

**AMENDED AND RESTATED POWER PURCHASE AGREEMENT**

**Between**

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

**And**

**FPL ENERGY MONTEZUMA WIND, LLC**  
(as "Seller")

**AMENDED AND RESTATED POWER PURCHASE AGREEMENT**

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**APPENDICES**

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

- Appendix I Form of Letter of Credit
- Appendix II Initial Energy Delivery Date Confirmation Letter
- Appendix III Milestones Schedule
- Attachment A Form of Monthly Progress Report
- Appendix IV Project Description Including Description of Site
- Appendix V Delivery Term Contract Quantity Schedule
- Appendix VI Commercial Operation Certification Procedure
- Appendix VII GEP Damages Calculation
- Appendix VIII Notification Requirements for Available Capacity and Project Outages
- Appendix IX Certification of Third Party Agreement
- Appendix X Resource Adequacy
- Appendix XI Notices List
- Appendix XII Form of Consent to Assignment
- Appendix XIII Seller Documentation Condition Precedent
- Appendix XIV Form of Actual Availability Report
- Attachment A Form of Actual Availability Report
- Appendix XV Form of Guaranty
- Appendix XVI Land Use Permit

## AMENDED AND RESTATED POWER PURCHASE AGREEMENT

### PREAMBLE

This Amended and Restated Power Purchase Agreement, together with the appendices and any other attachments referenced herein, is made and entered into between Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”), and FPL Energy Montezuma Wind, LLC, a Delaware limited liability company (“Seller”), as of the Execution Date set forth on the signature page hereof.

**WHEREAS**, the Parties entered into a Power Purchase Agreement, dated April 13, 2010 (“Prior Agreement”);

**WHEREAS**, the Parties seek to amend and restate the Prior Agreement in its entirety to reflect the Parties’ agreement to (i) delay the Guaranteed Commercial Operation Date by one month and (ii) to reduce the Contract Price;

**AND WHEREAS**, upon the Execution Date the Parties agree that the Prior Agreement shall be null and void and of no further effect.

**NOW THEREFORE**, in consideration of the foregoing, Buyer and Seller hereby agree to the following:

### GENERAL TERMS AND CONDITIONS

#### ARTICLE ONE: GENERAL DEFINITIONS

1.1 “AAA” means the American Arbitration Association or its successor.

1.2 “Actual Availability Report” has the meaning set forth in Section 3.1(l)(ii).

1.3 “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. 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 Amended and Restated Power Purchase Agreement between Buyer and Seller, which is comprised of the Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of (a) Section 10.14, the word “agreement” shall have the meaning set forth in this definition and (b) Section 3.1(k)(viii), the word “contract” shall have the meaning set forth in this definition.

1.5 “Arbitration” has the meaning set forth in Section 12.4(a).

1.6 “As-Available Product” means a Product for which, subject to the terms of this Agreement, (a) Seller is obligated to sell and deliver and (b) 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 mechanical capacity of the Project, expressed in whole megawatts, that is available to generate Product.

1.8 “Availability Workbook” has the meaning set forth in Appendix XIV.

1.9 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such proceeding or cause of action remains undismissed for sixty (60) days, (b) makes an assignment or any general arrangement for the benefit of creditors (but excluding any collateral assignments to Lenders in the normal course of business), (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.

1.10 “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.

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

1.12 “Buyer’s Notice” has the meaning set forth in Section 3.9(c)(v)(B).

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

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

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

1.16 “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.

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

1.18 “CAISO Revenues” means (a) the credits and other payments received by Buyer, as Seller’s Scheduling Coordinator, as a result of test energy from the Project delivered to the real-time market by Seller during the Test Period, including revenues associated with CAISO dispatches and (b) the debits, costs, penalties and interest that are directly assigned by the CAISO

to the CAISO Global Resource ID for the Project for, or attributable to, scheduling and deliveries from the Project under this Agreement.

1.19 “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.

1.20 “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State 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.

1.21 “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 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.

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

1.23 “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.

1.24 “Change of Control” means any transfer, sale, assignment, pledge or other disposition of shares of or equity interests in a Party having the result (directly or indirectly and either immediately or subject to the happening of any contingency) of changing the entity or entities which possess the power (directly or indirectly and either immediately or subject to the happening of any contingency) to direct or cause the direction of the management or policies of such Party (from the entity or entities possessing such power as to such Party as of the Execution Date), whether such change is voluntary or involuntary on the part of such Party.

1.25 “Claims” means all third party claims, loss, actions or suits, 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.

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

1.27 “Commercial Operation Date” means the date on which Seller (a) notifies Buyer that eighty-five percent (85%) of the Turbines are installed and able to produce and deliver Energy to the Delivery Point, and (b) provides an officer’s certificate, substantially in the form attached hereto as Appendix VI, certifying the completion of the Commercial Operation Certification Procedure.

1.28 “Commercially Reasonable” or “Commercially Reasonable Efforts” means efforts which are reasonably within the contemplation of the Parties at the time of executing this Agreement and which do not require the performing Party to expend any funds other than expenditures which are customary and reasonable in transactions of the kind and nature contemplated by this Agreement in order for the performing Party to satisfy its obligations hereunder. “Commercially Reasonable Efforts,” or “Commercially Reasonable” shall be consistent with Good Utility Practices, including electric system reliability and stability, federal, state or other regulatory mandates relating to renewable energy portfolio requirements, and shall take into consideration the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. “Commercially Reasonable” or “Commercially Reasonable Efforts” shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time. For purposes of Section 10.3, the words “commercially reasonable efforts” shall have the meaning set forth in this definition and in Section 10.3(a) and (b)

1.29 “Compliance Cap” has the meaning set forth in Section 3.1(j)(ii).

1.30 “Compliance Cap Notice” has the meaning set forth in Section 3.1(j)(ii).

1.31 “Condition Precedent” means each of, or one of, the conditions set forth in Section 2.4(a)(i) through (iv) and “Conditions Precedent” shall refer to all of the conditions set forth in Section 2.4(a)(i) through (iv).

1.32 “Construction Start Date” means the date on which Seller delivers to Buyer (a) a copy of the Notice to Proceed that Seller has delivered to the Engineering and Construction Contractor for the Project.

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

1.34 “Contract Price” means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in Section 4.1.

1.35 “Contract Quantity” means the quantity of Delivered Energy expected to be delivered by Seller during each Contract Year as set forth in Section 3.1(e)(i).

1.36 “Contract Quantity Amendment” has the meaning set forth in Section 3.1(e)(ii)(D).

1.37 “Contract Quantity Reset” has the meaning set forth in Section 3.1(e)(ii)(D).

1.38 “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.

1.39 “Costs” means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations



or in entering into new arrangements which replace the Terminated Transaction; and (b) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Transaction.

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

1.41 "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.

1.42 "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. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

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

1.44 "Curtailed Period" means the period of time during which there is any of the following: (a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO's electric system integrity or the integrity of other systems to which the CAISO is connected; (b) a curtailment directed by the CAISO due to Overgeneration, which as used in this provision has the meaning set forth in the CAISO Tariff, or a forecast or expectation of Overgeneration, including a request by the CAISO to manage Overgeneration conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (c) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including (i) any situation that affects normal function of the electric system including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (d) scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or (e) a curtailment in accordance with Seller's

obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

1.45 “Daily Delay Damages” means with respect to 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 the Guaranteed Commercial Operation Date (not to exceed \$1,840,000), divided by (b) 180.

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

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

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

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

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

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

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

1.53 “Delivery Term Security” means the Performance Assurance that Seller is required to maintain, as specified Section 8.4(a)(iv), to secure performance of its obligations during the Delivery Term.

1.54 “Disclosing Party” has the meaning set forth in Section 10.9(a)(v).

1.55 “Disclosure Order” has the meaning set forth in Section 10.9(b).

1.56 “Downgrade Event” shall refer to any point in time when either (a) Seller’s Guarantor’s Credit Rating (or Qualified Replacement Guarantor’s Credit Rating, if applicable) falls below BBB- from S&P or Baa3 from Moody’s, if rated by one or more Ratings Agencies, or (b) both S&P and Moody’s no longer rate Seller’s Guarantor (or Seller’s Qualified Replacement Guarantor, if applicable).

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

1.58 “Early Termination Date” has the meaning set forth in Section 5.2(c).

1.59 “Effective Date” means the date on which all of the Conditions Precedent set forth in Section 2.4(a) have been satisfied or waived in writing by both Parties.

1.60 “Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, or Interconnection Customer’s Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner’s electric system for

receipt of Energy at the Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if the Participating TO's electric system is not part of the CAISO Grid.

1.61 "Electrical Losses" means all applicable losses, including any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

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

1.63 "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.

1.64 "Energy" means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 1.95, "Green Attributes," the word "energy" shall have the meaning set forth in this definition.

1.65 "Energy Deviation(s)" means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid (as defined in the CAISO Tariff) submitted for the Project 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.

1.66 "Energy Investment Tax Credit" or "ITC" means the tax credit for "energy property" described in Section 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.67 "Engineering and Construction Contractors" means the engineering and construction contractors selected and engaged by Seller to design and construct the Project.

1.68 "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.

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

1.70 "Exclusivity Period" has the meaning set forth in Section 3.9(c)(v)A).

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

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

1.73 "Exempt Wholesale Generator" has the meaning provided in 18 CFR Section 366.1, as may be amended or supplemented from time to time.

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

1.75 “First Offer” has the meaning set forth in Section 3.9(c)(v)(A).

1.76 “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 Commercially 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 the following:

(i) hail, flooding, unusual lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcanic activity 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, blockade, insurrection, revolution, expropriation or confiscation;

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

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

(b) Force Majeure shall not be based on:

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

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

(iii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project, except if Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;

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

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

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

(vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, or strikes directed exclusively at the Engineering and Construction Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project with respect to labor at 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)(iii) above.

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

1.78 "Force Majeure Development Failure" has the meaning set forth in Section 11.1(b).

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

1.80 "Force Majeure Notice" has the meaning set forth in Section 3.7(d).

1.81 "Force Majeure Project Failure" has the meaning set forth in Section 11.1(a)(i).

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 an amount of least 2.3 MW of the Contract Capacity 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 "Forecasting Penalty" has the meaning set forth in Section 4.5(d)(iii), and "Forecasting Penalties" means more than one Forecasting Penalty.

1.84 "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, determined in a Commercially Reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield

curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.85 “Generally Accepted Accounting Principles” means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

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

1.87 “GEP Damages” has the meaning set forth in Section 3.1(e)(ii)(B) and in Appendix VII.

1.88 “GEP Failure” means Seller’s failure to produce Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

1.89 “GEP LD Cap” has the meaning set forth in Section 3.1(e)(ii)(c).

1.90 “GEP Shortfall” means the amount in MWh by which Seller failed to achieve the Guaranteed Energy Production in the applicable Performance Measurement Period.

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

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

1.93 “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.

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

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

in the atmosphere;<sup>1</sup> (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

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

1.97 "Guaranteed Energy Production" or "GEP" has the meaning set forth in Section 3.1(e)(ii)(A).

1.98 "Guarantor" means [REDACTED]

1.99 "Guaranty" means a guaranty, security agreement, or any other document containing an obligation of the Guarantor in favor of, and supporting any obligations of, Seller to Buyer, in substantially the form attached as Appendix XV hereto.

1.100 "Hour-Ahead Scheduling Process" has the meaning set forth in the CAISO Tariff.

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

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

1.103 "Interconnection Customer's Interconnection Facilities" has the meaning set forth in the LGIA.

1.104 "Interconnection Point" means Pacific Gas and Electric Company's 230 kV Birds Landing Substation.

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

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

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

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

1.108 “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.

1.109 “Intervention” means an action, restriction, prohibition or intervention by a Governmental Authority or third party relating to the Land Use Permit or Wildlife Mortality which such action, restriction, prohibition or intervention materially and adversely impacts: (i) the ability of Seller to operate or maintain the Project consistent with the permitted levels set forth in the Land Use Permit, or (ii) Seller’s performance of any obligation arising under the Agreement.

1.110 “Land Use Permit” means the Land Use Permit No. U-06-06 issued by the Solano County Planning Commission granted January 27, 2010 (attached hereto at Appendix XVI).

1.111 “Law” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Sections 1.41 “CPUC Approval,” 1.95 “Green Attributes,” 10.3, “Seller Representations and Warranties” and 10.14 “Governing Law,” the term “law” shall have the meaning set forth in this definition.

1.112 “Lender” or “Lenders” means any and all persons or successors in interest thereof (a) lending money or extending credit (including any financing lease, monetization of tax benefits, backleverage financing or credit derivative arrangement) to Seller or to an Affiliate of Seller including: (i) for the construction, permanent, or interim financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and related rights from Seller, and/or (b) participating (directly or indirectly) as an equity investor in the Project primarily in connection with the utilization of applicable federal tax credits or tax depreciation benefits associated with holding an ownership interest in the Project, or (c) participating as a lessor under a lease finance arrangement relating to the Project (which person or persons shall not include Seller or any of its Affiliates).



1.113 “Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by (a) a U.S. commercial bank or (b) a U.S. branch of a foreign commercial bank with at least \$10 billion in assets, with either such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, substantially in the form as contained in Appendix I to this Agreement.

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

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

1.116 “Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment (such acceptance not to be unreasonably withheld, conditioned or delayed) who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) 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 (e) is licensed in an appropriate engineering discipline for the required certification being made.

