Form described in the previous sentence, Seller shall also submit a completed Outage Notification Form in accordance with the provisions set forth in Appendix IX 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 Industry Practice. 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 or foregone revenues. If Buyer agrees to pay the incremental costs or foregone revenues, 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 four (4) hours thereafter, and (iii) submit a completed Outage Notification Form to Buyer in accordance with the instructions in Appendix IX. Seller shall not substitute Energy from any other source for the output of the Project during a Forced Outage, other than any Energy Deviation supplied through the CAISO.

(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 the time at which an event of Force Majeure first prevents or delays performance under this Agreement, 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 date on which an event of Force Majeure first prevents or delays performance under this Agreement, 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 Delivered Energy 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 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 SDG&E upon request. If either Party receives information through CAISO or directly from SDG&E 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 use commercially reasonable efforts, subject to the Compliance Cost Cap in Section 3.1(p), 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. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator and shall at all times comply with Seller's safety and security requirements when on the Site as directed by Seller at the time of each Site visit. 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 Interconnection Service Provider, the CAISO, and the Transmission Owners 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 any 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 and comment (but not approval) 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 following the Effective 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) (A) within thirty (30) days of Buyer's receipt of the complete specifications for the Project provided pursuant to Section 3.9(a)(v), and (B) within fifteen (15) days of Buyer's receipt of any specification for changes in the Project provided pursuant to Section 3.9(a)(v), notify Seller in writing of the results of its review (if any) of the applicable drawings and specifications, including a description of any flaws perceived by Buyer in the design.

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

(c) Construction Milestones.

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

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

meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, then subsection (iv) below shall apply. If the missed Milestone(s) is not a Guaranteed Project Milestone, and so long as Seller complies with its obligations under Section 3.9(c)(i) and (ii), then Seller shall not be considered in default of its obligations under this Agreement.

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

(A) The Construction Start Date shall occur no later than June 1, 2011 (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) 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 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 Transmission Owners' transmission system and to complete all Electric System Upgrades needed, if any, in order to interconnect the Project to the Transmission Owners' transmission system on a timely basis, but fails to secure any necessary legally binding commitments for completion of needed upgrades and energization of new interconnection facilities by a date that is no later than 180 days after the Guaranteed Construction Start Date due to delays beyond Seller's reasonable control ("Transmission Delay"); provided that if Buyer exercises the Curtailment Option and Seller interconnects the Project to the Transmission Owners' transmission system under a Limited Operation Plan, then Seller may not claim any Transmission Delay extension days beyond the date on which the Project is so interconnected to the Transmission Owners' transmission system;

(III) five hundred forty (540) days if Seller has used commercially reasonable efforts to obtain construction financing for the Project on terms reasonably acceptable to Seller, but is unable to obtain such financing due to market conditions or other factors beyond Seller's reasonable control and has provided to Buyer documentation of its efforts and inability to obtain such financing, and an affidavit executed by an authorized signatory of Seller attesting that, in the signatory's good-faith belief, Seller used commercially reasonable efforts to obtain financing but was unable to secure it ("Financing Delay"); or

(IV) one hundred eighty (180) days in the event of Force Majeure ("Force Majeure Construction Extension") without regard to Financing Delay, 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.

(B) The Commercial Operation Date shall occur no later than December 1, 2014, (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), (II) subject to Section 3.9(c)(iii)(C), the Guaranteed Commercial Operation Date may be extended on a day

for day basis for up to five hundred forty (540) days if Seller has used commercially reasonable efforts to obtain physical interconnection of the Project but fails to obtain such interconnection within three (3) years prior to the Guaranteed Commercial Operation Date due to delays beyond Seller's reasonable control ("Interconnection Delay"); provided that, with respect to any particular day of delay in obtaining interconnection (and without limiting the effect of Section 3.9(c)(iii)(B)(I) above), Seller may not claim both an Interconnection Delay and a Transmission Delay, and if Buyer exercises the Curtailment Option and Seller interconnects the Project to the Transmission Owners' transmission system under a Limited Operation Plan, then Seller may not claim any Interconnection Delay extension days beyond the date on which the Project is so interconnected to the Transmission Owners' transmission system, (III) 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 plus the number of extension days claimed by Seller pursuant to a Force Majeure Construction Extension shall not exceed one hundred eighty (180) days, and (IV) the Guaranteed Commercial Operation Date will be extended day for day for every day of Daily Delay Damages paid by Seller for failure to meet the Guaranteed Construction Start Date.

(C) If Seller claims Permitting Delay, Transmission Delay, Interconnection Delay, Financing Delay, and Force Majeure Construction Extension, such extensions cannot cumulatively exceed five hundred forty (540) days and all such extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(iv) Failure to Meet Guaranteed Project Milestones.

(A) If Seller fails to meet the Guaranteed Commercial Operation Date or the Guaranteed Construction Start Date, as applicable, and no extensions pursuant to Section 3.9(c)(iii) have been claimed by Seller, Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of ninety (90) days ("Project Cure Period"); or (II) the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, up to a total of ninety (90) days ("Construction Cure Period"). Each Party agrees and acknowledges that the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone, would be difficult or impossible to predict with certainty, and the Daily Delay Damages are an appropriate approximation of such damages. Drawing upon the Project Development Security in the amount of such Daily Delay Damages shall be Buyer's sole and exclusive remedy during the Project Cure Period and the Construction Cure Period, respectively, for Seller's failure to meet the applicable Guaranteed Project Milestone. 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.

(B) If Seller has claimed an extension pursuant to Section 3.9(c)(iii) and Seller has failed to meet the Adjusted Guaranteed Construction Start Date or the Adjusted Guaranteed Commercial Operation Date, Seller must elect to either terminate this Agreement or be subject to Daily Delay Damages for each day or portion of a day that (I) the Commercial Operation Date occurs after the Adjusted Guaranteed Commercial Operation Date for up to a total of ninety (90) days ("Adjusted Project Cure Period"); or (II) the Construction Start Date occurs after the Adjusted Guaranteed Construction Start Date, as applicable, up to a total of ninety (90) days ("Adjusted Construction Cure Period"). Each Party agrees and acknowledges that the damages that Buyer would incur due to delay in achieving either

Guaranteed Project Milestone, would be difficult or impossible to predict with certainty, and the Daily Delay Damages are an appropriate approximation of such damages. Drawing upon the Project Development Security in the amount of such Daily Delay Damages shall be Buyer's sole and exclusive remedy during the Adjusted Project Cure Period and the Adjusted Construction Cure Period, respectively, for Seller's failure to meet the applicable Guaranteed Project Milestone. 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 Adjusted Guaranteed Construction Start Date, only if Seller meets the Adjusted Guaranteed Commercial Operation Date. If Seller elects to terminate this Agreement, Buyer shall return to Seller its Project Development Security less any amount previously paid in Daily Delay Damages, except if Seller's failure to meet its Guaranteed Project Milestone is due to a Permitting Delay or Financing Delay, in which case Seller shall forfeit the remaining Project Development Security. If Seller does not elect to terminate this Agreement, and is still unable to meet the applicable Guaranteed Project Milestone at the end of the Adjusted Project Cure Period or Adjusted Construction Cure Period, then Buyer may terminate this Agreement, and Buyer shall return to Seller its Project Development Security less any amount previously paid in Daily Delay Damages, except if Seller's failure to meet its Guaranteed Project Milestone is due to a Permitting Delay or Financing Delay, in which case Seller shall forfeit the remaining Project Development Security. If Seller elects to terminate this Agreement or Buyer terminates this Agreement after Seller is unable to meet the applicable Guaranteed Project Milestone at the end of the Adjusted Project Cure Period or Adjusted Construction Cure Period, Buyer shall have, pursuant to the terms of Appendix XIII, a right of first offer for the duration of the Exclusivity Period to purchase all output from the Project up to the Initial Contract Capacity. For purposes of this Section 3.9(c)(iv)(B), the Exclusivity Period shall be twenty-four (24) months from the date termination is effective (in the case where Seller has missed its Guaranteed Project Milestone due to a Permitting Delay, Transmission Delay, Interconnection Delay, or Financing Delay) or thirty-six (36) months from the date termination is effective (in the case where Seller has missed its Guaranteed Project Milestone due to Force Majeure).

