

PG&E-Solar Partners VIII (PPA II)

POWER PURCHASE AND SALE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

SOLAR PARTNERS VIII, LLC
(as "Seller")

As-Available Product

Dated: April 28, 2009

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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: **Solar Partners VIII, LLC**, a Delaware limited liability company ("Seller")

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

All Notices:

All Notices:

Delivery Address:
1999 Harrison Street, Ste. 2150
Oakland, CA 94612

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

Mail Address: (if different from above)

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

Attn: Tom Doyle
Executive Vice President
Phone: (510) 550-8477
Facsimile: (510) 550-8165

Duns: 793874764
Federal Tax ID Number: 36-4608152

Duns: 55629980
Federal Tax ID Number: 94-0742640

Invoices:

Attn: Larry Stritch
Controller
Phone: (510) 250-8167
Facsimile: (510) 550-8165

Invoices:

Attn: Amol Patel (axpx@pge.com)
Manager, Bilateral Settlements
Phone: (415) 973-6510
Facsimile: (415) 972-5507

Scheduling:

Attn: Tom Doyle, Executive Vice President
Phone: (510) 550-8477
Facsimile: (510) 550-8165

Scheduling:

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

Payments:

Attn: Larry Stritch
Controller
Phone: (510) 250-8167
Facsimile: (510) 550-8165

Payments:

Attn: Amol Patel (axpx@pge.com)
Manager, Bilateral Settlements
Phone: (415) 973-6510
Facsimile: (415) 972-5507

Wire Transfer:

BNK: Wells Capital, Wells Fargo Bank
ABA: 121000248
ACCT: 22801400

Wire Transfer:

BNK: Mellon Trust of New England, N.A.
ABA: 011001234
ACCT: 059994

Credit and Collections:

Attn: Larry Stritch
Controller
Phone: (510) 250-8167
Facsimile: (510) 550-8165

Credit and Collections:

Attn: Kenneth Lock (KxLj@pge.com)
Sr. Financial Analyst, Credit Risk Management
Phone: (415) 972-5188
Facsimile: (415) 973-7301

With additional Notices of an Event of Default to:

Contract Manager:

Attn: Tom Doyle, Executive Vice President

Phone: (510) 550-8477
Facsimile: (510) 550-8165

Contract Manager:

Attn: Ted Yura (thy1@pge.com)
Manager, Contract Management
Phone: (415) 973-8660
Facsimile: (415) 972-5507

With additional Notices of an Event of Default to:

Daniel T. Judge, General Counsel
Phone: (510) 250-8154
Facsimile: (510) 550-8165

With additional Notices of an Event of Default to:

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

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

Article Three

New Generation Facility

Add Section 3.9.
If not checked, inapplicable.

Article Eight

Credit and Collateral Requirements

8.2 Seller Financial Information:

Option A
 Option B

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: \$2,000,000

8.4(a)(ii) Project Development Security Amount: \$8,000,000

Type of Project Development Security: *Cash or Letter of Credit*

The following is the "Delivery Term Security":

8.4(a)(iii) Delivery Term Security Amount

- \$ 14,000,000 Letter of Credit per Section 8.4(a)(iii)(A);
- and
- \$ 42,000,000 Lien per Section 8.4(a)(iii)(B)

Article 10

10.6 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 10.6(v).

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

- Appendix I Form of Letter of Credit
- Appendix II Initial Energy Delivery Date Confirmation Letter
- Appendix III Milestones Schedule
- Appendix IV Project Description Including Description of Site
- Appendix V Form of Certification
- Appendix VI Commercial Operation Certification Procedure
- Appendix VII Form of Monthly Progress Report
- Appendix VIII Scheduling and Outage Notification Procedures
- Appendix IX Resource Adequacy
- Appendix X Form of Actual Availability Report, including Attachment 1 (Form of Microsoft Excel Worksheet)
- Schedule A Average Projected Hourly Production

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:

SOLAR PARTNERS VIII, LLC,
a Delaware limited liability company

PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation

By: BrightSource Energy, Inc., a California
corporation, its managing member

By: _____

By: _____

Name: Tom Doyle

Name: Roy M. Kuga

Title: Executive Vice-President

Title: Vice President-Energy Supply

Date: April 28, 2009

Date: April 28, 2009

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

- 1.1 "AAA" means the American Arbitration Association.
- 1.2 "Actual Availability Report" has the meaning set forth in Section 3.1(n)(i).
- 1.3 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.4 "Agreement" means this Power Purchase and Sale Agreement between Buyer and Seller, which is comprised of the Cover Sheet, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.11, the word "agreement" shall have the meaning set forth in this definition.
- 1.5 "Arbitration" has the meaning set forth in Section 12.3.
- 1.6 "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.
- 1.7 "Available Capacity" means the maximum Delivered Energy from the Project, expressed in megawatts, that could be generated by the Project safely and when operated within its design parameters during daylight hours if adequate direct normal insolation were available.
- 1.8 "Availability Workbook" has the meaning set forth in Appendix X.
- 1.9 "Average Projected Hourly Production" means the average (irrespective of the actual insolation level) Energy in MWh projected to be produced from the Project during each hour of each day of each month of each year as set forth in Schedule A.
- 1.10 "Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.
- 1.11 "BrightSource" means BrightSource Energy, Inc., a Delaware corporation.
- 1.12 "BS II" means BrightSource Industries (Israel) Ltd., an Israeli corporation.

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's WREGIS Account" has the meaning set forth in Section 3.1(k)(i).

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

1.17 "CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO revenue meter.

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

1.19 "CAISO Master File" means the master file database maintained by CAISO with respect to the Project.

1.20 "CAISO Penalties" has the meaning set forth in Section 4.5.

1.21 "CAISO Revenues" means (a) the credits and other payments received by Buyer 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 during the Test Period under this Agreement.

1.22 "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.

1.23 "CA Property Tax" means the obligation to pay California state property tax under the California Revenue and Taxation Code, as it may be amended from time to time.

1.24 "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.

1.25 "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.

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

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

1.28 "CEC Permit" means the approval by the CEC of an Application for Certification with respect to the construction and operation of the Project at the Site.

1.29 "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.

1.30 "Commercial Operation" means the Project is available to be placed in service for purposes of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated or issued thereunder, and when so placed in service, will be able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement, including Appendix VI.

1.31 "Commercial Operation Date" means the date specified in Appendix III on which Seller (a) notifies Buyer that Commercial Operation has occurred and (b) provides a certification of Licensed Professional Engineer, substantially in the form attached hereto as Appendix V, attesting to the satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix VI hereto.

1.32 "Conditional Commitment" either (i) has the meaning set forth in Title 10, Part 609, Section 609.2, of the United States Code of Federal Regulations in effect as of the Execution Date, as may be amended or supplemented from time to time, or (ii) means any similar DOE commitment to guarantee a loan or debt obligation.

1.33 "Conditions Precedent" means the Term Conditions Precedent.

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

1.35 "Construction Start Date" means the date specified in Appendix III on which Seller delivers to Buyer a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor(s) for the Project.

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

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

1.38 "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(a)(i).

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

1.40 "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.

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

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

1.43 "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.

1.44 "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.

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

1.46 "Current Internal Revenue Code" means the Internal Revenue Code of 1986, as amended and in effect on the Execution Date, and not as it may be amended or supplemented from time to time.

1.47 "Daily Delay Damages" means with respect to the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, an amount equal to (a) the Project Development Security Amount posted as of the first date that Daily Delay Damages are payable under this Agreement with respect to such Guaranteed Project Milestone, divided by (b) 600.

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

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- 1.49 "Day Ahead Schedule" has the meaning set forth in the CAISO Tariff.
- 1.50 "Defaulting Party" means the Party that is subject to an Event of Default.
- 1.51 "Delivered Energy" means all Energy produced from the Project as measured in MWh at the CAISO revenue meter of the Project plus any Lost Output based on a power factor of precisely one (1) and net of all Electrical Losses.
- 1.52 "Delivery Point" means the point at which Buyer receives Seller's Product, as set forth in Section 3.1(d).
- 1.53 "Delivery Term" has the meaning set forth in Section 3.1(c).
- 1.54 "Deficient Month" has the meaning set forth in Section 3.1(k)(v).
- 1.55 "Delivery Term Security" means the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.
- 1.56 "Disclosing Party" has the meaning set forth in Section 10.6.
- 1.57 "Disclosure Order" has the meaning set forth in Section 10.6.
- 1.58 "Dispatch Down Period" means the period of time during which (a) curtailments ordered from the CAISO, for reasons including, but not limited to, any system emergency, as defined in the CAISO Tariff ("System Emergency"), which otherwise do not constitute a Force Majeure under subsection (a)(iv) of the definition of Force Majeure, (b) curtailments ordered by Buyer based on any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes Buyer's electric system integrity or the integrity of other systems to which Buyer is connected, as determined by Buyer in Buyer's sole discretion; (c) curtailments ordered by Buyer due to over generation as defined in the CAISO Tariff; (d) curtailments ordered by Buyer based upon a request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (e) curtailments ordered by the Participating Transmission Owner, which otherwise do not constitute a Force Majeure under subsection (a)(iv) of the definition of Force Majeure, or (f) there is scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point.
- 1.59 "DOE" means the United States Department of Energy.
- 1.60 "DUNS" means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.
- 1.61 "Early Termination Date" has the meaning set forth in Section 5.2.
- 1.62 "Effective Date" means the date on which all of the Term Conditions Precedent set forth in Section 11.1 have been satisfied or waived in writing by both Parties.

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

1.64 "Electrical Losses" means (unless otherwise specified) all applicable losses, including, but not limited to, any transmission or transformation losses between the Site and the Delivery Point.

1.65 "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.

1.66 "Energy" means electric energy measured in MWh and net of Station Uses (unless otherwise specified). For purposes of the definition of "Green Attributes," the word "energy" shall have the meaning set forth in this definition.

1.67 "Energy Deviations" means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the Final Hour Ahead Schedule (as defined in the CAISO Tariff) for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour and (b) Delivered Energy for the Settlement Interval.

1.68 "Energy Property" means property described in Section 48(a)(3)(A)(i) of the Current Internal Revenue Code.

1.69 "Energy Tax Credit(s)" means the tax credit for property described in Section 48(a)(3)(A)(i), with respect to Energy Property, of the Internal Revenue Code of 1986, as it may be amended from time to time.

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

1.71 "EPC Contractor(s)" means an engineering, procurement and construction contractor(s), selected by Seller, with substantial experience in the engineering, procurement and construction of solar thermal power plants.

1.72 "Equitable Defenses" means any bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

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

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

1.75 "Execution Date" means the latest signature date found on the Cover Sheet.

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

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

1.78 "Financial Closing Date" means the date upon which Seller first has access, but for conditions to continued funding, to funds provided by the Financing Parties and other entities for the purpose and sufficient to finance the projected costs of the development, construction and commencement of Commercial Operation of the Project.

1.79 "Financing Parties" means (i) any and all lenders providing senior or subordinated construction, interim or long-term debt financing or refinancing, the proceeds of which are used in whole or part for the Project, and any trustee or agent acting on their behalf, and (ii) any and all equity investors providing financing (including lease financing) or refinancing for the Project, and any trustee or agent acting on their behalf.

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

1.81 "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, or extreme volcanic eruption, or other natural disaster or unusual or extreme adverse weather-related events;

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

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

(iv) emergencies declared by 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.

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder (or any portion thereof), including an elimination of or diminution in the value of Green Attributes or Buyer's requirement to comply with Resource Adequacy obligations

or procure Eligible Renewable Energy Resources under the California Renewables Portfolio Standard due to a change in Law;

(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 by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

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

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

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

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above.

1.82 "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.

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

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

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

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

1.87 "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.

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

1.89 "Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these 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.

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

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

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

1.92 "Guaranteed Energy Production" means an amount of Energy, as measured in MWh, equal to the product of (i) and (ii), where (i) is one hundred forty percent (140%) of the Contract Quantity during the first twenty-four (24) month period immediately following the Initial Energy Delivery Date and then is one hundred sixty percent (160%) of the Contract Quantity for every twenty-four (24) month period thereafter, and (ii) is the difference between (A) and (B), with the difference divided by (A), where (A) is two hundred percent (200%) of the Contract Quantity and (B) is the sum of the Average Projected Hourly Production for each Seller Excuse Hour in the applicable Performance Measurement Period. In no event shall the Guaranteed Energy Production be less than ninety-five percent (95%) RPS Eligible.

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

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

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

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

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

1.98 "Interconnection Point" has the meaning set forth in Section 3.1(h)(i).

1.99 "Interest Amount" means with respect to an Interest Period, the amount of interest calculated as follows: (i) the sum of (a) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (b) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (ii) multiplied by the Interest Rate in effect for that day; (iii) multiplied by the number of days in that Interest Period; (iv) divided by 360.