1.117 “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, determined in a Commercially Reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of Energy Investment Tax Credits, or other federal or state tax credits, grants, or benefits related to the Project or generation therefrom.

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

1.119 “Market Price” means the simple average of the Integrated Forward Market (Day-Ahead) hourly price, as published by the CAISO, for the Existing Zone Generation Trading Hub, in which the PNode resides.

1.120 “Meteorological Station” has the meaning set forth in Section 3.1(l)(v)(A).

1.121 “Milestones” means the key development activities required for the construction and operation of the Project, as set forth in Appendix III.

1.122 “Monthly Progress Report” means the report similar in form and content attached hereto as Attachment A to Appendix III.

1.123 “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.

1.124 “MW” means megawatt.

1.125 “MWh” means megawatt-hour.

1.126 “NERC” means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.

1.127 “Net Worth” means means the dollar value calculated by subtracting liabilities from total assets (excluding goodwill and other intangible assets described in FASB Statement 142) as such terms are determined in accordance with GAAP.

1.128 “Network Upgrades” has the meaning set forth in the CAISO Tariff.

1.129 “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.

1.130 “NextEra” means NextEra Energy Resources, LLC.

1.131 “NOAA” means National Oceanic and Atmospheric Administration or successor thereto.

1.132 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.133 “Notice,” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Appendix XI contains the names and addresses to be used for Notices.

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

1.135 “Obligor” means the Party breaching the terms of this Agreement.

1.136 “Outage Notification Procedures” means the procedures specified in Appendix VIII, attached hereto.

1.137 “Participating Intermittent Resource” or “PIRP” has the meaning set forth in the CAISO Tariff.

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

1.139 “Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 10.14, Governing Law, the word “party” or “parties” shall have the meaning set forth in this definition.

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

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

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

1.143 “Permitted Extensions” means extensions to the Guaranteed Commercial Operation Date due to Permitting Delay, Transmission Delay or Force Majeure Construction Extension pursuant to Section 3.9(c)(iii)(A), (B) or (C), as applicable.

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

1.145 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.

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

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

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

1.149 “Prior Agreement” has the meaning set forth in the recitals to this Agreement.

1.150 “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.

1.151 “Project” means all of the Unit(s), the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including the assets used to connect the Unit(s) to the Interconnection Point, as more particularly

described on Appendix IV. For purposes of Section 1.95, “Green Attributes,” the word “project” shall have the meaning set forth in this definition.

1.152 “Project Cure Period” has the meaning set forth in Section 3.9(c)(iv)(C).

1.153 “Project Development Security” is the Performance Assurance required of Seller, as specified and referred to in Section 8.4(a)(i), (ii) and (iii).

1.154 “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Project is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Contract Capacity.

1.155 “Qualified Replacement Guarantor” means an entity which at the time it is to provide a replacement Guaranty (a)(i) has a Credit Rating equal to or greater than Guarantor, but in no event lower than BBB- from S&P or Baa3 from Moody’s; (ii) has a consolidated Net Worth of at least one billion dollars (\$1,000,000,000.00); and (iii) (A) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, or (B) is a foreign Qualified Replacement Guarantor organized in a jurisdiction reasonably acceptable to Buyer and, with respect to such foreign Qualified Replacement Guarantor, Seller has furnished to Buyer a legal opinion, in form, substance and from a law firm reasonably satisfactory to Buyer and from counsel reasonably acceptable to Buyer, regarding the enforceability of the Guaranty to be issued by such foreign Qualified Replacement Guarantor, or (b) is acceptable to Buyer in its sole discretion as having a verifiable creditworthiness and Net Worth sufficient to secure the Qualified Replacement Guarantor’s obligations under the Guaranty.

1.156 “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.

1.157 “Reductions” has the meaning set forth in Section 4.7(b).

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

1.159 “Remedial Action Plan” has the meaning set forth in Section 3.9(c)(ii).

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

1.161 “Replacement Capacity” has the meaning set forth in Section 3.3(b)(ii).

1.162 “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.

1.163 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3(a).

1.164 “Revised Offer” has the meaning set forth in Section 3.9(v)(C).

- 1.165 “RPS Qualification Expenditure Maximum” has the meaning set forth in Section 10.3(b).
- 1.166 “RPS Qualification Improvement” has the meaning set forth in Section 10.3(b).
- 1.167 “RPS Qualification Improvement Amount Agreement” has the meaning set forth in Section 10.3(b).
- 1.168 “RPS Qualification Improvement Notice” has the meaning set forth in Section 10.3(b).
- 1.169 “S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.
- 1.170 “Satisfaction Date” has the meaning set forth in Section 2.5(a).
- 1.171 “Schedule” has the meaning set forth in the CAISO Tariff.
- 1.172 “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.
- 1.173 “SEC” means the U.S. Securities and Exchange Commission.
- 1.174 “Seller” has the meaning set forth in the Preamble.
- 1.175 “Seller Excuse Hours” means those hours during which Seller is unable to schedule or deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, (c) Curtailment Period or (d) an Intervention.
- 1.176 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).
- 1.177 “Settlement Amount” means the amount in US\$ equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.
- 1.178 “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.).
- 1.179 “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all Units that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.
- 1.180 “Site” means the location of the Project as described in Appendix IV.
- 1.181 “System Emergency” has the meaning set forth in the CAISO Tariff.
- 1.182 “Term” has the meaning provided in Section 2.5(a).
- 1.183 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2 of this Agreement.

1.184 “Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

1.185 “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.

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

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

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

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 “Unit” means each Siemens 2.3 MW 93 meter wind turbine used to produce the Product under this Agreement, which turbines are identified in Appendix IV.

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

1.192 “Wildlife Mortality” means the “take” of any animal under any State, Local, or Federal wildlife protection laws (including animal cruelty and other related laws), including intentional or accidental death or injury to wildlife, or intentionally or accidentally altering or degrading wildlife habitat which might kill or injure wildlife or wildlife populations by impacting breeding, feeding, nesting, or other essential behavior pattern of wildlife either temporarily or permanently.

1.193 “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.

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

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

1.196 “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.

1.197 “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.

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

### **2.1 Entire Agreement; Termination of Prior Agreement.**

(a) This Agreement, together with the Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties.

(b) The Parties agree that upon the Effective Date of this Agreement the Master Power Purchase and Sale Agreement dated April 8, 2005 entered into by and between the Parties shall be terminated in its entirety and both Parties shall be released entirely from all obligations and liabilities under that agreement.

2.2. Interpretation. The following rules of interpretation shall apply in addition to those set forth in Section 10.15:

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

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

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

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

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

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

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

(h) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way a limitation.

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. Conditions Precedent.

(a) Conditions Precedent. The Term shall not commence until the occurrence of all of the following:

(i) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;

(ii) CPUC Approval has been obtained;

(iii) Buyer receives a final and non-appealable order of the CPUC that finds that Buyer’s entry into this Agreement is reasonable and that payments to be made by Buyer hereunder are recoverable in rates; and

(iv) Buyer receives from Seller the documentation listed in Appendix XIII (Seller Documentation Condition Precedent) as provided therein.

(b) CPUC Approval Filing. Buyer shall file the Agreement for CPUC Approval within sixty (60) days of the Execution Date and shall use Commercially Reasonable Efforts to obtain CPUC Approval; provided that, Seller provides all such documentation and data requested by Buyer, which Buyer finds necessary to satisfy the then-current filing requirements of the CPUC.

(c) Interim Sales of Energy.

(i) In the event that the Parties have satisfied the Conditions Precedent set forth in Section 2.4(a)(i) and (iv) and the Project achieves Commercial Operation and has satisfied the conditions set forth in Section 3.1(c) (C) and (E) prior to Conditions Precedent 2.4(a)(ii) and (iii) being either satisfied or waived in writing by the Parties, then during such period (the “Interim Period”) pending the satisfaction of the Conditions Precedent set forth in Section 2.4(a)(ii) and (iii), Seller shall sell and deliver, and Buyer shall purchase and receive on an intermittent basis all Energy generated by the Project and delivered to the Delivery Point, subject to Section 3.1(i) and Buyer shall purchase such Energy at the Market Price. During the Interim Period, Seller shall invoice Buyer, and Buyer shall make payment to Seller, in accordance with the billing and payment procedures set forth in Article Six. During the Interim Period, Seller shall use reasonable efforts to ensure that WREGIS Certificates associated with Renewable Energy Credits corresponding to all Energy purchased during the Interim Period are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred to Buyer upon satisfaction of the outstanding conditions precedent and the commencement of the Delivery Term. Upon receipt by Buyer of such WREGIS Certificates



and a corresponding invoice from Seller, Buyer shall pay to Seller an amount equal to the difference between the Market Price and the Contract Price for each MWh of Product received by Buyer during the Interim Period; provided that if Seller fails to provide such WREGIS Certificates then Buyer shall not be obligated make such payment.

(ii) If Buyer is not able to purchase the Energy during the Interim Period and Buyer notifies Seller of such prohibition, then Seller shall have the right to sell the Product to a third party on terms and conditions that will not prevent the sale of Product to Buyer upon satisfaction of the Conditions Precedent.

(iii) Notwithstanding anything to the contrary in this Agreement, if Buyer purchases Energy from Seller during the Interim Period, then in addition to those provisions set forth in Section 2.6(a) below this Agreement shall be effective and binding as of the first day of the Interim Period only to the extent required to give full effect to and enforce, the rights and obligations of the Parties under the following:

- (A) Section 3.1(d), (f), (g), (h), (i), (j), (l), (m);
- (B) Sections 3.2 through and including 3.8; and
- (C) Sections 4.5 through 4.7.

(d) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 2.4(a)(ii) and (iii) are not satisfied or waived in writing by both Parties on or before two hundred forty (240) days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Other than payment for amounts due and owing for Interim Sales of Energy, set forth in Section 2.4(c)(i) above, neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

## 2.5 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.4(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Sections 2.4(d), 5.2, or Section 11.1 of this Agreement (the "Term"); provided that this Agreement shall thereafter remain in effect (i) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (the "Satisfaction Date") or (ii) in accordance with the survival provisions set forth in subpart (b) below.

(b) Notwithstanding anything to the contrary in this Agreement, (i) all rights under Section 10.6 (Indemnities) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (ii) all rights and obligations under Section 10.9 (Confidentiality) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years; and (iii) the right of first offer in Section 3.9(c)(v) and Section 11.1(d) shall survive the Satisfaction Date for two (2) years.

2.6 Binding Nature.

(a) Upon Execution Date. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

- (i) Sections 3.9(a)(vi) and 5.1(a)(iv)-(v);
- (ii) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.6;
- (iii) Sections 5.2 through 5.8;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;
- (v) Sections 10.2, 10.6 through 10.9, and Sections 10.12 through 10.17; and
- (vi) Articles One, Two, Seven, Twelve and Thirteen.

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

2.7 Separation of Functions. The Parties acknowledge that this Agreement is between (a) Seller and (b) Buyer acting solely in its merchant function. Buyer is required to maintain the separation of its transmission and merchant functions pursuant to the FERC's Standards of Conduct as directed by FERC Order No. 717, as may be modified, amended or replaced from time to time. The Parties further acknowledge that they have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as Participating Transmission Owner, including, but not limited to, orders or instructions relating to Electric System Upgrades and/or Curtailment Periods.

**ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

3.1 Seller's and Buyer's Obligations.

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

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver or cause to be delivered, and Buyer shall purchase and receive or cause to be received the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right (i) to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Energy delivered to Buyer in connection with Energy Deviations or (ii) sell Product from the Project to a third Party other than in connection with Energy Deviations or in accordance with Section 3.1(i)(v). Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except during the Test Period. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer

shall be responsible for any costs or charges imposed on or associated with the Product after its receipt at and from the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

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

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

As used herein, “Delivery Term” shall mean the period of Contract Years specified above beginning on the first date that Seller delivers Product (excluding test energy during the Test Period) to Buyer from the Project (“Initial Energy Delivery Date”) in connection with this Agreement and continuing until the end of the twenty-fifth (25<sup>th</sup>) Contract Year unless terminated as provided by the terms of this Agreement. For sake of certainty, if the Buyer has purchased Energy or Product pursuant to Section 2.4(c) during the Interim Period, the Interim Period shall end on the day prior to the Initial Energy Delivery Date and Seller agrees that it shall declare the Initial Energy Delivery Date upon satisfaction of clause (D) below. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (A) the Commercial Operation Date has occurred and Seller has installed one-hundred percent (100%) of the Turbines; (B) Buyer shall have received the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; (C) Seller shall have obtained the requisite CEC Certification and Verification for the Project; (D) all of the applicable Conditions Precedent in Section 2.4(a) of the Agreement have been satisfied or waived in writing, and (E) Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the “Initial Energy Delivery Date Confirmation Letter” attached hereto as Appendix II on the Initial Energy Delivery Date.

(d) Delivery Point. The Delivery Point shall be the PNode designated by the CAISO for the Project.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity. The Contract Quantity during each Contract Year is 129,000 MWh.

