

**Execution Copy**

**POWER PURCHASE AND SALE AGREEMENT**

**Between**

**PACIFIC GAS AND ELECTRIC COMPANY**

(as “Buyer”)

and

**DESERT SUNLIGHT HOLDINGS, LLC**

(as “Seller”)

**As-Available Product**

# POWER PURCHASE AND SALE AGREEMENT

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***POWER PURCHASE AND SALE AGREEMENT***

**COVER SHEET**

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

Name: **Desert Sunlight Holdings, LLC**, a Delaware limited liability company (“Seller”) All Notices:

Delivery Address:  
1111 Broadway, 4th Floor  
Oakland, CA 94607

Mail Address: same as above

Attn: [REDACTED]

Phone: [REDACTED]  
Facsimile: [REDACTED]

Duns: [REDACTED]

Federal Tax ID Number: 27-1860494

**Invoices:**

Attn: [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**Scheduling:**

Attn: [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**Payments:**

Attn: [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

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

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

Mail Address:  
P.O. Box 770000, Mail Code N12E  
San Francisco, CA 94177  
Attn: Candice Chan (cww9@pge.com)  
Director, Contract Mgmt & Settlements  
Phone: (415) 973-7780  
Facsimile: (415) 972-5507

Duns: [REDACTED]

Federal Tax ID Number: 94-0742640

**Invoices:**

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

**Scheduling:**

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

**Payments:**

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

**Wire Transfer:**

BNK: [REDACTED]  
ABA: [REDACTED]  
ACCT: [REDACTED]

**Wire Transfer:**

BNK: [REDACTED]  
ABA: [REDACTED]  
ACCT: [REDACTED]  
Acct Title: [REDACTED]

**Credit and Collections:**

Attn: [REDACTED]  
  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**Credit and Collections:**

Attn: Kenneth Lock  
Credit Risk Management  
Phone: (415) 973-9099  
Facsimile: (415) 973-7301

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

Attn: \_\_\_\_\_  
  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Contract Manager:**

Attn: Ted Yura (THY1@pge.com)  
Manager, Contract Management  
Phone: (415) 973-8660  
Facsimile: (415) 973-2207

With additional Notices of an Event of Default to:

First Solar Law Department  
Attn: [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

With additional Notices of an Event of Default to:

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

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

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**Article Three**

New Generation Facility

- Add Section 3.9.  
If not checked, inapplicable.

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**Article Eight**

Credit and Collateral Requirements

8.2 Seller Financial Information:

- Option A (Seller and provider of a Guarantee, if applicable)  
Option B Specify:

8.4 Project Development Security; Delivery Term Security

- Applicable  
 Not Applicable

If Applicable:

The following is the “Project Development Security”:

8.4 (a)(i) Project Development Security Amount: **\$900,000** (\$3,000/MW of Contract Capacity).

8.4 (a)(ii)(A) Project Development Security Amount: **\$3,000,000** (\$10,000/MW of Contract Capacity).

8.4 (a)(ii)(B) Project Development Security Amount: **\$15,000,000** (\$50,000/MW of Contract Capacity), as may be adjusted to reflect any required payment of liquidated damages as provided in Section 3.9(e) and 10.1(g).

Type of Project Development Security:

Cash and/or Letter of Credit

The following is the “Delivery Term Security”

8.4(a)(iii) Delivery Term Security Amount: **\$300,000 per MW** of Contract Capacity as of the Commercial Operation Date.

Type of Delivery Term Security:

Cash, Letter of Credit, Guarantee, a combination of cash and Guarantee, or a combination of Letter of Credit and Guarantee, provided that any Guarantee be from a Guarantor reasonably acceptable to Buyer based on Buyer’s standard credit criteria.

**Article 10**

10.7 Confidentiality

Confidentiality Applicable  
If not checked, inapplicable.

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

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

Appendix I:	Form of Letter of Credit
Appendix II:	Initial Energy Delivery Date Confirmation Letter
Appendix III:	Guaranteed Project Milestones Schedule
Appendix III-A:	Milestones Schedule
Appendix IV:	Project Description Including Description of Site
Appendix V:	Forms of Certification
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Appendix XIII:	Identified Provisions for Mitigation Amendment
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Appendix XV	Actual Availability Report Attachment A Form of Actual Availability Report
Attachment XVI	Contract Capacity Schedule
Schedule 3.1(e):	Contract Quantity

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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:

DESERT SUNLIGHT HOLDINGS, LLC

PACIFIC GAS AND ELECTRIC COMPANY

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

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

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

Name: Roy M. Kuga

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

Title: VP – Energy Supply Management

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

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

## GENERAL TERMS AND CONDITIONS

### ARTICLE ONE: GENERAL DEFINITIONS

- 1.1 “Actual Availability Report” has the meaning set forth in Section 3.1(l)(i).
- 1.2 “Additional Capacity” means any generation capacity at the Site that is proposed to be constructed after any permitted termination of this Agreement or permitted reduction of the Project’s Contract Capacity under this Agreement, not to exceed (together with the Contract Capacity in the event of a reduction) 300 MW in the aggregate.
- 1.3 “Affected Milestones” has the meaning set forth in Section 10.1(c)(i).
- 1.4 “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.
- 1.5 “Agreement” means this Power Purchase and Sale Agreement between Buyer and Seller, which is comprised of the Cover Sheet, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, the word “agreement” shall have the meaning set forth in this definition.
- 1.6 “Arbitration” has the meaning set forth in Section 12.3.
- 1.7 “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.
- 1.8 “Available Capacity” means the capacity from the Project, expressed in whole megawatts, that is available to generate Product.
- 1.9 “Availability Notice” means a notice from Seller to Buyer of the Available Capacity of the Project.
- 1.10 “Availability Workbook” has the meaning set forth in Appendix XV.
- 1.11 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), or (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

1.12 “BLM” has the meaning set forth in Section 10.1(g).

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 on the Cover Sheet.

1.15 “Buyer Dispatch Down Period” means the period of time during which curtailments are ordered by Buyer for any reason other than those pertaining to a Dispatch Down Period and shall include curtailments or reductions in Delivered Energy due to the submission of economic bids to the CAISO by Buyer or other economic reasons.

1.16 “Buyer-Generated Hour-Ahead Forecast” means the forecast of Delivered Energy from the Project that corresponds to the CAISO hour-ahead scheduling deadlines that is prepared by Buyer for each hour in which the Project is not participating in EIRP.

1.17 “Buyer’s SC” has the meaning set forth in Section 3.4(c)(i).

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

1.19 “CA Property Tax” means the obligation to pay California state property tax under the California Revenue and Taxation Code, as it may be amended or supplemented from time to time

1.20 “CA Property Tax Abatement Law” means a Law or statute providing for an exemption from, or abatement of, the obligation to pay CA Property Tax for a qualified solar facility that, except for the tax lien date for the 2015-16 fiscal year and the January 1, 2017 deadline in the Current CA Property Tax Abatement, is no less beneficial than the Current CA Property Tax Abatement, or the equivalent of such a Law or statute.

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

1.22 “CAISO Declared Over-Generation Condition” means a CAISO declared condition on the CAISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load, as communicated to Seller by Buyer or CAISO.

1.23 “CAISO Forecasted Over-Generation Condition” means a CAISO forecasted condition on the CAISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load, as communicated to Seller by Buyer or CAISO.

1.24 “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO revenue meter.

1.25 “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.

1.26 “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO (a) for violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case “CAISO Penalties” do not include the costs and charges related to Scheduling and imbalances which are addressed in Section 4.5(b) of this Agreement.

1.27 “CAISO Revenues” means (a) the credits and other payments received by Buyer, as Seller’s Scheduling Coordinator, 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 (b) 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.

1.28 “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.

1.29 “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.

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

1.31 “Capacity LD Amount” has the meaning set forth in Section 3.9(e)(ii).

1.32 “Casualty Event” means any physical damage to or destruction of all or any portion of the Project by any cause which qualifies as an event or circumstance described in subparts (i) through (iii) of the introductory paragraph of the definition of Force Majeure.

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

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

1.35 “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.

1.36 “Commercial Operation” means the Project or any part thereof, as applicable, is operating and able to produce and deliver Delivered Energy to Buyer pursuant to the terms of this Agreement.

1.37 “Commercial Operation Date” means the date on which Seller (a) notifies Buyer that Commercial Operation has occurred with respect to the full Contract Capacity (as may be adjusted pursuant to this Agreement), and (b) provides a certification, substantially in the form attached hereto as Appendix V-B, demonstrating satisfactory completion of the Commercial Operation certification procedure as provided in Appendix V-B.

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

1.39 “Congestion Revenue Rights” or “CRRs” has the meaning set forth in Section 3.1(d).

1.40 “Construction Contract” means Seller’s construction contract with a Construction Contractor.

1.41 “Construction Contractor” means one or more construction contractors, selected by Seller, with substantial experience in the construction of projects that require similar construction skills and expertise as the Project.

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

1.43 “Construction Start Date” means the date on which Seller delivers to Buyer a certification, substantially in the form attached hereto as Appendix V-A, demonstrating that construction of the Project has begun as provided in Appendix V-A.

1.44 “Contract Capacity” means the generation capacity designated for the Project in Section 3.1(f), as adjusted (if applicable) pursuant to Sections 3.9(e) and 10.1, net of all auxiliary loads, station electrical uses, and Electrical Losses.

1.45 “Contract Capacity Commitment” means the Contract Capacity that Seller commits to construct, which may be reduced pursuant to Section 10.1(g), but which will be, at a minimum, the amount of the Contract Capacity that may be constructed pursuant to both (a) the material Governmental Approvals received or obtained by Seller as of the Guaranteed Construction Start Date and (b) the Transmission Upgrades completed as of the Guaranteed Construction Start Date (which shall be extended day-for-day for each day that any Guaranteed Project Milestone is extended), not to exceed 300 MW in the aggregate.

1.46 “Contract Capacity Reduction Notice” means Seller’s Notice to Buyer reducing the Contract Capacity in accordance with this Agreement and containing a reasonably detailed

description and explanation of the reason for the reduction including, without limitation, identifying the applicable Section under this Agreement that permits the reduction and providing any and all support (documentary or otherwise) for Seller's position regarding how and why the reduction is permitted under such Section of this Agreement.

1.47 "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.

1.48 "Contract Quantity" means the quantity of Delivered Energy to be delivered by Seller during each Contract Year as set forth in Schedule 3.1(e) net of all Electrical Losses, as adjusted (if applicable) based on the adjustments to Contract Capacity pursuant to Sections 3.9(e) and 10.1.

1.49 "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

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

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

1.53 "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.

1.54 "CPUC Mitigation Filing" has the meaning set forth in Section 10.1(d)(iii).

1.55 “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.

1.56 “Cure” has the meaning set forth in Section 8.5.

1.57 “Current CA Property Tax Abatement” means the provisions of Section 73 of the California Revenue and Taxation Code as in effect on the Execution Date, and not as it may be amended or supplemented from time to time.

1.58 “Daily Delay Damages” means with respect to a Guaranteed Project Milestone an amount per day equal to (i) the Project Development Security Amount required to be posted in accordance with Section 8.4(a)(ii), as reduced pursuant to Section 8.4(a)(iii), divided by (ii) 180.

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

1.60 “Day-Ahead Availability Notice” has the meaning set forth in Section 3.4(c)(iii)(C).

1.61 “Day Ahead Market” has the meaning provided in the CAISO Tariff.

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

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

1.64 “Delivered Energy” means all Energy produced from the Project that is not Test Energy as measured in MWh at the CAISO revenue meter of the Project based on a power factor of precisely one (1) and net of all Electrical Losses.

1.65 “Delivery Point” means the point at which Buyer receives Seller’s Product, as set forth in Section 3.1(d).

1.66 “Delivery Term” has the meaning set forth in Section 3.1(c).

1.67 “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.

1.68 “Development Failure Event” means one or more events or circumstances occurring prior to the Outside Completion Date that materially impede(s) or materially and adversely affect(s) the construction and completion of all or any portion of the Project’s Contract Capacity to the extent that (a) it is not commercially reasonable for Seller to construct and complete such amount of the Project’s Contract Capacity and (b) such event(s) or circumstance(s) are not separately provided for or excused under this Agreement.

1.69 “Development Failure Notice” means Seller’s Notice to Buyer claiming a Development Failure Event and containing a reasonably detailed description and explanation of



the Development Failure Event including, but not limited to, providing any and all support (documentary or otherwise) for Seller's claim and position regarding how and why the failure constitutes a Development Failure Event and specifying the amount of Contract Capacity that has not achieved Commercial Operation by the Outside Completion Date because of the Development Failure Event.

1.70 "Direct Allocation Facilities" means all facilities and equipment to be constructed or installed between the high sides of the output step-up transformers at the Project and the Other Project and the "Points of Interconnection" under their respective Large Generator Interconnection Agreements (which is expected to be the same as the Interconnection Point under this Agreement), that are required to interconnect either or both of the Project and the Other Project to such Points of Interconnection, including the costs of all Interconnection Facilities and all other equipment and facilities required under such Large Generator Interconnection Agreements, and all costs for equipment and facilities comprising the approximately 10-mile 230 kV proposed transmission line from the Project and/or the Other Project to such Points of Interconnection.

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

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

1.73 "Dispatch Down Period" means the period of time during which (a) curtailments are ordered from the CAISO, for reasons including but not limited to (i) any System Emergency (as defined in the CAISO Tariff), (ii) a CAISO Declared Over-Generation Condition; or (iii) a CAISO Forecasted Over-Generation Condition; (b) curtailments are ordered by the Participating Transmission Owner, or (c) there is scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point.

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

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

1.76 "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.

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

1.78 "EIRP-Related Charges and Payments" means (1) the monthly Forecast Fee (as defined in the CAISO Tariff) under EIRP and (2) other charges imposed under the CAISO Tariff for participation in or compliance with EIRP.

1.79 "Electrical Losses" means all applicable losses, including, but not limited to, any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

1.80 “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.

1.81 “Energy” means electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of the definition of “Green Attributes,” the word “energy” has the meaning set forth in this definition.

1.82 “Energy Deviation(s)” 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.

1.83 “Energy Replacement Amount” or “ERA” has the meaning set forth in Section 3.1(e)(iii).

1.84 “Energy Investment Tax Credit” or “ITC” means the tax credit for property described in Sections 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986, as it may be amended from time to time, and shall include any grants or payments in lieu of such tax credit.

1.85 “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.

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

1.87 “Exclusivity Period” has the meaning provided in Appendix XIV, as applied in Section 3.9(e)(iii), and Section 10.1.

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

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

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

1.91 “Extension Cutoff Date” has the meaning set forth in Section 10.1(c)(i).

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

1.93 “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due

diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

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

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

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

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

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

(b) Force Majeure shall not be based on:

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

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

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

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

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

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

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

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure.

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

1.95 "Forecasting Penalty" has the meaning set forth in Section 4.5(c)(iii), and "Forecasting Penalties" means more than one Forecasting Penalty.

1.96 "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 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. A Party shall use commercially reasonable efforts to obtain third party information in order to determine Gains and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information.

1.97 "GEP Period" has the meaning set forth in Section 3.1(e)(ii).

1.98 "GEP Shortfall" has the meaning set forth in Section 3.1(e)(ii).

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

1.100 "Governmental Approval" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, rights of way, 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, use or operation, as applicable, of the Project.

1.101 “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.

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

1.103 “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 (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere<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.

1.104 “Grid Support Facilities” means all equipment and facilities, wherever located (including at the Project or the Other Project, at the Interconnection Point or on the CAISO Grid), that are constructed or installed for the purpose of facilitating the operation of the CAISO Grid (and any other electric transmission or distribution systems connected thereto) beyond the Interconnection Point that are not necessary for the production or delivery of Energy by the

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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.

Project or the Other Project to the Interconnection Point, including equipment and facilities for reactive power support and low voltage ride-through.

1.105 “Guarantee” means a guarantee in a form substantially similar to the form attached hereto as Appendix XII from a Guarantor acceptable to Buyer in Buyer’s reasonable discretion based on Buyer’s standard credit criteria.

1.106 “Guaranteed Commercial Operation Date” has the meaning set forth in Section 3.9(c)(iii)(B).

1.107 “Guaranteed Construction Start Date” has the meaning set forth in Section 3.9(c)(iii)(A).

1.108 “Guaranteed Energy Production” has the meaning set forth in Section 3.1(e)(ii).

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

1.110 “Guarantor” means the guarantor, if any, of Seller’s obligations under this Agreement that (a) executes a Guarantee, and (b) is otherwise acceptable to Buyer in Buyer’s reasonable discretion based on Buyer’s standard credit criteria. In determining whether a third party is acceptable, Buyer may base its determination, without limitation, on its evaluation of the cost, convenience and likely success of enforcing the Guarantee against such third party.

1.111 “Hour Ahead” has the meaning set forth in the CAISO Tariff.

1.112 “Hour-Ahead Forecast” has the meaning set forth in the CAISO Tariff.

1.113 “Increment” means a portion of the Project with a generation capacity of at least ten (10) MW but not more than twenty (20) MW, unless otherwise agreed by Buyer, such agreement not to be unreasonably withheld.

1.114 “Initial Energy Delivery Date” has the meaning set forth in Section 3.1(c).