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

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

1.102 "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.

1.103 "Large Generator Interconnection Agreement" or "LGIA" means the agreement and associated documents between Seller, the Participating TO and CAISO governing the terms and conditions of Seller's interconnection with the Participating TO's transmission lines, including, without limitation, any description of the proposed plan for interconnecting to the Participating TO's transmission lines.

1.104 "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 become effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Section 10.1(b), "Seller Representations and Warranties" and 10.11 "Governing Law," the term "law" shall have the meaning set forth in this definition.

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

1.106 "LGIP" means the Large Generator Interconnection Procedures set forth in the CAISO Tariff and associated documents; provided that if the LGIP is replaced by such other successor procedures approved by FERC governing interconnection (i) to the Participating TO's Transmission System or (ii) of generating facilities with an expected net capacity equal to or greater than the Contract Capacity, the term "LGIP" shall then apply to such successor procedure.

1.107 "Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in California, (ii) has training and experience in the power industry specific to the technology of the Project, (iii) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the independent engineering obligations of Seller pursuant to this Agreement or any requirements related to debt and equity financing arrangements related to the Project, (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.

1.108 "Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including, without limitation, any sale-leaseback arrangement, any conditional sale or other title retention agreement, and any financing lease having substantially the same effect as any of the foregoing.

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

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

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

1.112 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the

Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product. If (i) the Non-Defaulting Party is the Seller, and (ii) Seller declares an Early Termination Date (A) prior to the Original Guaranteed Commercial Operation Date, the term "Losses" shall include loss of Energy Tax Credits applicable to the Project, but shall exclude any other federal or state tax credits, benefits, or exemptions of any kind, including, without limitation, any exemption from CA Property Tax ("Tax Benefits"); or (B) after the Original Guaranteed Commercial Operation Date, the term "Losses" shall exclude any loss of Energy Tax Credits or Tax Benefits. Notwithstanding the foregoing, Seller may not claim lost Energy Tax Credits as a component of Seller's Losses if Seller would not, had Seller performed its obligations and this Agreement remained in effect, have been able to obtain Energy Tax Credits or if the Project would not have been eligible or qualified for Energy Tax Credits. To the extent that Seller obtains or the Project is eligible or qualifies for any Energy Tax Credits following Seller's declaration of an Early Termination Date prior to the Original Guaranteed Commercial Operation Date, Seller shall refund to Buyer that portion of any Termination Payment made to Seller that is attributable to lost Energy Tax Credits that Seller obtains or for which the Project is eligible or qualifies.

1.113 "Lost Output" means the amount of Product that would have been generated by the Project for delivery to the Delivery Point absent any curtailments resulting from Limited Operation which amount shall be determined using the Performance Model less any known non-transmission related Project outages or constraints.

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

1.115 "Maximum Emergency Capacity" means the maximum potential power output capability of the Project as measured at the CAISO revenue meter, net of Electrical Losses, for short-time emergency operating conditions.

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

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

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

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

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

1.121 "MRTU" or "Market Redesign and Technology Upgrade" means the locational marginal pricing market system to be governed by the CAISO MRTU Tariff approved by FERC.

1.122 "MWh" means megawatt-hour.

- 1.123 "NERC" means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.
- 1.124 "NERC Holiday" has the meaning set forth in Section 4.2.
- 1.125 "Network Upgrade Commitment" has the meaning set forth in Section 3.1(h)(ii).
- 1.126 "Network Upgrades" means any additions and/or reinforcements to an electric transmission system that are required as the result of the interconnection of the Project through the Project's Interconnection Facilities to the Participating Transmission Owner's electric system and to permit delivery of the Product, safely and reliably, in the quantities and at the times at which delivery of such Product may be required under this Agreement, up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project. Network Upgrades under this Agreement include Network Upgrades, Participating TO's Interconnection Facilities, and Distribution Upgrades, but not Interconnection Customer's Interconnection Facilities, each such term as defined in the CAISO Tariff.
- 1.127 "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.
- 1.128 "Non-Defaulting Party" has the meaning set forth in Section 5.2.
- 1.129 "Notice" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, certified first class United States mail, return receipt requested, overnight courier service, facsimile or electronic messaging (e-mail).
- 1.130 "Notice to Proceed" means the notice provided by Seller to the EPC Contractor(s) following execution of the EPC Contract(s) between Seller and such EPC Contactor(s) and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contactor(s) to begin construction of the Project without any delay or waiting periods.
- 1.131 "Obligor" means the Party breaching the terms of this Agreement.
- 1.132 "Original Guaranteed Commercial Operation Date" means the date specified in Appendix III.
- 1.133 "Original Network Upgrade Completion Date" means the date specified in Appendix III.
- 1.134 "Outage Notification Form" means the notice required by Appendix VIII, which shall be submitted by Seller to Buyer in accordance with the relevant provisions of Section 3.7. PG&E reserves the right to revise or change the manner in which such notice shall be submitted upon written Notice to Seller.
- 1.135 "Participating Intermittent Resource" or "PIRP" shall have the meaning set forth in the CAISO Tariff.
- 1.136 "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.

1.137 "Party" or "Parties" means the Buyer or Seller individually, or to both collectively. For purposes of Section 10.11, "Governing Law," the word "party" or "parties" shall have the meaning set forth in this definition.

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

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

1.140 "Performance Model" has the meaning set forth in Section 3.1(n)(i).

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

1.142 "Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

1.143 "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) must cause the Available Capacity of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.

1.144 "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.

1.145 "Project" means the generating facility constructed at the Site that uses solar thermal Luz Power Tower ("LPT") technology, including a field of heliostats, receivers, a steam turbine and a generator, to produce the Products identified in Appendix IV, and the other assets, tangible and intangible, that compose the generation facility as more particularly described in Appendix IV.

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

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

1.148 "Project Permitted Liens" means the Liens created by the Senior Security Documents so long as the same comply with the provisions of Section 8.6 of this Agreement.

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

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

1.151 "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.

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

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

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

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

1.156 "Renewable Energy Credit" or "renewable energy credits" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

1.157 "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.

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

1.159 "RPS Eligible" means electric Energy meeting the eligibility requirements for certifying renewable resources as eligible under the California Renewables Portfolio Standard and the eligibility requirements set forth in guidelines adopted by the CEC pursuant to California Public Resources Code Section 25747, both as may be amended or supplemented from time to time.

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

1.161 "Schedule" means the actions of Buyer and/or its designated representative(s), or its Scheduling Coordinator and Transmission Providers, if applicable, of notifying, requesting and confirming the quantity and type of Product to be delivered on any given day or days during the Delivery Term at the Delivery Point.

1.162 "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.

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

1.164 "Seller" has the meaning set forth on the Cover Sheet.

1.165 "Seller Downgrade Event" means that the Credit Rating of Seller's Guarantor falls below Baa3 by Moody's or BBB- by S&P.

1.166 "Seller Excuse Hours" means those hours during which Seller is unable to deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer's failure to perform, or (c) Dispatch Down Period.

1.167 "Seller's WREGIS Account" has the meaning set forth in Section 3.1(k)(i).

1.168 "Senior Security Documents" means, collectively, all documents granting the Senior Secured Lenders a security interest in any property or assets of the Seller to secure the obligations of the Seller to the Senior Secured Lenders, including a mortgage and security agreement.

1.169 "Senior Secured Lenders" means Persons not affiliated with Seller who provide construction or term debt financing for the Project (and the agents thereof) holding security interests (of any priority) in the collateral granted under the Senior Security Documents.

1.170 "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.

1.171 "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.).

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

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

1.174 "Site Control" means Seller shall provide documentation to Buyer, reasonably acceptable to Buyer, demonstrating that Seller controls the Site identified in Appendix IV by means of ownership or one or more leases, rights of way, easements, or other property rights, each of which expires no earlier than December 31, 2038, as necessary to permit access to and utilization of the Site for the purposes contemplated in this Agreement not later than the date identified in Appendix III.

1.175 "SLIC" means the Scheduling and Logging system for the CAISO, as defined in the CAISO Tariff.

1.176 "Station Use" means the electric energy produced by the Project steam turbine generator set that is used within the Project to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Project.

1.177 "Term" has the meaning set forth in Section 2.5.

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

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

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

1.181 "Test Energy" means Product produced by or associated with the Project during the Test Period.

1.182 "Test Period" means the period of not more than ninety (90) consecutive days commencing on the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Project to the CAISO Grid and ending when Seller advises Buyer of the occurrence of the Initial Energy Delivery Date.

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

1.184 "TOD" means time of delivery of Delivered Energy from Seller to Buyer.

1.185 "TOD Factors" has the meaning set forth in Section 4.3(a).

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

1.187 "Total Project Costs" means the following costs and expenses (without duplication) incurred in connection with the development, design, engineering, acquisition, construction, financing, testing, start-up and completion of the Project, in each case prior to the Initial Energy Delivery Date: (a) the price payable by Seller pursuant to all construction contracts for the Project and equipment purchase contracts for components of the Project (but, in the case of equipment or facilities intended for use by projects in addition to the Project, only that portion of the price attributable to the Project's share of such equipment or facilities); (b) the cost of Site acquisition and improvement and the cost of interconnection facilities (but, in the case of property, equipment or facilities intended for use by projects in addition to the Project, only that portion of the price attributable to the Project's share of such property, equipment or facilities); (c) the cost of development and permitting of the Site and Project (but in the case of development and permitting activities intended to benefit projects in addition to the Project, only that portion of the cost attributable to the Project's share of such development and permitting activities); (d) the cost of insurance and bonds obtained by Seller with respect to the Project; (e) legal, accounting, engineering and financing fees and expenses for the Project reviewed and accepted by the Senior Secured Lenders in connection with the closing of construction or term debt or equity financing for the Project; (f) ad valorem taxes, real and personal property taxes and sales, use and excise taxes directly relating to the Project; (g) general and administrative expenses of Seller directly attributable to the Project included in the financing for the Project reviewed and accepted by the Senior Secured Lenders in connection with the closing of construction or term debt or equity financing for the Project; (h) funds deposited into any debt service reserve account for the benefit of the Senior Secured Lenders to the extent required under the terms of the documents under which construction or term debt financing for the Project is provided to Seller by the Senior Secured Lenders; (i) funds deposited into any maintenance or contingency reserve account to the extent required under the terms of the documents under which construction or term debt financing for the Project is provided to Seller by the Senior Secured Lenders; (j) the face amount of the Letter of Credit provided as a portion of the Delivery Term Security or any cash collateral delivered to Buyer as a substitute therefor; and (k) other costs directly related to the development, design, engineering, acquisition, construction, financing, testing, start-up and

completion of the Project that are included in the financing for the Project reviewed and accepted by the Senior Secured Lenders in connection with the closing of construction or term debt or equity financing for the Project.

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

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

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

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

1.192 "WREGIS Certificate Deficit Value" has the meaning set forth in Section 3.1(k)(v).

1.193 "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.

1.194 "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.

1.195 "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, constitutes the entire, integrated agreement between the Parties.

2.2 Interpretation. The following rules of interpretation shall apply:

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

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

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

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

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

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

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

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

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

2.5 Term. The Term shall commence upon the satisfaction of the Term Conditions Precedent set forth in Section 11.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to Section 5.2 or Section 11.2 of this Agreement (the "Term"); provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for twelve (12) months.

2.6 Binding Nature.

(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 3.10, 5.1(a), 5.1(b)(v), 8.3, 8.4(a)(i), 8.4(b), 8.5;
- (ii) Sections 5.2 through 5.6;
- (iii) Sections 10.1, 10.2(a), 10.5 through 10.7, and Sections 10.11 through 10.14; and
- (iv) Articles One, Two, Seven, Eleven, and Twelve through Fourteen.

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

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

(b) Transaction.

(i) Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except during the Test Period.

(ii) Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to and at the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt from the Delivery Point. The Parties agree that Seller shall arrange and pay independently for any and all necessary costs under any interconnection agreement with the Participating Transmission Owner. In accordance with Section 3.4, the Parties agree that Seller shall arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing) sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

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

- Delivery shall be for a period of ten (10) Contract Years.
- Delivery shall be for a period of fifteen (15) Contract Years.
- Delivery shall be for a period of twenty (20) Contract Years.
- Non-standard Delivery shall be for a period of twenty-five (25) Contract Years.

If the "Non-standard Delivery" Delivery Term is selected, Parties need to apply to the CPUC justifying the need for non-standard delivery. As used herein, "Delivery Term" shall mean the period of Contract Years specified above beginning on the first date that Seller delivers Product to Buyer from the Project, excluding any Product delivered during the Test Period, ("Initial Energy Delivery Date") in connection with this Agreement and continuing until the end of the twenty-fifth (25th) Contract Year unless terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (i) the Commercial Operation Date has occurred; (ii) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable, (iii) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing, and (iv) Seller shall have obtained the requisite CEC Certification and Verification. For the avoidance of doubt, prior to the Test Period, Seller shall obtain such CEC Certification and Verification, and register the Project in WREGIS and take the other actions described in Section 3.1(k). 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. The Test Period shall end on the Initial Energy Delivery Date.