(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” means an amount of Delivered Energy, as measured in MWh, equal to the product of (x) and (y), where (x) is one hundred forty five percent (145%) of the Contract

Quantity, and (y) is the difference between (I) and (II), with the resulting difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. Guaranteed Energy Production is described by the following formula:

Guaranteed Energy Production = (145% \* Contract Quantity in MWh) \* [(Hrs in Performance Measurement Period – Seller Excuse Hrs) / Hrs in Performance Measurement Period]

(B) If Seller has a GEP Failure, then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall notify Seller of such failure. Seller may cure the GEP Failure by delivering to Buyer no less than eighty five percent (85%) of the Contract Quantity over the next following Contract Year (“GEP Cure”); provided that Seller notices Buyer that it will exercise the GEP Cure right within thirty (30) days of Seller’s receipt of Notice of the GEP Shortfall. If Seller fails to generate the required amount of Delivered Energy to achieve the GEP Cure for the applicable Performance Measurement Period, Seller shall pay GEP Damages in accordance with Section 3.1(e)(ii)(C) and calculated pursuant to Appendix VII (GEP Damages Calculation). The Parties agree that the damages sustained by Buyer associated with Seller’s failure to achieve the Guaranteed Energy Production requirement would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay GEP Damages.

(C) If Seller fails to achieved the GEP Cure during the GEP Cure Period, Buyer shall, within forty-five (45) days of the end of the GEP Cure period, provide Seller with Notice of such failure in writing including the amount of the GEP Damages owed by Seller, if any. Seller shall pay the GEP Damages within sixty (60) days of receipt of Buyer’s Notice. Any disputes with respect to such amounts shall be resolved in accordance with Section 6.2 and Article 12 hereof. In no event shall Seller’s aggregate liability for GEP Liquidated Damages exceed Nine Million Six Hundred Thousand Dollars (\$9,600,000) (the “GEP LD Cap”). Payment of GEP Liquidated Damages and the remedies set forth in Section 3.1(e)(ii)(D) below shall be Buyer’s sole and exclusive remedies for a GEP Shortfall. In the event that a GEP Failure or combination of GEP Failures causes Seller to pay GEP Liquidated Damages to Buyer in an amount equal to the GEP LD Cap then Seller shall be subject to Section 3.1(e)(ii)(D) below, but shall no longer be subject to the GEP Failure, GEP Cure, GEP Liquidated Damages (in excess of the GEP LD Cap) and GEP Shortfall provisions as set forth in Sections 3.1(e)(ii)(A), (B) and (C).

(D) (I) In the event a GEP Failure or combination of GEP Failures causes Seller to become liable to Buyer for GEP Liquidated Damages in an amount in excess of the GEP LD Cap, Buyer shall have the right, but not the obligation, to amend this Agreement (a “Contract Quantity Amendment”) to reduce the Contract Quantity to an amount equal to the average amount of Delivered Energy produced by the Project in the three (3) Contract Years prior to the effective date of the Contract Quantity Amendment. The effective date of the Contract Quantity Amendment shall be the commencement date of the Performance Measurement Period following the Performance Measurement Period in which Seller’s total obligations for GEP Liquidated Damages exceeded the GEP LD Cap and such amendment shall be effective for the remainder of the Term, subject to the Contract Quantity Reset (defined below). If Buyer elects to make a Contract Quantity Amendment then, at least thirty (30) days prior to the Contract Quantity Amendment’s effective date, Buyer shall provide to Seller a form of the Contract Quantity Amendment and written Notice explaining in reasonable detail the

calculation of the new Contract Quantity. Upon receipt of such Notice, Seller shall promptly execute and return the Contract Quantity Amendment to Buyer or dispute the quality of the data used to calculate the new Contract Quantity. Any such dispute regarding the new Contract Quantity shall be resolved in accordance with Article 12 hereof and the Contract Quantity shall be deemed to be the Contract Quantity calculated by Buyer (as reflected in the form of Contract Quantity Amendment provided by Buyer) during the period in which any dispute over the new Contract Quantity is pending.

(II) Following the effective date of a Contract Quantity Amendment, if Seller is able to produce Energy from the Project in excess of one hundred and twenty percent (120%) of the Contract Quantity set forth in a Contract Quantity Amendment over any calendar year period, Seller may reset the Contract Quantity to such level of production (a "Contract Quantity Reset") and the Parties shall amend further the Agreement to reflect the higher Contract Quantity, such Contract Quantity Reset not to exceed the original Contract Quantity. If Seller elects to institute a Contract Quantity Reset, at least thirty (30) days prior to the Contract Reset's effective date, Seller shall provide to Buyer a form of amendment to the Agreement documenting the Contract Quantity Reset and written Notice explaining in reasonable detail the calculation of the Contract Quantity Reset. Upon receipt of such Notice, Buyer shall promptly execute and return the amendment to Seller or dispute the quality of the data used for Seller's calculation of the Contract Quantity Reset. Any such dispute regarding the Contract Quantity Reset shall be resolved in accordance with Article 12 hereof and the amount of the Contract Quantity Reset shall be deemed to be the amount calculated by Seller (as reflected in the form of Contract Quantity Reset amendment provided by Seller) during the period in which any dispute over the Contract Quantity Reset amount is pending.

(f) Contract Capacity. The generation capability designated for the Project shall be 36.8 MW net of all auxiliary loads, station electrical uses, and Electrical Losses (the "Contract Capacity"). Except as set forth in Section 3.1(i)(v), throughout the Delivery Term, Seller shall sell and deliver all Product produced by the Project solely to Buyer and in no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds the Contract Capacity, except if such Contract Capacity is changed as a result of Section 3.1(g)(i).

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied exclusively from the Project. Seller shall not make any alteration or modification to the Project outside of normal customary and prudent plan and maintenance consistent with Good Utility Practice which results in a change of not more than seven percent (7%) to either the Contract Capacity or the anticipated output of the Project without Buyer's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed. The Project is further described in Appendix IV.

(ii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Section 10.7(a), 10.7(b) and 10.7(c). Seller shall be deemed to have relinquished possession of the Project if the Project has totally ceased (i.e., zero (0) output) to generate, produce and deliver Product for a consecutive three hundred and sixty (360) day period and such cessation is not a result of a Force Majeure event, a Curtailment Period, or action of Buyer, in each case directly impacting the Project or this Agreement; provided, if a Licensed Professional Engineer determines in writing provided to Buyer that the cessation cannot be remedied within the one hundred eighty (180) day period, including an explanation for the cause

and remediation process for the cessation, Seller shall not be deemed to have relinquished possession or control of the Project under this Section 3.1(g)(ii) for such additional time as is reasonably necessary to remedy such cessation up to a total of twenty-four (24) months in the aggregate, so long as Seller advises Buyer of its plan for such remediation and promptly commences and diligently and continuously pursues remediation.

(h) Interconnection Customer's Interconnection Facilities.

(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under the LGIA; (B) cause the Interconnection Customer's Interconnection Facilities, including metering facilities to be maintained; (C) comply with the procedures set forth in the LGIP and applicable agreements or procedures provided under the LGIP in order to obtain the Electric System Upgrades, if any, identified in the LGIA, and (D) obtain those Electric System Upgrades as identified in the LGIA, if any, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project during the times at which such delivery is anticipated under this Agreement.

(ii) Coordination with Buyer. If requested by Buyer, Seller shall (A) provide to Buyer copies of all material correspondence related thereto; and (B) provide Buyer with written reports of the status of the LGIA and Electric System Upgrades, if applicable, on a monthly basis. The foregoing shall not preclude Seller from executing an LGIA that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law.

(i) Performance Excuses.

(i) Seller Excuses. Seller shall be excused from delivering the Product and 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 Curtailment Periods.

(iii) Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project as directed by the CAISO, the Participating Transmission Owner or as may be communicated by Buyer at the direction of the CAISO or the Participating Transmission Owner during any Curtailment Period.

(iv) No Excuse. Except for a failure or curtailment resulting from a Force Majeure or during a Curtailment 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.

(v) Third-Party Sales. Seller may sell to third parties any Product that Buyer does not purchase and is excused from purchasing or receiving due to Force Majeure; provided that Buyer shall be relieved from all costs and liability associated with the scheduling of such Product to the third party, including functioning as the Scheduling Coordinator; provided that Buyer shall cooperate reasonably with Seller so that Seller can function as Scheduling Coordinator for such third party sales.

(j) Greenhouse Gas Emissions Reporting.

(i) 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 reporting, registering, tracking, allocating for or accounting for such emissions.

(ii) Seller agrees to take all Commercially Reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such emission reporting requirements, if any; provided that, if Seller determines that the: (A) costs and expenses to comply with the requirements of this Section 3.1(j); or (B) costs and expenses specifically set forth in Section 3.3(a)(ii) (Resource Adequacy) will exceed in the aggregate one hundred thousand dollars (\$100,000) per calendar year (the "Compliance Cap"), Seller shall notify Buyer of the amount by which Seller anticipates exceeding the Compliance Cap and provide documentation and calculations to support the expected exceedence ("Compliance Cap Notice"). Buyer shall then have thirty (30) days after receipt of the Compliance Cap Notice to:

(A) notify Seller that Buyer will pay the Compliance Cap exceedence, subject to CPUC Approval (if required), and if Buyer so elects, Seller shall, upon receipt of payment from Buyer, implement the additional compliance requirements; or

(B) notify Seller that Buyer will not pay the Compliance Cap exceedence, in which case this Agreement shall continue in full force and effect and Seller shall not be required to take any further action pursuant to this Section 3.1(j) or Section 3.3 (Resource Adequacy) which would result in the Seller incurring amounts in excess of the Compliance Cap. If Buyer fails to respond to the Compliance Cap Notice in the time period set forth in Section 3.1(j)(ii), then Buyer shall be deemed to have elected not to pay the Compliance Cap exceedence.

(k) WREGIS. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall comply with all Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.1(k)(viii); provided that Seller satisfies or is satisfying its obligations under Section 3.1(k)(i). In addition:

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

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward 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 Delivered Energy for such calendar month as evidenced by the Project's metered data.

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

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 6 and the Guaranteed Energy Production for the applicable Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller's obligations under this Section 3.1(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 Delivered Energy in the same calendar month.

(viii) Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

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

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point. If different, and continuing throughout the Term, Seller shall use Commercially Reasonable Efforts to provide Buyer, in a form reasonably acceptable to Buyer, the following data on an approximately real-time basis and, if applicable, historical basis:



(A) read-only access to meteorological measurements and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (F) of this list, and energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project;

(B) read-only access to the Project's CAISO revenue meter and all Project meter data at the Site;

(C) full, real time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application;

(D) net plant electrical output at the CAISO revenue meter;

(E) time-average data including 10-minute and hourly values of total global horizontal irradiance or direct normal insolation, total global radiation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure; and

(F) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of wind speed; provided, such equation shall be developed and updated jointly by the Parties and shall not be the basis for the incurrence by Seller of any Forecasting Penalties. Such equation shall take into account the expected availability of the Project.

(ii) For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Project's monthly Settlement Interval Actual Available Capacity in the form set forth in Appendix XIV (Form of Actual Availability Report). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. Buyer shall exercise Commercially Reasonable Efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(l)(ii); provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

(iii) Buyer reserves the right to validate the data provided pursuant to Section 3.1(l)(i) with information publicly available from NOAA and nearby weather stations and substitute such data for its settlement purposes only in the event that the data is not provided or if Seller's data is inconsistent with the publicly available data or is missing; provided that Buyer shall substitute data only for those periods during which Seller's data is missing or inconsistent.

(iv) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 3.1(l)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within ten (10) Business Days of Buyer's request.

(v) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain one (1) stand-alone meteorological station (the "Meteorological Station") at the Site to monitor and report the meteorological data required in Section 3.1(l)(i) of this Agreement. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

(B) Seller shall maintain the Meteorological Station, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third-Party SC (as applicable). Seller shall promptly repair and replace as necessary such Meteorological Station, 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 use Commercially Reasonable Efforts to maintain, repair or replace such equipment as necessary within five (5) Business 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.

(E) Notwithstanding the forgoing in (A), (B), (C) and (D) above, in the event Seller is unable, for any reason, to provide to Buyer meteorological data from the Meteorological Station and provided Seller promptly commences and diligently and continuously pursues repair, Seller shall be permitted to satisfy its meteorological data delivery obligation by providing substitute meteorological data from the Highwinds wind energy project owned by Seller's Affiliate and located adjacent to the Project.

(vi) 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.

(vii) 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 the Meteorological Station. Such Meteorological Station shall provide, via remote access to Buyer, all data relating to (A) wind speed and direction, standard deviation of wind direction, air temperature, barometric pressure, and humidity at the Site, as well as time-average data including 10-minute and hourly values of irradiance or insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure; (B) elevation, latitude and longitude of the weather station; and (C) any other data that would be required for participation in the EIRP.

(m) Obtaining and Maintaining CEC Certification and Verification. Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

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

3.3 Resource Adequacy.

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

(i) if at any time CAISO determines that the Project is not "deliverable" then Seller's Resource Adequacy obligations hereunder shall be suspended and excused; and

(ii) Seller's actual and documented costs associated with capital improvements and administrative expenses (but specifically excluding costs incurred by Seller related to operations, maintenance and repair of the Project) related to providing and maintaining the Capacity Attributes necessary to satisfy Buyer's Resource Adequacy Requirements shall be subject to the Compliance Cap set forth in Section 3.1(j) and Seller shall not be required to undertake any actions pursuant to this Section 3.3 unless Buyer complies with the reimbursement obligations set forth in Section 3.1(j), except as otherwise provided for in Sections 3.3(b) and (c) below.