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

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

1.117 “Interconnection Point” means the point of interconnection of the Project to the CAISO Grid as specified in Section 3.1(h)(i).

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

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

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

1.121 “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

1.122 “ITC Expiration Date” means the last date on which a solar energy facility can be placed in service and qualify for Energy Tax Credits under an ETC Law, which as of the Execution Date is December 31, 2016.

1.123 “ITC Extension” has the meaning set forth in Section 10.1(c)(i).

1.124 “ITC Review Date” means December 31, 2014.

1.125 “Large Generator Interconnection Agreement” or “LGIA” means the agreement and associated documents between Seller, the Participating Transmission Owner and the CAISO governing the terms and conditions of Seller’s interconnection with the Participating Transmission Owner’s transmission lines, including any description of the proposed plan for interconnecting to the Participating Transmission Owner’s transmission lines.

1.126 “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 the definition of “CPUC Approval” and “Green Attributes” and Sections 10.2(b) (“Seller Representations and Warranties”) and 10.12 (“Governing Law”), the word “law” shall have the meaning set forth in this definition.

1.127 “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 attached hereto as Appendix I.

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

1.129 “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 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. A Party shall use commercially reasonable efforts to obtain third party information in order to determine Losses and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of Energy Tax Credits, production tax credits or other federal or state tax credits or benefits related to the Project or generation therefrom.

1.130 “Manager” has the meaning set forth in Section 12.2(a).

1.131 “Material Casualty Event” means the occurrence of a Casualty Event (a) if prior to the Commercial Operation Date, that is reasonably likely to extend achievement of the Commercial Operation Date by more than one (1) year, or (b) if after the Commercial Operation Date, where the period for full restoration or repair of that portion of the Project damaged by the Casualty Event is reasonably likely to exceed one (1) year.

1.132 “Maximum Curable Quantity” has the meaning set forth in Section 3.1(e)(ii).

1.133 “Maximum Project Capacity Limitations” means those limitations on the Project’s generation capacity as set forth in the column in Appendix III entitled “Maximum Project Generation Capacity prior to Guaranteed Project Milestone Date”.

1.134 “Milestones” means those milestones for the construction of the Project as set forth in Appendix III-A.

1.135 “Milestone Extension” has the meaning set forth in Section 10.1(c)(i).

1.136 “Mitigation Amendment” has the meaning set forth in Section 10.1(d)(ii).

1.137 “Mitigation Exercise Period” has the meaning set forth in Section 10.1(d)(ii).



- 1.138 “Mitigation Notice” has the meaning set forth in Section 10.1(c)(ii).
- 1.139 “Mitigation Offer” has the meaning set forth in Section 10.1(d)(i).
- 1.140 “Mitigation Offer Deadline” has the meaning set forth in Section 10.1(c)(ii).
- 1.141 “Mitigation Option” has the meaning set forth in Section 10.1(d)(ii).
- 1.142 “Mitigation Option Approval” has the meaning set forth in Section 10.1(d)(iii).
- 1.143 “Monthly Progress Report” means the report similar in form and content attached hereto as Appendix VI.
- 1.144 “Monthly Period” has the meaning set forth in Section 4.2.
- 1.145 “Monthly TOD Payment” has the meaning set forth in Section 4.3(b).
- 1.146 “Moody’s” means Moody’s Investor Services, Inc., or its successor.
- 1.147 “MW” means megawatt stated in alternating current.
- 1.148 “MWh” means megawatt-hour.
- 1.149 “NERC” means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.
- 1.150 “NERC Holiday” has the meaning set forth in Section 4.2.
- 1.151 “Network Upgrades” means all “Network Upgrades” described in the Large Generator Interconnection Agreements for the Project and the Other Project.
- 1.152 “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.
- 1.153 “NOAA” means National Oceanic and Atmospheric Administration or successor thereto.
- 1.154 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.155 “Non-Recourse Contract Capacity” has the meaning set forth in Section 3.9(e)(ii).
- 1.156 “Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

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

1.158 “Offer Acceptance Notice” has the meaning set forth in Section 10.1(d)(ii).

1.159 “Other Project” has the meaning set forth in Section 10.1(g).

1.160 “Other Seller” means the owner of the Other Project.

1.161 “Outage Notification Procedures” means the procedures specified in Appendix VIII, attached hereto. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.

1.162 “Outside Completion Date” has the meaning set forth in Section 3.9(e)(ii).

1.163 “Partial ITC Extension” means federal legislation providing for an extension of the Energy Investment Tax Credit that would otherwise constitute an ITC Extension except that the extension is either (a) for a period of time that is less than that required under the definition of ITC Extension or (b) for a credit percentage that is less than the percentage required under the definition of ITC Extension.

1.164 “Partial Property Tax Extension” means California legislation providing for an extension of the CA Property Tax Abatement Law that would otherwise constitute an Property Tax Extension except that the extension is either (a) for a period of time that is less than that required under the definition of Property Tax Extension or (b) for a lesser abatement amount than is currently provided under the CA Property Tax Abatement Law.

1.165 “Participating Intermittent Resource” or “PIRP” shall have the meaning set forth in the CAISO Tariff.

1.166 “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is Southern California Edison Company.

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

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

- 1.169 “Performance Measurement Period” has the meaning set forth in Section 3.1(e).
- 1.170 “Performance Tolerance Band” shall be calculated as set forth in Section 4.5(c)(ii).
- 1.171 “Permit Failure” has the meaning set forth in Section 10.1(g) and shall not constitute or be considered a Development Failure Event under this Agreement.
- 1.172 “Permit Failure LD Payment” has the meaning set forth in Section 10.1(g).
- 1.173 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.
- 1.174 “PNode” has the meaning set forth in the CAISO Tariff.
- 1.175 “Preschedule Day” has the meaning set forth in Section 3.4(c)(iii).
- 1.176 “Product” means the Energy, capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project, including, without limitation, renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.
- 1.177 “Program Agreements” has the meaning set forth in Section 3.4(b).
- 1.178 “Project” means the generating facility, the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility as more particularly described on Appendix IV. For purposes of the definition of “Green Attributes,” the word “project” has the meaning set forth in this definition.
- 1.179 “Project Allocation Factor” means, for each of Seller and the Other Seller, at any time, a fraction (a) the numerator of which is equal to the total planned contract capacity at such time of the generating facility to be owned by the Seller or the Other Seller, as the case may be, and (b) the denominator of which is equal to the aggregate amount of the planned contract capacities of both such generating facilities at such time. The Parties acknowledge that, as of the Execution Date, the Project Allocation Factor for Seller equals 0.5455, and the Project Allocation Factor for the Other Seller equals 0.4545 (determined on the basis of Seller’s Contract Capacity of 300 MW and the Other Seller’s planned contract capacity of 250 MW).
- 1.180 “Project Capacity” means, as of any time, the total generation capacity of the Project that has achieved Commercial Operation at that time.
- 1.181 “Project Cure Period” has the meaning set forth in Section 3.9(c)(v).

1.182 “Project Development Security” is the collateral required of Seller, as specified in the Cover Sheet, and referred to in Sections 3.9(e) and 8.4(a).

1.183 “Project Interconnection Costs” means, at any time, the product of the then applicable Total Interconnection Costs times the Project Allocation Factor.

1.184 “Project Network Upgrade Costs” means, at any time, the product of the then applicable Total Network Upgrade Costs times the Project Allocation Factor.

1.185 “Project Substation” means the substation at which the Project is connected to the CAISO Grid, which is currently planned to be a new substation south of Desert Center near Interstate Highway 10 in Riverside County, California on SCE's Devers-Palo Verde 500 kV transmission line.

1.186 “Prolonged Outage” is any period of more than thirty (30) consecutive days during which more than forty percent (40%) of the Contract Capacity of the Project is or will be unavailable.

1.187 “Property Tax Expiration Date” means the last date on which a solar energy facility can be placed in service and qualify for exemption from or abatement of CA Property Tax under a CA Property Tax Abatement Law, which as of the Execution Date is December 31, 2016.

1.188 “Property Tax Extension” has the meaning set forth in Section 10.1(c)(i).

1.189 “Property Tax Review Date” means December 31, 2014.

1.190 “Qualifying Protocols” has the meaning set forth in Section 3.4(b).

1.191 “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.

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

1.193 “Reductions” has the meaning set forth in Section 3.1(d).

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

1.195 “Reinstatement Date” has the meaning set forth in Section 10.1(d)(iv).

1.196 “Reinstatement Terms” has the meaning set forth in Section 10.1(d)(ii).

1.197 “Remedial Action Plan” has the meaning provided in Section 3.9(c)(ii).

1.198 “Renewable Energy Credit” and “renewable energy credit” have the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

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

1.200 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.

1.201 “Right of First Offer” refers to all of the terms and conditions set forth in Appendix XIV.

1.202 “ROD” has the meaning set forth in Section 10.1(g).

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

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

1.205 “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.

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

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

1.208 “Seller Downgrade Event” means, in the event Buyer accepts a Guarantee, that the Credit Rating of Seller’s Guarantor falls below the standard required and accepted by Buyer at the time that Buyer accepts such Guarantee.

1.209 “Seller Excuse Hours” means those hours during which Seller is unable to schedule or deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, (c) a Dispatch Down Period, (d) a Buyer Dispatch Down Period, or (e) a Material Casualty Event.

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

1.211 “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.

1.212 “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.).

1.213 “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.

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

1.215 “Term” shall have the meaning provided in Section 2.5 of this Agreement.

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

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

1.218 “Test Energy” means for any Test Period the product of the following, for which Seller shall be compensated in accordance with Section 4.6:

$$\text{Total X Energy} = \frac{\text{Test Increment}}{[\text{Test Increment} + \text{Sum of Increments which have achieved Commercial Operation}]}$$

1.219 “Test Increment” means any Increment that Seller wishes to test to determine if it is ready for Commercial Operation.

1.220 “Test Period” means, for any Test Increment, a consecutive period of not less than twenty-four (24) hours beginning not less than forty-eight (48) hours after Buyer’s receipt of Notice from Seller provided in accordance with Section 3.9(d) that a Test Increment is ready to begin testing and stating the hour in which such testing will begin (which shall not in any event occur before the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Project to the CAISO Grid) and ending forty-eight (48) hours after Buyer’s receipt of Notice from Seller that such Test Increment has achieved Commercial Operation; provided that, in no event shall any Test Period continue for more than ninety (90) consecutive days.

1.221 “Third Party Day-Ahead Forecast” has the meaning set forth in Section 3.1(i)(iii).

1.222 “Third Party Forecaster” has the meaning set forth in Section 3.1(i)(iii).

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

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

1.225 “TOD Factors” shall have the meaning set forth in Section 4.3(a).

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

1.227 “Total Direct Allocation Facilities Costs” means the total costs payable by Seller and the Other Seller (without duplication) for Direct Allocation Facilities.

1.228 “Total Energy” means all Energy produced from the Project (including any Test Energy) as measured in MWh at the CAISO revenue meter of the Project based on a power factor of precisely one (1) and net of all Electrical Losses.

1.229 “Total Grid Support Facilities Costs” means the total costs payable by Seller and the Other Seller (without duplication) for Grid Support Facilities.

1.230 “Total Interconnection Costs” means the sum of the Total Direct Allocation Facilities Costs and the Total Grid Support Facilities Costs.

1.231 “Total Network Upgrade Costs” means the total costs payable by Seller and the Other Seller (without duplication) with respect to Network Upgrades, including all payments under their respective large generator interconnection agreements and all payments in respect of taxes.

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

1.233 “Transmission Cost Cap” means \$136.90/MWh.

1.234 “Transmission Cost Failure” has the meaning set forth in Section 10.1(h)(i) and shall not constitute or be considered a Development Failure Event under this Agreement.

1.235 “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 the CAISO.

1.236 “Transmission Upgrades” means any additions and/or reinforcements to an electric transmission system, including Interconnection Facilities, Grid Support Facilities and Network Upgrades, that are required as the result of the interconnection of the Project to the Participating Transmission Owner’s electric system and/or to permit delivery of the Product to Buyer’s Load, as defined in the CAISO Tariff, and the receipt of such Product by Buyer, safely and reliably, in the quantities and at the times at which delivery and receipt of such Product may be required under this Agreement, utilizing all of the Contract Capacity of the Project.

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

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

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

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

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

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

## **ARTICLE TWO: GOVERNING TERMS AND TERM**

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

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

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

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

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

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

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



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

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

(h) A reference to a Law includes any amendment or modification to such Law, and all regulations, rulings and other Laws promulgated under such Law.

(i) The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

(j) The words “include,” “includes” and “including” are not limiting.

(k) References to “days” means calendar days, unless the term “Business Days” shall be used.

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 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 Recording, and agrees to notify its officers and employees of such Recording and to obtain any consent of such officers and employees as may be required by applicable Law.

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(e), 5.2, 10.1 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 pursuant to Section 10.5, 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). Notwithstanding anything to the contrary in this Agreement, all indemnity rights shall survive the termination or expiration of this Agreement for twelve (12) months, all rights and obligations under Section 10.7 (Confidentiality) shall survive the termination or expiration of this Agreement for twenty-four (24) months, and all rights and

obligations under Sections 3.9(e)(iii), 10.1(f)(iii), 10.1(g)(v), 10.1(h)(ii), 10.1(i)(v), and Appendix XIV, as applicable, shall survive termination of this Agreement until the Parties' obligations under those Sections have been satisfied.

## 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 5.7;
- (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.

(b) Transaction. Unless specifically excused by the terms of this Agreement, throughout the Delivery Term Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term. Except as otherwise provided in this Agreement, 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, and Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt from the Delivery Point. The Parties agree that Seller shall arrange and pay independently for any and all necessary costs under any interconnection agreement with the Participating Transmission Owner. In accordance with Section 3.4, the Parties agree that Seller shall arrange and pay independently for

any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

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

- Delivery shall be for a period of ten (10) Contract Years.
- Delivery shall be for a period of fifteen (15) Contract Years.
- Delivery shall be for a period of twenty (20) Contract Years.
- Non-standard Delivery shall be for a period as described below ending twenty-five (25) Contract Years from the Commercial Operation Date.

As used herein, “Delivery Term” shall mean the period beginning on the first date that the conditions set forth in the next sentence have been satisfied and Seller delivers Product to Buyer from the Project (“Initial Energy Delivery Date”) in connection with this Agreement and continuing until the end of the twenty-fifth (25th) Contract Year after the Commercial Operation Date unless terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall not occur until all of the following have been satisfied: (i) Commercial Operation has occurred with respect to the first Increment of the Project; (ii) Buyer shall have received and accepted the Delivery Term Security for the first Increment of the Project in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; (iii) Seller shall have obtained the requisite CEC Certification and Verification for the Project; (iv) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing; and (v) Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource to the extent such status is available at such time as the conditions in subsections (i) through (iv) of this Section 3.1(c) are satisfied. 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.

Prior to the Initial Energy Delivery Date, Seller shall provide Buyer with complete and accurate information for the following provisions of the Cover Sheet: Contact for Notices; DUNS, Federal Tax ID Number; Scheduling; Wire Transfer; Contact for Notices of an Event of Default.

(d) Delivery Point. The Delivery Point shall be the PNode designated by the CAISO for the Project. Seller shall not be responsible for, and Buyer shall pay for, all charges for losses and congestion after the Delivery Point. To the extent that Seller (at no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges, losses or Congestion Revenue Rights (as defined in the CAISO Tariff), or similar arrangements, whether due any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, or invoice

adjustments, or other hedging instruments (obtained at no cost to Seller) associated with the Product (collectively, any such refunds, credits or benefits are referred to as “Reductions”), then, at Buyer’s option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer, provided Buyer agrees to pay the costs, if any, of accepting such transfers; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity. The Contract Quantity during each Contract Year is the amount set forth for the applicable Contract Year in Schedule 3.1(e), which amount is inclusive of outages.

(ii) Guaranteed Energy Production. Throughout the part of the Delivery Term from and after the Commercial Operation Date, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in any rolling period of twenty-four (24) consecutive months during which Seller has not paid any Energy Replacement Amounts (each such period, a “Performance Measurement Period”), as permitted under this Section 3.1(e)(ii). For purposes of this Agreement, “Guaranteed Energy Production” means an amount of Energy, as measured in MWh, equal to the product of (i) and (ii), where (i) is 140% of the Contract Quantity (i.e. the equivalent of 70% of the Contract Quantity in a 12 month period), and (ii) is the difference between (A) and (B), with the difference divided by (A), where (A) is the number of hours in the applicable Performance Measurement Period and (B) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. If Seller delivers less than the Guaranteed Energy Production in any Performance Measurement Period (“GEP Shortfall”), in order to avoid an Event of Default under Section 5.1(b)(iv), Seller shall be entitled to pay Buyer, as liquidated damages and not as a penalty, the Energy Replacement Amount; provided that the aggregate amount of all GEP Shortfalls in any GEP Period for which Energy Replacement Amounts may be paid by Seller shall not exceed the Contract Quantity for the first Contract Year (“Maximum Curable Quantity”). For purposes of this Agreement, a “GEP Period” means either the first through tenth Contract Years or the eleventh through twentieth Contract Years. (For sake of certainty, the following is an example applying the above-described limitation on Seller’s right to pay the Energy Replacement Amount for a GEP Shortfall: Assume the Contract Quantity is 685,000 MWh for the first Contract Year and the applicable GEP Period is the first through the tenth Contract Years. The aggregate amount of all GEP Shortfalls in the first through the tenth Contract Years for which Energy Replacement Amounts may be paid shall not exceed 685,000 MWh.)