(v) Partial Completion Daily Delay Damages.

If Seller meets the Guaranteed Commercial Operation Date or the Adjusted Guaranteed Commercial Operation Date, as applicable, but has not yet installed one hundred percent (100%) of Initial Contract Capacity, Seller may continue to install additional capacity for up to one hundred eighty (180) days ("Extended Installation Period"). For each day during the Extended Installation Period, Seller shall pay Partial Completion Daily Delay Damages equal to the product of (a) Daily Delay Damages, and (b) one (1) minus the ratio of installed Contract Capacity to Initial Contract Capacity, where installed Contract Capacity is equal to the capacity of the Project as of the Guaranteed Commercial Operation Date or the Adjusted Guaranteed Commercial Operation Date, as applicable.

(vi) Partial Completion Damages.

If, as of the Final Commercial Operation Date, the installed Contract Capacity is less than the Initial Contract Capacity, Seller shall forfeit the lesser of (A) the remaining undrawn Project Development Security, or (B) the product of (I) the Project Development Security posted pursuant to Section 8.4(a)(ii), and (II) one (1) minus the ratio of installed Contract Capacity to Initial Contract Capacity, where installed Contract Capacity is the capacity of the Project as of the Final Commercial Operation Date.

3.10 Execution of Phase PPAs

(a) Obligation to Execute Phase PPAs. Seller shall have the right to develop the Project in up to six (6) Phases. A "Phase" is a portion of the Project, as defined in this Agreement, consisting of not less than twenty (20) MW that is separately metered. Seller may, from time to time at any time prior to the Final Commercial Operation Date and until Phase PPAs (as defined below) for five (5) Phases, in addition to this Agreement, have been executed, provide Notice to Buyer that it intends to separately develop a Phase ("Phase Notice"). Each Phase Notice shall include:

(i) the "Contract Capacity" for the Phase, which shall be a portion of the Contract Capacity specified under this Agreement, and shall not be less than twenty (20) MW ("Phase Capacity");

(ii) a description of the "Site" on which such Phase shall be developed, which "Site" shall constitute a portion of the Site defined under this Agreement;

(iii) a description of the "Project" comprising the Phase, which "Project" shall constitute a portion of the Project defined under this Agreement;

(iv) the "Guaranteed Construction Start Date" for the Phase, provided that the "Guaranteed Construction Start Date" for the first Phase shall be no later than the Guaranteed Construction Start Date specified in this Agreement (as it may be extended);

(v) the "Guaranteed Commercial Operation Date" for the Phase, provided that the "Guaranteed Commercial Operation Date" shall be no later than the Guaranteed Commercial Operation Date specified in this Agreement (as it may be extended);

(vi) the "Contract Quantity" for the Phase, which shall be equal to the product of (A) the Contract Quantity under this Agreement, multiplied by (B) the "Phase Ratio," which means the quotient of (I) the Phase Capacity, divided by (II) the Contract Capacity under this Agreement;

(vii) the "Project Development Security" for the Phase, which shall be equal to the product of (A) the Project Development Security under this Agreement, multiplied by (B) the Phase Ratio;

(viii) the "Delivery Term Security" for the Phase, which shall be equal to the product of (A) the Delivery Term Security under this Agreement, multiplied by (B) the Phase Ratio;

(ix) the "Compliance Cost Cap" for the Phase, which shall be equal to the product of (A) the Compliance Cost Cap under this Agreement, multiplied by (B) the Phase Ratio; and

(x) the "Seller," which shall be an Affiliate of the Seller under this Agreement.

(b) Content of Phase PPA. Within sixty (60) days after Buyer's receipt of the Phase Notice, the Parties shall enter into a power purchase agreement governing the

development, construction, and operation of, and the sale of the output from, such Phase ("Phase PPA"). Each Phase PPA shall be identical to this Agreement, except that:

(i) the Phase PPA defined terms Contract Capacity, Site, Project, Guaranteed Construction Start Date, Guaranteed Commercial Operation Date, Contract Quantity, Project Development Security, Delivery Term Security, Compliance Cost Cap, and Seller, shall conform to the applicable values, descriptions, or dates provided in the Phase Notice;

(ii) Appendices III, IV, and XI to the Phase PPA shall be revised to reflect any Phase-specific Milestones, Project and Site descriptions, and contact information for provision of Notices;

(iii) the Phase PPA shall not include Section 3.10 of this Agreement;

(iv) the Phase PPA shall not include Section 4.1(b); and

(v) the Phase PPA may reflect any necessary non-substantive administrative or conforming changes.

(c) Adjustments to this Agreement. Concurrent with the execution of a Phase PPA, the Parties shall execute an amendment to this Agreement to:

(i) reduce Contract Capacity by an amount equal to the Phase Capacity;

(ii) reduce the Contract Quantity, Project Development Security, Delivery Term Security, and Compliance Cost Cap to equal the product of (A) the applicable value prior to execution of such Phase PPA, multiplied by (B) the difference of one (1), minus the Phase Ratio;

(iii) revise the description of the Site and the Project in Appendix IV of this Agreement to exclude that portion of the Site and the Project that is described in the Phase PPA;

(iv) revise the Milestones in Appendix III of this Agreement, if necessary; and

(v) revise the Guaranteed Construction Start Date specified in Section 3.9(c)(iii)(A) of this Agreement to be the date that is ninety (90) days prior to the Guaranteed Commercial Operation Date specified in Section 3.9(c)(iii)(B) of this Agreement.

(d) Notwithstanding anything herein to the contrary, if the Project is developed in Phases and the CAISO does not permit a Phase to have a single dedicated CAISO revenue meter, then the Parties shall cooperate in good faith to reach agreement on an adjustment of the terms of this Agreement, and of all Phase PPAs, including but not limited to Scheduling procedures and obligations, and procedures for addressing meter inaccuracies, to accommodate the use of non-CAISO sub-meters for each Phase, provided that Buyer shall not be required to bear costs or liabilities greater than those Buyer would have incurred in the absence of sub-metering, to accommodate such sub-metering, including but not limited to costs or liabilities caused by the administrative burden in reconciling deliveries from each Phase or disputes regarding PG&E's administration of sub-metering.

## ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

### 4.1 Contract Price and Adjustments.

(a) Contract Price. The Contract Price for each MWh of Delivered Energy shall be \$147.50/MWh until the first anniversary of the Initial Energy Delivery Date. On the first anniversary of the Initial Energy Delivery Date, and each anniversary thereafter, the Contract Price shall be revised to equal the value calculated in accordance with the following formula:

$$\text{Contract Price}_t = \text{Base Price} + \text{Floating Price}_t$$

Where:

Contract Price <sub>t</sub>	=	the Contract Price being calculated;
Base Price	=	\$137.175
Floating Price <sub>t</sub>	=	Floating Price <sub>t-1</sub> x (GDP-IPD <sub>t</sub> /GDP-IPD <sub>t-1</sub> )
Floating Price <sub>t-1</sub>	=	\$10.325 for the period prior to the first anniversary of the Initial Energy Delivery Date, and the Floating Price <sub>t</sub> in effect for the prior year thereafter;
GDP-IPD <sub>t</sub>	=	the most recent quarterly GDP-IPD as of the date the Contract Price is calculated;
GDP-IPD <sub>t-1</sub>	=	the most recent quarterly GDP-IPD as of the date the Contract Price for the prior year was calculated.

#### Example 1:

Most Recent Quarterly GDP IPD on the Initial Energy Delivery Date = GDP-IPD<sub>t-1</sub> = 130

Most Recent Quarterly GDP IPD on the first anniversary of the Initial Energy Delivery Date = GDP-IPD<sub>t</sub> = 134

Change in GDP IPD = (GDP-IPD<sub>t</sub>/GDP-IPD<sub>t-1</sub>) = (134/130) = 103.0769%

Floating Price<sub>t</sub> = \$10.325 (Floating Price<sub>t-1</sub>) \* 1.030769 (Change in GDP IPD) = \$10.6427

Contract Price<sub>t</sub> = \$137.175 (Base Price) + \$10.6427 (Floating Price<sub>t</sub>) = \$147.82

Contract Price<sub>t</sub> = \$147.82

#### Example 2:

Most Recent Quarterly GDP IPD on the first anniversary of the Initial Energy Delivery Date = GDP-IPD<sub>t</sub> = 134



Most Recent Quarterly GDP IPD on the second anniversary of the Initial Energy Delivery Date =  
 $GDP-IPD_t = 137$

Change in GDP IPD =  $(GDP-IPD_t / GDP-IPD_{t-1}) = (137/134) = 102.2388\%$

Floating Price<sub>t</sub> = \$10.6427 (Floating Price<sub>t-1</sub>) \* 1.022388 (Change in GDP IPD) = \$10.8809

Contract Price<sub>t</sub> = \$137.175 (Base Price) + 10.8809 (Floating Price<sub>t</sub>) = \$148.06

Contract Price<sub>t</sub> = \$148.06

(b) Contract Price Adjustment for Transmission Upgrade Costs. Seller shall be obligated to maintain at its sole expense the Interconnection Facilities, including metering facilities, for which Seller is responsible under the LGIA, but shall have no obligations, except as set forth in this Section 4.1(b), for Transmission Upgrades. Seller shall, prior to the later of July 31, 2009 or five (5) days after the Execution Date, submit an interconnection request with CAISO for the Initial Contract Capacity seeking Full Capacity Deliverability Status (as defined in the CAISO Tariff) for the Project. Seller shall forward to Buyer within three (3) Business Days of receipt from CAISO a copy of the Phase I Study (or such other study as provided by CAISO in response to Seller's interconnection request) prepared by CAISO in connection with the interconnection request. Within thirty (30) days after receiving the Phase I Study, Buyer shall provide Notice to Seller as to whether Buyer wishes to proceed with the Transmission Upgrades or abandon the Transmission Upgrades and accept that the Generating Facility may not qualify for Full Capacity Deliverability Status.

(i) If Buyer timely provides Notice that it wishes to proceed with the Transmission Upgrades and the CAISO's Phase I Study caps Seller's obligation for Transmission Upgrades at fifty million dollars (\$50,000,000) or less, (A) Seller shall (I) pursue the timely negotiation and execution of the LGIA and be obligated for all Transmission Upgrade costs pursuant to the LGIA and compliance with CAISO's requirements for pursuing the Transmission Upgrades, including posting any required security and funding of the Transmission Upgrades (II) waive confidentiality vis-à-vis Buyer with respect to communications with the CAISO and the Participating Transmission Owners regarding the Transmission Upgrades and negotiation of the LGIA and (III) promptly provide Buyer with copies of all material correspondence between or among the Seller, CAISO and the Participating Transmission Owners related to the Transmission Upgrades and the negotiation of the LGIA; (B) within fifteen (15) days of the date on which Seller and its Affiliates under this Agreement, or under one or more Phase PPAs, if any, achieve Commercial Operation, in the aggregate, of at least one hundred forty-five (145) MW, Seller shall (I) take all necessary actions, including compliance with all applicable provisions of the CAISO Tariff and the LGIA, to assign irrevocably (subject only to Buyer's compliance with its obligations under this Section 4.1(b)) to Buyer the rights to repayment of any and all refunds or credits by the CAISO or the Participating Transmission Owners performing the Transmission Upgrades to which Seller would be entitled absent assignment to PG&E and deliver to Buyer documentation demonstrating to Buyer's reasonable satisfaction that Seller has assigned to Buyer the repayment rights for Transmission Upgrades pursuant to this subsection 4.1(b)(i)(B)(I); and (II) invoice Buyer (invoice shall include documentation of all costs and expenses), for the following costs and expenses incurred by Seller in connection with the interconnection request and pursuit of the Transmission Upgrades: (1) the interconnection request application fee, (2) the cost of any security posted, such as Letter of Credit fees and Cash Collateralization Costs, (3) the funds provided to CAISO or a Participating Transmission Owner for the costs of the Transmission Upgrades, and (4) any other reasonable

direct costs incurred by Seller to advance the LGIP process and respond to the Phase II Study, (such costs and expenses, collectively, the "Transmission Upgrades Costs"), plus interest on the monthly cumulative balance of Transmission Upgrade Costs (not including Cash Collateralization Costs) at a monthly rate equal to 0.9167%; (C) Upon receipt of Seller's Notice, and upon compliance by Seller with Section 4.1(b)(i)(B)(I), Buyer shall pay all amounts that are due under this Section 4.1(b) (provided that Buyer reserves the right to dispute Seller's compliance with this Section 4.1(b) and withhold associated disputed amounts pursuant to Section 6.2) to Seller within thirty (30) days; (D) Seller shall invoice Buyer monthly, and Buyer shall pay within fifteen (15) days of receiving Seller's invoice, for any continuing Transmission Upgrade Costs that are due under this Section 4.1(b) (provided that Buyer reserves the right to dispute Seller's compliance with this Section 4.1(b) and withhold associated disputed amounts pursuant to Section 6.2). For clarity, if Seller and its Affiliates under this Agreement, or under one or more Phase PPAs, if any, do not achieve Commercial Operation, in the aggregate, of at least one hundred forty-five (145) MW, Buyer shall have no obligations with respect to pursuit of, or payment of any costs and expenses related to, Transmission Upgrades.