(b) Availability Standards; Replacement Capacity. The following shall apply and the specified costs, expenses and penalties shall be excluded from the Compliance Cap:

(i) provided Buyer has satisfied its Compliance Cap obligations, if any, related to Resource Adequacy, Seller shall be responsible for the payment of all costs, expenses and penalties assessed by the CAISO resulting from Seller's failure to achieve the monthly availability standard related to a wind energy project for the applicable compliance year as such is set forth in the CAISO Tariff; and

(ii) in the event that the rules implementing Resource Adequacy Requirements provide for the replacement of Project capacity dedicated to Buyer but not generated by the Project ("Replacement Capacity") then the following shall apply:

(A) if Seller has delivered to Buyer Notice no less than forty-five (45) days in advance of any Planned Outage, Buyer shall be solely responsible for all

obligations, costs, expenses and penalties assessed by the CAISO related to such Replacement Capacity;

(B) if Seller has failed to deliver to Buyer Notice no less than forty-five (45) days in advance of any Planned Outage, Seller shall be solely responsible for all obligations, costs, expenses and penalties assessed by the CAISO related to such Replacement Capacity.

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 Interconnection Customer's Interconnection Facilities (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) Subject to Section 3.1(i)(i), Seller shall bear all risks and costs associated with such transmission service, including any transmission outages or curtailment to 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, 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 at and from the Delivery Point.

(B) Subject to Section 3.1(i)(ii), Buyer shall bear all risks and costs associated with such transmission service, including any transmission outages or curtailment from the Delivery Point.

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

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

(b) EIRP Requirements. Seller shall provide Buyer with a copy of the notice from CAISO certifying the Project as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. Following certification and whenever applicable, Seller shall participate in and comply with EIRP as directed by Buyer or Third-Party SC and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during all hours of the Delivery Term, and Buyer, as Scheduling Coordinator, shall

facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to assist Seller's participation in and compliance with EIRP and such additional protocols, to the extent such actions are at *de minimis* cost to Buyer during the Test Period and Delivery Term. All costs of compliance with Qualifying Protocols and ongoing certificate during the Test Period and Delivery Term shall be for the account of Seller. Ongoing costs for scheduling the Project's Output through EIRP Test Period and during the Delivery Term shall be for the account of Buyer.

(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. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

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

(ii) Buyer's Responsibilities as Scheduling Coordinator. 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 and the CAISO's protocol and scheduling practices, including the requirements of EIRP, if applicable.

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include Project availability and updated status of transformers, Unit status, and any other equipment that may impact availability. To avoid Forecasting Penalties set forth in Section 4.5(d)(iii), Seller shall use Commercially Reasonable Efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of September 1 of the first Contract Year or forty-five (45) days before the first day of the first Contract Year of the Delivery Term, if applicable, and (II) September 1 of each calendar

year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer 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 the Test Period, and thereafter 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 estimate of the Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(C) Daily Forecast of Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller or Seller's agent shall provide an accurate day ahead estimate 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](http://www.wecc.biz)) under the document title, "Prescheduling Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least 2.3 MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day-Ahead Schedules, then Seller must notify Buyer of such change by telephone and shall send a revised notice to Buyer's Internet site set forth in Appendix VIII. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

Day-Ahead Trading Desk  
Primary Telephone: (415) 973-6222  
Backup Telephone: (415) 973-4500

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, (I) until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Buyer and (II) to the extent Seller's failure contributes to an imbalance charge, Seller shall be subject to the Forecasting Penalties set forth in Section 4.5(d)(iii).

(D) Hourly Forecast of Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of 2.3 MW or more, whether due to Forced Outage, Force Majeure or other

cause, as soon as reasonably possible, but no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit Schedules to the CAISO in accordance with the Hour-Ahead Scheduling Process. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer in furtherance of its scheduling requirements. With respect to any Forced Outage, Seller shall (I) use Commercially Reasonable Efforts to notify Buyer of such outage immediately following Seller Available Capacity notification to the CAISO via SLIC and (II) follow the Outage Notification Procedures in Appendix VIII of this Agreement. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Project during or after the end of such outage. These notices and changes to Available Capacity shall be communicated by telephone to Buyer's Hour-Ahead Trading Desk and shall be sent to Buyer's internet site as set forth in Appendix VIII:

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

(iv) Replacement of Scheduling Coordinator.

(A) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller's SC. These actions include (I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

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

3.5 Standards of Care.

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

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

(c) Reliability Standard. Seller agrees to abide by (i) 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.

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 reasonably 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; provided that any such access shall take place during normal business hours and Buyer shall observe all applicable safety rules made known to Buyer's employees, contractors and authorized agents and shall indemnify Seller for the actions of its employees, contractors and authorized agents for harm or liabilities caused by Buyer, its employees, contractors or authorized agents. 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 6.1, 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. In addition to Seller's Planned Outage notification requirement set forth in Section 3.3(b) related to Resource Adequacy Requirements, Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with the Annual Forecast of Available Capacity procedure set forth in Appendix VIII no later than September 1<sup>st</sup> of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld, conditioned or delayed. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage no later than forty-five (45) 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, conditioned or delayed. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail materially lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use Commercially Reasonable Efforts to accommodate Buyer's request.

(c) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the provisions in Appendix VIII. Seller shall notify Buyer



in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis using the same notification procedure as used with initial notice. Seller shall not substitute Energy from any other source for the output of the Project during a Prolonged Outage.

(d) Force Majeure.

(i) If, as a result of a Force Majeure, the Party claiming the Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, such non-performing Party shall be excused from only that portion of its performance that is prevented by such Force Majeure event to the extent so prevented; provided that: (A) within seventy-two (72) 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 such oral notice the non performing Party shall provide the other Party with Notice (a “Force Majeure Notice”) in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim; (B) 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 event; and (C) the Party claiming Force Majeure shall exercise Commercially Reasonable Efforts to eliminate or mitigate the effects of the Force Majeure condition. Seller shall not substitute Products from any other source for the output of the Project during an outage resulting from Force Majeure and 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. Failure to provide timely Force Majeure Notice constitutes a waiver of a Force Majeure claim.

(ii) Except as set forth in Section 11.1, in no event shall a condition of Force Majeure be grounds for termination of the Agreement, or extend the Term of this Agreement; provided, however, if at any time during the period of Force Majeure the non-performing Party fails to undertake or ceases undertaking its Commercially Reasonable Efforts to remedy its inability to perform, then the non-performing Party shall no longer be excused from its performance by reason of Force Majeure.

(iii) Notwithstanding anything in this Agreement to the contrary, no payment obligation arising under this Agreement prior to the date of an event of Force Majeure, and no obligation to provide Performance Assurances shall be excused by such event of Force Majeure.

(e) Communications with CAISO. Seller shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide Buyer with copies of all outage plans and clearance requests submitted to CAISO, and shall promptly inform Buyer of all clearance approvals and disapprovals and other communications with CAISO pertaining to the status of planned or in-progress Project outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to Buyer 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.

(f) 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; provided that such change does not result in an increase cost of performance or allocates additional risk to Seller hereunder other than *de minimis* cost and risk.

3.8 Operations Logs and Access Rights.

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

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC provided that Buyer shall observe all applicable project safety rules made known to Buyer's authorized agents, employees or inspectors and shall indemnify Seller for actions of its authorized agents, employees or inspectors while they are at the Project. Buyer shall make Commercially 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 Customer's 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 material changes in the Project and provide to Buyer specifications and design drawings of any such changes.

(vi) Provide to Buyer Progress Reports as follows: (A) prior to the Construction Start Date, within thirty (30) days after the close of each calendar quarter from the first quarter following the Execution Date until six (6) months prior to Seller's anticipated Construction Start Date; and (B) starting six (6) months prior to Seller's anticipated Construction Start Date, within thirty (30) days after the close of each month until the Project Commercial Operation Date, and agreeing to regularly scheduled meetings between representatives of Buyer and Seller to review such Progress Reports and discuss Seller's construction progress. Progress Reports 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 inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable Notice. Buyer shall have the right, but not the obligation, to inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable Notice, provided that Buyer shall observe all applicable Project safety rules made known to Buyer's employees or authorized agents and shall indemnify Seller for the actions of its employees and authorized, while they are at the Project. Buyer shall coordinate its inspection activities with the Project's operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

(c) Construction Milestones.

(i) Milestones. The Parties agree time is of the essence in regards to the Agreement. As such, the Seller agrees to use Commercially Reasonable Efforts to achieve the Milestones in a timely fashion and acknowledges that the Buyer will suffer damages if the Commercial Operation Date does not occur by the Guaranteed Commercial Operation Date. Seller agrees to provide Buyer with any reasonable documentation requested by Buyer to support the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

(ii) Remedial Action Plan. If Seller misses three (3) or more Milestones, other than the Guaranteed Commercial Operation Date, 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 is outlined in the Monthly Progress Report and requires Seller to provide a detailed description of its proposed course of action 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 Commercial Operation Date, then subsection (iii) below shall apply.

(iii) Guaranteed Commercial Operation Date: Seller shall have demonstrated Commercial Operation per the terms of Appendix VI no later than January 30, 2011, (the "Guaranteed Commercial Operation Date"), provided, that if Seller declares the Commercial Operation Date based upon the installation of eighty-five (85%) of its Turbines, then Seller shall install and place into service the remaining fifteen percent (15%) of Turbines no later than sixty (60) days following the Commercial Operation Date; and, provided, further, that the Guaranteed Commercial Operation Date may be extended on a day for day basis for not more than:

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

(B) three hundred sixty (360) days if Seller has used Commercially Reasonable Efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to have the Project physically interconnected to the CAISO Grid and to complete all Interconnection Customer's Interconnection Facilities needed, if any, in order to interconnect the Project to the CAISO Grid, but fails to secure any necessary commitments from CAISO or the Participating Transmission Owner for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"); or

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

Seller shall provide Buyer Notice within thirty (30) days of Seller becoming aware of the facts or circumstances giving rise to the Permitted Extension, but in any event at least sixty (60) days prior to the Guaranteed Commercial Operation Date; provided that in the case of a Force Majeure Construction Extension, if sixty (60) days is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event. Such Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension. If Seller claims Permitting Delay, Transmission Delay and/or Force Majeure such extensions cannot cumulatively exceed three hundred sixty (360) days and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days. Further and in the event Seller elects to provide Seller with a Notice relating to a Permitted Extension, Seller shall post the Project Development Security as specified and referred to in Section 8.4(a)(iii).

(iv) Cure Period and Delay Damages.

(A) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date, after giving effect to Permitted Extensions, then Buyer shall be entitled to liquidated damages equal to Daily Delay Damages for each day or portion of a day that the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date. The Parties agree that Buyer's receipt of Daily Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 5.1 and (y) not limit Buyer's right to terminate this Agreement pursuant to Section 3.9(c)(iv)(C). In the event any liquidated damages are due pursuant to this Section 3.9(c)(iv)(A), Buyer shall provide Seller with a written invoice and calculation with respect to any amounts due, and Seller shall pay such liquidated damages within fifteen (15) days of receipt of the invoice. Any disputes with respect to such amounts shall be resolved in accordance with Section 6.2 and Article 12 hereof.

(B) In the event that Seller fails to make to Buyer a Daily Delay Damages payment, then Buyer shall be entitled to draw upon the Project Development Security to satisfy the outstanding balance. Seller shall pay Buyer Daily Delay Damages during the Cure Period and such obligation shall expire on the date on which Seller achieves the Commercial Operation Date.

(C) If Seller has not achieved the Commercial Operation Date within 180 days of the first date upon which Seller becomes liable for Daily Delay Damages (the "Project Cure Period"), Buyer may terminate this Agreement and retain any Project Development Security after thirty (30) days Notice of such failure, such termination and retention being the sole and exclusive remedy of Buyer for failure to meet the Commercial Operation Date and, except for obligations and liabilities arising prior to termination (including for Daily Delay Damages) and the surviving provisions set forth in Section 2.4(b), neither Party shall have further obligations or liabilities to the other, including for a Termination Payment or otherwise, by reason of such termination.

(D) Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to Seller's delay in achieving either of the Guaranteed Project Milestones would be difficult or impossible to predict with certainty and (II) the Daily Delay Damages are an appropriate approximation of such damages.

(v) Right of First Offer.

(A) If Buyer exercises its termination right in connection with the Seller's failure to achieve the Commercial Operation Date, then for a period of two (2) years from the date on which Buyer Notifies Seller of such termination ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (C) below, (the "First Offer") and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(B) If Buyer accepts the First Offer, Buyer shall Notify Seller within sixty (60) days of receipt of the First Offer subject to CPUC Approval ("Buyer's Notice"), and then the Parties shall have not more than sixty (60) days from the date of Buyer's Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary. Upon execution of a new power purchase agreement or the amendment of this Agreement, Buyer shall promptly commence prosecution of any required CPUC Approval. If applicable, pending Buyer's decision to exercise the First Offer and, if Buyer timely exercises the First Offer, during the period thereafter until execution of a power purchase agreement or amendment to this Agreement and the receipt of any necessary approval from the CPUC, to the extent offered by Seller and accepted by Buyer, Seller shall sell to Buyer the Product from the Project at the Contract Price. If Buyer is not able to purchase or is not interested in purchasing the Product on an interim basis at the Contract Price, Seller shall have the right to sell the Product to the CAISO on terms and conditions that will not prevent the sale of Product to Buyer upon CPUC approval.

(C) If Buyer (i) rejects or fails to accept Seller's First Offer within sixty (60) days of receipt of such offer, (ii) Seller and Buyer are unable to agree to a new power purchase agreement or an amendment to this Agreement, or (iii) if the new power purchase

agreement or amendment is not approved by the CPUC within two hundred and ten (210) days of filing, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. Seller's certificate shall be in substantially the form of Appendix IX. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer based on such lower rate of return (the "Revised Offer") in accordance with subpart (A) above. If within thirty (30) days of receipt of Seller's Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party.

**ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS**

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

| <b>Contract Year</b>                                   | <b>Contract Price (\$/MWh)</b> |
|--|--------------------------------|
| Contract Year 1 through and including Contract Year 25 | \$101.00                       |

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

4.3 Reserved.

4.4 Reserved.

4.5 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer as a result of Seller's actions (except penalties incurred by Seller related to Replacement Capacity, which is addressed at Section 3.3(b)). Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer's actions, including Buyer's Curtailment Periods.

(b) Any invoice submitted by either Buyer or Seller related to CAISO Penalties shall include the related CAISO invoice and a written statement explaining in reasonable detail the calculation of the amount due. Any disputes with respect to such amounts shall be resolved in accordance with Section 6.2 and Article 12 hereof.

(c) Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling and imbalances except as provided in Section 4.5(d) below.

Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall use Commercially Reasonable Efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller's and Buyer's respective responsibilities for payment for imbalance and congestion charges and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(d) Forecasting Penalties.

(i) In the event (A) Seller fails to (I) provide the access and information required in Section 3.1(l)(i); (II) comply with the installation, maintenance and repair requirements of Section 3.1(l)(v); or (III) provide the forecast of Available Capacity required in Section 3.4(c)(iii), (B) Buyer, as Scheduling Coordinator, submitted a schedule to the CAISO without the benefit of the information or access to data to have been provided by Seller as stated in subpart (A) above, and (C) 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 three percent (3%) multiplied by Contract Capacity multiplied by one (1) hour.

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to one hundred fifty percent (150%) of the Contract Price for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.5(d)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement. In the event any Forecasting Penalties are due pursuant to this Section 4.5(d), Buyer shall provide Seller with a written invoice and supporting documentation with respect to any amounts due, and Seller shall pay such Forecasting Penalties within fifteen (15) days of receipt of the invoice. Any disputes with respect to such amounts shall be resolved in accordance with Section 6.2 and Article 12 hereof.

4.6 Test Period Payments. During the Test Period Seller's full compensation for Product sold to Buyer shall be the CAISO Revenues for the Delivered Energy, which revenues Buyer shall forward promptly to Seller.

4.7 Additional Compensation.

(a) 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 compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that and for the avoidance of doubt, nothing herein precludes Seller from retaining credits related to Electric System Upgrades contemplated in Section 3.1(h)(i).

(b) To the extent that during the Delivery Term Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or Congestion Revenue Rights (as defined in the CAISO Tariff), whether due to any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging

instruments associated with the Product (collectively, any such refunds, credits or benefits are referred to as “Reductions”), then, at Buyer’s option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions.

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

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

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

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

(ii) any representation or warranty made by such Party herein:

(A) except for Section 10.3(a), is false or incorrect in any material respect when made and the Non-Defaulting Party provides to other Party Notice of the same within one (1) year of the Execution Date, provided that (I) such misrepresentation or breach of warranty is not remedied within twenty (20) Business Days after Notice is received by the Defaulting Party; or (II) such inaccuracy is not capable of being remedied, but the Non Defaulting Party’s damages resulting from such inaccuracy can be reasonably ascertained and the payment of such damages is not made within twenty (20) Business Days after a Notice of such damages is provided by the Non Defaulting Party to the Defaulting Party; or

(B) with respect to Section 10.3(a), becomes false or incorrect 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 10.3(a) to be materially false or incorrect, such breach of the representation or warranty in Section 10.3(a) shall not be an Event of Default if Seller is using, or has used, Commercially Reasonable Efforts to cure such breach, in accordance with Section 10.3(b);

(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), which failure has a material adverse effect on a Party’s ability to perform its obligations under this Agreement, if such failure is not remedied within thirty (30) days after Notice of such failure, which Notice sets forth in reasonable detail the nature of the failure; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period specified above, the Party shall have such additional time (not exceeding an additional ninety (90) days) as is reasonably necessary to remedy such failure, so long as such Party advises the Non Defaulting Party of its plan for such cure and promptly commences and diligently pursues such remedy;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails



to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

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

(i) if at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project;

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

(iii) if Seller has provided a Guaranty to satisfy the collateral obligations under this Agreement, then with respect to such Guarantor (or a Qualified Replacement Guarantor), if any of the following failures shall have occurred and Seller has not cured such failure or replaced the Guaranty with substitute Performance Assurance within ten (10) Business Days thereafter:

(A) if any representation or warranty made by Guarantor (or Qualified Replacement Guarantor) under the Guaranty is false or misleading in any material respect when made;

(B) the failure of the Guarantor to make any payment required to be made or to perform a material covenant or obligation in the Guaranty and such failure is not remedied within three (3) Business Days after Notice is provided;

(C) the Guarantor becomes Bankrupt;

(D) after issuance, the failure of the Guaranty to be in full force and effect for purposes of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement; or

(E) the Guarantor repudiates, disaffirms, disclaims, or rejects in whole or in part, or challenges the validity of the Guaranty.

5.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) withhold any payments due to the Defaulting Party under this Agreement;

(b) suspend performance;

(c) 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");

- (d) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;
- (e) collect the Termination Payment;
- (f) exercise its rights pursuant to Section 8.3 to draw upon and retain Performance Assurance; and
- (g) exercise any other rights or remedies available at Law or in equity to the extent otherwise permitted under this Agreement.

5.3 Notice to Lenders. Notwithstanding anything in Section 5.2 to the contrary, in the case of an Event of Default by Seller, Buyer shall not terminate the Agreement unless it complies with any notice or cure provisions set forth in the Consent to Assignment entered into between Buyer and the Lender(s) pursuant to Section 10.7(c). For sake of certainty, if the Lenders do not have additional cure periods and such Consent to Assignment does not require advance notice, Buyer may send Notice of default to Seller and the Lender(s) at the same time.

5.4 Calculation of Termination Payment.

(a) 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: (i) for a like amount, (ii) of the same Product, (iii) at the same Delivery Point, (iv) for the remaining Delivery Term, and (v) any other commercially reasonable manner.

(b) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.

(c) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

5.5 Notice of Payment of Termination Payment. As soon as practicable, 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.

5.6 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 twenty (20) 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. Any disputes with respect to the Termination Payment shall be resolved in accordance with Article Twelve.

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

5.8 Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

## ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. Billing and payment for Products sold to and purchased by Buyer under this Agreement and any other amounts due and payable hereunder shall be as follows. On or about the tenth (10<sup>th</sup>) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month, as adjusted pursuant to Section 4.5 (CAISO Charges) (which may include charges incurred in preceding months), and, if applicable, Section 4.6. Buyer shall pay the undisputed amount of such invoices less the amount of any Forecasting Penalties (as applicable), on or before the later of the twenty-fifth (25<sup>th</sup>) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

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

including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

## **ARTICLE SEVEN: LIMITATIONS**

7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN.

UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.6 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of

PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with Generally Accepted Accounting Principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on [www.pge-corp.com](http://www.pge-corp.com) or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

8.2 Seller Financial Information. If requested by Buyer, Seller shall deliver within one hundred twenty days (120) following the end of each fiscal year, a copy of FPL Group Inc.'s annual report containing audited consolidated and summary financial statements for such fiscal year and the audited consolidated and summary financial statements for such fiscal year for the Guarantor if the Guarantor is not an Affiliate of FPL Group Inc. In all cases the statements should be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles. Seller shall be deemed to have satisfied such delivery requirement with respect to FPL Group Inc. if the applicable report is publicly available on [www.fpl.com](http://www.fpl.com) or on the SEC EDGAR information retrieval system; 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 statements are provided to Buyer upon their completion and filing with the SEC.

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

8.4 Performance Assurance.

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

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of \$552,000 and in the form of cash or Letter of Credit within five (5) Business Days following the Execution Date of this Agreement until Seller posts Project Development Security pursuant to Section 8.4(a)(ii) below with Buyer;

(ii) Project Development Security pursuant to this Section 8.4(a)(ii) in the amount of \$1,840,000 and in the form of cash or Letter of Credit from a date that is thirty (30) days following the date on which all of the Conditions Precedent set forth in Section 2.4 are either satisfied or waived and in either case until Seller posts Delivery Term Security pursuant to Section 8.4(a)(iii) below with Buyer; provided that Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Project Development Security posted pursuant to this Section 8.4(a)(ii); provided however, that if Seller establishes the Commercial Operation Date prior the above-stated posting deadline for Project Development Security under this subsection, then Seller shall post security under Section 8.4(a)(iii) below in satisfaction of this Section 8.4(a)(ii);

(iii) Project Development Security pursuant to this Section 8.4(a)(iii) in the amount of \$1,840,000 and in the form of cash or Letter of Credit from a date that is sixty (60) days following the date Seller issues a Notice relating to a Permitted Extension; and

(iv) Delivery Term Security pursuant to this Section 8.4(a)(iv) in the amount of \$9,114,000 from the Commercial Operation Date until the end of the Term; provided that such amount is subject to increase pursuant to Section 3.1(f). \$5,468,400 of the Delivery Term Security may be provided in the form of a Guaranty from the Guarantor or a Qualified Replacement Guarantor, and the remainder of the Delivery Term Security shall be provided in the form of cash or a Letter of Credit. Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) and (iii) toward the Delivery Term Security posted pursuant to this Section 8.4(a)(iii).

(b) Use of Project Development Security. Consistent with Section 3.9(c)(iv)(B), 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. Consistent with Sections 5.2, 5.4, 5.5 and 5.6, Buyer shall 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 Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security unless Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) and 8.4(a)(iii), if applicable, toward the Delivery Term Security posted pursuant to Section 8.4(a)(iv).

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security or Delivery Term Security, as applicable, at the Interest Rate; provided that, such interest shall be retained by Buyer until Seller posts the Delivery Term Security pursuant to Section 8.4(a)(iv). Upon Seller's posting of the Delivery Term Security, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix XI.

(Notices List). After Seller posts the Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for such Delivery Term Security.

(e) Seller Downgrade Event. If, at any time during the Delivery Term, there shall occur a Downgrade Event in respect of Seller's Guarantor, then Seller shall deliver to Buyer replacement Delivery Term Security in the form of a Letter of Credit, cash, or, at Seller's option, a replacement Guaranty from a Qualified Replacement Guarantor in lieu thereof in an amount equal to the applicable amount of Delivery Term Security as determined in Section 8.4(a)(iv). In the event Seller shall fail to provide Buyer with such Letter of Credit, cash or replacement Guaranty within seven (7) Business Days of the Downgrade Event, Buyer may declare an Event of Default pursuant to Section 5.1(b)(iii) by providing Notice thereof to Seller. In the event that a Downgrade Event subsequently occurs with respect to a Qualified Replacement Guarantor providing a Guaranty hereunder, such Guaranty shall be promptly replaced as described in this Section 8.4(e).

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

#### 8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least an A3 by Moody's and at least an A by S&P, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall cure such default by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within seven (7) Business Days after Buyer receives Notice of such refusal (all of which is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by a bank with a Credit Rating of at least an A3 by Moody's and at least an A by S&P, other than the bank failing to honor the outstanding Letter of Credit, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight.

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

#### ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product or the Transaction arising at the Delivery Point, including 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 Recording. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer's employees or representatives performing a Scheduling Coordinator function as provided in Section 3.4(c) and Seller's employees or representatives performing the data access functions as set forth in Section 3.1(l)(i) and the forecasting functions set forth in Section 3.4(c)(iii). The Parties agree 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.

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

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

(b) 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;



(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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

(h) 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.

### 10.3 Seller Representations and Warranties.

(a) 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.

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.

(b) With regard to satisfying the representations set forth in 10.3(a) Seller shall be deemed to have made Commercially Reasonable Efforts if Seller takes actions to implement any change or improvement to the Project in order to satisfy such representations and to maintain such certification, qualification or compliance (“RPS Qualification Improvement”) which would require Seller to incur, in the aggregate, administrative or capital costs up to One

Million Dollars (\$1,000,000) over the Term of this Agreement (“RPS Qualification Expenditure Maximum”). If after such change in Law has occurred, Seller determines that it will exceed the RPS Qualification Expenditure Maximum to implement the RPS Qualification Improvement, Seller shall notify Buyer and provide documentation and calculations to support the expected exceedence (“RPS Qualification Improvement Notice”). Buyer shall then have thirty (30) days after receipt of the RPS Qualification Improvement Notice to verify or dispute Seller’s documentation and calculation. The Parties shall then have ten (10) days to agree in writing (such agreement not to be unreasonably withheld, conditioned or delayed) on the amount by which Seller will exceed the RPS Qualification Expenditure Maximum in order to satisfy the RPS Qualification Improvement (“RPS Qualification Improvement Amount Agreement”). Buyer may then:

(i) elect to pay Seller the amount set forth in the RPS Qualification Improvement Amount Agreement and notify Seller of such election, subject to CPUC Approval (if required), within ten (10) Business Days of the effective date of the RPS Qualification Improvement Amount Agreement. If Buyer so elects, Seller shall, upon receipt of payment from Buyer, implement the RPS Qualification Improvement; or

(ii) elect not to pay Seller for the amount set forth in the RPS Qualification Improvement Amount Agreement and notify Seller of such decision within ten (10) Business Days of the effective date of the RPS Qualification Improvement Amount Agreement, in which case this Agreement shall continue in full force and effect and Seller shall not be required to implement any further or additional RPS Qualification Improvement.