(A) No Performance Measurement Period shall be less than twenty-four (24) months, and no Energy Replacement Amount shall accrue or be payable unless and until at least twenty-four (24) months have elapsed since the Commercial Operation Date (with respect to the first Performance Measurement Period) or the end of the previous Performance Measurement Period. Following the payment of an Energy Replacement Amount, the Performance Measurement Period to which such Energy Replacement Amount payment is made shall terminate, a new Performance Measurement Period shall begin, and periods prior to the beginning of such new Performance Measurement Period shall not be included in the current Performance Measurement Period.

(B) Subject to Buyer's right to declare an Event of Default if Seller has exceeded the Maximum Curable Quantity for a GEP Period, in the event of a GEP Shortfall in any Performance Measurement Period, Buyer shall provide Notice to Seller of such GEP Shortfall within one hundred twenty (120) days after the last day of the last month of such Performance Measurement Period, which Notice shall include a calculation of the Energy Replacement Amount due from Seller. Seller shall have sixty (60) days after receipt of such Notice to review Buyer's calculation and either pay the entire Energy Replacement Amount claimed by Buyer or to pay any undisputed portion and provide Notice to Buyer of the portion it disputes, along with an explanation of the reasons for such dispute and reasonable supporting documentation. The Parties shall negotiate in good faith to resolve any disputed portion of the Energy Replacement Amount and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is reasonably requested by the other Party. If the Parties are unable to resolve a dispute regarding any Energy Replacement Amount within thirty (30) days after Seller has sent a Notice of dispute to Buyer, either Party may invoke the dispute resolution procedures provided in Article Twelve.

(iii) The "Energy Replacement Amount" for a given Performance Measurement Period shall be calculated as set forth in Appendix VII.

(f) Contract Capacity. The Contract Capacity of the Project shall be 300 MW, as such amount may be adjusted pursuant to Section 3.9(e) or Section 10.1. Throughout the Delivery Term, except as otherwise directed by the CAISO, Seller shall sell and Schedule all Product produced by the Project solely to Buyer, and in no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds one hundred ten percent (110%) of the Contract Capacity.

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Except as provided in Sections 3.9(e) and 10.1, Seller shall not (i) make any alteration or modification to the Project which results in a change to the Contract Capacity of the Project without Buyer's prior written consent, which consent shall not be unreasonably withheld or conditioned, or (ii) make any alteration or modification to the Project to allow for onsite storage or augmentation of the Project output without Buyer's prior written consent, which consent shall not be unreasonably withheld or conditioned; provided that Seller may add solar modules and related equipment to the Project without Buyer's consent if Seller reasonably determines that such additional solar modules and related equipment are necessary to maintain (but not increase) the Project's Contract Capacity after the Commercial Operation Date. The Project is further described in Appendix IV.

(h) Interconnection Facilities.

(i) Interconnection Point. The interconnection point is a new substation south of Desert Center near Interstate Highway 10 in Riverside County, California on SCE's Devers-Palo Verde 500 kV transmission line.

(ii) Seller Obligations. Seller shall be obligated to (A) maintain or cause to be maintained the Interconnection Facilities, including metering facilities; and (B) perform or cause to be performed and/or pay for all necessary Transmission Upgrades, which shall include Delivery Network Upgrades and Reliability Network Upgrades, as such terms are

defined in the CAISO Tariff, to the extent required by the interconnection agreement between Seller and Transmission Provider.

(iii) Cooperation and Coordination. Seller shall use commercially reasonable efforts to pursue and actively seek the timely completion and execution of the LGIA and the timely completion of the Transmission Upgrades, which shall include, without limitation, assisting and cooperating with the Participating Transmission Owner and the CAISO to provide for the development, permitting and construction of the Transmission Upgrades in a sufficient time frame for Seller to meet Guaranteed Project Milestones (as extended). Seller shall respond to CAISO or PTO requests in a timely manner and make required payments under the LGIA in a timely manner. Further, Seller shall use commercially reasonable efforts to (A) coordinate with Buyer in connection with the Transmission Upgrades and the development of the LGIA; (B) solicit Buyer's comments on such activities; (C) provide to Buyer copies of all material correspondence related thereto and all correspondence between Seller, CAISO and the Participating Transmission Owner relating to the Project; (D) grant to Buyer the right to communicate directly with the CAISO and the Participating Transmission Owner regarding the LGIA, the Interconnection Facilities and the Transmission Upgrades for the Project and, to the extent reasonably practicable, allow Buyer to monitor Seller's negotiation with the CAISO and the Participating Transmission Owner of Seller's LGIA; and (E) provide Buyer with written reports of the status of the LGIA and Transmission Upgrades 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.

(i) Performance Excuses.

(i) Seller Excuses. Seller shall be excused from achieving the Guaranteed Energy Production for the applicable time period as a result of Seller Excuse Hours as provided in Section 3.1(e)(ii).

(ii) Buyer Excuses. The obligation of Buyer to receive or pay for the Product shall be excused only (A) during periods of Force Majeure affecting Buyer's ability to receive the Product, but not its ability to transmit the Product from the Delivery Point, (B) by Seller's failure to perform or (C) during Dispatch Down Periods to the extent of the applicable curtailment.

(iii) Dispatch Down/Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), upon notice from Buyer, Seller shall promptly curtail the production of the Project. Such notice shall be provided to Seller

(A) during a Dispatch Down Period and shall be revoked as soon as reasonably possible after the Dispatch Down Period ends. Seller shall be entitled to all revenues and payments from CAISO related to such curtailment, as full compensation for lost sales to Buyer; and

(B) during a Buyer Dispatch Down Period and shall be revoked when the Buyer Dispatch Down Period ends. Buyer shall pay Seller the Contract Price in accordance with Article 4 for the Product that would have been generated by the Project absent the Buyer Dispatch Down Period, for the forecasted output (1) based on the final EIRP Hour-Ahead Forecast if available, whether or not Seller is participating in EIRP for that hour, or (2) the Buyer-Generated Hour-Ahead Forecast if a final EIRP Hour-Ahead Forecast is not available. If the Buyer-Generated Hour-Ahead Forecast is to be used, such Buyer-Generated Hour-Ahead Forecast shall attempt to forecast the actual amount of Delivered Energy that would have been produced during such Buyer Dispatch Down Period and shall be fully consistent with the methodology employed for such Buyer-Generated Hour-Ahead Forecasts absent a Buyer Dispatch Down Period. If Seller believes that the Buyer-Generated Hour-Ahead Forecast is not a reasonable estimate of the actual amount of Delivered Energy that would have been produced during such Buyer Dispatch Down Period, Seller may engage a qualified independent third party forecasting service reasonably acceptable to Buyer and Seller (the “Third Party Forecaster”) to prepare a revised forecast (the “Third Party Hour-Ahead Forecast”), and such Third Party Hour-Ahead Forecast shall be binding on both Buyer and Seller for purposes of determining the amount of Delivered Energy that would have been generated by the Project absent the Buyer Dispatch Down Period. The Parties shall share the cost of the Third Party Forecaster equally.

(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; provided, however, that if Buyer fails to accept Energy due to a failure of transmission service, whether or not excused, Seller will nonetheless be deemed to have performed its obligations hereunder so long as the Project was available to produce Energy immediately prior to such failure of transmission service and such failure was not the direct or indirect result of the negligence or the failure of, or caused by, Seller.

(j) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer’s written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any; provided, however, that Seller shall not be obligated to modify or add equipment to the Project if the cost of doing so would exceed ten thousand dollars (\$10,000). All information and data reported to Buyer shall be considered confidential information to the extent that such information or data would disclose or constitute any non-public term or condition of this Agreement or any Transaction hereunder.

(k) WREGIS. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Test Energy and all Delivered Energy 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, upon completion of the Forward Certificate Transfers described below, sole title to all such WREGIS Certificates shall transfer to Buyer. In addition:

(i) Prior to the first Test Period, Seller shall register the Project with WREGIS and establish an account with WREGIS (“Seller’s WREGIS Account”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “Forward Certificate Transfers” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“Buyer’s WREGIS Account”). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account. Buyer shall cooperate with Seller in receiving and accepting all such transfers and shall, at its sole expense, take all actions and execute all documents or instruments necessary to accept all such transfers in a timely manner.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward to the extent provided under the WREGIS Operating Rules until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month to correspond with the Test Energy and the Delivered Energy 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 for Delivered Energy, Buyer shall make an invoice payment for a given month in accordance Article 6 before the WREGIS Certificates for Delivered Energy in such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.1(k). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 6. With respect to Test Energy, Buyer shall compensate Seller for the Renewable Energy Credits and WREGIS Certificates associated with such Test Energy pursuant to Section 4.6 below.

(v) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates associated with Delivered Energy that are delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month (“Deficient Month”). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer’s payment(s) to Seller under Article 6 and the Guaranteed Energy Production for the applicable Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller’s 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; provided, however, that prior to making any such adjustment, Seller shall have ninety (90) days to correct such error or omission before any amounts are deducted from Buyer's payments to Seller hereunder. In addition, if Seller subsequently corrects any such error or omission, Buyer shall credit back to Seller any amounts previously deducted amounts on account of such claimed WREGIS Certificate Deficit, notwithstanding the prior expiration of such ninety (90) day period, and shall pay all such amounts to Seller as part of Buyer's next monthly payment to Seller hereunder.

(vi) Without limiting Seller's obligations under this Section 3.1(k), if a WREGIS Certificate Deficit is caused by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission, and Buyer shall not deduct any amount from its monthly payments to Seller as a result of any WREGIS Certificate Deficit caused by an error or omission of WREGIS until Seller has had at least ninety (90) days to correct such error or omission. In addition, if WREGIS subsequently corrects any such error or omission, Buyer shall credit back to Seller any amounts previously deducted amounts on account of such claimed WREGIS Certificate Deficit, notwithstanding the prior expiration of such ninety (90) day period, and shall pay all such amounts to Seller as part of Buyer's next monthly payment to Seller hereunder.

(vii) The Parties will execute all certificates and other documents and cooperate with each other as reasonably necessary to implement their respective obligations under this Section 3.1(k). If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(k) after the Execution Date, the Parties promptly shall modify this Section 3.1(k) as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Test Energy and the Delivered Energy in the same calendar month.

(l) 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 Delivery Point and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the following data on a real-time basis and, if applicable, 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 (F) of this list, and energy output information collected by the supervisory control and data acquisition system (SCADA) 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) net plant electrical output at the CAISO revenue meter;

(E) time-average data including 10-minute and hourly values of plane of array irradiance, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and visibility in winter fog areas; and

(F) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of solar insolation, temperature, wind speed, and, if applicable, and wind direction. Such equation shall take into account the expected Available Capacity.

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 Project's monthly Settlement Interval Actual Available Capacity in the form set forth in Appendix XV (Form of 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.

(ii) Buyer reserves the right to compare the data provided pursuant to Section 3.1(l)(i) with information publicly available from NOAA and nearby weather stations and to use any or all of such data for purposes of making its estimates of Energy production by and scheduling Energy from the Project.

(iii) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 3.1(l)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis, 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 at least two (2) stand-alone meteorological stations at the Site to monitor and report the meteorological data required in Section 3.1(l)(i) of this Agreement. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate 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 (“Maintenance Notice”), Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Maintenance Notice. This five-day period may be extended on a day-for-day basis with Buyer’s consent (not to be unreasonably withheld) if, no later than three (3) days following Buyer’s delivery of a Maintenance Notice, Seller demonstrates with documentary or other evidence to the reasonable satisfaction of Buyer that, despite the exercise of due diligence, it is not commercially reasonable to maintain, repair or replace such equipment in a five-day period and a longer period is necessary.

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

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

(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 or near (at a location reasonably acceptable to Buyer) the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (A) total global horizontal irradiance, plane of array irradiance, air temperature, wind speed and direction, precipitation, barometric pressure, visibility in winter fog areas (forward scatter sensor) and humidity at the Site, as well as time-average data including 10-minute and hourly values of irradiance or insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and visibility in winter fog areas; (B) elevation, latitude and longitude of the weather station; and (C) any other data that would be required for participation in the EIRP.

(m) Obtaining and Maintaining CEC Certification and Verification. Seller shall file an application for pre-certification as an ERR with the CEC no later than the Construction Start Date, and shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

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

the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

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

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller Obligations. As of the first Test Period and continuing through 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. As of the first Test Period and continuing through the Delivery Term, Seller shall be responsible for all electric transmission losses and congestion to the Delivery Point and shall assume all liability and pay for all congestion charges up to the Delivery Point. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements relating to transmission service to and interconnection at the Delivery Point, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement, Meter Service Agreement and PTO Generator Special Facilities Agreements, if applicable, so as to be able to deliver Energy to the CAISO Grid.

(ii) Buyer Obligations. As of the first Test Period and continuing through the Delivery Term, Buyer shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment. As of the first Test Period and continuing through the Delivery Term, Buyer shall be responsible for all electric transmission losses and congestion from the Delivery Point and shall assume all liability and pay for all congestion charges from the Delivery Point. Buyer shall fulfill all applicable requirements set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements relating to receipt of Energy at and transmission service from the Delivery Point, so as to be able to accept and receive Energy at the Delivery Point for transmission in the CAISO Grid.

(b) EIRP Requirements. The CAISO has established protocols for scheduling solar power to permit solar projects to participate in EIRP ("Qualifying Protocols"), and Seller agrees that it will participate in EIRP at the direction of Buyer or Buyer's SC once the Qualifying Protocols are finalized and the Project becomes eligible to participate in EIRP. As soon as practical, but not more than ninety (90) days after Qualifying Protocols are finalized and made effective by the CAISO, Seller shall apply to have the Project certified as a Participating Intermittent Resource and shall thereafter diligently pursue such process to completion, including negotiating and executing all necessary documents to become a Participating Intermittent Resource (each as defined by the CAISO Tariff and collectively, the "Program Agreements"). Seller shall provide Buyer with a copy of the notice from 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 shall participate in and comply with EIRP as directed by Buyer or Buyer's SC and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during all hours of the Delivery Term, and Buyer, as Scheduling Coordinator, shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to assist Seller's participation in and compliance with EIRP and such additional protocols, to the extent such actions are at de minimis cost to Buyer.

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

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the first Test Period, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or a qualified third party selected by Buyer ("Buyer's SC"), as Seller's Scheduling Coordinator, and Buyer or Buyer's 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. Buyer shall give Seller Notice of the appointment of Buyer's SC at least ten (10) Business Days (or such longer period as may be required by the CAISO) before Buyer's SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Buyer's SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Buyer's SC and for all cost, charges

and liabilities incurred by Buyer's 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 Delivery Term.

(ii) Buyer's Responsibilities as Scheduling Coordinator. During the Delivery Term, Buyer or Buyer's 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. Without limiting the generality of the foregoing, Buyer or Buyer's SC will consistent with Buyer's existing settlement processes (A) review and validate any charges and payments on CAISO statements that are or are claimed to be the responsibility of Seller with Buyer's existing settlement validation processes, (B) submit disputes to the CAISO regarding any errors or inaccuracies in the CAISO statements for any such charges and payments on or before the required deadlines; (C) diligently prosecute resolution of such disputes for the benefit of Seller; and (D) keep Seller informed about the status of any such disputes, including providing reasonable supporting documentation upon Seller's request.

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include Available Capacity and updated status of photovoltaic panels, inverters, transformers, and any other equipment that may impact availability. To avoid Forecasting Penalties set forth in Section 4.5(c)(iii), Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including but not limited to automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) 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 (II) September 1 of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer or Buyer's SC (as 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 shall provide to Buyer or Buyer's SC (as 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 Buyer's SC via Buyer's internet site, as provided in Appendix VIII, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day; provided, however, that the Day-Ahead Availability Notice for Tuesday (Preschedule Day of Monday) may be delivered prior to 10:00 am PPT on the preceding Friday. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (1) Monday – Preschedule Day for Tuesday
- (2) Tuesday – Preschedule Day for Wednesday
- (3) Wednesday – Preschedule Day for Thursday
- (4) Thursday – Preschedule Day for Friday and Saturday
- (5) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website ([www.wecc.biz](http://www.wecc.biz)) under the document title, "Prescheduling Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's best estimate of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day-Ahead Schedules, then Seller must notify Buyer of such change by telephone and shall send a revised notice to Buyer's Internet site set forth in Appendix VIII. 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, (I) until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Buyer, as such Day-Ahead Forecast may have been subsequently adjusted pursuant to clause (D) below.

(D) Hourly Forecast of Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in 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 Availability Notice as soon as possible, but no later than one (1) hour before Buyer or Buyer's SC (as applicable) is required to submit Hour-Ahead schedules to the CAISO. Available Capacity changes after one (1) hour before the CAISO deadline for

Hour-Ahead Schedules, but before the CAISO Hour-Ahead deadline, shall also be reported by Seller to Buyer as soon as reasonably possible. 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 or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage immediately following Seller Available Capacity notification to the CAISO via SLIC and Seller shall follow the Outage Notification Procedures in Appendix VIII of this Agreement. Seller shall inform Buyer 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 and shall be sent to Buyer's internet site as set forth in Appendix VIII:

Hour-Ahead Trading Desk  
Primary Telephone: (415) 973-4500

(iv) Replacement of Scheduling Coordinator.