(d) Delivery Point. The Delivery Point shall be the Interconnection Point. To the extent that Seller is reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or losses from and after the Buyer's side of the Interconnection Point associated with the delivery of Product in accordance with the terms of this Agreement (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer to the extent permitted to do so; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions. In addition, to the extent that Seller is granted exemptions, Seller shall transfer such exemptions to Buyer to the extent such transfer is permitted or, if such transfer is not permitted, use commercially reasonable efforts to accord such exemptions to Buyer.

(e) Contract Quantity and Guaranteed Energy Production. The Contract Quantity during each Contract Year is expected to be at least 516,000 MWh. Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in any period of twenty-four (24) consecutive months during the Delivery Term ("Performance Measurement Period"). If Seller adjusts the Contract Capacity pursuant to Section 3.1(f) below, then the Contract Quantity and Guaranteed Energy Production shall change in proportion to the change in the Contract Capacity. If Seller delivers less than the Guaranteed Energy Production in any Performance Measurement Period, then within 120 days after the last day of the last month of such Performance Measurement Period, Buyer shall notify Seller of such failure and Buyer may, at its option, declare an Event of Default. If during such 120 day period, Buyer opts not to declare an Event of Default with respect to Seller's failure to meet the

Guaranteed Energy Production requirement, then Buyer shall waive its right to declare an Event of Default based on Seller's failure with respect to the Performance Measurement Period which served as the basis for the default. For sake of certainty, in the event that Buyer waives its right to declare an Event of Default with respect to the Performance Measurement Period which served as the basis for such default, Buyer shall again have the right to declare an Event of Default, subject to the conditions set forth in this subsection (e), if as of the last day of the month following such Performance Measurement Period or any subsequent month, Seller again fails to achieve the Guaranteed Energy Production requirement for such subsequent Performance Measurement Period.

(f) Contract Capacity and Capacity Factor. The Contract Capacity of the Project shall be 200 MW and the Capacity Factor shall be 29.47%; provided that (A) no less than the earlier of (x) two years before the Original Guaranteed Commercial Operation Date and (y) thirty (30) days after the Seller enters into a binding contract for the purchase of the steam turbine generator set(s) for the Project, Seller may, upon written Notice, make a one-time adjustment to the Contract Capacity, based upon the design gross nameplate output rating of said steam turbine generator set(s) selected for the Project less maximum expected Station Use and Electrical Losses, by no more than ten percent (10%) and (B) no later than one year following the Initial Energy Delivery Date, Seller may, upon prior written Notice given within such year, make a one-time adjustment to the Contract Capacity by no more than three percent (3%), such second adjustment, if any, to be effective ninety (90) days thereafter. Upon either or both such adjustments, the Contract Quantity and Guaranteed Energy Production shall change in proportion to the change in the Contract Capacity. The Capacity Factor shall remain at 29.47% regardless of any adjustment to the Contract Capacity. In no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy in excess of the lesser of (i) the Maximum Emergency Capacity for the Project designated in the CAISO Master File and (ii) 234 MW. Throughout the Delivery Term, Seller shall sell all Product produced by the Project solely to Buyer.

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity of the Project without Buyer's prior written consent except as provided in Section 3.1(f) above. The Project is further described in Appendix IV.

(h) Interconnection Facilities.

(i) Interconnection Point. The interconnection point shall be the 115kV busbar at the new "Ivanpah" substation that will be built on the 115kV (or 230 kV, as the case may be) transmission line owned by Southern California Edison that runs between Mountain Pass and Eldorado ("Interconnection Point"). The Interconnection Point shall connect to the CAISO Grid.

(ii) Seller's Network Upgrade Obligations. As between Buyer and Seller, Seller shall have sole responsibility for and shall, at its sole expense, be obligated to (A) maintain the Interconnection Facilities, including metering facilities; and (B) perform and fund all necessary Network Upgrades, which shall include Delivery Network Upgrades and Reliability Network Upgrades, as such terms are defined in the CAISO Tariff, in order to satisfy Seller's Network Upgrade obligation in subpart (B) of this Section 3.1(h)(ii) and to ensure that the full Contract Capacity of the Project is deliverable to the Delivery Point. Seller's obligations under this Section 3.1(h)(ii) shall be subject to Seller's receipt of a final and legally binding contract (such as an executed LGIA) or regulatory order or decision providing that Seller shall be entitled

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to a repayment, equal to the total amount paid to the Participating TO for the cost of the Network Upgrades. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. Section 35.19(a)(2)(iii), as such provisions may be adjusted from time to time, from the date of any payment for such Network Upgrades through the date on which Seller receives a repayment of such payment ("Network Upgrade Commitment"). For the avoidance of doubt, Buyer shall have no obligation to fund, pay for or compensate Seller or any Participating Transmission Owner (as such term is defined by the CAISO) in any manner for any Network Upgrades, including by means of inclusion of such costs in its revenue requirements for recovery through its transmission or retail rates.

(iii) Limited Operation.

(A) If in accordance with the LGIP Seller is notified by the Participating Transmission Owner or CAISO that the Participating Transmission Owner's Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Guaranteed Commercial Operation Date, then within thirty (30) days of Seller's receipt of such notification Seller shall request that the Participating Transmission Owner or CAISO, as applicable, conduct a study, at Seller's expense, of limited operation as provided in the LGIA ("Limited Operations Study"). Seller shall promptly provide the results of the Limited Operations Study to Buyer. If the Limited Operations Study provides that the Project can be interconnected to the CAISO Grid on the basis set forth in the LGIA ("Limited Operation Plan") by the Guaranteed Commercial Operation Date, then Buyer shall have the right, but not the obligation, to pay Seller the Contract Price for the Lost Output (the "Curtailment Option"). If Buyer elects to exercise the Curtailment Option, then Buyer shall pay Seller the Contract Price for the Lost Output and Seller shall pursue the Limited Operation Plan and interconnect the Project to the CAISO Grid under that plan.

(B) Regardless of whether Buyer exercises the Curtailment Option, Seller shall, at its sole expense, pursue diligently the timely completion of all necessary Network Upgrades as set forth in subsections (ii) and (iv) of Section 3.1(h).

(iv) Cooperation and Coordination. Seller shall use commercially reasonable efforts to pursue and actively seek the timely completion and execution of the LGIA, which shall include, without limitation, assisting and cooperating with the Participating TO and CAISO to minimize the time associated with the development, permitting and construction of the Network Upgrades required for the Project. Further, Seller shall use commercially reasonable efforts to (A) coordinate with Buyer in connection with the Network 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 TO relating to the Project; (D) grant to Buyer the right to communicate directly with the CAISO and the Participating TO regarding the Project and, to the extent reasonably practicable, include Buyer in Seller's negotiation with the CAISO and the Participating TO of Seller's LGIA; and (E) provide Buyer with written reports of the status of the LGIA and Network 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 during Seller Excuse Hours.

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

(iii) Dispatch Down/Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce delivery amounts as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Dispatch Down Period; provided that, for a Dispatch Down Period as described in subsections (b) through (d) of the definition of Dispatch Down Period, such Dispatch Down Period shall be no more than fifty (50) hours during any Contract Year. In the event such Dispatch Down Period exceeds fifty (50) hours in any Contract Year, then Buyer shall pay Seller the Contract Price for the curtailed output during those hours of such Dispatch Down Period in excess of the fifty (50) hour maximum.

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

(j) Greenhouse Gas Emissions. 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 appropriate instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any.

(k) WREGIS. Seller shall, at its sole expense, take all actions and execute all documents or instruments reasonably necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Energy generated by the Project are issued and tracked pursuant to the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer as set forth below. Seller shall comply with all Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. To the extent that WREGIS Certificates may be created for Test Energy during the Test Period, Seller shall cause such WREGIS Certificates to be created and shall transfer them to Buyer at no charge in accordance with this Section 3.1(k). In addition:

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

(ii) Seller shall cause Forward Certificate Transfers to occur no later than one month after their creation in accordance with the certification procedure established by

the WREGIS Operating Rules. As of the Execution Date, the WREGIS Certificates are expected to be created no later than ninety (90) calendar days after the end of each calendar month for Energy generated by the Project in that calendar month. For example, for Energy generated by the Project in January 2009, the WREGIS Certificates will be created in WREGIS no later than April 30, 2009. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

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

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Energy generated by the Project for the same calendar month ("Deficient Month"). For the avoidance of doubt, a WREGIS Certificate Deficit would occur with respect to any Energy (and the corresponding WREGIS Certificates) previously delivered to Buyer for a calendar month that is later determined to not be RPS Eligible. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then Seller shall be liable to Buyer for the fair market value of the WREGIS Certificate Deficit not received by Buyer (the "WREGIS Certificate Deficit Value"), such WREGIS Certificate Deficit Value to be as reasonably determined by Buyer (which determination shall take into consideration any market that may be available for the purchase of WREGIS Certificates or Renewable Energy Credits). Any WREGIS Certificate Deficit Value so determined by Buyer shall be refunded to Buyer with interest at the Interest Rate in the form of a cash refund or one or more offsets (as necessary) to be made by Buyer against Buyer's payment obligations under this Agreement, such interest to accrue with respect to such amount from the date paid by Buyer until the date refunded or offset. In the event Seller is able to correct the WREGIS Certificate Deficit so that all or a portion of the WREGIS Certificates associated therewith are subsequently delivered to Buyer, any amount by which the payment otherwise payable to Seller has been reduced or refunded to Buyer (together with any interest included as part of any such reduction or refund) due to such WREGIS Certificate Deficit or portion thereof shall be included as an adjustment to Seller's next monthly invoice to Buyer and paid as part of Buyer's subsequent payment to Seller pursuant to Article 6.

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

(vii) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(k) after the Execution Date, the Parties promptly shall modify this Section 3.1(k) as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Energy generated by the Project in the same calendar month.

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

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

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

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the following data and information on a real-time and historical basis: (A) read-only access to meteorological measurements, all parameters necessary for use in the equation under item (G) of this list (all such parameters in item (G) shall be provided in real-time except for Available Capacity), and energy output information collected by the Supervisory Control and Data Acquisition (SCADA) system for the Project; (B) read-only access to the Project's CAISO revenue meter and all Project meter data at the Site; (C) full, real time access to the Project's SLIC client application; (D) electrical output of the electrical generator; (E) net plant electrical output at the revenue quality meter (as such meter is described in the CAISO Tariff); (F) time-average data including 10-minute and hourly values of direct normal insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, and barometric pressure; and (G) an equation, which shall be an Excel spreadsheet model (the "Performance Model"), updated on an ongoing basis to reflect the potential generation of the Project as a function of direct normal insolation, time of the day, day of the year, ambient temperature, wind speed, wind direction, and such other directly measureable or determinable factors as shall be included within said equation. Such equation shall take into account the expected Available Capacity of the Facility during the relevant period. For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Settlement Interval Actual Available Capacity of the Project for each month in the form set forth in Appendix X ("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 and information provided pursuant to Section 3.1(n)(i) with information publicly available from NOAA and nearby weather stations and use such data in connection with its Scheduling Coordinator obligations if Seller's data is inconsistent with the publicly available data or is missing; provided that, Buyer shall not claim that Seller has not fulfilled its obligations under this Section 3.1(n) merely due to any such inconsistency without first performing an audit or other review process.

(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(n)(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 one stand-alone meteorological station(s) at the Site to monitor and report the meteorological data required in Section 3.1(n)(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(n)(i) of this Agreement.

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

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

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

(v) Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least thirty (30) days prior to the Initial Energy Delivery Date; provided, however, that any such information received by Buyer that is not publicly available shall be deemed confidential hereunder.

(vi) No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide a minimum of one (1) year of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (A) direct normal insolation, air temperature, wind speed and direction, precipitation, barometric pressure, and relative humidity at the Site, as well as time-average data including 10-minute and hourly values of direct normal insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, and barometric pressure; (B) elevation, latitude and longitude of the weather station; and (C) any other data that would be required for participation in the EIRP.

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 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's Transmission Service Obligations. As of the Test Period and during the Delivery Term:

(A) 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.

(B) Seller shall bear all risks and costs associated with such transmission service, including, but not limited to, any congestion, transmission outages or curtailment to and at the Delivery Point.

(C) Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement, Meter Service Agreement and PTO Generator Special Facilities Agreements, if applicable, so as to be able to deliver Energy to the CAISO Grid.