#### 10.4 Covenants.

(a) General Covenants. Each Party covenants that as of the Test Period and 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 ensure that 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;

(iv) it shall provide the other Party prompt Notice in the event there is 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;

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

(vi) 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 applicable to it; and

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

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements applicable to an Interconnection Customer (as defined in the CAISO Tariff) and shall take any other necessary action, including payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the Commercial Operation date or as soon as practicable thereafter.

(iii) Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns (including Lenders in connection with a permitted collateral assignment), have or will have ownership of, or a demonstrable exclusive right to control, the Project.

10.5 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 or entity arising prior to or at the Delivery Point.

10.6 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers’ respective directors, officers, agents, and representatives against and from any and all (i) Claims including costs and attorney’s fees resulting from, or arising out of or in any way connected with (A) the Product delivered under this Agreement to the Delivery Point, (B) Seller’s operation and/or maintenance of the Project, or (C) Seller’s actions or inactions with respect to this Agreement; and, (ii) loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers’ and Affiliates’ respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its 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 by Seller under this Agreement after the Delivery Point, (ii) Buyer’s actions or inactions as Scheduling Coordinator, or (iii) Buyer’s actions or inactions with respect to this Agreement, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.6(a) and 10.6(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity 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.

#### 10.7 Assignment.

(a) General Assignment. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

(i) Except as set forth in Sections 10.7(b) and 10.7(c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed so long as (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence reasonably satisfactory to the other Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request.

(ii) Notwithstanding the foregoing and subject to Sections 10.7(b) and 10.7(c), consent shall not be required for an assignment of this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior Notice of the assignment, and (iv) the assigning Party agrees in writing to be remain bound by the terms and conditions of the Agreement.

(iii) Notwithstanding the foregoing and subject to Sections 10.7(b) and 10.7(c), Buyer shall provide to Seller an unconditional consent to assignment (direct or indirect, whether voluntary or by operation of Law), which consent must be given within thirty (30) days of receipt of Notice from Seller; provided, that the following conditions are satisfied as determined reasonably by Buyer: (A) Seller provides evidence to Buyer that the operator of the Project or the new entity which controls Seller has demonstrable experience as an operator of other wind electric generation facilities; (B) the proposed assignee or new entity provides the Delivery Term Security in accordance with the requirements of Article 8; provided, however, in the event the assignee or the new entity has a Credit Rating below BBB- from S&P or Baa3 from Moody's (or no Credit Rating), then the Delivery Term Security must be provided in the form of a Letter of Credit, cash or, at the assignee or new entity's option, a replacement Guaranty from a Qualified Replacement Guarantor in lieu thereof up to the amount permitted to be provided in the form of a Guaranty under Section 8.4(a)(iv) and in a total amount equal to the applicable amount of Delivery Term Security as determined in Section 8.4(a)(iv); (C) Seller delivers evidence to Buyer of the assignee's or new entity's financial capability to fulfill Seller's or Seller's then-current Guarantor's obligations hereunder, and (D) the assignee's or new entity's delivers such tax and enforceability assurance as reasonably requested by Buyer; provided that Buyer shall make such request to Seller in writing within ten (10) Business Days of receipt of Notice from Seller regarding the assignment.

(b) Assignment in Connection with a Change of Control. Except as provided for in subsections (i) and (ii) of this Section 10.7(b) any direct or indirect Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment and shall require the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided:

(i) Buyer's consent shall not be required for a sale, assignment, pledge or other transfer of any of the following: (A) all or substantially all of the assets of NextEra or its ultimate parent company; (B) all or substantially all of NextEra's or its ultimate parent company's renewable energy generation portfolio; or (C) all or substantially all of NextEra's or its ultimate parent company's wind generation portfolio; provided that, in the case of (C), the Project is not the sole wind generation power plant being acquired; and.

(ii) any of the following "Change of Control" shall not require Buyer's consent: (A) any direct or indirect sale, assignment, pledge or other transfer of shares of or equity interests in Seller if, after giving effect thereto, NextEra or NextEra's ultimate parent company, remains the direct or indirect owner of a majority of the shares of or equity interests in Seller and maintains the power (directly or indirectly and either immediately or subject to the happening of any contingency) to direct or cause the direction of the management or policies of the Seller; (B) a merger, consolidation, amalgamation, reorganization or similar transaction of a Person with or into NextEra or its ultimate parent company; or (C) sale, assignment, pledge or other transfer of all or substantially all of the shares or equity interests of NextEra or its ultimate parent company.

Seller shall provide Buyer Notice of any Change of Control within thirty (30) days of such Change of Control with correct Notice information for such Party following the Change of Control.

(c) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement to its Lenders as collateral for any financing or refinancing of the Project; provided, Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including reasonable attorneys' fees. Buyer's consent to assignment by Seller to its Lenders shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix XII; provided, however, if requested by the Lenders, Buyer shall, at Seller's sole cost, cooperate reasonably with Seller to revise the Form of Consent to Assignment solely to reflect market terms and conditions prevailing at the time of such financing that the Parties agree differ from those in the Form of Consent to Assignment provided further that Buyer shall not be required to modify the Form of Consent to Assignment in a manner that would give rise to any additional expense or unreasonable risk being accepted by Buyer as determined by Buyer in Buyer's sole discretion. Buyer shall, upon request by Seller or any Lender and at Seller's sole expense, cooperate reasonably to execute, or arrange for the delivery of, within thirty (30) days of such request, those normal, reasonable and customary certificates, opinions and other documents and to provide such other normal and customary representations or warranties (all in a form reasonably acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof), as may be necessary to assist Seller in consummating any financing or refinancing of the Project or any part thereof (including for Financing Liens as set forth in Section 10.8).

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.7 is void.

10.8 Financing Liens. Seller, without approval of Buyer, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project; provided that Seller shall not be relieved of any of its obligations or liability under this Agreement. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

10.9 Confidentiality.

Confidentiality Notification: If checked, Seller has waived its right to notification in accordance with Section 10.9(b).

(a) Neither Party shall disclose the non-public terms or conditions of this Agreement to a third party, other than as follows:

(i) to the Party's Affiliates, the Party's or its Affiliates' respective employees, Lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential,

(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) for disclosure to Lenders pursuant to Sections 10.7(c) and 10.8 of this Agreement;

(v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or

(vi) in order to comply with *any* applicable regulation, rule, or order of the CPUC, CEC, SEC or the FERC.

(b) If a Party is required to disclose confidential information in order to satisfy an obligation pursuant to subsection (a)(v) above ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (y) prohibited from complying with a Disclosure Order or (z) 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.

(c) The Parties agree that the confidentiality provisions under this Section 10.9 are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Section 10.9 shall govern confidential treatment of all information exchanged between the Parties as of and after the Effective Date.

10.10. RPS Confidentiality. Notwithstanding Section 10.9(a) 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 Capacity, Contract Quantity, and Delivery Point.

10.11 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

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

(a) Workers' Compensation and Employers' Liability.

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

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

(b) Commercial General Liability.

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

(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) include "Additional Insured" endorsement and add as additional insureds Buyer, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for Seller (Insurance Services Office Form G2010 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 Seller has been endorsed by blanket endorsement;"

(B) be endorsed to specify that Seller's insurance is primary and that any insurance or self-insurance maintained by Buyer 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) Seller's Pollution Liability.

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

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

(iii) The policy shall endorse Buyer as additional insured.

(e) Professional Liability Insurance. Seller shall cause each of its Engineering and Construction Contractors to procure and maintain the following:

(i) Errors and Omissions Liability insurance appropriate to such Engineering and Construction Contractor's profession and the Project. Coverage shall be for a professional error, act or omission arising out of the scope of services set forth in the applicable engineering and construction contract for the design and construction of the Project(as applicable) including coverage for bodily injury, property damage, and consequential financial loss.

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



(iii) Coverage shall:

(A) be endorsed to specify that Seller's insurance is primary and that any Insurance or self-insurance maintained by Buyer shall not contribute with it; and

(B) be endorsed to specify that the selection of counsel, paid for by the insurer, to defend Buyer and its officers, directors, agents, and employees against covered or potentially covered claims shall be by mutual consent of Buyer and insurer.

(f) All Risk Property Insurance.

(i) An All Risk Property insurance policy including earthquake and flood shall be maintained during the course of Work being performed and include start-up and testing for installed equipment and delayed opening coverage. Such policy shall include coverage for materials and equipment while under the care, custody and control of 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 maximum foreseeable loss of the property.

(g) Additional Insurance Provisions.

(i) Before commencing performance of the Work, Seller shall furnish Buyer 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 Buyer.

(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 Buyer on an annual basis and, in addition, Buyer may, upon reasonable Notice, inspect the original policies at the offices of Seller.

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

(h) Self Insurance.

(i) Notwithstanding any other requirement set forth in this Section 10.12, Seller may self-insure to the extent Seller or an Affiliate of Seller (as applicable, the "Self-Insurer"), maintains a self-insurance program under which Seller may be insured; provided that, (A) the Self-Insurer's Credit Rating is rated at BBB- or better by Standard & Poor's, and Baa3 or better by Moody's, (B) the amounts set aside by the Self-Insurer for the self-insurance program to cover losses and costs related to the Project and the Seller are consistent with Good Utility

Practice, and (C) Seller has provided Buyer with Notice of its election to self-insure pursuant to this Section 10.12(h)(i).

(ii) For any period of time that the Self-Insurer is unrated by Standard & Poor's or the Self-Insurer's Credit Rating is rated at less than investment grade by Standard & Poor's, Seller shall comply with the insurance requirements applicable to it under this Section 10.12.

(iii) In the event that Seller is permitted to self-insure pursuant to this Section 10.12(h), it shall not be required to comply with the insurance requirements under the applicable sections of Section 10.12, provided that any use of self-insurance hereunder shall not relieve Seller of its obligations under this Section 10.12 with respect to its subcontractors, including its Engineering and Construction Contractors.

(iv) The Parties acknowledge that if Seller had maintained such insurance coverages as are required under this Section 10.12, any insurance proceeds that would have been made available to Buyer or its directors, officers, agent and employees as a result of such coverages would have been paid when due without counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Therefore, any payments that would have been made to Buyer, its directors, officers, employees and agents had such coverages been maintained shall be made as provided in this Section 10.12, regardless of Seller's lack of such coverage by third-party insurers.

(i) 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 Buyer, 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.

10.13 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. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Financial Accounting Standard Boards Interpretation No. 46(R), "Consolidation of Variable Interest Entities" or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the Agreement. If, as a result of this review (or subsequent reviews as Buyer deems necessary), Buyer determines that such consolidation is required for a given period then the Parties agree to the following provisions for such period:

(a) Within one hundred twenty (120) days following the end of each calendar year, Seller shall deliver to Buyer (i) unaudited financial statements together with related footnotes as necessary to comply with Generally Accepted Accounting Principles in the United States, and (ii) a completed annual disclosure checklist with supporting financial schedules necessary for Buyer to prepare its annual filing with the SEC. Buyer will provide to Seller such checklist prior to the end of each year and include only items considered material to Buyer. If audited financial statements are prepared for the calendar year, Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(b) Within ninety (90) days following the end of each calendar quarter, Seller shall deliver to Buyer (i) an unaudited condensed statement of income for the calendar quarter and year-to-date, (ii) an unaudited condensed statement of cash flows for the calendar quarter and year-to-date, (iii) an unaudited condensed balance sheet at the end of such calendar quarter, and (iv) a completed quarterly disclosure checklist with supporting financial schedules necessary for Buyer to prepare its quarterly filing with the SEC. Buyer will provide to Seller such checklist prior to the end of each quarter and include only items considered material to Buyer.

(c) Seller shall prepare its financial statements to be delivered under the terms of this Section in accordance with accounting principles generally accepted in the United States.

(d) Promptly upon Notice from Buyer, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer's internal auditors and an independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002 (as applicable). Within thirty (30) days of Seller's receipt of Notice from Buyer, Seller shall remediate any deficiency in Seller's internal controls of financial reporting identified by Buyer or Buyer's independent registered public accounting firm during. All reasonable expenses for the foregoing shall be borne by Buyer.

(e) As soon as possible, but in no event later than two (2) Business Days following the occurrence of any items affecting Seller which, during the term of this Agreement, Seller understands that Buyer would be required to disclose in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing. Such items include, but are not limited to, the following:

- (i) Acquisition or disposition of a material amount of assets;
- (ii) Creation of a material direct financial obligation or off-balance sheet financing arrangement;
- (iii) Existence of material litigation; and
- (iv) Entry into, or termination of, a material contract not made in the ordinary course of Seller's business.

(f) Buyer shall treat Seller's financial statements or other financial information provided under the terms of this Section in strict confidence and, accordingly shall:

(i) Utilize such Seller financial information only for purposes of preparing, reviewing or certifying Buyer's financial statements, for making regulatory, tax or other filings required by Law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain Credit Ratings; and

(ii) Make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's financial statements and to those persons or entities who are entitled to receive confidential information as identified in Section 10.9.

10.14 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.

10.15 General.

(a) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.17. This Agreement shall be binding on each Party's successors and permitted assigns.