(A) At least ninety (90) 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 Buyer's 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 Buyer's SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer or Buyer's SC (as applicable) of the last date on which Buyer or Buyer's SC (as applicable) will be Seller's SC.

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

3.5 Standards of Care.

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

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



(c) Reliability Standard. Seller agrees to abide by all applicable (i) NERC, WECC and CAISO reliability requirements, including Resource Adequacy Requirements (to the extent the Project qualifies for Resource Adequacy) and, if applicable, CPUC General Order No. 167, “Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities”, and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner. Seller shall enter into and comply with the WECC Reliability Management System (Generator) Agreement, or successor agreement, as of the Commercial Operation Date and throughout the Delivery Term.

3.6 Metering. All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project’s CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter 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 VIII.

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with the Annual Forecast of Available Capacity procedure set forth in Appendix VIII no later than August 1<sup>st</sup> of each year during the Delivery Term. Buyer shall notify Seller within thirty (30) days after receipt of the Planned Outage schedule if it wants to change the Planned Outage schedule. Seller shall use commercially reasonable efforts to accommodate any change requested by Buyer to Seller’s proposed Planned Outage schedule. 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 VIII below no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of January, June through September, and December except to the extent such Planned Outages can be conducted without adversely affecting the capability of the Facility to make available the Contract Capacity. During all other months, Seller shall not schedule Planned Outages except as provided in the Planned Outage schedule without the prior written consent of

Buyer, which consent may not be unreasonably withheld or conditioned. Buyer shall use commercially reasonable efforts to accommodate Seller's requested Planned Outage schedule. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer whether it is able to reschedule its Planned Outage and, if so, of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request. Unless Buyer is transmitting a CAISO order to Seller, once a Planned Outage schedule has been finalized by Buyer and Seller, Buyer may not change Seller's Planned Outage schedule without Seller's approval.

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

(d) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the provisions in Appendix VIII. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis using the same notification procedure as used with initial notice. Seller shall not substitute Energy from any other source for the output of the Project during a Prolonged Outage.

(e) Force Majeure. Within the earlier of forty-eight (48) hours of obtaining actual knowledge or seven (7) days after the occurrence of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim to the extent of any matters or claims arising more than seven (7) days prior to the delivery of such Notice. Seller shall not substitute Products from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

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

(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 Buyer with copies of all outage plans and clearance requests submitted to CAISO, and shall promptly inform Buyer of all clearance approvals and disapprovals and other communications with CAISO pertaining to the status of planned or in-progress Project outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to Buyer upon request. Seller acknowledges that Buyer will provide such information to the Participating Transmission Owner upon request. If either Party receives information through CAISO or directly from the Participating Transmission Owner regarding maintenance that will directly affect the Project, it will provide this information promptly to the other Party.

(h) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7 or 3.8 or Appendix VIII, both Parties understand and acknowledge that the specified transmission and scheduling mechanisms, metering requirements, outage notification procedures and operating procedures described therein are subject to change by either Party from time to time based upon either (a) such Party's implementation of orders or other regulatory changes issued by the CPUC, CAISO, FERC or other relevant authorities; (b) such Party's implementation of changes in Laws, rules, regulations or the like; (c) other changes in procedures determined by such Party in good faith to be necessary for the prudent operation of its business, which changes under this subpart (c) to this Section 3.7(h) shall not result in a material impact on or cost to the other Party's operations. Upon receipt of Notice from a Party of any of the foregoing changes, the Parties agree to work in good faith to implement any such changes as reasonably deemed necessary by the Party giving the Notice.

### 3.8 Operations Logs and Access Rights.

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

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

Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

3.9 New Generation Facility.

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

(i) Design and construct the Project.

(ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the Participating Transmission Owner for the Interconnection Facilities to Schedule and deliver the Product.

(iii) Acquire all permits and other approvals for the construction, operation, and maintenance of the Project required to be held by Seller.

(iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project.

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any changes in the Project and provide to Buyer specifications and design drawings of any such changes. Seller shall have the right to redact or edit such design drawings and documents to delete any sensitive, proprietary or confidential information. In all events, all such information shall be treated as confidential information for purposes of the Agreement.

(vi) Within fifteen (15) days after (A) the close of each calendar quarter from the first calendar quarter following the Execution Date until the Construction Start Date and (B) the close of each month from the first month following the Construction Start 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 Guaranteed Project Milestones and Milestones and indicate whether Seller has met or is on target to meet the Guaranteed Project Milestones and Milestones.

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

(i) Notify Seller in writing of the results of its review of all specifications for the Project within thirty (30) days of Buyer's receipt thereof, including a description of any flaws perceived by Buyer in the design, but Seller shall have no obligation to change its design based on Buyer's review or comments.

(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 that the Guaranteed Project Milestones (as defined in Section 3.9(c)(iii) below) and the 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 the Guaranteed Project Milestones and the 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) such Milestone 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 Milestone 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. In addition to the foregoing, the provisions of Section 3.9(c)(v) shall apply with respect to any missed Guaranteed Project Milestone(s).

(iii) Subject to Sections 3.9(c)(v) and 10.1, “Guaranteed Project Milestones” are as follows:

(A) The Construction Start Date shall occur no later than July 1, 2013 (the “Guaranteed Construction Start Date”); and

(B) Seller shall have demonstrated Commercial Operation for the Contract Capacity per the terms of Appendix V-B no later than July 1, 2015 (the “Guaranteed Commercial Operation Date”).

(iv) Each of the foregoing Guaranteed Project Milestones and all other Milestones shall be subject to the extensions provided in Section 10.1, and references to “Milestones” and “Guaranteed Project Milestones” herein shall be understood to mean the Milestones or Guaranteed Project Milestones as extended.

(v) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than eighteen (18) months prior to the Guaranteed Commercial Operation Date (determined without reference to any extensions provided for in this Agreement) without Buyer’s prior written approval. If either Guaranteed Project Milestone occurs after the required date for such Guaranteed Project Milestone as set forth on Appendix III, Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to the Daily Delay Damages for each day or portion of a day that (A) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of one hundred eighty (180) days (“Project Cure Period”); or (B) the Construction Start Date occurs after the Guaranteed Construction Start Date for up to a total of one hundred eighty (180) days (“Construction Cure Period”). Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to delay in achieving such Guaranteed Project Milestones would be difficult or impossible to predict with certainty, and (II) the applicable Daily Delay

Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the Guaranteed Construction Start Date if Seller achieves Commercial Operation of the Project on or before the Guaranteed Commercial Operation Date. For sake of certainty, but subject to Section 3.9(e), Buyer shall retain all Daily Delay Damages drawn (and not previously returned pursuant to the preceding sentence) as a result of Seller's failure to meet the Guaranteed Commercial Operation Date or the Guaranteed Construction Start Date if Seller fails to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date.

(d) Completion of Increments Prior to Commercial Operation Date. 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 Commercial Operation Date. Seller will test each Increment as it is completed in order to confirm that such Increment has achieved Commercial Operation. As specified in the definition for "Test Period," Seller will provide Buyer not less than forty-eight (48) hours Notice prior to the commencement of a Test Period for each Test Increment. Seller shall provide such Notice to Buyer at least forty-eight (48) hours prior to the deadline by which Seller must notify the CAISO of a Test Period and, applying the WECC Preschedule Day (as defined in Section 3.4(c)(iii)(C)) to the Test Period, no later than fourteen (14) hours before the beginning of the WECC Preschedule Day for such Test Period; provided that, with respect to the first Test Period such Notice shall be provided at least sixty (60) days prior to the earlier of the CAISO deadline or the WECC Preschedule Day for that first Test Period. Seller shall also notify Buyer when each Test Increment has achieved Commercial Operation. At the end of the Test Period for each Test Increment, which shall be forty-eight (48) hours after Seller has given Buyer Notice that such Test Increment has achieved Commercial Operation, the Energy generated by such Increment will be considered Delivered Energy, and Buyer will pay Seller the Contract Price for such Energy as provided in Article 4; provided, however, that, except as otherwise set forth in Sections 10.1(c) and 10.1(d), Seller shall not schedule, and Buyer shall not be obligated to receive or pay for, any Energy in excess of the Maximum Project Capacity Limitations listed on Appendix III for the period up to and including the applicable deadline listed in Appendix III. For those periods during which the Maximum Project Capacity Limitation listed on Appendix III is 300 MW, Section 3.1(f) hereof shall be applicable and Seller may deliver (and Buyer shall receive and pay for) Energy up to 110% of the Maximum Project Capacity Limitation.

(e) Adjustment of Contract Capacity and Contract Quantity.

(i) If Seller fails to achieve Commercial Operation with respect to some or all of the Contract Capacity by the Outside Completion Date because of a Development Failure Event, then Seller's liability for such failure shall be limited to (A) liquidated damages of \$50,000 per MW as provided in subsection (ii) below and (B) the rights and obligations as provided subsection (iii) below. For the avoidance of doubt, nothing herein modifies or limits Buyer's right to draw upon the Project Development Security for Daily Delay Damages as provided in Section 3.9(c)(v) above.

(ii) If by the expiration of the Project Cure Period after the Guaranteed Commercial Operation Date (including all extensions permitted under this Agreement) (the "Outside Completion Date"), a Development Failure Event occurs and results in

all or any part of the Contract Capacity (as reduced pursuant to Section 10.1) not achieving Commercial Operation by the Outside Completion Date, Seller shall provide a Development Failure Notice to Buyer no later than ten (10) Business Days after the Outside Completion Date, which shall specify the amount of capacity for which Commercial Operation has been achieved and the amount of capacity for which Commercial Operation has not been achieved, and the Contract Capacity shall be reduced to the amount of capacity for which Commercial Operation has been achieved by the Outside Completion Date (with appropriate adjustments to the Contract Quantity and all other terms and conditions hereunder related to Contract Capacity). Subject to Seller's payment of both the Capacity LD Amount as provided below and all applicable Daily Delay Damages pursuant to Section 3.9(c)(v), the Project Development Security and the Delivery Term Security will also be reduced to reflect the reduced Contract Capacity and all Project Development Security posted in excess of such reduced Contract Capacity shall be promptly returned to Seller. The amount of capacity that has not achieved Commercial Operation by the Outside Completion Date because of the Development Failure Event shall be referred to as the "Non-Recourse Contract Capacity". In addition, Buyer shall retain, as liquidated damages and not as a penalty, an amount (the "Capacity LD Amount") equal to (A) (I) the amount of Non-Recourse Contract Capacity, in MW, times (II) \$50,000 per MW, minus (B) all Daily Delay Damages previously paid by Seller to Buyer for such amount of the Non-Recourse Contract Capacity. Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to reduction of the Contract Capacity or termination of this Agreement (as applicable) because of a Development Failure Event would be difficult or impossible to predict with certainty, and (II) the Capacity LD Amount is an appropriate approximation of such damages. In order to satisfy the Capacity LD Amount, Buyer shall have the right to immediately draw upon and apply the Project Development Security to the payment of the Capacity LD Amount. Seller's payment of the Capacity LD Amount hereunder and the rights and obligations set forth in subsection (iii) below shall constitute Buyer's sole remedies for Seller's failure to achieve Commercial Operation of the Non-Recourse Contract Capacity because of a Development Failure Event. In the event that all of the Contract Capacity fails to achieve Commercial Operation by the Outside Completion Date because of a Development Failure Event (i.e., all of the Contract Capacity constitutes Non-Recourse Contract Capacity), this Agreement shall terminate following Seller's payment of the Capacity LD Amount and, other than as provided in Section 2.5 (excluding obligations to pay the Settlement Amount and other damages, but including obligations for indemnification payments and any other indemnification obligations under Section 10.5), both Parties shall be released of any further liabilities and obligations under the Agreement.

(iii) In the event that the Contract Capacity is reduced or this Agreement is terminated pursuant to subsection (ii) above, then the terms of Buyer's Right of First Offer set forth in Appendix XIV shall apply and are incorporated herein by reference. For purposes of the Right of First Offer under this Section 3.9(e)(iii), the "Exclusivity Period" shall be the period beginning on the date the Contract Capacity is reduced or this Agreement is terminated pursuant to Section 3.9(e)(ii) and ending on July 1, 2017.

**ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS**4.1 Contract Price for All Product Except Test Energy.

The Contract Price for each MWh of Delivered Energy and all other Product (excluding Test Energy which shall be paid for as provided in Section 4.6) during the Delivery Term shall be as follows:

<b>Period</b>	<b>Contract Price (\$/MWh)</b>
Initial Energy Delivery Date through Commercial Operation Date	\$126.80/MWh
Contract Years 1-25 (inclusive)	\$126.80/MWh

The Contract Price shall be increased by (a) \$0.20/MWh for each \$1,000,000 by which the Project Interconnection Costs exceed \$8,000,000, prorated based on the actual amount if the Project Interconnection Costs in excess of \$8,000,000 are not an integral multiple of \$1,000,000, and (b) \$0.06/MWh for each \$1,000,000 of Project Network Upgrade Costs, prorated based on the actual amount of the Project Network Upgrade Costs if they are not integral multiples of \$1,000,000; provided, however, that the Contact Price as so increased shall not exceed the Transmission Cost Cap unless otherwise agreed by Buyer.

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

<b>Monthly Period</b>	<b>TOD PERIOD</b>		
	<b>1. Super-Peak</b>	<b>2. Shoulder</b>	<b>3. Night</b>
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.

#### 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 and all other Product (excluding Test 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 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.

$$\text{Monthly TOD Payment} = \sum_{\substack{\text{all hours} \\ \text{in month}}} (CP \times TOD_n \times E_n)$$

where

CP = Contract Price, in \$/MWh

$TOD_n$  = TOD Factor for hour n

$E_n$  = Delivered Energy for hour n, in MWh

4.4 Excess Energy. If Seller delivers Delivered Energy during any two (2) consecutive Contract Years in excess of one hundred twenty percent (120%) of the aggregate annual Contract Quantity amount for such two consecutive Contract Years (i.e. total Delivered Energy in excess of 240% of the annual Contract Quantity amount for a single Contract Year during such two consecutive Contract Years), the Contract Price for Delivered Energy for the remainder of the second Contract Year after such threshold (240% of the annual Contract Quantity amount during such two consecutive Contract Years) is exceeded shall be adjusted to be seventy-five percent (75%) of the applicable Contract Price.

4.5 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer as a result of Seller's actions. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer's actions, including Buyer Dispatch Down Periods.

(b) Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling (including Day-Ahead Scheduling) and imbalances except (i) as provided in Section 4.5(c) below and (ii) for EIRP-Related Charges and Payments or program costs. Settlement of such EIRP-Related Charges and Payments that are incurred by Buyer on Seller's behalf shall occur in accordance with Section 6.1. Seller and Buyer shall cooperate to minimize the charges assessed by the CAISO with respect to Scheduling and imbalances to the extent possible. Such cooperation shall not alter Seller's and Buyer's respective responsibilities for payment for imbalance and congestion charges and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined in the CAISO Tariff) associated with the Energy generated from the Project.

(c) Forecasting Penalties.

(i) In the event Seller fails in a given hour to (A) provide the access and information required in Section 3.1(l)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(l)(iv); or (C) provide the forecast of Available Capacity required in Section 3.4(c)(iii), and the Energy Deviation for the given hour exceeded the Performance Tolerance Band defined below, Seller will be responsible for Forecasting Penalties with respect to such Energy Deviation as set forth below. If Buyer believes that an Energy Deviation is the result of Seller's failure to comply with its obligations under clauses (A), (B) or (C) of this Section 4.5(c)(i), Buyer shall provide Notice of such failure to Seller. Any delay by Buyer in giving such Notice shall not reduce Seller's responsibility for such Energy Deviations under this Section 4.5(c) with the following exception: if Buyer reasonably determines that Seller's failure to comply with its obligations under clauses (A), (B) or (C) with respect to any

such Energy Deviation was not material, then Seller shall be responsible for the applicable Forecasting Penalties only if Seller fails to promptly cure its failure after Buyer's delivery of such Notice to Seller.

(ii) The Performance Tolerance Band is three percent (3%) multiplied by Contract Capacity multiplied by one (1) hour (i.e. for a Contract Capacity of 300 MW, the Performance Tolerance Band would be 1.5 MWh for any Settlement Interval).

(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.

(iv) Forecasting Penalties shall not apply during any Test Period unless the Test Energy generated during such Test Period is scheduled by Buyer with Seller's prior written consent in accordance with Section 4.6(b) below or the MWh amount of Delivered Energy in any given hour during the Test Period is less than the Final Hour Ahead Schedule for such hour and such under-delivery results in an Energy Deviation for the hour that exceeds the Performance Tolerance Band.

#### 4.6 Test Period Payments.

(a) During any Test Period, Seller's full compensation from Buyer for the Test Energy sold to Buyer shall be the CAISO Revenues for such Test Energy, which revenues Buyer shall forward promptly to Seller. Pursuant to Section 3.1(k), Seller shall transfer to Buyer all of the Renewable Energy Credits and WREGIS Certificates associated with such Test Energy. Seller's full compensation from Buyer for such Renewable Energy Credits and WREGIS Certificates shall be \$50 per MWh. Buyer shall pay Seller such compensation promptly after the WREGIS Certificates evidencing the Renewable Energy Credits for a given Test Period have been properly transferred to Buyer's WREGIS Account.