(ii) If Buyer timely provides Notice to Seller that it does not wish to proceed with the Transmission Upgrades, (A) within fifteen (15) days of such Notice Seller shall invoice Buyer, and Buyer shall pay to Seller within fifteen (15) days of receipt of the invoice, for reimbursement of the interconnection request application fee (provided that Buyer reserves the right to dispute Seller's compliance with this Section 4.1(b) and withhold associated disputed amounts pursuant to Section 6.2); (B) Seller shall abandon all activities related to pursuing the Transmission Upgrades and inform CAISO that CAISO should abandon all activities related to pursuing the Transmission Upgrades; and (C) Buyer accepts that the Generating Facility may not qualify for Full Capacity Deliverability Status.

(iii) If Buyer timely provides Notice that it wishes to proceed with the Transmission Upgrades and Seller's obligation for Transmission Upgrades in CAISO's Phase I Study exceeds fifty million dollars (\$50,000,000), Seller and Buyer shall negotiate in good faith to establish a mechanism that allows PG&E to directly fund any required security and other costs and pursue at its direct expense such Transmission Upgrades. If Seller and Buyer are unable to agree within twenty-five (25) days of receiving Buyer's Notice, (A) Seller shall abandon all activities related to pursuing the Transmission Upgrades and inform CAISO that CAISO should abandon all activities related to pursuing the Transmission Upgrades; (B) Seller shall invoice Buyer, and Buyer shall pay to Seller within fifteen (15) days of receipt of the invoice, for reimbursement of the interconnection request application fee (provided that Buyer reserves the right to dispute Seller's compliance with this Section 4.1(b) and withhold associated disputed amounts pursuant to Section 6.2); and (C) Buyer accepts that the Generating Facility may not qualify for Full Capacity Deliverability Status.

(iv) If at any time Seller determines, or reasonably expects, that the installed Capacity of the Project as of the Final Commercial Operation Date will be less than the Initial Contract Capacity Seller shall (A) promptly notify Buyer; (B) use commercially reasonable efforts to minimize the obligation to fund any Transmission Upgrades that Buyer has elected to pursue under this Section 4.1(b); and (C) promptly provide Buyer with copies of all material correspondence between or among the Seller, CAISO and the Participating Transmission Owners related to the Transmission Upgrades and Seller's efforts to reduce the obligation to fund the Transmission Upgrades resulting from the smaller installed capacity.

(v) Seller shall request, and in good faith pursue, direct funding or reimbursement from the Participating Transmission Owners for the Transmission Upgrades.

Seller shall provide to Buyer all material correspondence between Seller and the Participating Transmission Owners in this respect. Any direct funding by the Participating Transmission Owners (in part or in whole) shall have the effect of reducing Buyer's obligation to reimburse Seller as provided above by reducing the costs that Seller incurs, and any reimbursement from the Participating Transmission Owners would be assigned to Buyer as a refund pursuant to Section 4.1(b)(i)(B)(I).

(vi) If for any reason, other than as a result of the fault or negligence of Buyer, Buyer does not obtain in a timely manner from the refunding entity repayment of any of the refunds or credits to which it becomes entitled pursuant to Seller's assignment under Section 4.1(b)(i)(B)(I) ("Unrecovered Refunds"), Buyer shall have the right to withhold from each of Seller's monthly invoices issued under Section 6.1 an amount not to exceed eight hundred thirty thousand dollars (\$830,000) until Buyer is made whole for the entire amount of its Unrecovered Refunds provided that (A) Buyer provides Seller Notice ninety (90) days in advance of withholding any payments pursuant to this section; (B) Buyer and Seller shall pursue all reasonable means for recovering from the refunding entity the Unrecovered Refunds; and (C) Buyer shall promptly notify Seller and pay to Seller any portion of the Unrecovered Funds obtained from the refunding entity subsequent to Buyer withholding such amounts from payments to Seller.

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

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

<b>TOD FACTORS FOR EACH TOD PERIOD</b>			
<b>Period</b>	<b>1. Super-Peak</b>	<b>2. Shoulder</b>	<b>3. Night</b>
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:

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

4.4 Excess Delivered Energy. In any Contract Year, if Seller delivers Delivered Energy in excess of 120 percent (120%) of the annual Contract Quantity amount, the Contract Price for such Energy in excess of 120 percent (120%) of Contract Quantity shall be adjusted to be 75 percent (75%) of the applicable Contract Price.

4.5 CAISO Charges.

(a) Subject to Section 4.5(b) and (c), 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, in accordance with the CAISO Tariff, for violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders, 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, provided that, if Seller fails to comply with all applicable outage reporting and outage notification procedures required under this Agreement, then Seller shall be responsible for all CAISO expenses, costs, and charges incurred by Buyer that result from such failure, and Buyer shall pass through to Seller such CAISO expenses, costs, and charges 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. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. 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 Delivered Energy.

(c) Forecasting Penalties.

(i) In the event (A)(I) Seller does not comply with its obligations under Section 3.1(m), or (II) Seller fails to provide the availability forecasts required in Section 3.4(c)(iii), and (B) the sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

(ii) Performance Tolerance Band. The Performance Tolerance Band is the greater of (A) one (1) MW multiplied by one (1) hour, or (B) three (3) percent multiplied by Contract Capacity or Revised Contract Capacity multiplied by one (1) hour.

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to one hundred fifty percent (150%) of the Contract Price for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.5(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of 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) or CAISO Revenues associated with Test Energy as contemplated in Section 4.6.

**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) 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, and such Party does not fully mitigate the adverse consequences of such false or misleading representation or warranty to the other Party within thirty (30) days after written Notice thereof; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.2(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b) shall not be an Event of Default if Seller uses commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading;

(iii) the failure in any material respect to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or except to the extent that an express remedy is provided in this Agreement), if such failure is not remedied within thirty (30) days after Notice (provided that if the remedy may not be effected within such thirty (30) day period and the non-performing party uses reasonable efforts to effect such remedy within ninety (90) days after Notice, then the cure period pursuant to this Section 5.1(a)(iii) shall be ninety (90) 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;

(ii) Seller delivers less than sixty percent (60%) of the Contract Quantity in any consecutive twenty-four (24) month period for reasons other than an event of Force Majeure. For purposes of this subsection Contract Quantity shall be the average of the Contract Quantities for each Contract Year fully or partly within the twenty-four (24) month period;

(iii) failure by Seller to meet either of the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date, provided that Seller has not claimed any of

the extensions set forth in Section 3.9(c)(iii), in each case after the applicable Project Cure Period or Construction Cure Period has expired;

(iv) failure to achieve the Guaranteed Energy Production requirement as set forth in Section 3.1(e) of this Agreement; or

(v) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement, if such failure is not remedied within five (5) days after Notice.