(b) It is the express intent of the Parties that the rates and all other terms and conditions of the services provided hereunder shall remain in effect for the Term and that such rates, terms and conditions shall not be subject to change under Sections 205 or 206 of the Federal Power Act of 1935, 16 U.S.C. § 791 et seq., (or any successor legislation) without the written consent of both Parties, notwithstanding any subsequent changes in applicable Law or market conditions that may occur. Each Party agrees that, except with the prior written consent of the other Party, neither it nor its Affiliates, successors and permitted assigns will institute or voluntarily cooperate, directly or indirectly (through complaint, investigation or otherwise), in the institution or conduct of any action or proceeding of the FERC under Section 205, Section 206 or any other portion of the Federal Power Act, which action or proceeding is intended to change the rates, terms and conditions of this Agreement then in effect. Absent agreement of all Parties to a proposed change, the standard of review for changes to any rate, term or condition of this Agreement proposed by a non-Party or the FERC or any other Governing Authority acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. \_\_\_

(2008). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to bind FERC, third parties and themselves to a public interest standard of review, the Parties hereby incorporate such language herein by reference. The Parties agree that except as expressly set forth in this Section 10.15(b), the rights of either Party under Sections 205 and 206 of the Federal Power Act shall not be limited.

10.16 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.

10.17 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: TERMINATION EVENTS**

11.1 Force Majeure Termination Event. Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following.

(a) If after the Commercial Operation Date:

(i) the Project fails to deliver at least forty percent (40%) of the Contract Quantity to the Delivery Point for a period of eighteen (18) consecutive rolling months following a Force Majeure event or an Intervention that directly impacts the Project (“Force Majeure Project Failure”) and Buyer has notified Seller of such failure; provided that if Seller within forty-five (45) days of receipt of Notice from Buyer regarding the Force Majeure Project Failure, presents Buyer with a plan for mitigation of the effect of the Force Majeure within a period not to exceed six (6) months from above-mentioned Notice date, which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer’s written acknowledgement of such plan (such acknowledgment not to be unreasonably withheld, delayed or conditioned), then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the additional period deemed necessary by Seller to repair the Project (not to exceed six (6) months); provided that Seller diligently pursues such mitigation plan throughout said additional period, and after which time Buyer may terminate unless the Project has been repaired, and the Seller has resumed performance under this Agreement; or

(ii) the Project is destroyed or rendered inoperable by a Force Majeure caused by a catastrophic natural disaster; provided that Seller shall have up to ninety (90) days following such Force Majeure event to obtain a report from a Licensed Professional Engineer stating whether the Project is capable of being repaired or replaced within twenty-four (24) additional months or less from the date of the report and provides to Buyer a copy of the engineer’s report, at no cost to Buyer. If such engineer’s report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of

the period deemed necessary by the engineer's report (not to exceed twenty-four (24) months), after which time, Buyer may terminate unless the Project has been repaired or replaced, as applicable, and the Seller has resumed performance under this Agreement.

(b) If prior to the Commercial Operation Date, Seller is unable, due solely to a Force Majeure event, to achieve the Guaranteed Commercial Operation, after applicable extensions or cure periods have run, as set forth in Sections 3.9(c)(iii) and (iv), (a "Force Majeure Development Failure"); provided that in the event of a Force Majeure caused by a catastrophic natural disaster Seller shall have not more than ninety (90) days from the date of such Force Majeure event to obtain a report from a Licensed Professional Engineer stating whether the Project may be placed into Commercial Operation within twenty-four (24) additional months and provide Buyer a copy of the engineer's or consultant's report, at no cost to Buyer. If such engineer's report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair, replacement then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(b) until the expiration of the period deemed necessary by the engineer's (not to exceed twenty-four (24) months), after which time, Buyer may terminate unless the Project has been repaired or replaced, as applicable, and the Seller has resumed performance under this Agreement.

(c) If Buyer elects to terminate this Agreement pursuant to Sections 11.1(a) or (b), such termination shall be effective after thirty (30) days' prior Notice to Seller. Upon such termination neither Party shall have any further obligations or liabilities to the other, including for a Termination Payment or otherwise, by reason of such termination, except for liabilities and obligations arising prior to termination and the surviving provisions set forth in Section 2.5(b). In the event of a termination pursuant to this Section 11.1, Buyer shall promptly return to Seller any Performance Assurance posted by Seller.

(d) Force Majeure Right of First Offer. If Buyer exercises its termination right in connection with a Force Majeure under Section 11.1, then for a period of two (2) years from the effective date of such termination (the "Force Majeure Exclusivity Period"), Seller and its successors, assigns and Affiliates shall be subject to the Right of First Offer in Section 3.9(c)(v) with respect to the sale of any Products from the Project.

## ARTICLE TWELVE: DISPUTE RESOLUTION

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

### 12.2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting to be held in person or telephonically to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"),

the Managers shall refer the matter to the designated senior officers of their respective companies (“Executive(s)”), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date (“Referral Date”), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

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

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

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), 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. The mediator shall have no affiliation with, financial or other interest in, or prior employment with either Party or their Affiliates and shall be knowledgeable in the field of the dispute.

#### 12.4 Arbitration.

(a) Arbitration. If within sixty (60) days after service of a written demand for mediation (“Mediation Period”), the mediation does not result in resolution of the dispute, then the controversy shall be settled by Arbitration conducted in the English language in New York, New York, administered by and in accordance with AAA’s Commercial Arbitration Rules (“Rules”) through “Last-offer (Baseball) Arbitration” (the “Arbitration”).

(b) Initiation. Either Buyer or Seller (the “Arbitration Invoking Party”) may by notice (the “Arbitration Notice”) to the other (the “Arbitration Noticed Party”) submit the dispute to Arbitration in accordance with the provisions of this Section 12.4. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the Mediation Period. Either Party may initiate Arbitration by filing with the AAA a notice of intent to arbitrate within the Mediation Period.

(c) Procedure.

(i) Any such Arbitration proceeding shall be before a tribunal of three (3) arbitrators, one (1) designated by the Arbitration Invoking Party, one (1) designated by the Arbitration Noticed Party and one (1) by the two (2) arbitrators so designated. The Arbitration Invoking Party and the Arbitration Noticed Party shall each name their arbitrator by notice (the "Selection Notice") given within five (5) Business Days after the date of the Arbitration Notice, and the two (2) arbitrators so appointed shall agree upon the third member of the tribunal within five (5) Business Days after the date of the Selection Notice. Any member of the tribunal not appointed within the period required, whether by one of the Parties or by the two (2) arbitrators chosen by the Parties, shall be appointed by the AAA. The arbitrators shall have no affiliation with, financial or other interest in, or prior employment with either Party or their Affiliates and shall be knowledgeable in the field of the dispute.

(ii) Each of the Arbitration Invoking Party and the Arbitration Noticed Party shall have twenty (20) Business Days, commencing on the date the Arbitration Notice is given, to prepare and submit a proposal for the resolution of the dispute to the tribunal, including a description of how such Party arrived at its proposal and the arguments therefor, as it deems appropriate. Each of the Arbitration Invoking Party and the Arbitration Noticed Party shall deliver a copy of its proposal, including any such supplemental information, to the other Party at the same time it delivers the proposal to the tribunal.

(iii) Each of the Arbitration Invoking Party and the Arbitration Noticed Party shall have five (5) Business Days after the receipt of the other Party's proposal to revise its respective proposal and submit a final proposal to the tribunal, including supporting arguments for its own and against the other Party's proposal.

(iv) Each of the Arbitration Invoking Party and the Arbitration Noticed Party shall present oral arguments supporting its final proposal to the tribunal at a proceeding held five (5) Business Days after the deadline for submission of final proposals to the tribunal. Each of the Arbitration Invoking Party and the Arbitration Noticed Party shall have three (3) hours to make its oral presentation to the tribunal.

(v) The tribunal shall, within ten (10) Business Days after presentation of the oral arguments, render a decision that selects the Arbitration Invoking Party's final proposal or the Arbitration Noticed Party's final proposal, and no other proposal. The award rendered pursuant to the foregoing shall be final and binding on the Parties, shall not be subject to appeal, and judgment thereon may be entered or enforcement thereof sought by either Party in any court of competent jurisdiction.

(d) Costs. Each Party shall bear the costs of its appointed arbitrator and its own attorneys' fees, and the costs of the third arbitrator incurred in accordance with the foregoing shall be shared equally by the Parties. Additional incidental costs of the Arbitration shall be paid for by the non-prevailing Party in the Arbitration.

(e) Arbitration Act. The agreement to arbitrate set forth in this Section 12.4 shall be enforceable in either federal or state court, and such agreement to arbitrate and all procedural aspects thereof, including the construction and interpretation of such agreement to arbitrate, the scope of the arbitrable issues, allegations of waiver, delay or defenses as to arbitrability, and the Rules (except as otherwise expressly provided herein) governing the conduct of the Arbitration, shall be governed by and construed pursuant to the United States Arbitration Act, 9 U.S.C. §§1-11.



(f) Pendency of Dispute. The existence of a dispute or the pendency of the dispute settlement or resolution procedures set forth in this Section 12.4 shall not in and of themselves relieve or excuse any Party from its ongoing duties and obligations under the Agreement.

(g) Limitation on Damages. It is further agreed that the arbitrators shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any Law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages.

(h) Confidentiality. 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. Notices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.

SIGNATURES

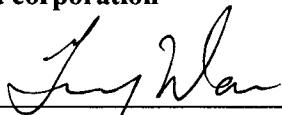
Agreement Execution

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

**FPL ENERGY MONTEZUMA WIND, LLC, a  
Delaware limited liability company**

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

Signature: 

Signature: 

Name: Dean Gosselin

Name: Fong Wan

Title: Vice President

Title: Senior Vice President, Energy  
Procurement

Date: June 2, 2010

Date: 6/3/2010 

**APPENDIX I**

**FORM OF LETTER OF CREDIT**

*Issuing Bank Letterhead and Address*

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

**Date:** [insert issue date]

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

**Applicants:** [redacted] and  
FPL Energy Montezuma  
Wind, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408  
Attention: Treasury

**Letter of Credit Amount:** [insert amount]

**Expiry Date:** [insert date that is one (1) year from offer date]

Ladies and Gentlemen:

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

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

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. [insert number] and stating the amount of the demand; and
2. One of the following dated statements signed by an authorized representative or officer of Beneficiary (signed as such):
  - A. “Pursuant to the terms of that certain Amended and Restated Power Purchase Agreement (“PPA”), dated \_\_\_\_\_, between Pacific Gas and Electric Company (“Beneficiary”) and FPL Energy Montezuma Wind, LLC, Beneficiary is entitled to draw under Letter of Credit No. [insert number] amounts owed by FPL Energy Montezuma Wind, LLC, or its assignee(s), under the PPA”;or

B. "Letter of Credit No. **[insert number]** will expire in twenty (20) business days or less and FPL Energy Montezuma Wind, LLC, or its assignee(s), has not provided replacement security acceptable to Pacific Gas and Electric Company ("Beneficiary")."

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed.
2. All banking charges associated with this Letter of Credit are for the account of the Applicants.
3. The Expiry Date of this Letter of Credit shall be automatically extended (without an amendment hereto) for a period of one (1) year from the Expiry Date or any future Expiry Date, unless at least sixty (60) days prior to any such expiration date we send Beneficiary notice by registered mail or overnight courier at Beneficiary's address first shown (or such other address as may be designated by Beneficiary) that this Letter of Credit will not be extended for any such additional one year period.
4. If Beneficiary returns this Letter of Credit to us prior to the Expiry Date with Beneficiary's signed statement that this Letter of Credit shall be cancelled, then we shall cancel this Letter of Credit.

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

All demands for payment shall be made by facsimile or original documents and a copy of this Letter of Credit sent by overnight delivery or courier to **[insert issuing bank]** at our address set forth above, Attention: Standby Letter of Credit Unit (or at such other address as may be designated by written notice delivered to you). In the event of a presentation by facsimile transmission, drawings must be presented by telefacsimile to \_\_\_\_\_, under telephone pre-advice to \_\_\_\_\_.