(ii) Buyer's Transmission Service Obligations. As of the Test Period and during the Delivery Term,

(A) 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.

(B) Buyer shall Schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Point.

(C) Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion from the Delivery Point.

(b) EIRP Requirements. The intent of this Agreement is that the Project shall be a certified Participating Intermittent Resource. The Parties acknowledge that as of the Execution Date, the CAISO has not yet established protocols for scheduling power from solar thermal projects to permit such projects to participate in EIRP ("Qualifying Protocols"). As soon as practicable, but not more than ninety (90) days after Qualifying Protocols are finalized and made effective by the CAISO, Seller shall 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 (including maintaining all equipment required to do so) as directed by Buyer or Third-Party SC and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during all hours of the Delivery Term.

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

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the beginning of the Test Period, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller's Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller's Scheduling Coordinator for the Project. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes SC duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all costs, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Period (other than with respect to Test Energy for which no payment is made) and Delivery Term.

(ii) Buyer's Responsibilities as Scheduling Coordinator. During the Delivery Term, Buyer or Third-Party SC shall comply with all obligations as Seller's Scheduling Coordinator under the CAISO Tariff and shall conduct all Scheduling in full compliance with the terms and conditions of this Agreement, the applicable CAISO Tariff, 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.

(iii) Available Capacity Forecasts. Seller shall provide the Available Capacity forecasts described below to Buyer. Seller's Available Capacity forecasts shall include

an updated status of solar field heliostats, the turbine generator and associated equipment, transformers, and any other equipment that may impact Available Capacity. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately (and may be liable under Section 4.5(c) for its failure to do so), 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, but only to the extent practicable, automated Available Capacity forecasts and outage submissions.

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

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

(C) Daily Forecast of Available Capacity. During each month of the Delivery Term, Seller shall provide a day ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or Third-Party SC (as applicable) via Buyer's internet site, as provided in Appendix 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. The current industry standard Preschedule Day timetable in the WECC is as follows:

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

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, "Prescheduling Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast 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 before the CAISO deadline for submitting Day-Ahead Schedules, then Seller shall 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 for each hour, 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 Availability Notice submitted by Seller to Buyer and (II) during the Delivery Term only, to the extent Seller's failure contributes to an imbalance charge, Seller shall be subject to the Forecasting Penalties described in Section 4.5(c)(iii).

(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 contained in the most recent applicable Available Capacity forecast for such period provided pursuant to subsection (C) of Section 3.4(c)(iii), whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but, if commercially reasonable, no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit Hour-Ahead schedules to the CAISO ("Hourly Notice of Available Capacity"). Available Capacity changes after this time, but before the CAISO deadline for submitting Hour-Ahead Schedules, shall also be reported by Seller to Buyer as soon as reasonably possible. The Hourly Notice of Available Capacity 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 or Third-Party SC (as applicable). With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage immediately following Seller's Available Capacity notification to the CAISO via SLIC and Seller shall follow the Scheduling and Outage Notification Procedures in Appendix VIII. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the Available Capacity of the Project during or after the end of such outage. These notices and changes shall be communicated by telephone to Buyer's Hour-Ahead Trading Desk and shall be sent to Buyer's internet site.

Hour-Ahead Trading Desk

Phone: 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 the Third-Party SC (as applicable) as Seller's SC. These actions include (I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

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

PG&E-Solar Partners VIII (PPA II)

3.5 Standards of Care.

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

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

(c) Reliability Standard. Seller agrees to abide by all (i) applicable NERC, WECC and CAISO reliability requirements, including all requirements in Section 3.3 applicable to Seller and all reporting requirements applicable to a generating resource 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 first date of the Test Period and throughout the Delivery Term.

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

3.7 Outage Notification.

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

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a completed Outage Notification Form in accordance with the provisions set forth in Appendix VIII no later than August 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld, delayed or conditioned. Notwithstanding the submission of the Outage Notification Form described in the previous

sentence, Seller shall also submit a completed Outage Notification Form in accordance with the provisions set forth in Appendix VIII below no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of June through September. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld, delayed or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage Schedule without Buyer's approval, not to be unreasonably withheld, delayed or conditioned. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request. Unless Buyer is transmitting a CAISO order to Seller once a Planned Outage schedule has been finalized by Buyer and Seller, Buyer may not change Seller's Planned Outage schedule without Seller's approval.

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

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

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

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

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

(h) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7 or 3.8 or Appendix VIII, Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, outage notification procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer. For the avoidance of doubt, Buyer has no right to direct or control the operation of the Project.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of (i) all material operations and maintenance information for the Project and (ii) the solar insolation and relevant weather data for the Site (including temperature, humidity, barometric pressure, wind speed and precipitation) on an average hourly 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, and similar information relating to the availability, testing and operation of the Project and availability and production of the Product. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request. Seller shall maintain each log for a period of time that is no less than seven (7) years from the log's creation date. As and to the extent permitted by applicable law and the terms and conditions of this Agreement, Buyer shall treat all commercially sensitive information provided by Seller pursuant to this Section 3.8(a) as confidential.

(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, including, without limitation, verification of the Project's availability or unavailability, or the exercise of any and all rights secured to Buyer by Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

3.9 New Generation Facility.

- (a) Seller, at no cost to Buyer, shall be responsible to:
- (i) Design and construct the Project.
 - (ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the Participating Transmission Owner for the Interconnection Facilities to Schedule and deliver the Product.
 - (iii) Acquire all permits and other approvals necessary for the construction, operation, and maintenance of the Project.
 - (iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project.
 - (v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any changes in the Project and provide to Buyer specifications and design drawings of any such changes.
 - (vi) Within fifteen (15) days after the close of each month from the first month following the Effective Date until the Commercial Operation Date, provide to Buyer a Monthly Progress Report and conduct regularly scheduled meetings, at Buyer's request, between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The Monthly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.
- (b) Buyer shall have the right, but not the obligation, to:
- (i) Notify Seller in writing of the results of the review within thirty (30) days of Buyer's receipt of all specifications for the Project, including a description of any flaws perceived by Buyer in the design.
 - (ii) Inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable notice.
- (c) Construction and Development Milestones.
- (i) The Parties agree that time is of the essence in regards to the Transaction. As such, the Parties also agree certain milestones for the construction of the Project as set forth in Appendix III hereto ("Milestones") must be achieved in a timely fashion or Buyer will suffer damages. Seller shall provide Buyer with any requested documentation to support the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.
 - (ii) If Seller misses three (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan"), which shall provide a detailed description of Seller's course of action and plan to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to

meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, then subsection (vi) below shall apply.

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

(A) The Construction Start Date shall occur upon the Delivery of Notice to Proceed, which shall occur no later than the date specified in Appendix III as the Guaranteed Construction Start Date (the "Guaranteed Construction Start Date"); and

(B) Seller shall demonstrate Commercial Operation per the terms of Appendix VI no later than the Guaranteed Commercial Operation Date (the "Guaranteed Commercial Operation Date") specified in Appendix III.

(iv) The Guaranteed Commercial Operation Date shall occur no later than the Original Guaranteed Commercial Operation Date.

(v) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date in accordance with Appendix III. If Seller's development plans would permit a Commercial Operation Date before the Original Guaranteed Commercial Operation Date, Seller may with no less than ten (10) Business Days' prior Notice to Buyer accelerate the Commercial Operation Date by no more than three hundred sixty-five (365) days before the Original Guaranteed Commercial Operation Date.

(vi) If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date or the Construction Start Date occurs after the Guaranteed Construction Start Date, then Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of sixty (60) days ("Project Cure Period"); or (II) the Construction Start Date occurs after the Guaranteed Construction Start Date up to a total of sixty (60) days ("Construction Cure Period"). Each Party agrees and acknowledges that the damages that Buyer would incur due to Seller's delay in achieving either the Guaranteed Commercial Operation Date or the Guaranteed Construction Start Date would be difficult or impossible to predict with certainty, and the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the Guaranteed Construction Start Date only if Seller meets the Guaranteed Commercial Operation Date, as provided further in Section 8.4(c) of this Agreement. For sake of certainty, Buyer shall retain all Daily Delay Damages drawn (or which Buyer asserts a right by Notice to draw or offset) as a result of Seller's failure to meet the Guaranteed Commercial Operation Date and the Guaranteed Construction Start Date, if Seller fails to meet the Guaranteed Commercial Operation Date. Notwithstanding the foregoing, unless and until Buyer exercises its default rights under Section 5.2, the Project Cure Period and/or the Construction Cure Period shall be deemed extended for up to an additional three hundred five (305) days each; provided that, Buyer shall be entitled to exercise all default rights under Section 5.2, including designating an Early Termination Date, at any time during such extension period unless the Construction Start Date or the Commercial Operation Date, as applicable, occurs prior to the Early Termination Date so designated by Buyer. In the event Buyer elects to extend the Project Cure Period and/or Construction Cure Period, Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day of such extension period unless and until the earlier of (A) the Construction Start Date or the Commercial

Operation Date, as applicable, occurs, or (B) the Early Termination Date if Buyer declares an Event of Default during the extension period.

(vii) Furthermore, Seller is ready, willing, and able to cause the Project to achieve Commercial Operation prior to the Original Guaranteed Commercial Operation Date if the Network Upgrades are completed pursuant to a Network Upgrade Commitment sixty (60) days prior to such an advanced Commercial Operation Date. If Seller is able to accelerate the Project to achieve Commercial Operation more than three hundred sixty-five (365) days before the Original Guaranteed Commercial Operation Date because a Network Upgrade Commitment provides that the Network Upgrades are scheduled to be completed earlier than the applicable date in Appendix III, Seller may issue Notice to Buyer to accelerate the Original Guaranteed Commercial Operation Date. Upon consent by Buyer, the Original Guaranteed Commercial Operation Date shall be moved to a mutually agreed to date and the other dates in Appendix III that are determined by the Original Guaranteed Commercial Operation Date shall be revised in accordance with the acceleration of the Original Guaranteed Commercial Operation Date on a day for day basis.

(d) The Parties acknowledge that Seller shall deploy new solar thermal Luz Power Tower ("LPT") technology in the Project. Subject to Buyer's approval, not to be unreasonably withheld, the generation component assets of the Project may be modified during the Term of this Agreement to improve the Project or the LPT technology; provided that (i) the Project continues to use LPT technology for the production of all Product, and (ii) any such improvements do not change the Contract Capacity or the Guaranteed Energy Production of the Project (except as provided in Section 3.1(f)) and do not result in any sale or transfer of any Product to any third party.

3.10 Coordination and Cooperation.

(a) Each Party shall use commercially reasonable efforts to file this Agreement for CPUC Approval as soon as practicable. The Parties shall coordinate their good faith efforts with respect to seeking CPUC Approval of this Agreement, including responses to any data requests from the CPUC regarding this Agreement. As and to the extent permitted by applicable law and subject to Sections 10.6 and 10.7 of this Agreement, the Parties shall seek confidential treatment by the CPUC of confidential material included in the filing of this Agreement for CPUC Approval or otherwise provided to the CPUC. Prior to the filing of this Agreement, the Parties will reasonably cooperate with respect to identifying their respective confidential material for which they shall seek confidential treatment.

(b) Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, estoppels and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section. Without limiting the foregoing, the Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Payment Provisions.

(a) Contract Price.

(i) Subject to subsection (ii) below, the contract price for each MWh of Delivered Energy in each Contract Year during the Term shall be **\$129.15** per MWh ("Contract Price").

(ii) If by December 31, 2009 the DOE has not offered a Conditional Commitment to BrightSource for this Project (the "BrightSource Conditional Commitment"), then the Contract Price shall be increased in the amount of **\$5.85** per MWh (the "Price Increase") and shall total **\$135.00** per MWh; provided that, in the event the DOE offers a Conditional Commitment for this Project at any time after December 31, 2009 and a guarantee thereunder becomes effective and in full force and effect, then the Price Increase shall no longer be applied as of the date of such offer and the total amount of any payments due to such Price Increase that was paid to Seller shall be refunded to Buyer with interest at the Interest Rate in the form of a cash refund or one or more offsets (as necessary) to be made by Buyer against Buyer's payment obligations under this Agreement, such interest to accrue with respect to such amount from the date paid by Buyer until the date refunded or offset.

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

Table 1

TOD Periods

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

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

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

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

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

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

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

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

4.3 TOD Factors and Monthly TOD Payment.

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

Table 2

TOD Factors for Each TOD Period

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

For the avoidance of doubt, the foregoing Contract Price, TOD Periods, and TOD Factors shall not be changed or altered during the Term of this Agreement, regardless of any change in Law.

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

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

4.4 Excess Delivered Energy. In any Contract Year, if Seller delivers Delivered Energy in excess of one hundred five percent (105%) of the annual Contract Quantity amount, the Contract Price for such Delivered Energy in excess of one hundred five percent (105%) shall be adjusted to be seventy-five percent (75%) of the Contract Price.