(b) Buyer will not schedule Test Energy unless otherwise agreed by the Parties. For the avoidance of doubt, all Delivered Energy that is not Test Energy shall be deemed Delivered Energy for which the full Contract Price is payable hereunder.

4.7 [Intentionally omitted]

4.8 [Intentionally omitted].

4.9 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the capacity of the Project committed to Buyer under this Agreement, including, but not limited to, compensation for Resource Adequacy or Green Attributes (but excluding credits or payments from the CAISO for ancillary services, reducing deliveries, and imbalances not otherwise provided for; and Energy Tax Credits and other federal, state and local tax credits that are applicable to a state or federal income taxation obligation), Seller shall remit all such

compensation directly to Buyer, less any costs or charges incurred in connection therewith; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to Transmission Upgrades as contemplated in Section 3.1(h)(ii).

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

5.1 Events of Default. An “Event of Default” shall mean,

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

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after 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; 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 and warranty in Section 10.2(b) shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term and to make such representation and warranty no longer materially false or misleading;

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

(iii) failure by Seller to start construction of the Project by the Guaranteed Construction Start Date set forth in Section 3.9(c)(iii) as a result of a Development Failure Event after giving effect to all applicable extensions of the Guaranteed Construction Start Date under Sections 3.9(c)(v) and 10.1 and after the 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, except when Seller pays the Energy Replacement Amount owing as a result of such failure in accordance Section 3.1(e); 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.

(c) with respect to Seller's Guarantor, if any, unless such Guarantor has been replaced as provided in Section 8.4(f):

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guarantee made in connection with this Agreement and such failure is not remedied within five (5) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's Guarantee to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such Guarantee shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guarantee.

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 ten (10) days after 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) except to the extent another measure of damages is provided for in this Agreement, 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 or as otherwise expressly provided in this Agreement; (c) withhold any payments due to the Defaulting Party under this Agreement; (d) suspend performance; and (e) exercise its rights pursuant to Section 8.3 to draw upon and retain Performance Assurance, and (f) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. Except to the extent another measure of damages is provided for in this Agreement, the Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the

“Settlement Amount” is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.3 Calculation of Termination Payment. Except to the extent another measure of damages is provided for in this Agreement, 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 delivery of a Notice of termination, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment due from the Defaulting Party to the Non-Defaulting Party, if any. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

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

5.7 Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of 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 first Test Period, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Article 4. 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, except as otherwise provided in Section 4.6. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

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

## **ARTICLE SEVEN: LIMITATIONS**

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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

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



certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

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

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

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence 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 or Guarantee issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right

of any nature whatsoever of Seller, including any equity or right of purchase or redemption by the Seller. The Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

#### 8.4 Performance Assurance.

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

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

(ii) (A) Project Development Security in the amount and in the form set forth in the Cover Sheet with respect to this subpart (ii) from a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Article Eleven are either satisfied or waived until Seller posts Project Development Security pursuant to clause (B) of this subpart (ii) with Buyer, and (B) Project Development Security in the amount and in the form set forth in the Cover Sheet with respect to this subpart (ii)(B) from a date not later than thirty (30) days following the first (1<sup>st</sup>) anniversary of the date on which all of the Conditions Precedent set forth in Article Eleven were either satisfied or waived until Seller posts Delivery Term Security pursuant to subpart (iii) below, with Buyer; and

(iii) from the Commercial Operation of each Increment until the end of the Term, the Delivery Term Security for such Increment in an amount equal to \$300,000 times the generation capacity in MW of each Increment, as set forth herein. Within fifteen (15) days after the end of each month prior to the Commercial Operation Date (or, to the extent the Commercial Operation Date is not achieved by the Guaranteed Commercial Operation Date, the Outside Completion Date), and within fifteen (15) days after the Commercial Operation Date (or, if applicable, the Outside Completion Date), Seller will deliver to Buyer Delivery Term Security in an amount equal to the total generation capacity in MW of all Increments that achieve Commercial Operation during the applicable month multiplied by \$300,000. Upon the satisfactory posting of the Delivery Term Security for such Increment, the Project Development Security associated with such Increment will be returned to Seller within five (5) Business Days, less the amounts that have been drawn upon and may be retained by Buyer in accordance with this Agreement; provided however, that with Buyer's consent, Seller may elect to apply the Project Development Security that is eligible to be returned toward the Delivery Term Security, if any, provided pursuant to this Section 8.4.

To the extent that Seller has provided the Performance Assurance in the form of a letter of credit, Seller may effect the delivery of additional amounts of the Delivery Term Security and the reduction of the amount of Project Development Security by increasing or decreasing it, as applicable, so that the face amount of the letter of credit held by Buyer equals the total of the

amount of the Project Development Security and the amount of Delivery Term Security which Buyer should then be holding under this Agreement.

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

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

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are owed to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security and, if Seller has met the Guaranteed Commercial Operation Date, then the Project Development Security returned shall include amounts previously deducted as Daily Delay Damages as provided in Section 3.9(c)(v). Return of the Project Development Security as provided in this Section 8.4(c) shall be made within five (5) Business Days of Seller's provision of the Delivery Term Security; provided however, that with Buyer's consent, Seller may elect to apply the Project Development Security that is eligible to be returned toward the Delivery Term Security, if any, provided pursuant to this Section 8.4.

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security or Delivery Term Security, as applicable, at the Interest Rate; 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 the Cover Sheet. 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; provided that if Seller has not provided such account information to Buyer at least five (5) Business Days prior to the first Interest Payment Date, Buyer shall transfer the Interest Payment to Seller within five (5) Business Days after delivery of such account information.

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller promptly after the following has occurred: (a) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (b) all payment obligations of the Seller arising under this Agreement that are then payable, including but not limited to payments pursuant to Section 4.5 (CAISO Charges), Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

(f) Seller Downgrade Event. If at any time there shall occur a Seller Downgrade Event or an event that would constitute an Event of Default under Section 5.1(c) and Seller has provided a Guarantee from the Guarantor acceptable to Buyer as Delivery Term

Security under this Agreement, then within five (5) Business Days of receipt of Buyer's request for such security Seller shall deliver a Letter of Credit or cash to Buyer in an amount equal to the amount of Delivery Term Security set forth on the Cover Sheet. In the event Seller shall fail to provide such Letter of Credit or cash to Buyer within five (5) Business Days of receipt of Buyer's request for such security, then Buyer will be entitled (i) to declare an Event of Default and (ii) to the remedies set forth in Article 5 of this Agreement.

#### 8.5 Letter of Credit.

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

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

### **ARTICLE NINE: GOVERNMENTAL CHARGES**

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

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

## ARTICLE TEN: MISCELLANEOUS

### 10.1 No Fault Extensions, Reductions and Terminations.

(a) Extensions of Milestones. Subject to subsection (b) below, each of the Guaranteed Project Milestones and the dates for completing all other Milestones may be extended on a day-for-day basis for (i) delays due to a Force Majeure, (ii) delays beyond July 1, 2011 in obtaining final and non-appealable Governmental Approvals required for the construction of the Project, and (iii) delays beyond November 1, 2013 in the completion of the Transmission Upgrades. If Seller is delayed beyond July 1, 2011 in obtaining final and non-appealable Governmental Approvals for some but not all of the Contract Capacity, the Guaranteed Project Milestones and other Milestones will only be extended to the extent they relate to the Contract Capacity in excess of the amount for which final and non-appealable Governmental Approvals have been obtained. Seller shall notify Buyer of the occurrence of any such delays as soon as reasonably possible.

(b) Limitation on Extensions. Except as otherwise provided in Section 10.1(e), no extensions of the dates for completing Milestones under Section 10.1(a) shall in the aggregate extend (i) the date for completing any Milestone by more than eighteen (18) months, (ii) the Guaranteed Construction Start Date beyond December 31, 2014, or (iii) the Guaranteed Commercial Operation Date beyond December 31, 2016.

(c) Energy Investment Tax Credit and Property Tax Abatement Extensions. This Section 10.1(c) shall apply only if one or more of the extensions under Section 10.1(a) above (without application of any other extension that may be provided for under another Section of this Agreement) extend the Guaranteed Construction Start Date to a date no earlier than December 31, 2014 and the Guaranteed Commercial Operation Date to a date no earlier than December 31, 2016.

(i) If (A) federal legislation providing for an extension of the Energy Investment Tax Credit in the amount of at least thirty percent (30%) of the basis of a solar photovoltaic electric generating facility placed in service before July 1, 2017 ("ITC Extension"), is not enacted by the ITC Review Date, or (B) California legislation providing for an extension of the Property Tax Expiration Date ("Property Tax Extension") is not enacted by the Property Tax Review Date, then (X) Section 10.1(c)(ii) shall apply, and (Y) the Affected Milestones (defined below) may each be extended on a day for day basis at Seller's election until such time as the ITC Extension and/or the Property Tax Extension, as applicable, are enacted ("Milestone Extension"); provided that in no event may the Milestone Extension exceed five hundred forty (540) days. The five hundred and forty-first (541<sup>st</sup>) day after the ITC Review Date and/or (as applicable) the Property Tax Review Date (June 30, 2016) shall be referred to herein as the "Extension Cutoff

Date”. As used herein “Affected Milestones” means (AA) if Seller has not yet commenced construction of the Project as of the ITC Review Date or the Property Tax Review Date, as applicable, all Guaranteed Project Milestones and other Milestones, and (BB) if Seller has commenced construction as of the ITC Review Date or the Property Tax Review Date, as applicable, all Guaranteed Project Milestones that occur after the then applicable ITC Expiration Date and/or Property Tax Expiration Date, as applicable.

(ii) If the ITC Extension has not been enacted by the ITC Review Date and/or the Property Tax Extension has not been enacted by the Property Tax Review Date, then Seller may offer Buyer a Mitigation Option by delivering to Buyer Notice of a Mitigation Offer (“Mitigation Notice”) by August 31, 2015 (the “Mitigation Offer Deadline”). If Seller fails to deliver a Mitigation Notice by the Mitigation Offer Deadline, then the Mitigation Option shall be deemed to have expired, Section 10.1(d) shall be inapplicable and Seller shall be deemed to have waived its rights thereunder, and the provisions of Section 10.1(e) setting forth the consequences of the expiration of the Mitigation Option shall apply.

(d) Mitigation Option.

(i) Seller’s Mitigation Offer. In its Mitigation Notice, Seller shall propose a revised Contract Price and changes to those provisions of the Agreement identified in Appendix XIII that exclude the value of the Energy Investment Tax Credit and/or the value of the exemption from CA Property Tax, as applicable, in their entirety and provide a formula or methodology to address a Partial ITC Extension and/or a Partial Property Tax Extension, as applicable (“Mitigation Offer”). Along with the Mitigation Offer, Seller shall provide documentation to evidence the ability of Seller (directly or through any Affiliate) (A) to earn and claim the federal tax credit under the existing federal legislation and the actual value of the credit based Seller’s (or Seller’s Affiliates, if applicable) anticipated tax filings with the U.S. federal government and applicable state government, and/or (B) to benefit from the CA Property Tax Abatement Law, as applicable. Such documentation must also include the effective tax rate used to determine the value and the justification for use of that tax rate and any other documentation reasonably required by Buyer to evaluate the Mitigation Offer.

(ii) Mitigation Option.

(A) Within sixty (60) days after its receipt of a Mitigation Notice (“Mitigation Exercise Period”), Buyer, in its sole discretion, shall have the right (“Mitigation Option”), but not the obligation, to accept Seller’s Mitigation Offer by delivering a notice of acceptance (“Offer Acceptance Notice”) to Seller.

(B) Within forty-five (45) days after Seller’s receipt of an Offer Acceptance Notice, the Parties must amend this Agreement and, if necessary, other documents related to this Agreement, to reflect the changes mutually agreed upon by the Parties related to the Mitigation Offer (“Mitigation Amendment”), subject to Mitigation Option Approval. The Mitigation Amendment must incorporate terms (“Reinstatement Terms”) providing (I) a methodology to reduce the agreed upon Contract Price to reflect a Partial ITC Extension and/or a Partial Property Tax Extension, as applicable for which Seller (or Seller’s Affiliates, if applicable) qualifies, if such legislation is enacted at any time after the Mitigation

Offer is accepted and (II) an express agreement to refund to Buyer, or allow Buyer to offset, any payments made to Seller under the Mitigation Amendment, if the ITC Extension, a Partial ITC Extension, the Property Tax Extension and/or a Partial Property Tax Extension is enacted or made available on a retroactive basis and Seller (or Seller's Affiliates, if applicable) is eligible to earn such tax credits or to receive such property tax abatement.

(C) If Buyer fails to deliver an Offer Acceptance Notice during the Mitigation Exercise Period, or if Buyer timely delivers an Offer Acceptance Notice but the Parties are unable to execute a Mitigation Amendment within the forty-five (45) day period following Seller's receipt of such notice, then the Mitigation Option shall be deemed to have expired, and the provisions of Section 10.1(e) shall apply.

(iii) Mitigation Option Approval. If the Parties complete and execute a Mitigation Amendment, Buyer shall, within forty five (45) days of the date on which the Parties execute the Mitigation Amendment, submit it to the CPUC through an advice filing or other appropriate application ("CPUC Mitigation Filing") seeking CPUC approval of Buyer's exercise of the Mitigation Option and the Mitigation Amendment, which must include Buyer's recovery of all additional payments to be made by Buyer under the Mitigation Amendment, as modified, subject to the Buyer's continued administration of the Agreement, as amended ("Mitigation Option Approval"). If such Mitigation Option Approval does not occur on or prior to one hundred eighty (180) days after the CPUC Mitigation Filing, the Mitigation Option shall be deemed to have expired without being exercised, the Mitigation Amendment shall have no effect, and the provisions of Section 10.1(e) shall apply.

(iv) Reinstatement. If, after Seller delivers a Mitigation Notice to Buyer, the ITC Extension, a Partial ITC Extension, the Property Tax Extension and/or a Partial Property Tax Extension, as applicable, is enacted (such date of enactment, the "Reinstatement Date"), and if as of the Reinstatement Date the Agreement is still in effect and Buyer has not delivered an Offer Acceptance Notice, then the Mitigation Offer shall be deemed rescinded, Seller shall not be permitted to terminate this Agreement pursuant to Section 10.1(e), and both Parties shall continue to perform under this Agreement, without amendment, except that each of the Affected Milestones shall be extended by the number of days between the ITC Review Date or the Property Tax Review Date, as applicable, and the Reinstatement Date. If the Reinstatement Date occurs while this Agreement is still in effect but after the date an Offer Acceptance Notice is delivered by Buyer, then the Reinstatement Terms of the Mitigation Amendment dealing with such circumstance shall apply.

(e) Expiration of Mitigation Option.

(i) Applicability. The provisions of Section 10.1(e)(ii) below shall apply only if the ITC Extension is not enacted by the ITC Review Date and/or the Property Tax Extension is not enacted by the Property Tax Review Date, as applicable, and one or more of the following apply:

(A) Seller fails to deliver a Mitigation Notice by the Mitigation Offer Deadline;

(B) Seller timely delivers a Mitigation Notice but Buyer fails to deliver an Offer Acceptance Notice within the Mitigation Exercise Period;

(C) Buyer and Seller are unable to execute a Mitigation Amendment within the 45-day period following Seller's receipt of Buyer's Offer Acceptance Notice;

(D) the Parties execute a Mitigation Amendment pursuant to Section 10.1(d) but Buyer fails to make the CPUC Mitigation Filing by the forty-fifth (45<sup>th</sup>) day after the Mitigation Amendment is executed; or

(E) Buyer has made the CPUC Mitigation Filing but Mitigation Option Approval is not received within the 180-day period following the CPUC Mitigation Filing.

(ii) Effect of Expiration of Mitigation Option. If one or more conditions set forth in Section 10.1(e)(i) apply, and if the ITC Extension and/or the Property Tax Extension is not enacted by the applicable Extension Cutoff Date, then Seller may terminate this Agreement by delivering Notice of termination to Buyer within ten (10) Business Days following the applicable Extension Cutoff Date. If Seller fails to deliver Notice of termination by the tenth (10<sup>th</sup>) Business Day after the applicable Extension Cutoff Date, Seller shall be deemed to have waived its termination right under this Section 10.1(e), and both Parties shall continue to perform under this Agreement without amendment. Any termination by Seller pursuant to this Section 10.1(e)(ii) shall be effective five (5) Business Days from the date on which Seller delivers Notice of termination. Upon such termination neither Party shall have any obligation or liability to the other except for those set forth in Section 2.5 (excluding obligations to pay the Settlement Amount and other damages, but including obligations for indemnification payments and any other indemnification obligations under Section 10.5), which shall survive termination of this Agreement as provided therein.

(f) Extended Force Majeure.