5.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date"), (b) to accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date and collect liquidated damages ("Termination Payment"), which shall be calculated in accordance with Section 5.3 below; (c) withhold any payments due to the Defaulting Party under this Agreement; (d) suspend performance; and (e) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. 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. Subject to the Non-Defaulting Party's rights under this Agreement of acceleration, termination, withholding, suspension and set-off, the foregoing shall not relieve the Non-Defaulting Party of its obligation to pay for performance rendered prior to termination. 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 Early Termination Without Damages. If Seller fails to deliver at least thirty percent (30%) of sum of the Contract Quantities in any two (2) consecutive Contract Years as a result of a Force Majeure event, either Party may terminate this Agreement upon sixty (60) days Notice. Termination under this Section 5.6 shall be without liability of Seller to Buyer for such failure to deliver provided Seller has met its obligations under Section 1.83 of this Agreement to take all reasonable precautions and measures to in order to prevent, avoid or mitigate the effect of such Force Majeure event. If either Party terminates this Agreement under this Section 5.6, Buyer shall have, pursuant to the terms of Appendix XIII, a right of first offer for the duration of the Exclusivity Period to purchase all output from the Project, up to the Initial Contract Capacity. For purposes of this Section 5.6, the Exclusivity Period shall be thirty-six (36) months from the date termination is effective.

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

## ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10<sup>th</sup>) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of meter 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, and (b) 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, Sections 4.6 and 4.7. Buyer shall pay the undisputed amount of such invoices less the amount of any Forecasting Penalties (as applicable), on or before the later of the twenty-fifth (25<sup>th</sup>) day of each month and fifteen (15) days after receipt of the invoice. If the 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. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE

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

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

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

8.2 Seller Financial Information. The applicable financial information shall be provided as specified 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 audited consolidated financial statements for such fiscal year, provided that, if Seller does not prepare audited financial statements, Seller shall provide unaudited financial statements, 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 audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of 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 present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under 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 agrees to deliver to Buyer 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 subsection (a)(i) in the amount of Eight Hundred Seventy Thousand Dollars (\$870,000) and in the form of cash or Letter of Credit from the Execution Date of this Agreement until Seller posts Project Development Security pursuant to subsection (a)(ii) below with Buyer;

(ii) Project Development Security pursuant to this subsection (a)(ii) in the amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000) and in the form of cash or Letter of Credit from a date not later than twenty-five (25) days following the date on which all of the Conditions Precedent set forth in Article Eleven are either satisfied or waived until Seller posts Delivery Term Security pursuant to subsection (a)(iii) below with Buyer; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to subsection (a)(i) toward the Project Development Security posted pursuant to this subsection (a)(ii); and

(iii) Delivery Term Security pursuant to this subsection (a)(iii) in the amount of Eighty-Eight Million Dollars (\$88,000,000) and in the form of cash, Letter of Credit or Guarantee from the Final Commercial Operation Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to subsection (a)(ii) toward the Delivery Term Security posted pursuant to this subsection (a)(iii). Upon establishment of a Revised Contract Capacity pursuant to Section 3.1(g), the Delivery Term Security shall be revised to equal the product of (A) the original Delivery Term Security, and (B)

the quotient of (I) the average of the revised Contract Quantities specified by Seller in its Notice delivered pursuant to Section 3.1(e)(i), divided by (II) the average of the original Contract Quantities in effect prior to such Notice. If the Initial Contract Capacity under this Agreement is greater than fifty (50) MW then, subject to the next sentence, Seller shall post the pro rata portion (based on the ratio of 50 MW to the Initial Contract Capacity) of the Delivery Term Security ("Interim Pro-Rata DTS") as each 50 MW increment of capacity is installed. If, after using commercially reasonable efforts, Seller is unable to post the Interim Pro-Rata DTS, Seller shall instruct Buyer to withhold thirty-five percent (35%) of the monthly revenues due to Seller under this Agreement to be held as cash security (subject to Section 8.4(d)) until Seller either posts the Interim Pro-Rata DTS or the amount withheld by Buyer equals the Interim Pro-Rata DTS, and Seller shall post the remaining required amount of Delivery Term Security on or before the Final Commercial Operation Date.

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

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security posted by Seller for Daily Delay Damages until such time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security to the extent of 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).

(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 within fourteen (14) days 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, any Termination Payment, indemnification payments related to an event for which Buyer sought indemnification

prior to the date specified in subpart (i) above, or other damages asserted prior to the date specified in subpart (i) above are paid or otherwise resolved in full (whether directly or indirectly such as through set-off or netting).

#### 8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit (x) fails to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P, (y) indicates its intent not to renew such Letter of Credit, or (z) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall (A) provide a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or (B) post cash in each case in an amount equal to the outstanding Letter of Credit within five (5) Business Days after Buyer receives Notice of such refusal ("Cure"), as applicable.

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

10.2 Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(c) The term "commercially reasonable efforts" as used in Section 10.2(b) of this Agreement shall not require Seller to incur Compliance Costs in excess of the Compliance Cost Cap.

(d) Seller warrants that the Project shall be electrically within the metered boundaries of the CAISO balancing authority area as of the Initial Energy Delivery Date.

### 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 to apply towards meeting its Resource Adequacy Requirements;

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

(iii) Seller covenants that it shall comply with all Interconnection Service Provider tariff requirements applicable to an Interconnection Customer (as defined in the Interconnection Service Provider 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; and

(iv) Seller covenants that it shall obtain certification of the Project as a Participating Intermittent Resource as soon as practicable after the Initial Energy Delivery Date.

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

10.5 Indemnities.

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

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

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

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

10.6 Assignment.

(a) General Assignment. Except as provided in Section 10.6(b), 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.

(b) Assignment to Financing Providers. Seller shall have the right to assign this Agreement as collateral for any financing or refinancing of the Project. Upon request, Buyer shall enter into a consent to assignment with the financing provider, which consent to assignment shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix XII, as may be modified to reflect the reasonable requests of the financing provider.



(c) Assignment in Connection with a Change in Control. Any direct 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.

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

#### 10.7 Confidentiality.

Confidentiality Applicable

If not checked, this Section 10.7 is inapplicable.

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 (i) the Party's employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 10.8 of this Agreement; (v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC. In connection with requests made pursuant to clause (v) of this Section 10.7 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

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

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly

and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10. Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage.

(a) Workers' Compensation and Employers' Liability.

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

(ii) Employers' Liability limits as follows:

Bodily Injury by accident	\$1,000,000	each accident
Bodily Injury by disease	\$1,000,000	policy limit
Bodily Injury by disease	\$1,000,000	each employee

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the standard Insurance Services Office Commercial General Liability Coverage "occurrence" form.

(ii) The limit shall not be less than \$5,000,000 (\$10,000,000 for Seller's EPC Subcontractors) each occurrence and in the aggregate for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall erode the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) Coverage shall:

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

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

(C) include a severability of interest clause.

(c) Business Auto.

(i) Coverage shall be at least as broad as the standard Insurance Services Office Business Auto Coverage form covering Automobile Liability on a "Hired and Non-owned" basis.

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

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

(d) Aircraft Liability.

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

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

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of Work performed by or for the Seller;

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

(e) Watercraft Liability.

(i) If the scope of Work involves watercraft, Marine protection and indemnity or other liability coverage, including coverage for injury sustained by any passenger, apply to all watercraft used in the performance of this Agreement.

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

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work by or for the Seller;

(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.

(f) Seller's Pollution Liability.

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

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

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

(g) All Risk Property Insurance.

(i) An All Risk Property insurance policy including earthquake and flood shall be maintained no later than the Construction Start Date and continuing during the course of Work being performed and include start-up and testing for installed equipment. Such policy shall include coverage for materials and equipment while under the care, custody and control of the Seller during the course of Work, at the Site, offsite or while in transit to the Site.