4.5 CAISO Charges.

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

(b) Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling (including Day-Ahead Scheduling) and imbalances. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. If Seller fails to comply with all applicable requirements in Section 3.4(c)(iii) and the outage notification procedures under this Agreement or as otherwise required by the CAISO, then Seller shall be responsible for all resulting expenses, costs and charges incurred by Buyer. Buyer shall pass through such expenses, costs, or charges to Seller based on the preliminary CAISO invoices as may be adjusted based on the final invoices for the relevant period. Buyer may net such amounts from subsequent Monthly TOD Payments to Seller under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(c) Forecasting Penalties.

(i) In the event Seller does not in a given hour (A) provide the access and information required in Section 3.1(n)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(n)(iv); or (C) provide the Available Capacity forecasts required in Section 3.4(c)(iii), and the sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

(ii) The Performance Tolerance Band is the greater of (A) five (5) MW multiplied by one (1) hour (the interval of time for monitoring Available Capacity forecasting requirements) or (B) three (3) percent multiplied by Contract Capacity multiplied by one (1) hour.

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

4.6 Test Period Obligations and Payments. During the Test Period Seller shall comply with the CAISO Generator Interconnection Manual, as it may be amended, supplemented, or replaced (in whole or in part) from time to time. For Seller's full compensation under this Agreement during the Test Period, Buyer shall forward to Seller the CAISO Revenues during the Test Period.

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

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

5.1 Events of Default. An "Event of Default" shall mean,

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

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after Notice is received by the Party failing to make such payment;

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made, except with respect to Sections 10.1(b), 10.1(c) or 10.1(d) or (B) with respect to Sections 10.1(b), 10.1(c) or 10.1(d), 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 10.1(b) or 10.1(c) to be materially false or misleading, such breach of the representation or warranty in Section 10.1(b) or 10.1(c) 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 in order to make the representation and warranty no longer false or misleading; and provided further that, if a portion of the output delivered to Buyer does not qualify under the requirements of the California Renewables Portfolio Standard as represented and warranted in clause (ii) of Section 10.1(b) and in Section 10.1(c), such breach shall not be an Event of Default and Buyer's exclusive remedy for such breach shall be a cash refund or one or more offsets (as necessary) against Buyer's payment obligations under this Agreement as provided in Section 3.1(k)(v);

(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 Agreement, Seller (A) delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project, or (B) sells any Product or portion thereof to a third party (unless expressly permitted by this Agreement);
- (ii) an outage resulting from an event of Force Majeure that prevents the Project from delivering at least sixty percent of the Contract Quantity to the Delivery Point for a period of eighteen (18) consecutive rolling months;
- (iii) failure by Seller to meet either the Guaranteed Construction Start Date set forth in Section 3.9(c)(iii)(A) or the Guaranteed Commercial Operation Date set forth in Section 3.9(c)(iii)(B), in each case after any permitted delay period set forth in Appendix III and the applicable sixty (60) day cure period set forth in Section 3.9(c)(vi) have expired; provided that, in the event the applicable 60 day cure period is extended, Buyer shall be entitled to declare an Event of Default at any time during such extension period as provided in Section 3.9(c)(vi);
- (iv) failure to achieve the Guaranteed Energy Production requirement as set forth in Section 3.1(e) of this Agreement;
- (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; or
- (vi) if at any time during the Delivery Term other than periods in which Buyer provides Seller notice that it is unable to receive a Product or in which Buyer suspends performance of this Agreement pursuant to Section 5.2 and accordingly refuses to receive and pay for a Product, Seller sells or Schedules such Product from the Project to any person other than Buyer.

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

5.3 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation

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

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

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

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

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including read-only access to invoices or settlement data from the CAISO market settlement website, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Section 3.6, Sections 4.1 through 4.4, and Section 4.6 as adjusted for CAISO charges pursuant to Section 4.5 (which may include preceding months). Notwithstanding the prior sentence, to the extent the determination of amounts due under this Agreement are based on invoices rendered by the CAISO, the Parties acknowledge and agree that the amounts set forth in the monthly invoices

may relate to prior calendar months, in accordance with CAISO settlement cycles. 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 (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the date on which the final CAISO invoice is rendered, or any specific adjustment to the invoice is made, for the month during which performance under the Transaction occurred; provided, however, such waiver shall not be applicable if a Party misrepresented or intentionally withheld material information prior to expiration of the twelve (12) month limitation. If an invoice is not rendered within twelve (12) months after the date on which the final CAISO invoice is rendered for 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 10.4 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com or on the SEC EDGAR information retrieval system; provided however, 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.

(a) Applicable Financial Information. The applicable financial information shall be provided as specified on the Cover Sheet:

Option A: If requested by Buyer, Seller shall deliver (i) within one hundred twenty (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 present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever, 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. The provisions of this Section 8.3 do not apply to the portion of the Delivery Term Security referenced in Section 8.4(a)(iii)(B).

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 a date not later than five (5) Business Days following the Execution Date of this Agreement until the Project Development Security is returned or applied pursuant to Section 8.4(c);

(ii) Project Development Security in the amount and in the form set forth in the Cover Sheet with respect to this subpart (ii) from a date not later than thirty (30) calendar

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days following the Financial Closing Date until the Project Development Security is returned or applied pursuant to Section 8.4(c); and

(iii) The Delivery Term Security in the amount and in the form set forth in the Cover Sheet with respect to this subpart (iii) from the Initial Energy Delivery Date until the end of the Term as follows:

(A) \$ 14,000,000 Letter of Credit; and

(B) \$ 42,000,000 Lien, in accordance with Section 8.6.

Any such Performance Assurance shall not be deemed a limitation of damages, unless otherwise specifically provided by the terms set forth in this Agreement. For avoidance of doubt, Seller has no obligation to add additional collateral in order to maintain any specified level of Performance Assurance if all or any portion of such Performance Assurance is drawn upon, set off, liquidated, applied or otherwise utilized pursuant to Section 8.4(b), or otherwise.

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

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). If Seller has met the Guaranteed Commercial Operation Date, then the Project Development Security returned shall include amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date. The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security; provided however, that with Buyer's consent, Seller may elect to apply the Project Development Security toward the Delivery Term Security pursuant to this Section 8.4.

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

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller promptly after the following has occurred: (a) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (b) all payment obligations of the Seller arising under this Agreement, including compensation for CAISO charges pursuant to Section 4.5, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

8.5 Letter of Credit.

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

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

8.6 Lien in Favor of Buyer. To secure its obligations under this Agreement, Seller shall grant to Buyer a present and continuing perfected Lien on and security interest in all of Seller's right, title and interest in and to the Project and the Seller's other assets, which Lien shall be in the amount of \$42,000,000 and subordinate only to Project Permitted Liens; provided, however, that the amounts secured and given priority by Project Permitted Liens shall not exceed eighty percent (80%) of the Total Project Costs. The Lien and security interest in favor of Buyer shall be created and evidenced by appropriate security agreements in substantially the form of the Senior Security Documents and otherwise in a form and substance reasonably satisfactory to Buyer (collectively, the "Project Security Agreement"), and shall be entered into on or before the Initial Energy Delivery Date.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

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

thus, in the event a Party's exemption is lost or reduced, each Party's responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

ARTICLE TEN: MISCELLANEOUS

10.1 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, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public

Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(c) 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.

(d) 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.

(e) For the avoidance of doubt, so long as Seller complies with its warranty obligations in Sections 10.1(b)-(d), Seller shall have no obligation, and makes no warranty, with respect to the extent to which Buyer may be able to use such renewable energy credits to comply with its obligations under the California Renewables Portfolio Standard.

10.2 Covenants.

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

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

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

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

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

(b) Seller Covenants.

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

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

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

10.4 Indemnities.

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

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably

withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Confidentiality. Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder ("Confidential Information") to a third party, other than (i) the Party's officers, directors, employees, lenders, investors, counsel, accountants, consultants, agents or advisors, or any Person providing or contemplating providing debt or equity financing or a guarantee or other material financial support to Seller, and its officers, directors, employees, counsel, accountants, consultants, agents or advisors, in each case who have a need to know such information and have agreed to keep such terms confidential, provided that, any Person providing or contemplating providing debt or equity financing or a guarantee or other material financial support to Seller shall first have agreed in writing to be bound by a materially similar obligation of confidentiality with respect to such Confidential Information as to which each Party is bound; (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 10.7 of this Agreement; (v) in order to comply with any applicable law, regulation, or rule, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC. In connection with requests made pursuant to clause (v) of this Section 10.6 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to: (a) notify the other Party prior to disclosing the Confidential Information and (b) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (a) prohibited from complying with a Disclosure Order or (b) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the Confidential Information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

10.7 RPS Confidentiality. Notwithstanding Section 10.6 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.

10.8 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 representation, statement, charge or computation made pursuant to this Agreement including, without limitation, amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof

was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.9 Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain, or cause to be obtained and maintained on Seller's behalf, the following insurance coverages, except as may otherwise be approved by PG&E in writing, such approval not to be unreasonably withheld. Seller also shall be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage.

(a) Workers' Compensation and Employers' Liability.

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

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

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, with no alterations to the coverage form.

(ii) The limit shall not be less than \$10,000,000 each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) Coverage shall:

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

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

(C) include a severability of interest clause.

(c) Business Auto.

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

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

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

(d) Aircraft Liability.

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

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

(iii) Coverage shall:

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

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

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

(e) Watercraft Liability.

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

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

(iii) Coverage shall:

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

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

(f) Seller's Pollution Liability.

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

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

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

(g) All Risk Property Insurance.

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

(ii) Coverage shall be written to cover the full replacement cost of the property.

(h) Professional Liability Insurance.

(i) This Section 10.9(h) does not apply to this Agreement. If the scope of work of the applicable contract such as the EPC Contract involves providing professional services, Errors and Omissions Liability insurance appropriate to the Seller's profession. Coverage shall be for a professional error, act or omission arising out of the scope of services shown in the Agreement, including coverage for bodily injury, property damage, and consequential financial loss.

(ii) The limit shall not be less than \$10,000,000 per claim.

(i) Additional Insurance Provisions.

(i) Before commencing performance of the Work, Seller shall furnish PG&E with certificates of insurance and endorsements of all required insurance for Seller.

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior Notice has been given to PG&E.

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

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

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

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

(vi) The insurance carrier or carriers and form of policy shall be subject to review and reasonable approval by PG&E.

(j) Form And Content.

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

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

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

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

(a) Complete financial statements and notes to financial statements; and

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

Any information provided to Buyer pursuant to this Section 10.10 shall be considered confidential in accordance with the terms of this Agreement and shall only disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

10.11 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.

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

10.13 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.

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

ARTICLE ELEVEN: CONDITIONS PRECEDENT

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

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

11.2 Failure to Meet All Term Conditions Precedent. If each of the Term Conditions Precedent in Section 11.1 is not satisfied or waived in writing by both Parties on or before one hundred eighty (180) days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. In the event that this Agreement is terminated pursuant to this Section 11.2, Buyer shall return the Project Development Security that Seller has posted under this Agreement to Seller in full.

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, and if the claim involves this and any related agreement between the Parties then all such agreements, is the dispute resolution procedure set forth in this Article Twelve. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of this procedure.

12.2 Management Negotiations.

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

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

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

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

12.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved at the request of any Party through a two-step dispute

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

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

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

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

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

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

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

ARTICLE THIRTEEN: NOTICES

Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, as provided in Appendix VIII, shall be provided in accordance with the terms set forth in the relevant Section of this Agreement. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day); 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; and a Notice of first class mail shall be deemed to have been received five (5) 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 written Notice of such change to the other Party.

ARTICLE FOURTEEN: OBLIGATIONS OF SELLER REGARDING DOE FUNDING

As of the Execution Date, Seller represents, warrants and covenants that it shall actively seek and diligently pursue a Conditional Commitment from the DOE for this Project and shall work in good faith with the DOE on the terms and conditions for any such Conditional Commitment or other funding commitment that may be proposed.