(i) After the Commercial Operation Date, if an outage results from an event of Force Majeure (other than a Material Casualty Event) that affects the Project itself (and not external items such as transmission downstream of the Delivery Point) and prevents the Project from delivering sixty percent (60%) or more of the Contract Quantity per year to the Delivery Point for a period of eighteen (18) consecutive months, Buyer may, at its option, reduce the Contract Capacity under this Agreement according to the following formula:

$$CC_{\text{red}} = CC_0 \times [(2/3 \times DE) / CQ]$$

where

$CC_{\text{red}}$  = the reduced Contract Capacity

$CC_0$  = the Contract Capacity before reduction

DE = the total amount of Delivered Energy delivered during such 18 month period



CQ = the Contract Quantity required to be delivered under this Agreement in the most recently ended Contract Year based on the Contract Capacity prior to reduction

(ii) If Buyer elects to reduce the Contract Capacity, it shall do so by Notice to Seller, but such reduction shall be without liability to Seller for penalties or damages by reason of such reduction; provided that, the Right of First Offer obligations in subsection (iii) below shall apply. Concurrently with any such reduction, the Contract Quantity shall be reduced correspondingly, and Buyer shall also return to Seller the Delivery Term Security then held by Buyer that exceeds the amount applicable to the reduced Contract Capacity, less the amounts that have been drawn upon and may be retained by Buyer in accordance with this Agreement.

(iii) In the event that the Contract Capacity is reduced by Buyer pursuant to this Section 10.1(f), then the terms of Buyer's right of first offer as set forth in Appendix XIV shall apply and are incorporated herein by reference. For purposes of the Right of First Offer under this Section 10.1(f)(iii), the "Exclusivity Period" shall be the period beginning on the date the Contract Capacity is reduced pursuant to Section 10.1(f)(i) and ending two (2) years after the date the Contract Capacity is reduced pursuant to Section 10.1(f)(i).

(g) Permit Failure.

(i) (A) If Seller has not received or obtained by the Guaranteed Construction Start Date final and non-appealable material Governmental Approvals required for the construction of the Project with a Contract Capacity of 300 MW, after using commercially reasonable efforts to do so ("Permit Failure"), Seller shall make a Contract Capacity Commitment on the Guaranteed Construction Start Date equal to, at a minimum, the generation capacity permitted under the final and non-appealable material Governmental Approvals that Seller has received as of the Guaranteed Construction Start Date, and shall provide Notice of such Contract Capacity Commitment to Buyer no later than ten (10) Business Days following the Guaranteed Construction Start Date.

(B) Buyer and Seller acknowledge that Seller has elected to seek one permit (the "BLM Permit") from the U.S. Bureau of Land Management ("BLM") for construction of 550 MW of solar generating capacity on BLM Land, covering both construction of the Project and another separate solar energy generating facility to be owned by Seller or an Affiliate of Seller and to be located in the vicinity of the Project with a proposed generating capacity of 250 MW (the "Other Project"). If, in spite of Seller's good faith efforts to obtain a BLM Permit authorizing the construction of a total of 550 MW of capacity, the final record of decision issued by the BLM (the "ROD") covering the Project and the Other Project authorizes the construction of less than 550 MW, Seller and the Other Seller shall reduce the capacities of the Project and the Other Project on a pro rata basis, such that the Contract Capacity of the Project and Seller's Contract Capacity Commitment is reduced to the capacity authorized by the ROD multiplied by the Project Allocation Factor.

(ii) If Seller's Contract Capacity Commitment is less than 100 MW because of a Permit Failure, then Buyer may, at its option, elect either of the following:

(A) To reduce the Contract Capacity to the level of the Contract Capacity Commitment, in which event the Contract Quantity, Project Development Security and Delivery Term Security also shall be proportionately reduced based on the reduced Contract Capacity, and Seller shall pay Buyer liquidated damages (for which Buyer may draw on the Project Development Security) equal to \$50,000 per MW for the difference between 300 MW and such reduced Contract Capacity Commitment, and Buyer's Right of First Offer in subsection (v) below shall apply to the difference between 300 MW and such reduced Contract Capacity Commitment. Seller shall pay such liquidated damages to Buyer no later than ten (10) Business Days following receipt of Buyer's Notice. Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to the reduction in Contract Capacity because of such a Permit Failure would be difficult or impossible to predict with certainty, and (II) such liquidated damages are an appropriate approximation of such damages.

(B) To declare an Early Termination Date for the entire Agreement due to such Permit Failure by Notice to Seller, in which event Seller shall pay to Buyer liquidated damages (for which Buyer may draw on the Project Development Security) in the amount of \$50,000 per MW for the full 300 MW Contract Capacity ("Permit Failure LD Payment"), and Buyer's Right of First Offer in subsection (v) below shall apply to the full 300 MW Contract Capacity. Seller shall pay such Permit Failure LD Payment to Buyer no later than ten (10) Business Days following receipt of Buyer's Notice. Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to termination of this Agreement because of such a Permit Failure would be difficult or impossible to predict with certainty, and (II) the Permit Failure LD Payment is an appropriate approximation of such damages. Upon Seller's payment of the Permit Failure LD Payment to Buyer, this Agreement shall terminate and, other than as provided in Section 10.1(g)(v) and Section 2.5 (excluding obligations to pay the Settlement Amount and other damages, but including obligations for indemnification payments and any other indemnification obligations under Section 10.5), both Parties shall be released of any further liabilities and obligations under the Agreement. For avoidance of doubt, upon Buyer's declaration of an Early Termination Date hereunder, Buyer may exercise all of the rights and remedies provided to Buyer as the Non-Defaulting Party under Article Eight to satisfy the Permit Failure LD Payment, including, without limitation, immediately drawing upon the Performance Assurance posted by Seller.

(iii) If Seller's Contract Capacity Commitment is more than 100 MW, but less than 300 MW because of a Permit Failure, then the Parties shall reduce the Contract Capacity to the level of the Contract Capacity Commitment, and Seller shall pay Buyer liquidated damages (for which Buyer may draw on the Project Development Security) equal to \$50,000 per MW for the difference between 300 MW and such reduced Contract Capacity Commitment, and Buyer's Right of First Offer in subsection (v) below shall apply to the difference between 300 MW and such reduced Contract Capacity Commitment. The Contract Quantity, Project Development Security and Delivery Term Security also shall be proportionately reduced based on the reduced Contract Capacity. Seller shall pay such liquidated damages to Buyer no later than ten (10) Business Days following Seller's Notice to Buyer of the reduced Contract Capacity Commitment. Each Party agrees and acknowledges that (A) the damages that Buyer would incur due to the reduction in Contract Capacity because of such a Permit Failure would be difficult or impossible to predict with certainty, and (B) such liquidated damages are an appropriate approximation of such damages.

(iv) Seller's liability for a Permit Failure shall be limited to the rights and remedies set forth in subsections (ii), (iii) and (v) of this Section 10.1(g).

(v) In the event that the Contract Capacity is reduced pursuant to Sections 10.1(g)(ii)(A) or 10.1(g)(iii) above or this Agreement is terminated pursuant to Section 10.1(g)(ii)(B) above, then the terms of Buyer's Right of First Offer set forth in Appendix XIV shall apply and are incorporated herein by reference. For purposes of the Right of First Offer under this Section 10.1(g)(v), the "Exclusivity Period" shall be the period beginning on the date the Contract Capacity is reduced pursuant to Sections 10.1(g)(ii)(A) or 10.1(g)(iii), as applicable, or this Agreement is terminated pursuant to Section 10.1(g)(ii)(B), and ending on July 1, 2017.

(h) Transmission Failures.

(i) If as of a date no earlier than July 1, 2012 and no later than ninety (90) days prior to the Guaranteed Construction Start Date, Seller reasonably determines, based on the actual or reasonably estimated amounts of Project Interconnection Costs and Project Network Upgrade Costs, that the increase in the Contract Price under Section 4.1 will or would be reasonably expected to cause the Contract Price to exceed the Transmission Cost Cap, and if Buyer does not agree, in its sole discretion, to pay such increased Contract Price notwithstanding the Transmission Cost Cap ("Transmission Cost Failure"), Seller may, at its option, elect either of the following:

(A) to proceed with this Agreement at a Contract Price equal to the Transmission Cost Cap; or

(B) to terminate this Agreement no later than the Guaranteed Construction Start Date by Notice to Buyer, without any further liability or obligation except as provided in Section 10.1(h)(ii) below.

Seller shall notify Buyer if the increase in the Contract Price pursuant to Section 4.1 will or would reasonably be expected to cause the Contract Price to exceed the Transmission Cost Cap no earlier than July 1, 2012 and no later than ninety (90) days prior to the Guaranteed Construction Start Date, and Buyer shall notify Seller within sixty (60) days after receipt of such Notice if will elect to pay such increased Contract Price, notwithstanding the Transmission Cost Cap. If Buyer so elects to pay such increased Contract Price, the Contract Price will be increased as provided in Section 4.1, but without being limited by the Transmission Cost Cap, and this Agreement shall continue in force; provided, however, that any increase in the Contract Price pursuant to Section 4.1 shall be based only on actual costs incurred by Seller. If Buyer does not elect to pay such increased Contract Price, Seller shall make its election under this Section 10.1(h)(i) no later than the Guaranteed Construction Start Date and shall provide Notice to Buyer of its election no later than three (3) Business Days following such deadline.

(ii) In the event that this Agreement is terminated by Seller pursuant to Section 10.1(h)(i) above, then the terms of Buyer's Right of First Offer set forth in Appendix XIV shall apply and are incorporated herein by reference. For purposes of the Right of First Offer under this Section 10.1(h)(ii), the "Exclusivity Period" shall be the period beginning on the

date this Agreement is terminated by Seller pursuant to Section 10.1(h)(i) and ending on July 1, 2017.

(i) Material Casualty Event.

(i) If a Material Casualty Event occurs, Seller shall give Buyer a Contract Capacity Reduction Notice of such occurrence within the earlier of forty-eight (48) hours of obtaining actual knowledge or seven (7) days after the occurrence of such event describing such Material Casualty Event in reasonable detail, and, if such Material Casualty Event occurs prior to the Commercial Operation Date, each of the Guaranteed Project Milestones and the other Milestones shall thereupon be extended for a period of one hundred twenty days (120) (or such lesser period as may elapse between the occurrence of such Material Casualty Event and Seller's election pursuant to the following sentence). Within one hundred twenty (120) days after the occurrence of such Material Casualty Event, Seller shall elect, by Notice to Buyer, (A) to repair and restore the Project completely and to deliver a Project with the Contract Capacity set forth herein (subject to such other adjustments as may be separately provided for herein), (B) upon delivery of a Contract Capacity Reduction Notice to Buyer, reduce the Contract Capacity to an amount not less than the greater of 10 MW or the capacity of the Project that was not affected by the Material Casualty Event, or (C) if the remaining Contract Capacity is less than 10 MW, terminate this Agreement as provided in subsection (iii) below. In addition, the terms of subsection (v) below shall apply to any reduction of the Contract Capacity or termination of this Agreement pursuant to this Section 10.1(i). If such Material Casualty Event occurs prior to the Commercial Operation Date and Seller elects either to repair and restore the Project completely or to proceed with the Project at a reduced Contract Capacity, each of the Guaranteed Project Milestones and other Milestones shall be further extended as reasonably necessary in order to allow a similar amount of time as is allowed under Appendix III for the initial construction of the Project for Seller to repair and restore the Project and complete construction of the Project at the applicable Contract Capacity.

(ii) If Seller elects to proceed with the Project at a reduced Contract Capacity as provided in clause (B) of subsection (i) above, the Contract Quantity, Project Development Security and Delivery Term Security also shall be proportionately reduced based on the reduced Contract Capacity, except that, if such reduction occurs prior to the Commercial Operation Date and if the total Performance Assurance held by Buyer prior to such reduction is less than the full amount of Delivery Term Security that will be applicable to the reduced Contract Capacity when it achieves Commercial Operation, Buyer may retain any excess Performance Assurance that it is then holding, and such excess shall be applied to any required increase in Delivery Term Security under Section 8.4(a)(iii). Subject to the foregoing, Buyer shall refund any excess Project Development Security and any excess Delivery Term Security to Seller within ten (10) Business Days after such amounts have been determined, less the amounts that have been drawn upon and may be retained by Buyer in accordance with this Agreement.

(iii) If as a result of a Material Casualty Event, the Contract Capacity is reduced to less than ten (10) MW, Seller may terminate this Agreement by Notice to Buyer pursuant to subsection (i) above without any liability for penalties or damages by reason of such termination; provided that, the obligations under the Right of First Offer as set forth in subsection (v) below shall apply. If Seller does terminate this Agreement in such case, Buyer shall return to

Seller all Performance Assurance then held by Buyer, less the amounts that have been drawn upon and may be retained by Buyer in accordance with this Agreement, within ten (10) Business Days after the effective date of such termination.

(iv) Seller shall not incur or be subject to any liability hereunder as a result of such reduction in the Contract Capacity or termination of this Agreement under subsections (i), (ii) or (iii) above, the failure to achieve Commercial Operation of any capacity by which the Contract Capacity is reduced, or the failure to achieve any Milestone or Guaranteed Project Milestone related to such capacity, except as provided in subsection (v) below.

(v) In the event that this Agreement is terminated or the Contract Capacity is reduced by Seller pursuant to Sections 10.1(i)(i), 10.1(i)(ii) or 10.1(i)(iii) above, then the terms of Buyer's Right of First Offer set forth in Appendix XIV shall apply and are incorporated herein by reference. For purposes of the Right of First Offer under this Section 10.1(i)(v), the "Exclusivity Period" shall be the period beginning on the date the Contract Capacity is reduced or this Agreement is terminated pursuant to Sections 10.1(i)(i), 10.1(i)(ii) or 10.1(i)(iii), as applicable, and ending two (2) years after the date the Contract Capacity is reduced or this Agreement is terminated pursuant to Sections 10.1(i)(i), 10.1(i)(ii) or 10.1(i)(iii), as applicable.

## 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.

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

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

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

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; and

(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.

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

(b) Seller Covenants.

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

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

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

10.5 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney’s fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to 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. Seller shall further indemnify Buyer for all penalties assessed against Buyer by the CPUC pursuant to the California Renewables Portfolio Standard to the extent caused by Seller’s failure to deliver the Product, unless such failure is caused by Force Majeure, Dispatch Down, Buyer Dispatch Down or Buyer’s breach or default under this Agreement.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss,

Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point 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.

10.6 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned; 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. Buyer agrees to execute a consent to assignment in favor of the financing provider(s) in substantially the form of Appendix X attached hereto.

10.7 Confidentiality. Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party's Affiliates, 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 clauses (v) or (vi) of this Section 10.7 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) with respect to a Disclosure Order pursuant to clause (v), to notify the other Party prior to disclosing the confidential information and (ii) with respect to a Disclosure Order pursuant to clauses (v) or (vi), to 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. The Parties agree that



the confidentiality provisions under this Section 10.7 are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Section 10.7 shall govern confidential treatment of all information exchanged between the Parties as of and after the Effective Date.

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 Test Energy and 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 Construction Contractors, maintaining sufficient limits of the appropriate insurance coverage.

(a) Workers' Compensation and Employers' Liability.

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

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

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, with no alterations to the coverage form, except as approved by Buyer, such approval not to be unreasonably withheld.

(ii) Taken together with the umbrella/excess liability insurance provided pursuant to Section 10.10(f), the limit shall not be less than \$10,000,000 each occurrence and in the aggregate for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within such 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 for owned vehicles shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 “any auto”. Coverage shall include hired and non-owned vehicles.

(ii) Taken together with the umbrella/excess liability insurance provided pursuant to Section 10.10(f), the limit shall not be less than \$10,000,000 each accident and in the aggregate for bodily injury and property damage.

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

(d) Aircraft Liability.

(i) Only 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) Taken together with the umbrella/excess liability insurance provided pursuant to Section 10.10(f), the limit shall not be less than \$10,000,000 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, except to the extent arising from PG&E’s gross negligence or willful misconduct.

(e) Watercraft Liability.

(i) Only 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) Taken together with the umbrella/excess liability insurance provided pursuant to Section 10.10(f), the limit shall not be less than \$10,000,000 for each occurrence and in the aggregate 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) Umbrella/Excess Liability Insurance.

(i) Excess liability coverage for liabilities covered by the commercial general liability, business auto, aircraft liability (if applicable) and watercraft liability (if applicable) policies described in Sections (b), (c), (d) and (e) above.

(ii) The limit shall be not less than \$10,000,000 per occurrence and in the aggregate.

(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.

(g) Seller's Pollution Liability.

(i) Coverage for bodily injury, property damage, including clean up costs and defense costs resulting from sudden, 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.

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

(h) All Risk Property Insurance.

(i) An All Risk Property insurance policy including earthquake and flood shall be maintained during the course of Work being performed and include start-up and testing for installed equipment during construction and delayed opening coverage during construction. 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 replacement cost of the property. Limits and deductibles shall be consistent with industry standards for California projects and shall be approved by PG&E, such approval not to be unreasonably withheld.

(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 ten (10) days from non-payment of premiums.

(iii) PG&E uses a third party vendor, Exigis, to confirm and collect insurance documents. Vendor and broker will be required to register as "service provider". Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to bind coverage on its behalf, and submitted through the Exigis website at: <https://prod1.exigis.com/pge>, Helpline: 1 (888) 280-0178, Certificate Holder: Pacific Gas and Electric Company, c/o Exigis, <https://prod1.exigis.com/pge>.

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

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

(vi) The insurance carrier or carriers shall be rated A-IX or A-VIII or better by A.M. Best or shall otherwise be reasonably acceptable to PG&E.

(j) Form And Content.