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

(h) Intentionally Deleted.

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

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

(iv) Reviews of such insurance may be conducted by PG&E on an annual basis and, in addition, PG&E may inspect the certificate of insurance evidencing compliance with the insurance terms required by this Agreement.

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

(vi) The insurance carrier or carriers shall be (A) licensed in the state(s) in which Seller is performing the work, and (B) carry a Best's Insurance Guide rating of "A" or better.

(j) Form And Content.

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

(A) waive any right of subrogation of the insurers hereunder against PG&E, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy. This Waiver of Subrogation provision applies only to damages arising out of the Seller's negligence, and not Buyer's negligence; and

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

10.11 Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Buyer will 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 financial statements and notes to financial statements; and

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

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

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

10.13 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights

enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing an original document. This Agreement shall be binding on each Party's successors and permitted assigns.

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 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

10.17 Survival. Without limiting any other provision of this Agreement, upon termination of this Agreement pursuant to Sections 3.9(c)(iv)(B), or 5.6, neither Party shall have any obligation or liability to the other Party except as provided in Sections 3.9(c)(iv)(B), 5.6, Article Twelve, and Appendix XIII, which shall survive termination of this Agreement as provided therein.

## ARTICLE ELEVEN: CONDITIONS PRECEDENT

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

- (a) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;
- (b) CPUC Approval has been obtained; and
- (c) Buyer receives a final and non-appealable order of the CPUC that finds that Buyer's entry into this Agreement is reasonable and that payments to be made by Buyer

hereunder are recoverable in rates (such occurrences in subsections (a) through (c) shall be referred to collectively as "Conditions Precedent").

Buyer shall make commercially reasonable efforts to submit this Agreement to the CPUC with appropriate request for CPUC Approval within forty-five (45) days after the Execution Date, but in no event shall Buyer submit this Agreement later than ninety (90) days after the Execution Date.

11.2 Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied or waived in writing by both Parties on or before two hundred forty (240) days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party, which Notice must be received on or before two hundred seventy (270) days from the date on which Buyer files this Agreement for CPUC Approval. Neither Party shall have any obligation or liability to the other, including for a Termination Payment, by reason of such termination, and Buyer shall promptly return the Project Development Security to Seller consistent with this Agreement. Upon the satisfaction or waiver of all Conditions Precedent, the Parties agree to provide a reasonable acknowledgement of same to the other Party if so requested.

## ARTICLE TWELVE: DISPUTE RESOLUTION

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

### 12.2 Management Negotiations.

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

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**Agreement Execution**

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

**AGUA CALIENTE SOLAR, LLC, a Delaware  
limited liability company**

**PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation**

Signature: Frank De Rosa  
Name: Frank De Rosa  
Title: CEO  
Date: 9/8/09

Signature: [Handwritten Signature]  
Name: Ray M. Kva  
Title: V.P. Energy Supply Management  
Date: 9/8/09

**APPENDIX I**

**FORM OF LETTER OF CREDIT**

**ISSUING BANK LETTERHEAD ADDRESS**

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

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

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

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

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

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

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

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

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

AND

- 2. Beneficiary's signed statement certifying:

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

OR

"This Letter of Credit will expire in thirty (30) days or less and Account Party has not provided alternate security in accordance with the terms of the Agreement."

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

Special Conditions:

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

We hereby engage with you that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored if drawn and presented for payment at any time before the close of business [INSERT TIME] at our counters located at [INSERT ADDRESS] on or before the Expiration Date or in the event of Force Majeure, as defined under Article 36 of the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 ("UCP"), that interrupts our business, within fifteen (15) days after resumption of our business, whichever is later.

Except as otherwise stated herein, this credit is subject to the UCP and, with respect to matters not so covered, this Letter of Credit is subject to and governed by the Laws of the State of New York.

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

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

**APPENDIX II**

**INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER**

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

Seller represents to Buyer that it has been granted status as an [Exempt Wholesale Generator] [Qualifying Facility]. Additionally Seller provides the following FERC Tariff information for reference purposes only:

Tariff:                      Dated:                      Docket Number:

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

**[SELLER]**

**PACIFIC GAS AND ELECTRIC COMPANY**

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

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

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

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

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

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

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

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

**APPENDIX III**

**MILESTONES SCHEDULE**

<b>Identify Milestone</b>	<b>Date for Completion</b>
Obtain Site Control	September 2008
File Special Use Permit (SUP) Application with Yuma County	June 1, 2009
File Certificate of Environmental Compatibility (CEC) Permit Application with the Arizona Corporation Commission (ACC)	July 1, 2009
Property Escrow Closing	December 31, 2009
Obtain SUP from Yuma County and Certificate from the ACC	September 2010
Close Construction Financing	February 1, 2011
Guaranteed Construction Start Date	June 1, 2011
Interconnection Facilities Complete (Energization and BackFeed Power Available)	December 1, 2011
Guaranteed Commercial Operation Date	December 1, 2014

## **APPENDIX IV**

### **PROJECT AND SITE DESCRIPTION**

#### **PROJECT DESCRIPTION**

Project name: Agua Caliente Solar Project

Project Site name: Agua Caliente Solar Project Site

Project physical address: Whitewing Ranch, north of Palomas Road at Ave 66E, Roll,  
AZ 85347

Technology Type: solar photovoltaic

Substation: APS Q43 500kV Switchyard

The term "Site" as defined in the Agreement means the parcel upon which the Project is located as set forth in the legal description attached hereto.

The Initial Contract Capacity of the Project is 290 MW net AC.

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

The photovoltaic modules, supports, inverters, transformers, and other balance of system occupying the Project site.

**Attachment 1 to Appendix IV  
LEGAL DESCRIPTION**

**The South half of the West half of the West half of Section 16, Township 5 South, Range 12 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;**

**EXCEPT 1/16<sup>th</sup> of all oil, gases and other hydrocarbon substances, coal, stone, metals, fossils and fertilizer of every name and description and except all minerals which may be essential to the production of fissionable materials as reserved in Arizona Revised Statutes, as set forth in Patents recorded in Docket 1132, pages 603 and 605, records of Yuma County, Arizona; and**

**FURTHER EXCEPT 75% of all remaining oil, gas, metals and mineral rights and 25% of all geothermal resources as reserved in instrument recorded in Docket 1113, page 543, records of Yuma County, Arizona; and**

**FURTHER EXCEPTING there from all remaining oil, gas, hydrocarbons and all other minerals as conveyed in instrument recorded in Document No. 1997-29125, records of Yuma County, Arizona.**

**The south half of the East half; and  
The south half of the East half of the West half of Section 16, Township 5 South, Range 12 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;**

**EXCEPT 1/16<sup>th</sup> of all oil, gases and other hydrocarbon substances, coal, stone, metals, fossils and fertilizer of every name and description and except all minerals which may be essential to the production of fissionable materials as reserved in Arizona Revised Statutes, as set forth in Patents recorded in Docket 1132, pages 603; 605; 635 and 637, records of Yuma County, Arizona; and**

**FURTHER EXCEPT 75% of all remaining oil, gas, metals and mineral rights and 25% of all geothermal resources as reserved in instrument recorded in Docket 1113, page 543, records of Yuma County, Arizona; and**

**FURTHER EXCEPTING therefrom all remaining oil, gas, hydrocarbons and all other minerals as conveyed in instrument recorded in Document No. 1997-29125, records of Yuma County, Arizona.**

**The East half of the West half of Section 21, Township 5 South, Range 12 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;**

**EXCEPT 1/16<sup>th</sup> of all oil, gases and other hydrocarbon substances, coal, stone, metals, fossils and fertilizer of every name and description and except all minerals which may be essential to the production of fissionable materials as reserved in Arizona Revised Statutes, as set forth in Patents recorded in Docket 1132, pages 609 and 639, records of Yuma County, Arizona ; and**

**FURTHER EXCEPT 75% of all remaining oil, gas, metals and mineral rights and 25% of all geothermal resources as reserved in instrument recorded in Docket 1113, page 543,**



**records of Yuma County, Arizona; and**

**FURTHER EXCEPTING** therefrom all remaining oil, gas, hydrocarbons and all other minerals as conveyed in instrument recorded in Document No. 1997-29125, records of Yuma County, Arizona.