[Signature Page on Cover Sheet;
Appendices and Schedules to Follow]

APPENDIX I

FORM OF LETTER OF CREDIT

ISSUING BANK LETTERHEAD ADDRESS

Date: _____

Irrevocable Standby Letter of Credit Number: _____

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

Applicant: _____
[insert Applicant's address] _____

Account Party: _____
[insert Account Party's address] _____

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

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

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

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

AND

2. Beneficiary's signed statement certifying:

"Pursuant to the terms of that certain Power Purchase and Sale Agreement dated April 28, 2009 ("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

PG&E-Solar Partners VIII (PPA II)

***Execution Version
Confidential***

Subject to Confidentiality Agreement

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

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

Special Conditions:

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

We hereby engage with you that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored if drawn and presented for payment at any time before the close of business [INSERT TIME] at our counters located at [INSERT ADDRESS] on or before the Expiration Date or in the event of Force Majeure, as defined under Article 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

FORM OF INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase and Sale Agreement dated April 28, 2009 ("Agreement") by and between Pacific Gas and Electric Company ("Buyer") and Solar Partners VIII, LLC ("Seller"), this letter ("Initial Energy Delivery Date Confirmation Letter") serves to document the Parties' further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has delivered and Buyer has received the Product, as specified in the Agreement, as of this ____ day of _____, _____ (the "Initial Energy Delivery Date"). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

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

Tariff: Dated: Docket Number:

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

By: SOLAR PARTNERS VIII, LLC

By: PACIFIC GAS AND ELECTRIC
COMPANY

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX III

MILESTONES SCHEDULE AND TECHNOLOGY

Identify Milestone	Date for Completion
Seller obtains Site Control	March 31, 2010; provided, however, that physical access to the Site shall occur no later than the Guaranteed Construction Start Date
CEC Permit Issuance	No later than March 31, 2010
Seller provides Notice that it has placed orders for the following major equipment: steam turbine, generator and transformers	No later than eighteen (18) months prior to the Guaranteed Commercial Operation Date
Construction Start Date	No later than eighteen (18) months prior to the Guaranteed Commercial Operation Date
Guaranteed Construction Start Date	No later than twelve (12) months prior to the Guaranteed Commercial Operation Date, as may be delayed on a day by day basis by Force Majeure up to a maximum of ninety (90) days
Interconnection Facilities Completion Date	No later than one hundred and twenty (120) days before the Guaranteed Commercial Operation Date
Original Network Upgrade Completion Date	No later than sixty (60) days before the Original Guaranteed Commercial Operation Date
Commercial Operation Date	Guaranteed Commercial Operation Date; provided that upon Notice to Buyer, Seller may accelerate the Commercial Operation Date by no more than three hundred sixty five (365) days prior to the Original Guaranteed Commercial Operation Date pursuant to Section 3.9(c)(v)
Original Guaranteed Commercial Operation Date	July 1, 2013 ; provided that upon Notice to and consent of Buyer, Seller may accelerate the Original Guaranteed Commercial Operation Date pursuant to Section 3.9(c)(vii)
Guaranteed Commercial Operation Date	Original Guaranteed Commercial Operation Date, as may be delayed on a day by day basis by Force Majeure up to a maximum of ninety (90) days

APPENDIX IV

SITE & PROJECT DESCRIPTION

A. SITE

LPT Ivanpah 3

Name:	LPT Ivanpah 3
Address:	See description below
Description:	800 acres of Bureau of Land Management (BLM) land, near I-15 at the California-Nevada border, approximately 45 miles southwest of Las Vegas; Section map and listing attached.
Owner:	BLM
Substation	New – to be built adjacent to the 115 (230, as the case may be) kV transmission line owned by Southern California Edison Company that runs between Mountain Pass and Eldorado
Point of Delivery	Busbar at new substation

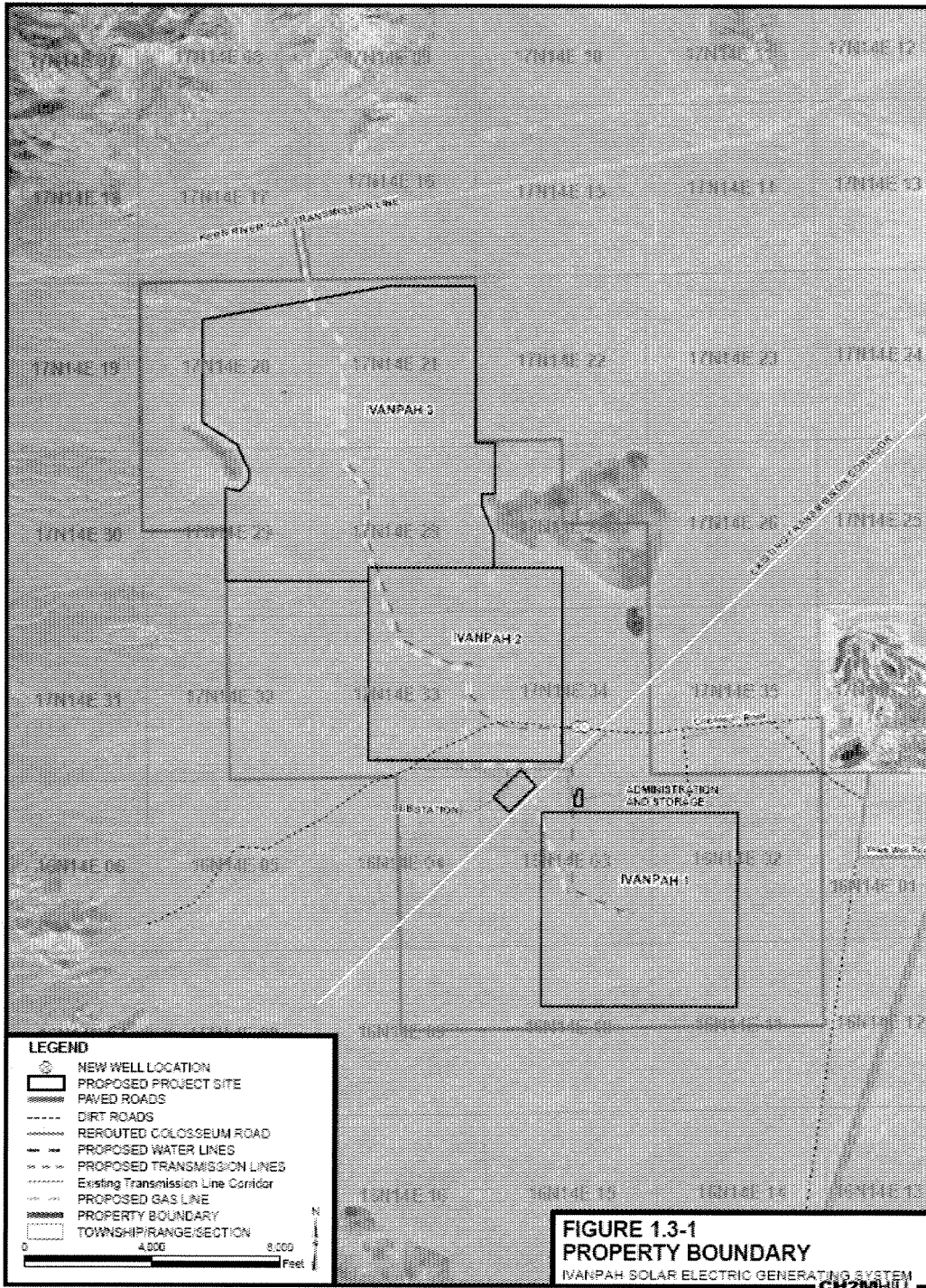
LPT Ivanpah 3

Township/Range – Section – Subdivision

Township/Range	Section	Subdivision
T17NR14E	20, 21, 28, 33, 34	All
T17NR14E	29	Northern half and southeastern quarter
T17NR14E	27	Southern half and northwestern quarter
T17NR14E	32	Eastern half
T16NR14E	2, 3	All
T16NR14E	4	Eastern half
T16NR14E	9, 10, 11	Northern half

PG&E-Solar Partners VIII (PPA II)

LPT Ivanpah 3
 Map Overlay – Subdivision



B. FACILITY DESCRIPTION

Ivanpah Project Design Elements. Design elements associated with the proposed project design can be grouped into the heliostat (mirror) fields, the power block, the shared utility corridor, the development of a network of maintenance and access roads, and the construction of an administration and maintenance complex. The Ivanpah Solar Electric Generating System ("SEGS") power plant complex includes three separate power plants with certain shared infrastructure facilities. The first 110-MW plant ("Ivanpah 1") and first 200-MW plant ("Ivanpah 3") will deliver power to PG&E. Another 100 MW plant ("Ivanpah 2") will deliver power to another offtaker. As shown on Figure 1 below, each of the Ivanpah proposed plants will consist of heliostat fields centered around a power block which is supplied with the necessary utilities through a utility corridor. Each of the plants will be connected to the Southern California Edison grid via a 115-kV transmission line. Each of these design elements are described below. The below summary reflects the current design, which may be modified as engineering and procurement progresses.

Heliostat Fields. The Ivanpah 1 and 3 projects will utilize heliostat arrays that automatically track the sun throughout the day and reflect the solar energy to the boiler on top of the solar power tower ("SPT"). It is estimated that the Ivanpah 1 and 3 projects will contain up to 70,000 heliostats and up to 140,000 heliostats, respectively. Each mirror is 7.2 feet high by 10.5 feet wide (2.20 meters by 3.20 meters), yielding a reflecting surface of 75.6 square feet (7.04 square meters). Each heliostat consists of two mirrors mounted on a single pole, along with an aiming control system that directs the motion of the heliostat as it moves to follow the sun. The aiming control system and the layout of solar fields are optimally designed to focus sunlight onto the SPT in a manner that maximizes steam output. The aiming control system uses optimization software to instruct the solar field controller where each heliostat should aim to maximize solar energy collection and output. This patent pending software system accounts for the light flux intensity and distribution required on the SPT's boiler and various other conditions such as sun insolation, wind, air pressure and the number of heliostats available for tracking. When computing the optimal aiming policy, the aiming control system factors in the differences between heliostats with respect to their tracking accuracy, the intensity of the beam they reflect (both of these factors are dependent mainly on the distance to the receiver), the shape of the beam and other relevant aspects.

Power Block. Each Solar Electric Generating System ("SEGS") power plant has a Power Block located in the approximate center of the facility. The Power Block consists of the SPT and receiver boiler, a steam turbine generator ("STG") set, the air-cooled condensers, and other auxiliary systems.

SPT and Receiving Boiler. The SPT is a metal structure designed specifically to support the boiler and efficiently move high-quality steam to the power block at its base. The height of the SPT will enable heliostats from significant distances to accurately reflect sunlight to the receiving boiler. The height of the SPT for Ivanpah 1 and Ivanpah 3 is approximately 460 feet. The receiving boiler is a traditional high-efficiency boiler, positioned on top of the SPT. The boiler converts the concentrated energy of the sun reflected from the heliostats into superheated steam. The boiler will be supplied by conventional boiler manufacturers and comply with standard boiler design parameters, providing performance assurance and industry best practices. The boiler's tubes are coated with a material that maximizes energy absorbance. The boiler has steam generation, superheating and reheating sections and is designed to generate superheated steam at a temperature of 550 degrees Celsius (°C) and 160 bars of pressure.

Power Block System. The power block system is the same as that used in traditional power generation facilities to convert steam to electricity. The power block consists of a conventional Rankine-cycle steam turbine generator with a reheat cycle, and auxiliary functions of heat rejection, water treatment, water disposal and grid interconnection capabilities. The integration of high-efficiency preexisting turbine technologies provides performance assurance and enables the system to maximize thermal to electricity efficiencies. To minimize water use, air, rather than water, will be used to cool the steam. Each power cycle for Ivanpah 1 and 3 will be based on a Rankine-cycle turbine with three pressure stage casings. Under the current design, live superheated steam will enter the high-pressure turbine casing at 160 bar and 540°C. It will leave the high-pressure casing via two extractions to high pressure preheaters and will be exhausted to a reheat circuit. The reheat steam is heated in a solar reheater (similar to the solar boiler superheater), located in the power block at the top of a SPT adjacent to the STG. The heated steam will enter an intermediate pressure turbine casing at 35 bar and 480°C. It will leave the intermediate pressure casing via two extractions – one to a deaerator and one to a preheater. The intermediate pressure exhaust then will enter the low-pressure casing at 4.5 bar and 222°C. Exhaust steam at 0.1265 bar will be condensed in an air-cooled condenser. Condensate is sent from the condenser well through three low pressure preheaters, to the deaerator, which serves also for feedwater reserve storage and is the point of feedwater make-up injection. From the deaerator, high pressure feedwater pumps send feedwater through two high pressure preheaters out to the solar field boilers. Ivanpah 1 and 3 each will have a backup diesel-fired engine to provide power to operate boiler recirculation pumps, firewater pumps, and other small electrical consumers in an emergency when power is otherwise unavailable.

Water Supply and Treatment. Well water will be used to supply domestic and industrial water needs. Two 100 percent redundant capacity wells will be located to the northeast of Ivanpah 1 that will supply water to the entire site. Make-up water for the steam system will be obtained from the active ground water well and treated in two stages. The first stage will remove ions while the second stage will use a polisher ion-exchanger system to produce feedwater-quality water for use in the boiler system. Package treatment plants will be used to provide potable water for drinking and sanitary uses (sinks, shower, and toilets) within the plants.