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

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

(B) with respect to any additional insured, provide a Form 438BFU endorsement or other endorsement providing 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 and Seller jointly determine that consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

(a) Complete financial statements (but only including notes with respect to annual financial statements); and

(b) Financial schedules underlying the financial statements, all within ninety (90) days after the end of each fiscal quarter for quarterly financial statements and within one hundred twenty (120) days after the end of the fiscal year for annual financial statements.

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

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

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

10.15 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by 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 FERC Approval Cooperation. The Parties acknowledge that Buyer may be required to seek approval from FERC for certain of the Scheduling Coordinator services and fee provided in Section 3.4(c). Seller further agrees that if requested in writing by Buyer to do so, Seller and Buyer shall (a) amend this Agreement to delete references to those Scheduling Coordinator services and fee that are the subject of FERC approval and (b) enter into a separate agreement with Buyer for those same services and fee; provided that the responsibilities of the Parties with respect to such services and for the payment of fees and costs shall not be modified by such amendment or additional agreement.

## **ARTICLE ELEVEN: CONDITIONS PRECEDENT**

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

- (a) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;
- (b) CPUC Approval has been obtained; and
- (c) Buyer receives a final and non-appealable order of the CPUC that finds that Buyer's entry into this Agreement is reasonable and that payments to be made by Buyer hereunder are recoverable in rates (such occurrences in subsections (a) through (c) shall be referred to as "Conditions Precedent").

11.2 Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied or waived in writing by both Parties on or before 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, and no Termination Payment shall be due in connection with such termination.

## **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 in writing a meeting 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 subpart (a) above, refuses or does not meet within the ten (10) Business Day period specified in subpart (a) above, either Party may initiate arbitration of the controversy or claim according to the terms of the following Section 12.3.

12.3 Arbitration. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be settled by Arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration"). Any arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the AAA a notice of intent to arbitrate within sixty (60) days after the date described in Section 12.2(d). 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 in herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, as provided in Appendix VIII, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Notices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.

**APPENDIX I**  
**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: [Desert Sunlight Holdings, LLC]  
c/o First Solar, Inc.  
1111 Broadway, 4th Floor  
Oakland, CA 94607

[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 acceptable to Pacific Gas and Electric Company."

This Letter of Credit expires at our counters located at [INSERT ADDRESS] on [INSERT DATE], ("Expiration Date") but the Expiration Date shall be automatically extended without amendment for a period of one year and on each successive Expiration Date, unless at least thirty (30) 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 scheduled 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. 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:

**DESERT SUNLIGHT HOLDINGS, LLC, a  
Delaware limited liability company**

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

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

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

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

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

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

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

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

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



**APPENDIX III****GUARANTEED PROJECT MILESTONES SCHEDULE**

<b>Guaranteed Project Milestones</b>	<b>Date for Completion</b>	<b>Maximum Project Generation Capacity prior to Guaranteed Project Milestone Date</b>
Guaranteed Construction Start Date	July 1, 2013	300 MW
Guaranteed Commercial Operation Date (full Contract Capacity)	July 1, 2015	300 MW

**APPENDIX III-A**  
**MILESTONES SCHEDULE**

<b>Milestone</b>	<b>Date for Completion</b>
Right of Way Application Submitted for Site	September 30, 2009
Interconnection Application Complete	December 31, 2009
Issuance of ROD by BLM	July 1, 2012
Final Design Completed	July 1, 2013
Construction Financing	July 1, 2013
Electrical Interconnection Complete	July 1, 2013



## APPENDIX IV

### PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

#### FACILITY DESCRIPTION:

Facility name: Desert Center Solar Farm (the Project)

Facility Site name: Desert Center, Riverside County, California

Facility physical address: The public land administered by the U.S. Department of Interior, Bureau of Land Management (BLM) that is located in Sections 13, 14, 22, 23, 24 east of Kaiser Road, in Township 4 south, Range 15 east, San Bernardino Base and Meridian.

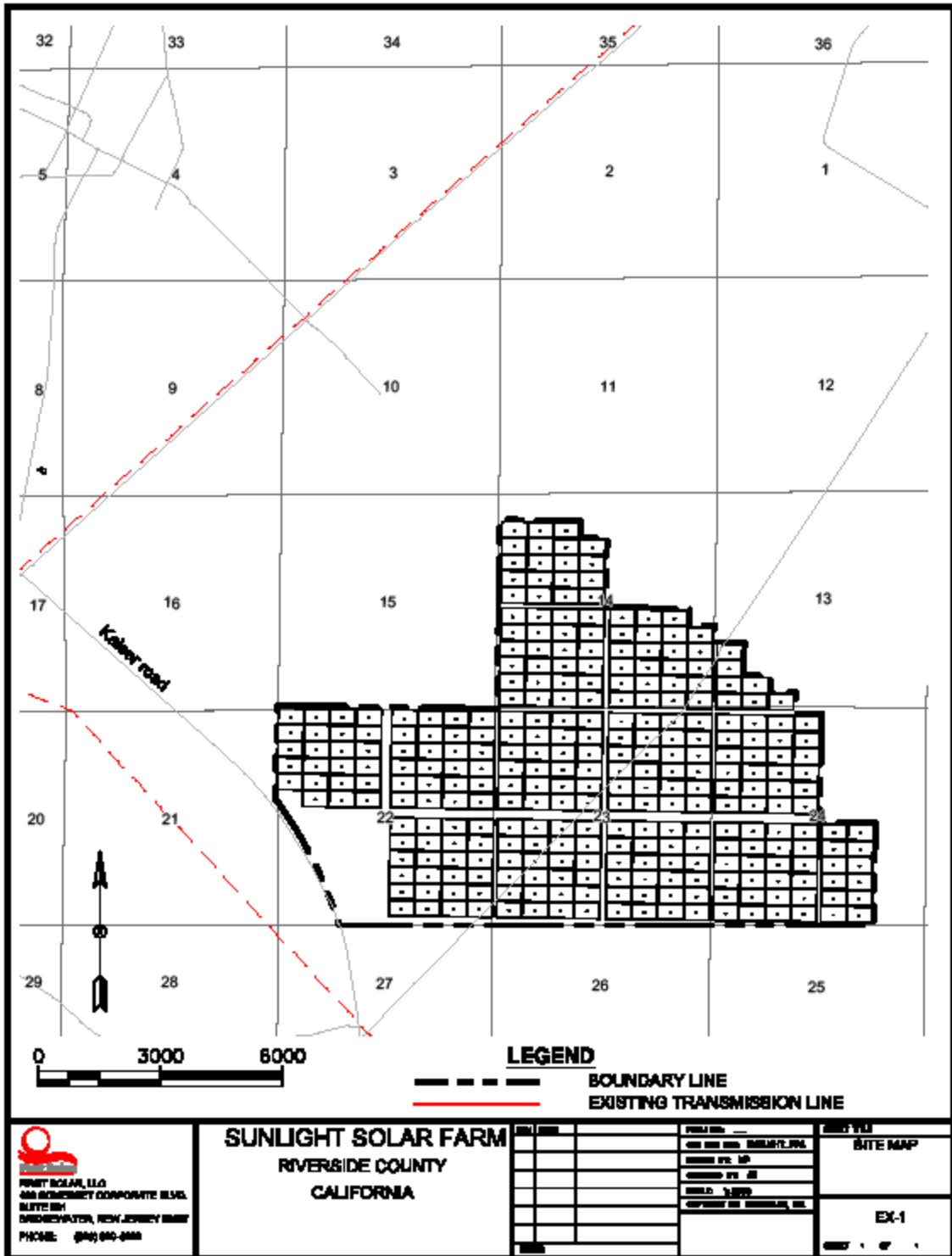
Technology Type: Thin film photovoltaic solar panels manufactured by First Solar Inc.

Substation: A new substation south of Desert Center near Interstate Highway 10 in Riverside County, California on SCE's Devers-Palo Verde 500 kV transmission line.

The term "Site" as defined in the Agreement means those certain parcels or portions thereof located in an unincorporated area of the County of Riverside, State of California, required by Seller to construct the Project (as may be adjusted pursuant to this Agreement) described on the Project site map attached to this Appendix IV or hereafter acquired or leased by Seller in the vicinity of such parcels.

The generation assets comprising the Project are described below:

The Project is expected to utilize approximately 300 to 600 inverters (depending on the size of inverter used) and approximately 4,000,000 solar panels depending on the average power of the solar panels being used), as the same may be adjusted pursuant to this Agreement.



## **APPENDIX V**

### **FORMS OF CERTIFICATION**

In accordance with the terms of that certain Power Purchase and Sale Agreement dated [\_\_\_\_\_] (“Agreement”), by and between Pacific Gas and Electric Company (“Buyer”) and Desert Sunlight Holdings, LLC (“Seller”), Seller shall notify Buyer (1) that the Construction Start Date has occurred by executing and delivering a Certificate of Construction Start Date in the form attached hereto as Appendix V-A and (2) that the Commercial Operation Date has occurred by executing and delivering a Certificate of Commercial Operation in the form attached hereto as Appendix V-B. Both certificates shall be executed by Seller, and the Certificate of Commercial Operation shall also be executed by a Licensed Professional Engineer.

**APPENDIX V-A**

**FORM OF CERTIFICATION FOR CONSTRUCTION START DATE**

This certification (“Certification”) is delivered by Desert Sunlight Holdings, LLC (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer that construction of the Project has begun.

Seller attaches hereto [a copy] [copies] of the Notice[s] to Proceed that Seller delivered to the Construction Contractor[s] and copies of delivery receipts or invoices proving that Seller has delivered, or caused to be delivered, to the Site the equipment necessary to generate, at least 1 MW.

DESERT SUNLIGHT HOLDINGS, LLC

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

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

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

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

## APPENDIX V– B

### FORM OF CERTIFICATION FOR COMMERCIAL OPERATION DATE

The undersigned, Desert Sunlight Holdings, LLC (“Seller”) does hereby deliver this Certificate of Commercial Operation with respect to the Project at [\_\_\_\_ MW] to Pacific Gas and Electric Company (“Buyer”). All capitalized terms not defined herein shall have the meanings set forth in that certain Power Purchase and Sale Agreement dated [\_\_\_\_\_] (the “Agreement”) between Seller and Buyer.

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

The [\_\_\_\_ MW] Project is capable of providing an As-Available Product and meet, at a minimum, all of the requirements identified below.

1. The Contract Capacity on the Commercial Operation Date was \_\_\_\_\_ MW.
2. Thin-film solar panel modules (“modules”) necessary to generate facility output equal to at least the Contract Capacity have been erected in accordance with the manufacturer’s specifications.
3. The electrical collection system related to the modules referred to in paragraph 2 above is complete, functional, and energized for the Project.
4. The collector substation is complete and capable of delivering an As-Available Product.
5. Commissioning of the Project has been completed. The electrical and control systems for the Project have been energized and tested in accordance with the manufacturer’s specifications, and the Project is released for electrical generation of power.

6. The Project is operational and interconnected with the CAISO Grid and capable of delivering Energy through either (a) the permanent Interconnection Facilities or (b) a temporary interconnection or other alternative interconnection arrangement that permits all or rotating segments of the Project to transmit Energy.

DESERT SUNLIGHT HOLDINGS, LLC

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

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

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

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

The undersigned has inspected the Project and reviewed the commercial operation test results for the Project and such other data as he/she deems necessary. Based on such review, it is the undersigned's opinion that the foregoing certification is correct.

[Licensed Professional Engineer]

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

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

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

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

**APPENDIX VI**

**FORM OF [MONTHLY] [QUARTERLY]  
PROGRESS REPORT**

**[Monthly] [Quarterly] Progress Report  
of**

**Desert Sunlight Holdings, LLC  
("Seller")**

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

[Date]

## 1.0 Instructions.

Any capitalized terms used in this report which are not defined herein shall have the meanings ascribed to them in the Power Purchase and Sale Agreement by and between Desert Sunlight Holdings, LLC (“Seller”) and Pacific Gas and Electric Company dated \_\_\_\_\_, 200\_ (the “Agreement”).

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

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

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

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

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

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

Seller shall complete, certify, and deliver this form of Monthly Progress Report to [\_\_\_\_\_], together with all attachments and exhibits, with three (3) copies of this report delivered to [\_\_\_\_\_] and [\_\_\_\_\_].



**2.0 Executive Summary.**

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

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

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

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

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

- 2.2.1 Design
- 2.2.2 Property Acquisition
- 2.2.3 Engineering
- 2.2.4 Major Equipment procurement
- 2.2.5 Construction and Interconnection
- 2.2.6 Milestone report

2.2.7 Permitting

2.2.8 Startup Testing and Commissioning

**3.0 Permitting.**

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

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

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

DESCRIPTION	STATUS

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

Please describe each of the Major local and/or county Governmental Approvals to be obtained by Seller (or Seller’s contractor or construction engineer (including any subcontractors)) and the status of each.

DESCRIPTION	STATUS

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

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

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

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

**3.5 Permitting Notices received from Seller’s Contractor.**

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

**4.0 Design Activities.**

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

The following table lists the design schedule to be followed by Seller and Seller’s contractor or construction engineer (including its subcontractors).

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

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

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

**5.0 Property Acquisition Activities.**

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

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

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

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

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

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

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

**6.0 Engineering Activities.**

**6.1 Table of engineering schedule to be followed by Seller and Seller’s contractor or construction engineer (including its subcontractors).**

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

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


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

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

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

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

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

Please provide a three-month look ahead engineering schedule.

**7.0 Major Equipment Procurement.**

**7.1 Table of major equipment to be procured by Seller or its Construction Contractor[s] (including [its] [their] subcontractors).**

The following table lists major equipment to be procured by Seller or Seller’s contractor or construction engineer (including its subcontractors):

<b>EQUIPMENT DESCRIPTION</b>	<b>MANUFACTURER</b>	<b>MODEL</b>	<b>CONTRACTED DELIVERY DATE</b>	<b>ACTUAL DELIVERY DATE</b>	<b>PROJECTED INSTALLATION DATE</b>	<b>ACTUAL INSTALLATION DATE</b>

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

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

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

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

**8.0 Construction and Interconnection Activities.**

**8.1 Table of construction and interconnection activities to be performed by Seller or Seller’s contractor or construction engineer (including its subcontractors).**

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

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

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

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

**8.4 Contractor Monthly Progress Report.**

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

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

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

**9.0 Milestones.**

**9.1 Milestone schedule.**

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

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

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

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

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

- 9.2.5 Delays in Major Equipment procurement

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 6.1, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

- 9.2.6 Delays in construction and interconnection schedule

Please explain in detail any delays beyond the scheduled completion dates stated in Section 7.1, any impact from the delays on the construction and interconnection schedule, and Seller's plans to remedy such impact.

**10.0 Safety and Health Reports**

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

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

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

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

DESERT SUNLIGHT HOLDINGS, LLC

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

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

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

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



**APPENDIX VII  
GEP DAMAGES CALCULATION**

**PLEASE DO NOT ALTER THIS**

In accordance with the provisions in Section 3.1(e)(iii), GEP Damages means the liquidated damages payment due by Seller to Buyer, calculated as follows:

$$[(A - B) \times (C - D)]$$

Where:

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

B = Sum of Delivered Energy over the Performance Measurement Period, in MWh

C = Replacement Price for the Performance Measurement Period, in \$/MWh, reflecting the sum of (a) the simple average of the simple average of the Day Ahead Integrated Forward Market hourly price, as published by the CAISO, for the Existing Zone Generation Trading Hub, in which the PNode resides, plus (b) \$50/MWh

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

The Parties agree that in the above calculation of GEP Damages, the result of "(C-D)" shall not be less than \$20/MWh.

## APPENDIX VIII

### NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

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

Prior to paralleling to or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify your designated balancing authority control center as follows:

- Call the balancing authority control center to parallel before any start-up
- Call the balancing authority control center again with parallel time after start-up.
- Call the balancing authority control center after any separation and report the separation time as well as the date and time estimate for return to service.