**The West half of the West half of Section 21, Township 5 South, Range 12 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;**

**EXCEPT 1/16<sup>th</sup>** of all oil, gases and other hydrocarbon substances, coal, stone, metals, fossils and fertilizer of every name and description and except all minerals which may be essential to the production of fissionable materials as reserved in Arizona Revised Statutes; as set forth in Patents recorded in Docket 1132, pages 609 and 639, records of Yuma County, Arizona; and

**FURTHER EXCEPT 75%** of all remaining oil, gas, metals and mineral rights and 25% of all geothermal resources as reserved in instrument recorded in Docket 1113, page 543, records of Yuma County, Arizona; and

**FURTHER EXCEPTING** therefrom all remaining oil, gas, hydrocarbons and all other minerals as conveyed in instrument recorded in Document No. 1997-29125, records of Yuma County, Arizona.

**The Northeast quarter; and**

**The Southeast quarter of Section 21, Township 5 South, Range 12 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;**

**EXCEPT 1/16<sup>th</sup>** of all oil, gases and other hydrocarbon substances, coal, stone, metals, fossils and fertilizer of every name and description and except all minerals which may be essential to the production of fissionable materials as reserved in Arizona Revised Statutes, as set forth in Patents recorded in Docket 1132, pages 607 and 641, records of Yuma County, Arizona; and

**FURTHER EXCEPT 75%** of all remaining oil, gas, metals and mineral rights and 25% of all geothermal resources as reserved in instrument recorded in Docket 1113, page 543, records of Yuma County, Arizona; and

**FURTHER EXCEPTING** therefrom all remaining oil, gas, hydrocarbons and all other minerals as conveyed in instrument recorded in Document No. 1997-29125, records of Yuma County, Arizona.

**The West half; and**

**The West half of the East half of Section 22, Township 5 South, Range 12 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;**

**EXCEPT 1/16<sup>th</sup>** of all oil, gases and other hydrocarbon substances, coal, stone, metals, fossils and fertilizer of every name and description and except all minerals which may be essential to the production of fissionable materials as reserved in Arizona Revised Statutes,

**as set forth in Patents recorded in Docket 1132, pages 611; 643 and 645, records of Yuma County, Arizona; and**

**FURTHER EXCEPT 75% of all remaining oil, gas, metals and mineral rights and 25% of all geothermal resources as reserved in instrument recorded in Docket 1113, page 543, records of Yuma County, Arizona; and**

**FURTHER EXCEPTING therefrom all remaining oil, gas, hydrocarbons and all other minerals as conveyed in instrument recorded in Document No. 1997-29125, records of Yuma County, Arizona.**

**All of Section 27, Township 5 South, Range 12 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona.**

**EXCEPT the East 33 feet thereof; and**

**FURTHER EXCEPT that portion of said section designated as railroad right of way and described in State of Arizona Patent No. 1014; and**

**EXCEPT 1/16<sup>th</sup> of all oil, gases and other hydrocarbon substances, coal, stone, metals, fossils and fertilizer of every name and description and except all minerals which may be essential to the production of fissionable materials as reserved in Arizona Revised Statutes, as set forth in Patents recorded in Docket 1132, pages 613; 615; 647 and 649, records of Yuma County, Arizona; and**

**FURTHER EXCEPT 75% of all remaining oil, gas, metals and mineral rights and 25% of all geothermal resources as reserved in instrument recorded in Docket 1113, page 543, records of Yuma County, Arizona; and**

**FURTHER EXCEPTING therefrom all remaining oil, gas, hydrocarbons and all other minerals as conveyed in instrument recorded in Document No. 1997-29125, records of Yuma County, Arizona.**

**The East half of the East half of Section 28, Township 5 South, Range 12 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;**

**EXCEPT 1/16<sup>th</sup> of all oil, gases and other hydrocarbon substances, coal, stone, metals, fossils and fertilizer of every name and description and except all minerals which may be essential to the production of fissionable materials as reserved in Arizona Revised Statutes, as set forth in Patent recorded in Docket 1132, page 617, records of Yuma County, Arizona; and**

**FURTHER EXCEPT 75% of all remaining oil, gas, metals and mineral rights and 25% of all geothermal resources as reserved in instrument recorded in Docket 1113, page 543, records of Yuma County, Arizona; and**

**FURTHER EXCEPTING therefrom all remaining oil, gas, hydrocarbons and all other minerals as conveyed in instrument recorded in Document No. 1997-29125, records of Yuma County, Arizona.**

**All of Section 34, Township 5 South, Range 12 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;**

**EXCEPT that portion of said section designated as railroad right of way and described in State of Arizona Patent No. 1014; and**

**FURTHER EXCEPT that portion of Section 34 lying Southeasterly of the following described strip of land:**

**A strip of land occupied by an existing paved road and having a width of 30.00 feet lying 15.00 feet on each side of the following described centerline:**

**BEGINNING at the West quarter corner of said Section 34;**

**Thence North 54° 38' 08" East 368.54 feet to the beginning of a curve to the right having a radius of 6350.00 feet;**

**Thence Easterly along said curve through a central angle of 07 ° 39' 53" an arc length of 849.46 feet;**

**Thence North 62° 18' 01" East 3619.28 feet to the beginning of a curve to the right having a radius of 2350.00 feet;**

**Thence Easterly along last said curve through a central angle of 10 ° 03' 59" an arc length of 412.88 feet to a point of reverse curve to the left having a radius of 1140.00 feet;**