Wastewater Management. A septic system will be provided at the administration/warehouse building, as each facility will have some staff or operators present on a full time basis. Portable toilets will be placed within the Power Block areas of each facility. These will be serviced by a waste management firm on a regular basis, depending on the number of toilets and staff at each facility.

Utility Corridors. Due to the size of the facilities, it will be necessary to route a number of utilities between the individual facilities (internal utility corridors) and between the combined facilities (external utility corridors).

Internal Utility Corridors. Within each SEGS facility there will be a utility corridor required for the overhead electrical lines from the facility to the common area and the SCE Substation, and the underground water and natural gas lines. It is anticipated that these corridors will parallel the local access roads within the facilities and the common area. The two 100 percent redundant capacity wells will be located to the northeast of Ivanpah 1 and will supply water to all three plants. The wells will be connected to the project plants by way of underground pipelines. The internal electrical transmission interconnections will link each plant to the power grid by connecting the plant switchyard to the new SCE substation (Ivanpah Substation) to be constructed between Ivanpah 1 and Ivanpah 2, on the north side of the transmission corridor.

External Utility Corridor(s). There are a number of external utilities that are required to either provide services to the facilities (natural gas pipeline) or remove the electrical energy generated at the facilities (transmission lines) and communication lines. Figure 2 shows the location of the transmission lines, substation, natural gas line and water line. SCE will upgrade the existing 115-kV transmission line between the new Ivanpah Substation and the El Dorado Substation to 220 kV. This SCE upgrade is designed to serve other projects planned in the general vicinity and is not being built specifically for the Ivanpah SEGS. It will provide sufficient capacity for Ivanpah SEGS and other projects SCE anticipates. Natural gas for the Ivanpah SEGS will be delivered via approximately 5.3 miles of new 4-to 6 inch pipeline that will connect to the existing Kern River Gas Transmission line located 0.5 mile extending beyond Ivanpah. Each plant will connect to this new distribution gas line to provide fuel for the package boiler and will have a separate metering set. The SEGS complex will be interconnected to the Southern California Edison grid through an upgraded 115-kV transmission line passing through the site on a northeast-southwest orientation. The proposed Ivanpah substation will also require new telecommunication infrastructure to be installed to provide protective relay circuit, Supervisory Control and Data Acquisition circuit, data, and telephone services. The telecommunication path from the Ivanpah substation to the local carrier facility interface at Mountain Pass area consists of approximately 8 miles of fiber optic cable to be installed overhead on existing poles and new underground conduits to be constructed in the substation and telecom carrier interface point. This fiber optic route consists of two segments. The first segment is from the Ivanpah substation to the Mountain Pass substation using the existing Nipton 33-kV distribution line poles built along the transmission line corridor that crosses between Ivanpah 1 and 2. The second segment is from Mountain Pass substation to the telecommunications facility approximately 1.5 miles away at an interface point to be designated by the local telecommunication carrier. The fiber cable will be installed on the existing 12 kV distribution line poles.

Electrical Transmission System. Ivanpah 1 and 3 will be interconnected to an existing Southern California Edison ("SCE") grid through an upgraded SCE 115-kV line passing within the site that borders on a northeast southwest utility corridor. A substation will be constructed at the site that will be used to connect the Ivanpah SEGS to the electrical grid. Each project will have a separate CAISO revenue meter.

Natural Gas System. Natural gas will be used as a supplementary fuel for project operation. Each phase of the project includes a small package natural gas-fired start-up boiler to provide heat for plant start-up and during temporary cloud cover. Natural gas will be obtained by the construction of a new approximately 5.3-mile-long, 4- to 6-inch distribution pipeline from the existing Kern River Gas Transmission pipeline located approximately 0.5 mile north of the Ivanpah 3 site.

Water Supply System. Two new groundwater production wells will be drilled and developed to provide raw water for the Ivanpah SEGS project. The water will be drawn from the two wells that will be located near the northwest corner of Ivanpah 1 (see Figure 2). The wells and pumping system will be sized for 100 percent redundancy. To reduce impacts on the land and provide operating efficiencies, the production wells will provide water to the entire site. The 400-MW capacity at the site will require up to 46 gallons per minute of raw water make-up, which will be drawn from the wells and distributed to the plants via underground high density polyethylene or polyvinyl chloride pipe. A portion of the raw water (100,000 gallons) is for plant use while the majority will be reserved for fire water. There will be a dirt access road to the wells. The water supply line will go from the wells to the paved road on the northwest corner of Ivanpah 1 and run north to the Administration Building and to Ivanpah 3 along the same corridor

as the gas line; and then south to Ivanpah 1 along the paved access road leading to the power block. In addition, a monitoring well will be installed southeast of the Administration Building near a northwest corner of Ivanpah 1. The permanent area required for the installation of the monitoring well and access to it is approximately 0.23 acres.

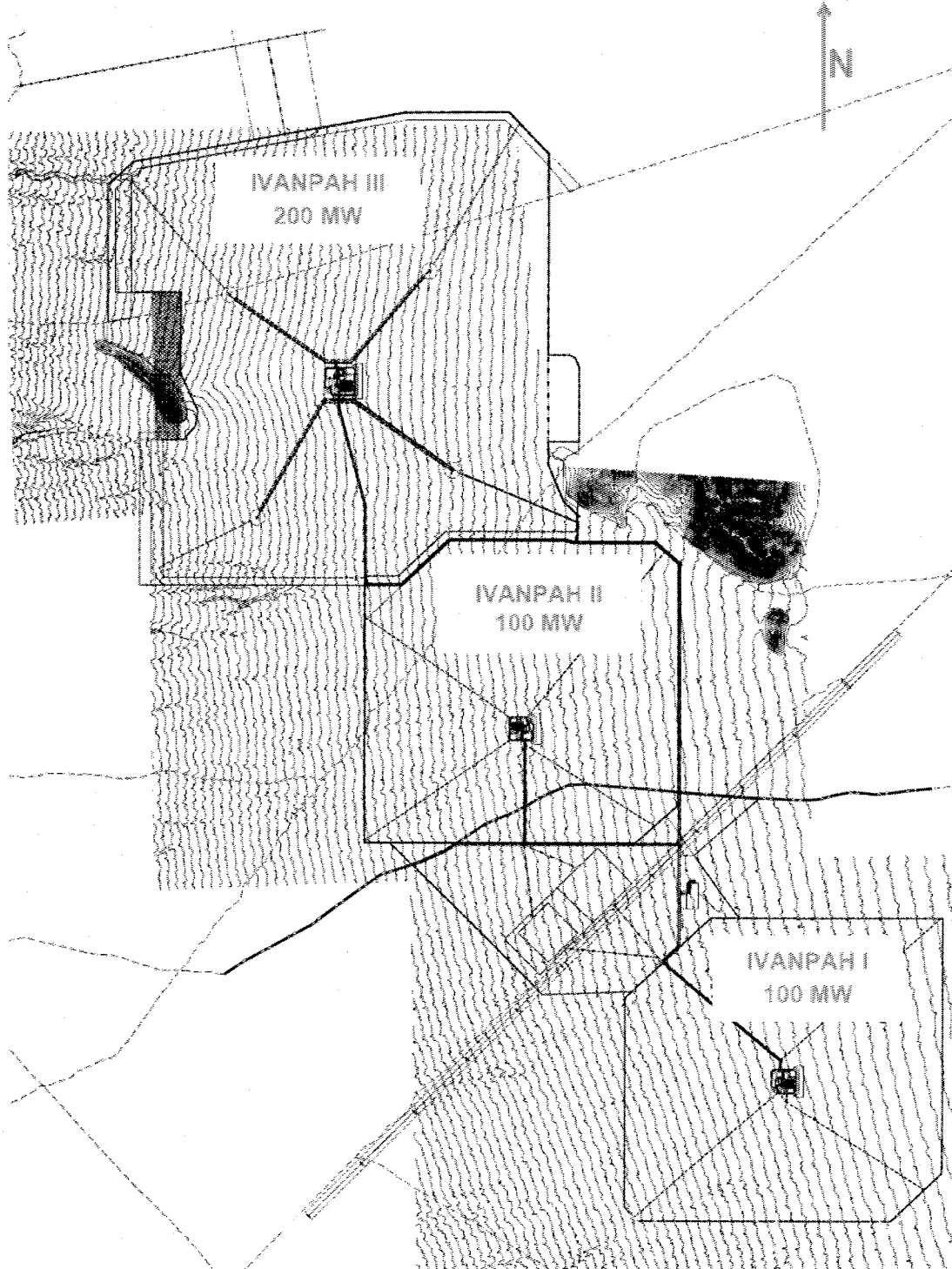
Substation and Switchyard. A new 115/220-kV substation will be built by SCE between Ivanpah 1 and Ivanpah 2.

Access Roads and Maintenance Paths. Shared access roads include a portion of the perimeter road on the southern and western edge of Ivanpah 2. In addition, the existing Coliseum Road will be relocated to the south of Ivanpah 2 to avoid passing through the heliostat fields of Ivanpah 2. Maintenance paths will be used to maintain and wash heliostat mirrors. These paths will not be graded. Access dirt roads will be used for site access, which will follow existing topography. Asphalt paved roads will be graded and compacted per the geotechnical report.

Fire Protection Systems. A fire protection system will be installed which meets the approval of the San Bernardino County Fire Marshall.

Administration and Maintenance Complex. An administration and maintenance complex located near the entrance to the Ivanpah 1 plant will be provided.

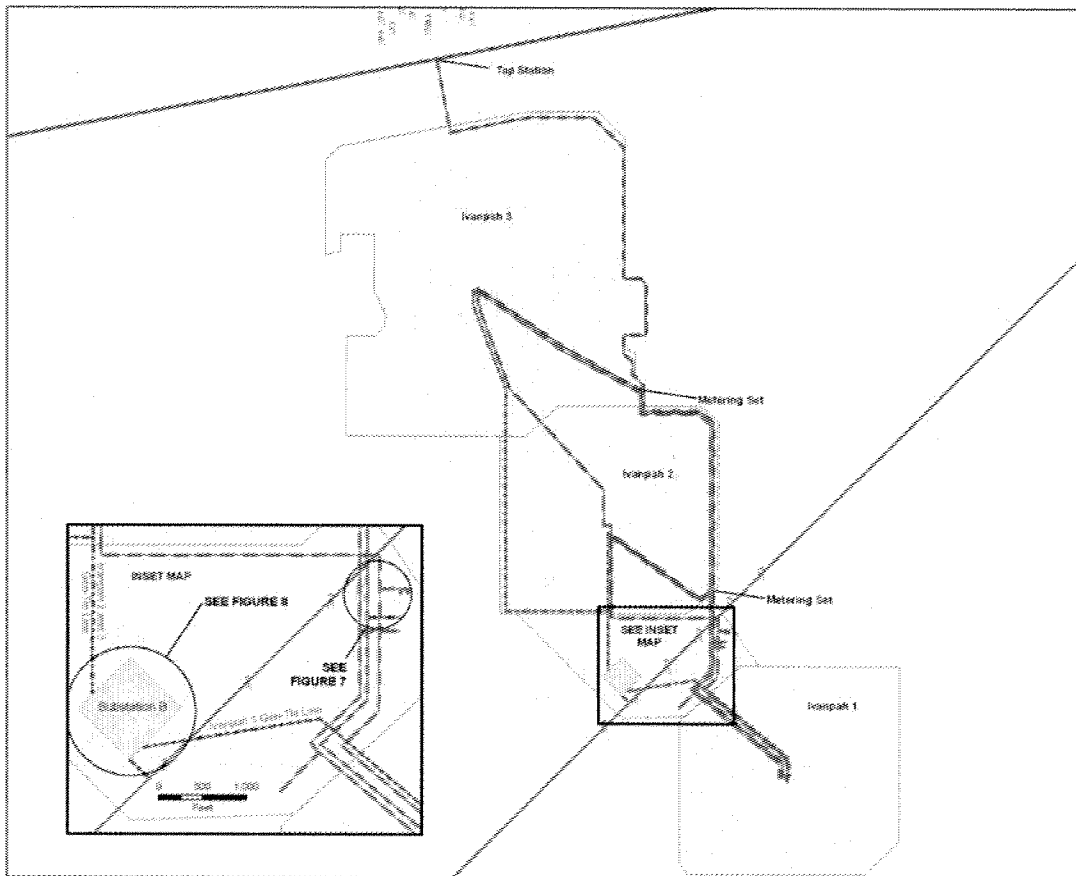
FIGURE 1



IVANPAH SEGS UNITS 1-3

FIGURE 2- UTILITY LAYOUT

Ivanpah SEGS Units 1-3



APPENDIX V

FORM OF CERTIFICATE OF COMMERCIAL OPERATION

SOLAR PARTNERS VIII, LLC

The undersigned, Solar Partners VIII, LLC (the "Seller"), does hereby deliver this Certificate of Commercial Operation to Pacific Gas and Electric Company (the "Buyer"). All capitalized terms not defined herein shall have the meaning set forth in the Power Purchase and Sale Agreement, dated April 28, 2009 (the "Agreement") between Seller and Buyer.