#### **B. SUBMISSION OF AVAILABLE CAPACITY AND PROJECT OUTAGES**

1. Submit information by posting to PG&E's Power Procurement Information Center, which is located at [www.pge.com](http://www.pge.com) under "For My Business." After selecting "Wholesale Power" on the right side of the page, select "Electric Procurement" along the left banner. After selecting the Power Procurement Information Center icon in the middle of the page, you will be required to enter a username and password, which will be assigned to you by PG&E's Bilateral Settlements Group.
2. If the website is unavailable, implement the procedures set forth below:
  - a. For all email correspondence, enter the following in the email subject field: Delivery Date Range, Contract Name, Email Purpose (For example: "dd/mm/yyyy - dd/mm/yyyy XYZ Company Project #2 Daily Forecast of Available Capacity")**
  - b. For Annual Forecasts of Available Capacity, email to [DAenergy@pge.com](mailto:DAenergy@pge.com) and [Bilat\\_Settlements@pge.com](mailto:Bilat_Settlements@pge.com).**
  - c. For Monthly and WECC Preschedule Daily Forecasts of Available Capacity, email to [DAenergy@pge.com](mailto:DAenergy@pge.com).**
  - d. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Day-Ahead Schedules, call primary phone 415.973.6222 or backup phone 415.973.4500. Also send email to [DAenergy@pge.com](mailto:DAenergy@pge.com).**

- e. For Hourly Forecasts of Available Capacity, call PG&E's Hour-ahead Trading Desk at 415.973.4500 and email to [RealTime@pge.com](mailto:RealTime@pge.com).
- f. For project outages, complete the specifics below and submit by email to [DAenergy@pge.com](mailto:DAenergy@pge.com) and [Bilat\\_Settlements@pge.com](mailto:Bilat_Settlements@pge.com)
  - i. **Email subject Field: *dd/mm/yyyy – dd/mm/yyyy XYZ Company Project #2 Outage Notification***
  - ii. **Email body:**
    - 1. ***Type of Outage: Planned Outage, Forced Outage, Prolonged Outage***
    - 2. ***Start Date and Start Time***
    - 3. ***Estimated or Actual End Date and End Time***
    - 4. ***Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted***
    - 5. ***Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage required by the CAISO.***

## APPENDIX IX

### RESOURCE ADEQUACY

1. Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the Capacity Attributes sold by Seller to Buyer under this Agreement to satisfy Buyer's Resource Adequacy Requirements to the extent they qualify for such purpose. Such commercially reasonable actions may include, but are not limited to, the following:
  - A. Cooperating with Buyer in qualifying the Contract Capacity for Resource Adequacy Requirements purposes. This includes following reporting requirements the CPUC has established and may establish in the future with respect to RA Capacity as required for Resource Adequacy Requirement eligibility, and making the Capacity Attributes available to Buyer at the CAISO Interconnection Point; and
  - B. Negotiating in good faith to make amendments to this Agreement that do not change any of the Parties' material rights or obligations or the allocation of economic benefits and burden under this Agreement in order to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.
2. Seller shall comply with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff, including but not limited to the following:
  - A. Taking all actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity to the extent the Project's Capacity Attributes and/or Contract Capacity qualifies as RA Capacity;
  - B. Coordinating with Buyer with regard to the submission of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff, to the CAISO;
  - C. Complying with the dispatch requirements applicable to the Project's resource type, as set forth in Section 40 of the CAISO Tariff; and
  - D. Complying with the applicable reporting requirements.
3. RA Capacity Delivery Point. The delivery point for the Project, with respect to the Capacity Attributes provided under the Agreement and the Transaction, shall be the Interconnection Point for the Project.

## APPENDIX X

### FORM OF CONSENT TO ASSIGNMENT

#### CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [\_\_\_\_\_, 2\_\_\_], between PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”), and [\_\_\_\_\_] , as collateral agent (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the Secured Parties”) providing financing to Desert Sunlight Holdings, LLC (“Seller”).

#### **Recitals**

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

B. The Secured Parties have provided or have agreed to provide financing to Seller, and require that Seller grant to Financing Provider a security interest in the “Assigned Agreement General Intangibles” and the “Assigned Agreement Accounts,” each as defined below, to secure Seller’s obligations in connection with such financing.

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

#### **Agreement**

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

2. Consent. Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the [Security Agreement] of (a) the Assigned Agreement (the “Assigned Agreement General Intangibles”), and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”). Subject to the terms and conditions below, if Financing Party or another person or entity acquires Seller’s interest in the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise), PG&E will recognize such person or entity as the counterparty under the Assigned Agreement. PG&E agrees that, until it is otherwise notified in writing by Financing Party, it will make all payments to be made to Seller under the Assigned Agreement from and after the date hereof to the following account or to such other account as it may be directed in writing by Financing Provider:

[insert account information]

PG&E, Seller and Financing Provider acknowledge and agree that PG&E will be deemed to be in compliance with the payment terms of the Assigned Agreement to the extent that PG&E makes payments to the above account or as otherwise directed in writing by Financing Provider. At such time as Financing Provider notifies PG&E in writing that PG&E may make payments in

accordance with Seller's instructions, PG&E shall thereafter do so without any liability therefor to Financing Provider.

3. Limitations on Assignment. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any security or other agreement executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (i) cures any and all defaults of Seller under the Assigned Agreement, (ii) executes and delivers to PG&E a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (iii) otherwise satisfies and complies with all requirements of the Assigned Agreement, (iv) provides such tax and enforceability assurance as PG&E may reasonably request, and (v) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement General Intangibles and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement General Intangibles or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement unless and until an event of default has occurred and is continuing under the [loan agreement] between Seller and Financing Provider (a "Financing Default"). Upon written notice from Financing Provider that a Financing Default has occurred and is continuing, Financing Party may take all actions and exercise all rights of Seller under the Assigned Agreement. PG&E agrees to accept such actions and exercise of rights by Financing Party, and Seller agrees that PG&E will be deemed to be in compliance with the Assigned Agreement in so doing.

"Permitted Transferee" means Financing Provider and any other person or entity reasonably satisfactory to PG&E (i) that has (or whose guarantor has) sufficient financial capability to perform the obligations of Seller under the Assigned Agreement, (ii) that provides all Performance Assurances required to be provided under the Assigned Agreement, and (iii) that has sufficient operating experience and capability (either itself or through contracts with operation and maintenance providers) to perform the obligations of Seller under the Assigned Agreements. Financing Provider may from time to time, following the occurrence of a Financing Default, notify PG&E in writing of the identity of a proposed transferee of the Assigned Agreement in connection with the enforcement of Financing Provider's security interest in the Assigned Agreement General Intangibles that is not a Permitted Transferee, and PG&E shall, within thirty (30) business days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is reasonably acceptable to PG&E (together with a written statement of the reason(s) for any negative determination) it being understood that if PG&E shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be reasonably acceptable to PG&E.

4. Cure Rights.

(a) Notice to Financing Provider by PG&E. PG&E shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an "Event of Default") to Seller (a "Default Notice"), provide a copy of such Default Notice to Financing Provider pursuant to Section 9(a) of this Consent and Agreement. In addition, Seller shall

provide a copy of the Default Notice to Financing Provider the next business day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Sections 4(a), 4(c), 4(d) and 4(e), PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement “Additional Cure Period” means (i) with respect to a monetary default, thirty (30) days in addition to the cure period if any provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, sixty (60) calendar days in addition to the cure period if any provided to Seller in the Assigned Agreement; provided, however, if such non-monetary default cannot reasonably be cured by Financing Party within such sixty (60) calendar day period, such Additional Cure Period shall be extended by such time, not to exceed an additional ninety (90) days, as is reasonably necessary to cure such non-monetary default.

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

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within sixty (60) days of receiving notice of an Event of Default from PG&E or Seller, whichever is received first, Financing Provider shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed one hundred eighty (180) days; provided, however, that Financing Provider shall provide a written notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider succeeds to Seller’s interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3.

(e) Replacement Agreement. If the Assigned Agreement is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, its owner(s) or guarantor(s), and if Financing Party or a successor owner of the Project so requests within forty-five (45) days after such termination, rejection or other invalidation, PG&E may elect, in its sole discretion, to enter into a new agreement for the balance of the obligations under the Assigned Agreement remaining to be performed with Financing Party or such successor owner having terms substantially the same as the terms of the

Assigned Agreement for the remaining term of the Assigned Agreement. Notwithstanding the execution and delivery of such replacement agreement, to the extent PG&E is or was otherwise entitled to do so under the replaced Assigned Agreement, PG&E may suspend performance of its obligations under such replacement agreement, unless and until all defaults of Seller (other than noncurable defaults that are specific to Seller) under the replaced Assigned Agreement have been cured.

(f) Limitation of Liability. PG&E acknowledges and agrees that Financing Party shall not have any liability or obligation under the Assigned Agreement as a result of the collateral assignment of the Assigned Agreement General Intangibles and the Assigned Agreement Accounts or this Consent and Agreement and that Financing Party is not obligated or required (i) to perform any of Seller's obligations under the Assigned Agreement unless it has assumed the Assigned Agreement as provided in Section 3, or (ii) to take any action to collect or enforce any claim for payment assigned under the financing documents. PG&E further acknowledges and agrees that Financing Provider shall not have any further liability or obligation under the Assigned Agreement once it has assigned or otherwise transferred the Assigned Agreement to a Permitted Transferee (other than the Financing Provider).



5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that PG&E shall have the right to set off or deduct from payments due to Seller each and every amount due PG&E from Seller arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement General Intangibles and the Assigned Agreement Accounts subject to any defenses or causes of action PG&E may have against Seller.

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

7. Amendment to Assigned Agreement. PG&E agrees that it will not, without the prior written consent of Financing Party, modify or amend the Assigned Agreement in any material respect.

8. Due Authorization, Etc. PG&E represents that the execution, delivery and performance by PG&E of this Consent and Agreement and the Assigned Agreement have been duly authorized by all necessary corporate or other action on the part of PG&E and that this Consent and Agreement and the Assigned Agreement have been duly executed and delivered on behalf of PG&E, and constitute the legal, valid and binding obligation of PG&E, enforceable in accordance with their terms, except as the enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws of general application affecting the enforcement of creditors' rights generally and general equitable principles.

9. Miscellaneous.

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

If to Financing Provider:

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

If to PG&E:

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

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

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

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

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

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

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

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

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

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

PACIFIC GAS AND ELECTRIC COMPANY  
(PG&E)

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

[ \_\_\_\_\_ ]  
(Financing Provider), as collateral agent

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

**ACKNOWLEDGEMENT**

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

DESERT SUNLIGHT HOLDINGS, LLC

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

**APPENDIX XI**

**CERTIFICATION OF THIRD PARTY AGREEMENT**

In accordance with Appendix XIV and the applicable Section of the Power Purchase and Sale Agreement dated \_\_\_\_\_ between Pacific Gas and Electric Company and Desert Sunlight Holdings, LLC (“**Seller**”), the undersigned, representative of Seller hereby delivers this certificate summarizing Seller’s proposed third party agreement to sell Products from the Project as referenced in Appendix XIV and such applicable Section. The material terms and conditions are as follows:

Price (describe any applicable escalation, TOD factors, and/or other key terms)

Energy Amount (annual)

Capacity Amount

Delivery Term

Delivery Point

Form and Amount of Security

Guaranteed Commercial Operation Date

Other Key Terms

I certify that the above summary is a truthful and accurate summary of the material terms and conditions of Seller’s proposed agreement with a third party.

DESERT SUNLIGHT HOLDINGS, LLC

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

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

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

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

## APPENDIX XII

### FORM OF GUARANTEE AGREEMENT

**1. Guarantee.** For valuable consideration, \_\_\_\_\_ (“Principal”) and \_\_\_\_\_ (“Guarantor”) jointly and severally unconditionally guarantee payment to Pacific Gas and Electric Company (“PG&E”), its successors and assigns, of all amounts owed to PG&E by \_\_\_\_\_ (“Principal”) under that certain Power Purchase and Sale Agreement dated as of \_\_\_\_\_, 2008 between Principal and PG&E (the “Agreement”). The liability of Guarantor hereunder is a continuing guarantee of payment when any amount is owing by Principal under the Agreement, without regard to whether such payment or performance obligation is contingent or absolute, liquidated or unliquidated, or whether recovery may be or has become barred by any statute of limitations or otherwise may be unenforceable.

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

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

**4. Termination.** The term of this Guarantee is continuous unless terminated with PG&E’s consent. Unless otherwise agreed in writing by PG&E, no notice or termination shall release Guarantor from any liability as to any amount or performance that is at the time or may subsequently become owing under the Agreement as entered into by PG&E and Principal while this Guarantee was in effect.

**5. Waivers of Defenses by Guarantor.** (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this agreement or the enforcement of this agreement. (b) Guarantor waives any right to require PG&E to (i) proceed against Principal, (ii) proceed against or exhaust any security held from Principal or any other party acting under a separate agreement, or (iii) pursue any other remedy available to PG&E. (c) Guarantor waives any defense based on or arising out of any defense of Principal other than

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

**6. Setoffs.** PG&E shall have a right of setoff against any amounts owed by PG&E to Principal under the Agreement, and every such setoff may be exercised by PG&E without notice to or demand on Guarantor.

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

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

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

**10. Notice.** Any notice given hereunder by either Guarantor or PG&E shall be made by facsimile to the person and at the address specified by each party for this purpose. Such notice shall be

effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

**For Guarantor:**

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

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

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

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

**For PG&E:**

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

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

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



## **APPENDIX XIII**

### **IDENTIFIED PROVISIONS FOR MITIGATION AMENDMENT**

Pursuant to Section 10.1(e) of the Agreement, Seller's Mitigation Offer shall not include changes based on anything other than those resulting directly from the unavailability of credits, exemptions and other benefits under the ETC Law and/or the CA Property Tax Abatement Law. The Parties agree that Seller may propose changes to the following Sections of the Agreement and any related definitions, appendices or provisions on the cover sheet in its Mitigation Offer: 3.1(e) (Contract Quantity and Guaranteed Energy Production), 3.1(f) (Contract Capacity), 3.9(c)(iii) (Guaranteed Project Milestones), 4.1 (Contract Price), 8.4 (Performance Assurance), 10.1 (No Fault Extensions, Reductions and Terminations), Appendix III (Guaranteed Project Milestones Schedule), and Appendix III-A (Milestones Schedule).

**APPENDIX XIV****TERMS OF BUYER'S RIGHT OF FIRST OFFER**

The following terms and conditions shall apply as specified in Sections 3.9(e) 10.1 of the Agreement, which incorporate this Appendix XIV by reference.

(1) Neither Seller, its successors and assigns, nor its Affiliates shall, for the period defined as the "Exclusivity Period" in the applicable Section of the Agreement, enter into an obligation or agreement to sell or otherwise transfer any Products from any Additional Capacity to any third party without first offering, by Notice to Buyer, to sell the Products from the Additional Capacity to Buyer on the same terms and conditions as this Agreement.

(2) If Buyer accepts Seller's offer, Buyer shall give Notice to Seller within sixty (60) days of receipt of Seller's offer and the Parties shall have not more than thirty (30) days from the date of Buyer's Notice to enter into an amendment to this Agreement (subject to CPUC Approval) to increase the Contract Capacity to include the Additional Capacity (not to exceed 300 MW in the aggregate with any currently applicable Contract Capacity). Appropriate adjustments will be made to the Contract Quantity, Project Development Security, and Delivery Term Security to reflect such Additional Capacity and to any applicable Guaranteed Project Milestones, other Milestones and other time-sensitive provisions, which shall be extended as reasonably necessary.

(3) If Buyer rejects or fails to accept Seller's offer by Notice to Seller within sixty (60) days of receipt of Seller's offer, Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from any Additional Capacity to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those offered to Buyer in this Agreement. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller summarizing the material terms and conditions of such agreement, which certificate shall be in substantially the form of Appendix XI. If Buyer, in its sole discretion, determines that such terms and conditions as set forth in the certificate are more favorable to the third party than those offered to Buyer, Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from such Additional Capacity without first offering to sell or otherwise transfer such Products from such Additional Capacity to Buyer on such more favorable terms and conditions in accordance with paragraphs (1) and (2) above. If Buyer rejects, or fails to accept by Notice to Seller, Seller's offer to sell or otherwise transfer such Products from such Additional Capacity within thirty (30) days of receipt of Seller's offer, Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from such Additional Capacity to any third party on such terms and conditions as set forth in the certificate.

## APPENDIX XV

### FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(l)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix XV.

- (a) Availability Workbook. Seller shall (i) collect the measurement data, listed in (b) below, in one (1) or more Microsoft Excel Workbooks (the “Availability Workbook”) provided in a form and naming convention approved by Buyer and (ii) electronically send the Availability Workbook to an address provided by Buyer. The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all generators as measured by such generator’s internal turbine controller.
- (b) Log of Availability. The Availability Workbook shall be created on a single, dedicated Excel worksheet and shall be in the form of Attachment A to this Appendix XV.

**APPENDIX XV Attachment A**

**Form of Actual Availability Report**

**[Seller]'s Actual Availability Report**

*All amounts are in MWs*

<b>Settlement Interval No.</b>	<b>Date</b>	<b>HE1</b>	<b>HE2</b>	<b>HE3</b>	<b>HE4</b>	<b>HE5</b>	<b>HE6</b>	<b>HE7</b>	<b>HE8</b>	<b>HE9</b>	<b>HE10</b>	<b>HE11</b>	<b>HE12</b>	<b>HE13</b>	<b>HE14</b>	<b>HE15</b>	<b>HE16</b>
1	mm/dd/yyyy																
2	mm/dd/yyyy																
3	mm/dd/yyyy																
4	mm/dd/yyyy																
5	mm/dd/yyyy																
6	mm/dd/yyyy																
1	mm/dd/yyyy																
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3	mm/dd/yyyy																
4	mm/dd/yyyy																
5	mm/dd/yyyy																
6	mm/dd/yyyy																

Date/Time of Submittal

**SCHEDULE 3.1(e)**  
**CONTRACT QUANTITY**

<u>Contract Year</u>	<u>Expected Contract Quantity (in MWh)<sup>1</sup></u>
1	685,000
2	679,000
3	674,000
4	668,000
5	663,000
6	657,000
7	652,000
8	647,000
9	641,000
10	636,000
11	630,000
12	625,000
13	619,000
14	614,000
15	608,000
16	603,000
17	597,000
18	592,000
19	586,000
20	581,000
21	575,000
22	570,000
23	564,000
24	559,000
25	553,000

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<sup>1</sup> As may be adjusted based on reductions of the Contract Capacity as provided in Sections 3.9 (e) or 10.1.