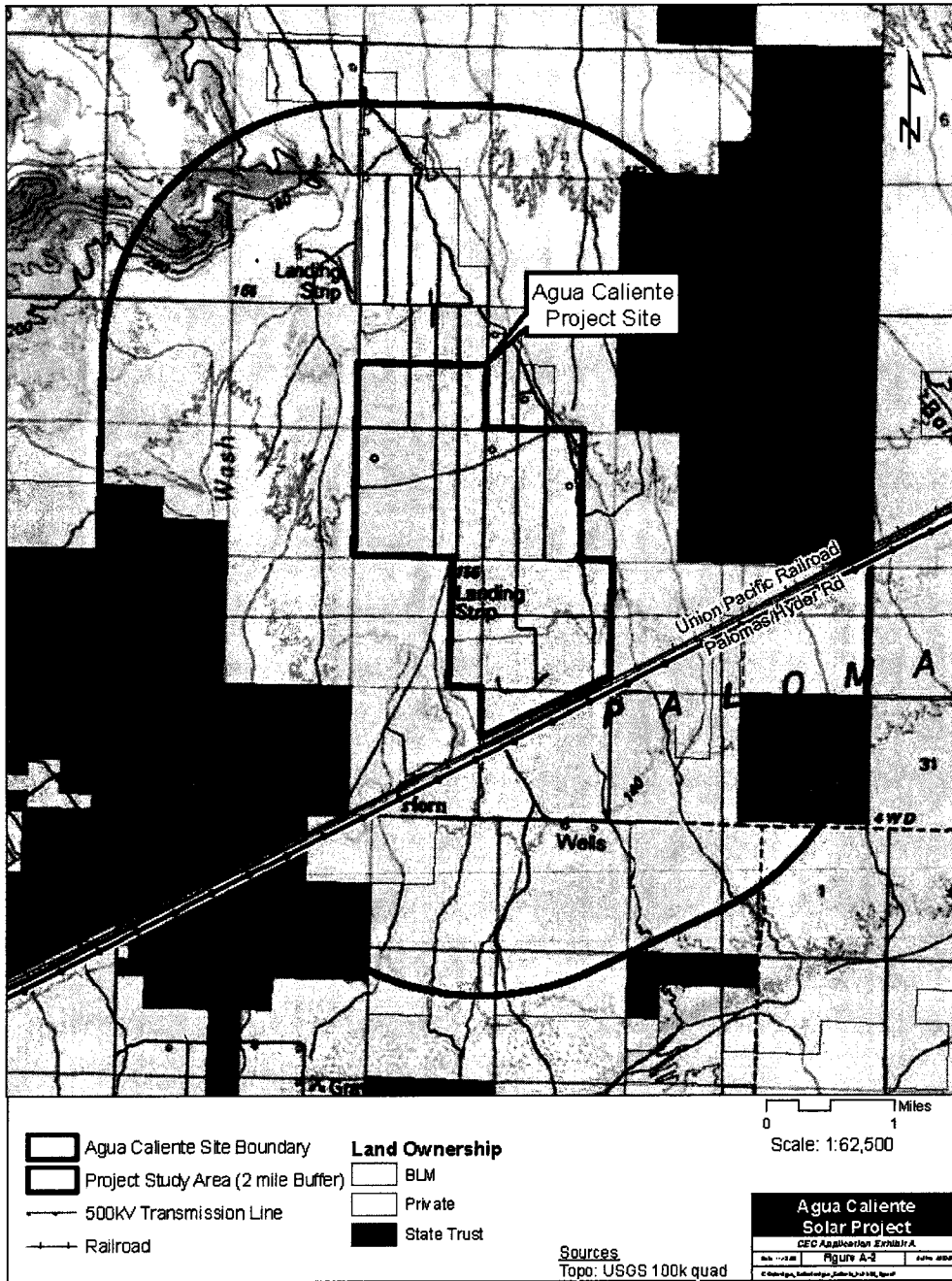
**Thence Easterly along last said curve through a central angle of 09° 45' 38" an arc length of 194.21 feet;**

**Thence North 62° 36' 22" East 182.35 feet to a point on the North line of the Northeast quarter of said Section 34 and the terminus of the herein described centerline, said point bears South 89° 57' 22" West 327.14 feet from the Northeast corner of said Section 34 (the sidelines of the above described strip of land lengthen or shorten to terminate at the North line and the West line of said Section 34);**

**EXCEPT 1/16<sup>th</sup> of all oil, gases and other hydrocarbon substances, coal, stone, metals, fossils and fertilizer of every name and description and except all minerals which may be essential to the production of fissionable materials as reserved in Arizona Revised Statutes, as set forth in Patents recorded in Docket 1132, page 651; and in Docket 1148, page 368, records of Yuma County, Arizona; and**

**FURTHER EXCEPT 75% of all remaining oil, gas, metals and mineral rights and 25% of all geothermal resources as reserved in instrument recorded in Docket 1113, page 543, records of Yuma County, Arizona; and**

**FURTHER EXCEPTING therefrom all remaining oil, gas, hydrocarbons and all other minerals as conveyed in instrument recorded in Document No. 1997-29125, records of Yuma County, Arizona.**



revised to equal the product of (A) the original Delivery Term Security, and (B) the quotient of (I) the average of the revised Contract Quantities specified by Seller in its Notice delivered pursuant to Section 3.1(e)(i), divided by (II) the average of the original Contract Quantities in effect prior to such Notice. If the Initial Contract Capacity under this Agreement is greater than fifty (50) MW then, subject to the next sentence, Seller shall post the pro rata portion (based on the ratio of 50 MW to the Initial Contract Capacity) of the Delivery Term Security ("Interim Pro-Rata DTS") as each 50 MW increment of capacity is installed. If, after using commercially reasonable efforts, Seller is unable to post the Interim Pro-Rata DTS, Seller shall instruct Buyer to withhold thirty-five percent (35%) of the monthly revenues due to Seller under this Agreement to be held as cash security (subject to Section 8.4(d)) until Seller either posts the Interim Pro-Rata DTS or the amount withheld by Buyer equals the Interim Pro-Rata DTS, and Seller shall post the remaining required amount of Delivery Term Security on or before the Final Commercial Operation Date.

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

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security posted by Seller for Daily Delay Damages until such time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security ~~for~~ to the extent of 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}~~~~{Pre-Delivery Term Security}~~, and Buyer shall return to Seller the ~~{Project Development Security}~~~~{Pre-Delivery Term 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;~~{Pre-Delivery Term Security} returned shall include amounts held by Buyer.~~ ~~The [The Project Development Security}~~~~{Pre-Delivery Term 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}~~~~{Pre-Delivery Term Security}~~ posted pursuant to Section 8.4(a)(ii) toward the Delivery Term Security posted pursuant to Section 8.4(a)(iii).

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as ~~{Project Development Security}~~~~{Pre-Delivery Term 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}~~~~{Pre-Delivery Term 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 within fourteen (14) days after the following has occurred: (a) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (b) all payment obligations of the Seller

arising under this Agreement, including compensation for ~~Imbalance Energy, CAISO charges~~ pursuant to Section 4.5, any Termination Payment, indemnification payments related to an event for which Buyer sought indemnification prior to the date specified in subpart (i) above, or other damages asserted prior to the date specified in subpart (i) above are paid or otherwise resolved in full (whether directly or indirectly such as through set-off or netting).

**(15) CONTRACT MODIFICATIONS**

[From Section 10.13]

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.

**(16) ASSIGNMENT**

10.6 ~~Assignment~~ Neither,

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

(b) Assignment to Financing Providers. Seller shall have the right to assign this Agreement as collateral for any financing or refinancing of the Project. Upon request, Buyer shall enter into a consent to assignment with the financing provider, which consent to assignment shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix XII, as may be modified to reflect the reasonable requests of the financing provider.

(c) Assignment in Connection with a Change in Control. Any direct 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.

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

**(18) APPLICATION OF PREVAILING WAGE**

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