In accordance with its obligation to declare that the Project has achieved Commercial Operation in accordance with the terms of the Agreement, Seller, through the Licensed Professional Engineer, hereby certifies and represents to Buyer that Commercial Operation has been achieved and that the following statements are true as of the date set forth herein:

A certified statement of the Licensed Professional Engineer, set forth below, has been provided as evidence of Commercial Operation of the Project to provide an As-Available Product and meet, at a minimum, the requirements indicated herein.

- a. The Project has achieved the following:
 1. Solar Collection Field Mechanical Completion, as defined in Appendix VI of the Agreement; and
 2. Power Block Mechanical Completion, as defined in Appendix VI of the Agreement; and
 3. Turbine Mechanical Completion, as defined in Appendix VI of the Agreement; and
 4. Turbine Commissioning Completion, as defined in Appendix VI of the Agreement.

- b. The Project is interconnected with the CAISO Controlled 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 the Project to transmit Energy, in accordance with all requirements of the Agreement.

EXECUTED by SELLER this _____ day of _____, 20__

SOLAR PARTNERS VIII, LLC

By: _____

Name: _____

Title: _____

[LICENSED PROFESSIONAL ENGINEER] as the
Professional Engineer

By: _____

Name: _____

Title: _____

APPENDIX VI

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

In accordance with its obligation under that certain Power Purchase and Sale Agreement, dated April 28, 2009, (the "Agreement") by and between Pacific Gas and Electric Company ("Buyer") and Solar Partners VIII, LLC ("Seller") to declare and recognize the Commercial Operation Date, Seller shall notify Buyer that the Project has achieved Commercial Operation in accordance with the terms of the Agreement by delivering the Certificate of Commercial Operation, in the form attached as Appendix V of the Agreement and as described below, from Seller and a Licensed Professional Engineer with respect to the Project's ability to deliver an As-Available Product. All terms not defined herein shall have the meaning set forth in the Agreement.

The Certificate of Commercial Operation, in the form attached as Appendix V of the Agreement, shall be submitted by Seller, and supported by the following:

- 1) Statement that at least sixty-six percent (66%) of the solar field heliostats that are expected to be erected have been erected in accordance with the manufacturer's specifications ("Solar Collection Field Mechanical Completion").
- 2) Statement that the Power Block (consisting of the solar receiver boiler, solar superheater, steam turbine, electric generator, and air-cooled condenser) has been erected in accordance with the manufacturers' specifications ("Power Block Mechanical Completion")
- 3) A statement signed by the manufacturer of the steam turbine that the steam turbine has been erected in accordance with the manufacturer's specifications ("Turbine Mechanical Completion").
- 4) A statement signed by the manufacturer of the steam turbine that steam turbine commissioning is complete for the steam turbine. Turbine commissioning is complete when the electrical and control systems have been energized and tested in accordance with the manufacturer's specifications and the steam turbine has been released for electrical generation of power ("Turbine Commissioning Completion").
- 5) Statement that the Project is 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 the Project to transmit Energy.

APPENDIX VII

**FORM OF MONTHLY
PROGRESS REPORT**

**Monthly Progress Report
of**

("Seller")

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

[Date]

1.0 Instructions.

Any capitalized terms used in this report which are not defined herein shall have the means ascribed to them in the Power Purchase and Sale Agreement by and between Solar Partners II, LLC ("Seller") and Pacific Gas and Electric Company dated April 28, 2009 (the "Agreement").

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

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

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

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

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

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

Seller shall complete, certify, and deliver this form of Monthly Progress Report to Buyer, attention Contract Management, together with all attachments and exhibits. Seller shall deliver such Reports to Buyer either by U.S. Mail or electronic mail.

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 Major¹ activities to be performed for each of the following aspects of the Project during the current month:

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

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

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

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

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

2.2.7 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 (the "EPC Contractor(s)")) (including its subcontractors)) and the status thereof:

DESCRIPTION	STATUS

3.2 Local and/or county Governmental Approvals.

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

DESCRIPTION	STATUS

3.3. Permitting activities that occurred during the previous month.

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

3.4 Permitting activities occurring during the current month.

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

3.5 Permitting Notices received from EPC Contractor(s).

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

4.0 Design Activities.

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

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

ACTIVITY	EPC CONTRACTOR(S)/ 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.

ACTIVITY	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

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

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

6.0 Engineering Activities.

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

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

ACTIVITY	EPC CONTRACTOR(S)/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

6.2 Engineering activities to be performed during the current month.

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

6.3 Engineering activities completed during the previous month.

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

6.4 Three-month look-ahead engineering schedule.

Please provide a three-month look ahead engineering schedule.

7.0 Major Equipment Procurement.

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

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

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

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

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

7.3 Major Equipment procurement activities completed during the previous month.

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

8.0 Construction and Interconnection Activities.

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

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

ACTIVITY	EPC CONTRACTOR(S)/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

8.3 Construction and interconnection activities completed during the previous month.

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

8.4 EPC Contractor(s) Monthly Progress Report.

Please attach a copy of the Monthly Progress Reports received during the previous month from the EPC Contractor(s) pursuant to the construction contract between Seller and EPC Contractor(s), certified by the EPC Contractor(s) 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 3.9 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, do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____



PLEASE DO NOT ALTER THIS

APPENDIX VIII

SCHEDULING AND OUTAGE NOTIFICATION PROCEDURES

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 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 and Bilat_Settlements@pge.com.
 - c. For Monthly and WECC Preschedule Daily Forecasts of Available Capacity, email to 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.
 - 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.

f. For project outages, complete the specifics below and submit by email to DAenergy@pge.com and 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**

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 RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to, the following:
 - A. Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the CAISO Interconnection Point; and
 - B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.

2. CAISO Dispatch Requirements:
 - A. Seller shall deliver, subject to the generation limitations set forth in 2(B) immediately below, the full Contract Capacity to the CAISO Interconnection Point; and
 - B. Seller shall commit the Project to generate up to the full Contract Capacity, as ordered by the CAISO, unless the Project (i) is subject to a partial or full Forced Outage, (ii) is undergoing a Planned Outage, (iii) is affected by an event of Force Majeure; or (iv) is affected by inadequate solar insolation.

3. RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Substation for the Project as set forth in Appendix IV.

APPENDIX X

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Sections 3.1(n)(i), 3.1(n)(iii) and 3.1(n)(iv), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix X.

- (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 Settlement Interval Actual Available Capacity of the generator.

- (b) Log of Availability. The Availability Workbook shall be created on a single, dedicated Excel worksheet and shall be in the form of Attachment 1 to this Appendix X. The data presented in the Availability Workbook shall not reflect any Electrical Losses that occur between the CAISO revenue meter and the Delivery Point.

APPENDIX X
ATTACHMENT 1
Form of Microsoft Excel Worksheet

ISeller's Availability Report
 All amounts are in MWs

Settlement Interval No.	Date mm/dd/yyyy	HE 1	HE 2	HE 3	HE 4	HE 5	HE 6	HE 7	HE 8	HE 9	HE1 0	HE1 1	HE1 2	HE1 3	HE1 4	HE1 5	HE1 6	HE1 7	HE1 8	HE1 9	HE2 0	HE2 1	HE2 2	HE2 3	HE2 4		
1	mm/dd/yyyy																										
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6	mm/dd/yyyy																										

Date/Time of Submittal

SCHEDULE A

Average Projected Hourly Production

Month	Hour of Day (24 hr day)	Project ed Production MWh*	Mont h	Hour of Day (24 hr day)	Project ed Production MWh*	Mont h	Hour of Day (24 hr day)	Project ed Production MWh*
Jan	6	0.00	May	6	16.13	Sept	6	0.00
Jan	7	0.00	May	7	94.82	Sept	7	61.27
Jan	8	12.07	May	8	144.63	Sept	8	144.53
Jan	9	87.13	May	9	163.33	Sept	9	174.75
Jan	10	136.09	May	10	166.83	Sept	10	188.66
Jan	11	146.39	May	11	173.22	Sept	11	185.28
Jan	12	152.98	May	12	180.35	Sept	12	185.69
Jan	13	150.62	May	13	177.05	Sept	13	179.93
Jan	14	146.09	May	14	172.97	Sept	14	167.41
Jan	15	119.44	May	15	161.56	Sept	15	155.28
Jan	16	54.71	May	16	145.81	Sept	16	108.26
Jan	17	0.00	May	17	103.54	Sept	17	44.84
Jan	18	0.00	May	18	23.33	Sept	18	0.00
Feb	6	0.00	June	6	34.45	Oct	6	0.00
Feb	7	0.00	June	7	121.22	Oct	7	22.29
Feb	8	42.79	June	8	157.45	Oct	8	104.55
Feb	9	103.53	June	9	175.95	Oct	9	148.16
Feb	10	131.64	June	10	177.63	Oct	10	162.91
Feb	11	138.96	June	11	179.73	Oct	11	172.34
Feb	12	141.28	June	12	183.69	Oct	12	161.61
Feb	13	136.45	June	13	174.91	Oct	13	155.35
Feb	14	136.53	June	14	185.02	Oct	14	158.50
Feb	15	128.53	June	15	167.74	Oct	15	137.65
Feb	16	92.37	June	16	147.60	Oct	16	79.86
Feb	17	10.66	June	17	111.49	Oct	17	0.00
Feb	18	0.00	June	18	47.30	Oct	18	0.00
March	6	0.00	July	6	16.15	Nov	6	0.00
March	7	18.26	July	7	94.73	Nov	7	0.00
March	8	97.55	July	8	139.55	Nov	8	65.68
March	9	144.16	July	9	160.70	Nov	9	136.51
March	10	157.65	July	10	173.50	Nov	10	151.65
March	11	165.74	July	11	173.83	Nov	11	157.51
March	12	164.01	July	12	176.19	Nov	12	154.23
March	13	161.93	July	13	179.42	Nov	13	139.73
March	14	158.04	July	14	174.14	Nov	14	136.09
March	15	144.07	July	15	173.23	Nov	15	98.48
March	16	115.48	July	16	152.11	Nov	16	30.36
March	17	51.32	July	17	111.38	Nov	17	0.00
March	18	0.00	July	18	44.48	Nov	18	0.00
April	6	0.00	Aug	6	0.00	Dec	6	0.00
April	7	72.04	Aug	7	71.88	Dec	7	0.00
April	8	136.22	Aug	8	135.60	Dec	8	25.20
April	9	175.17	Aug	9	166.37	Dec	9	88.87

PG&E-Solar Partners VIII (PPA II)

Execution Version

Confidential

Subject to Confidentiality Agreement

Month	Hour of Day (24 hr day)	Projected Production MWh*	Month	Hour of Day (24 hr day)	Projected Production MWh*	Month	Hour of Day (24 hr day)	Projected Production MWh*
April	10	186.62	Aug	10	178.00	Dec	10	122.68
April	11	190.63	Aug	11	173.51	Dec	11	133.77
April	12	193.72	Aug	12	179.40	Dec	12	130.31
April	13	180.43	Aug	13	172.21	Dec	13	126.94
April	14	179.68	Aug	14	169.05	Dec	14	118.76
April	15	169.71	Aug	15	157.15	Dec	15	80.86
April	16	139.61	Aug	16	128.57	Dec	16	14.54
April	17	96.69	Aug	17	83.15	Dec	17	0.00
April	18	0.00	Aug	18	0.00	Dec	18	0.00

* Any hour of the 24 hour day without a number has a Projected Production of 0.00.

Notes:

1. If the Contract Capacity is increased pursuant to Section 3.1(f) of the Agreement, each Projected Production number in the above table shall be increased by the ratio of the new Contract Capacity to the Contract Capacity set forth in the Agreement on the Execution Date.
2. The Projected Production numbers in the above table may be adjusted by mutual agreement of the Parties based upon the actual operating history at the Project.
3. Hour of the day means the 60 minute period ending at that time. Time shown is Pacific Standard time. During the months when Daylight Savings Time is in effect, the Projected Production numbers will shift ahead one hour.

PG&E-Solar Partners VIII (PPA II)

*Execution Version
Confidential
Subject to Confidentiality Agreement*

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:

SOLAR PARTNERS VIII, LLC,
a Delaware limited liability company

PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation

By: BrightSource Energy, Inc., a California
corporation, its managing member

By: _____

Name: Tom Doyle

Title: Executive Vice-President

Date: April 28, 2009

By: _____

Name: Roy M. Kuga

Title: Vice President-Energy Supply

Date: April 28, 2009

(CRM)