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

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

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

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

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

Very truly yours,

**[insert name of issuing bank]**

By: \_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_ **[print or type name]**

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

**Exhibit A SIGHT DRAFT**

TO  
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ \_\_\_\_\_ DATE: \_\_\_\_\_

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

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

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

Pacific Gas and Electric Company

BY: \_\_\_\_\_  
NAME AND TITLE

**APPENDIX II**

**INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER**

In accordance with the terms of that certain Amended and Restated Power Purchase Agreement dated \_\_\_\_\_ (“Agreement”) by and between Pacific Gas and Electric Company (“Buyer”) and FPL Energy Montezuma Wind, 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 scheduled and Buyer has received the Product, as specified in the Agreement, as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the “Initial Energy Delivery Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

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

Tariff:                      Dated:                      Docket Number:

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

**FPL ENERGY MONTEZUMA WIND, LLC**

**PACIFIC GAS AND ELECTRIC COMPANY**

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

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

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

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

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

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

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

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

**APPENDIX III**

**MILESTONES SCHEDULE**

| <b>Identify Milestone</b>              | <b>Date for Completion</b> |
|--|----------------------------|
| Begin Construction                     | September 2010             |
| Wind Turbine Generator Delivery        | October 2010               |
| Interconnection to CAISO Grid Complete | November 2010              |
| Begin Commissioning                    | November 2010              |
| Guaranteed Commercial Operation Date   | January 30, 2011           |



**APPENDIX III- Attachment A**

**FORM OF MONTHLY  
PROGRESS REPORT**

**Monthly Progress Report  
of**

**FPL Energy Montezuma Wind, LLC  
("Seller")**

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

[Submittal Date]

## 1 Instructions

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

In addition to the Remedial Action Plan requirement set forth in Section 3.9(c) of the Agreement, Seller shall review the status of each Milestone of the construction schedule (the “Schedule”) for the Units and related Project and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

- (i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Units or related Project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.
- (ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Units or related Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Monthly Construction Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

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

## **2 Executive Summary**

### **2.1 Major activities completed**

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

2.1.1 [Insert Milestones from Appendix III, if needed]

2.1.2 Financing

2.1.3 Governmental Approvals

2.1.4 Site Control

2.1.5 Design and Engineering

2.1.6 Major Equipment Procurement

2.1.7 Construction

2.1.8 Interconnection

2.1.9 Startup Testing and Commissioning

### **2.2 Major activities recently performed**

Please provide a summary of the major activities performed for each of the following aspects of the Project since the previous report (provide details in subsequent sections of this report):

2.2.1 [Insert Milestones from Appendix III, if needed]

2.2.2 Financing

2.2.3 Governmental Approvals

2.2.4 Site Control

2.2.5 Design and Engineering

2.2.6 Major Equipment Procurement

2.2.7 Construction

2.2.8 Interconnection

2.2.9 Startup Testing and Commissioning

### **2.3 Major activities planned but not completed**

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Project:

2.3.1 [Insert Milestones from Appendix III, if needed]

2.3.2 Financing

2.3.3 Governmental Approvals

2.3.4 Site Control

2.3.5 Design and Engineering

2.3.6 Major Equipment procurement

2.3.7 Construction

2.3.8 Interconnection

2.3.9 Startup Testing and Commissioning

### **2.4 Major activities expected during the current month**

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

2.4.1 Milestones

2.4.2 Financing

2.4.3 Governmental Approvals

2.4.4 Site Control

2.4.5 Design and Engineering

2.4.6 Major Equipment procurement

2.4.7 Construction

2.4.8 Interconnection

2.4.9 Startup Testing and Commissioning

**3 Milestones**

**3.1 Milestone schedule**

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

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

**3.2 Remedial Action Plan (if applicable)**

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 using the outline provided below.

- 3.2.1 Identify Missed Milestone
- 3.2.2 Explain plans to achieve missed Milestone
- 3.2.3 Explain plans to achieve subsequent Milestones
- 3.2.4 Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Milestones

**4 Financing**

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

| Activity<br>(e.g., obtain \$xx for yy stage from zz) | Completion Date         |
|--|-------------------------|
|  | / / (expected / actual) |
|  | / / (expected / actual) |

**5 Project Schedule**

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

**6 Governmental Approvals**

**6.1 Environmental Impact Review**

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

**Agency** [e.g., the lead agency as required under the California Environmental Quality Act (CEQA)]

**Date of application/submission** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ (expected / actual)

**Date application/submission deemed complete by agency** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ (expected / actual)

**Date of initial study** (if applicable) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ (expected / actual)

**Process** (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report)

**Date of Notice of Preparation** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ (expected / actual)

**Date of Draft ND/MND/EIR** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ (expected / actual)

**Date Notice of Determination filed at OPR or County Clerk** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ (expected / actual)

**6.2 Federal, State, Regional, County or Local Governmental Approvals**

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

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

**6.3 Governmental Approval activities recently performed**

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

**6.4 Governmental Approval activities expected during the current month**

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

**6.5 Governmental Approval Notices received from EPC Contractor**

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

**7 Site Control**

**7.1 Table of Site Control schedule**

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Project Site (e.g., purchase, lease).

| <b>Activity</b> | <b>Completion Date</b>          |
|-----------------|---------------------------------|
|                 | ___/___/___ (expected / actual) |
|                 | ___/___/___ (expected / actual) |

**7.2 Site Control activities recently performed**

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

**7.3 Site Control activities expected during the current month.**

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

**8 Design and Engineering**

**8.1 Design and engineering schedule**

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

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

| <b>Name of EPC Contractor / Subcontractor</b> | <b>Activity</b> | <b>Completion Date</b>          |
|---|-----------------|---------------------------------|
|   |                 | ___/___/___ (expected / actual) |
|   |                 | ___/___/___ (expected / actual) |

**8.2 Design and engineering activities recently performed**

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

**8.3 Design and engineering activities expected during the current month**

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

**9 Major Equipment Procurement.**

**9.1 Major equipment to be procured**

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

| <b>Equipment Description</b> | <b>Manufacturer</b> | <b>Delivery Date</b><br>(indicate whether expected or actual)<br>_/_/____<br>(expected / actual) | <b>Installation Date</b><br>(indicate whether expected or actual)<br>_/_/____<br>(expected / actual) |
|------------------------------|---------------------|--|--|
|                              |                     |  |  |
|                              |                     |  |  |

| <b>Equipment Description</b> | <b>No. Ordered</b> | <b>No. Made</b> | <b>No. On-Site</b> | <b>No. Installed</b> | <b>No. Tested</b> |
|------------------------------|--------------------|-----------------|--------------------|----------------------|-------------------|
|                              |                    |                 |                    |                      |                   |
|                              |                    |                 |                    |                      |                   |

**9.2 Major Equipment procurement activities recently performed**

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

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

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

**10 Construction**

**10.1 Construction activities**

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

| <b>Activity</b> | <b>EPC Contractor / Subcontractor</b> | <b>Completion Date</b><br>_/_/____ (expected / actual) |
|-----------------|---------------------------------------|--|
|                 |                                       |  |
|                 |                                       |  |

**10.2 Construction activities recently performed**

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



**10.3 Construction activities expected during the current month**

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

**10.4 EPC Contractor Monthly Construction Progress Report.**

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

**11 Interconnection**

**11.1 Interconnection activities**

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

| Activity | Name of EPC Contractor / Subcontractor | Completion Date              |
|----------|--|------------------------------|
|          |  | _/_/____ (expected / actual) |
|          |  | _/_/____ (expected / actual) |

**11.2 Interconnection activities recently performed**

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

**11.3 Interconnection activities expected during the current month**

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

**12 Startup Testing and Commissioning**

**12.1 Startup testing and commissioning activities**

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

| Activity | Name of EPC Contractor / Subcontractor | Completion Date              |
|----------|--|------------------------------|
|          |  | _/_/____ (expected / actual) |
|          |  | _/_/____ (expected / actual) |

**12.2 Startup testing and commissioning activities recently performed**

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

**12.3 Startup testing and commissioning activities expected during the current month**

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

**13 Safety and Health Reports**

**13.1 Accidents**

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

**13.2 Work stoppages**

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

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

**14 Certification**

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

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

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

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

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

## APPENDIX IV

### PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

#### FACILITY DESCRIPTION

Facility name: Montezuma Wind Energy Center

Facility Site name: Montezuma Wind Energy Center

Facility physical address: \_\_\_\_\_

Total number of Units at the facility (committed and not committed to Buyer) 16

Technology Type: Siemens 2.3 MW-93 Wind Turbine Generators

Substation: PG&E 230 kV Birds Landings Substation

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

| Landowner's Name | APN      | Acres  |
|------------------|----------|--------|
| Hamilton         | 48-06-07 | 155.37 |
| Meyer            | 48-06-14 | 301.50 |
| Sugawara         | 48-10-31 | 315.17 |
| Hamilton         | 48-16-01 | 662.20 |
| Hamilton         | 48-10-62 | 158.32 |
| Mayhood          | 48-16-12 | 320.00 |
| Hansen Trust     | 48-16-15 | 510.97 |
| Hansen Trust     | 48-16-16 | 200.20 |
| Freese           | 90-09-06 | 93.00  |
| Freese           | 90-09-07 | 242.00 |
| Russel           | 90-09-26 | 280.29 |

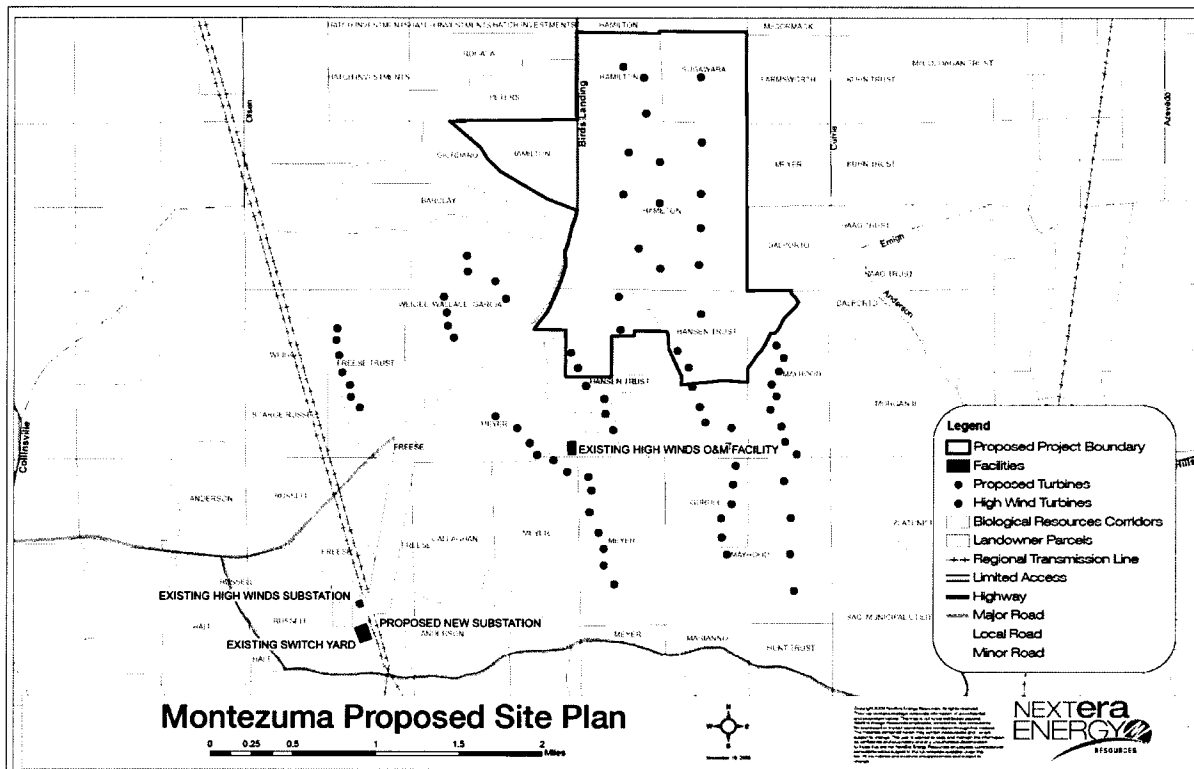
The nameplate capacity of the Project is 36.8

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

#### ***Siemens 2.3 MW Turbine***

The rotor of the Siemens 2.3 MW turbine, which has a three-blade cantilevered construction design, is mounted upwind of the tower. The blades are constructed of fiberglass reinforced epoxy. The turbines are mounted on a tapered tubular steel tower with internal ascent and decent access to the internal systems. The hub height is 262.5 feet (80 meters), and the rotor diameter is 305.1 feet (93 meters). The turbine operates automatically in all wind conditions, self-starts when the wind reaches approximately 4 meters per second (m/s), and cuts out at an average wind speed of 25 m/s. The blades are approximately 152.6 feet (46.5 meters) in length. The rotor swept area

for the Siemens 2.3 MW turbine is 73,118 square feet (6,793 square meters or 1.68 acres). The total turbine height with the blade tip in the 12 o'clock position is 415 feet (126.5 meters). The blade tip ground clearance is 109.9 feet (33.5 meters). The gear box is fitted with a fail-safe mechanical disc brake at the high-speed shaft.



**Transmission and Interconnection Facilities:**

The power generated by the Montezuma Wind Project would be collected and conveyed to the power substation by an electrical power collection system that would be installed as part of the proposed Montezuma Wind Project. The system would include padmounted transformers, buried cables, and junction boxes. Pad mounted transformers would be connected to each turbine via buried power cables. The buried cable system would include junction boxes that would house cable splices and allow access to the cable if needed for maintenance or repair. Cables would be buried approximately 42 inches deep between all turbines, transformers, and between transformers and the substation. The cables would be installed on private land occupied by the proposed Montezuma Wind Project and along public roads. The power collection and feeder lines would be located underground for the entire lines would be installed underground via horizontal d high side 230-kV power collection lines would be above ground for approximately 500 feet to connect to the existing switchyard. The overhead cables would be mounted on new or existing small steel or wooden poles. The interconnection point to the PG&E 230-kV Line would be made at the PG&E Birds Landing switchyard.

**APPENDIX V**

**DELIVERY TERM CONTRACT QUANTITY SCHEDULE**

| <b>Contract Year</b> | <b>Contract Quantity</b> |
|----------------------|--------------------------|
| 1-25                 | 129,000 MWh              |

**APPENDIX VI**

**COMMERCIAL OPERATION CERTIFICATION PROCEDURE**

**FORM OF CERTIFICATION**

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

- (a) Seller has successfully completed completion testing of the Project which is required by the Project's Governmental Approvals, the Interconnection Agreement, CEC Eligible Renewable Energy Resource certification requirements, and Seller's construction and operating agreements;
- (b) all relevant manufacturers' warranties for the commencement of Commercial Operation are in place and valid;
- (c) Seller has executed all agreements and made all arrangements necessary to deliver the Product from the Project to the Delivery Point safely and reliably in compliance with the provisions of the Agreement;
- (d) all Delivery Term Security arrangements have been established in a form and in the amounts sufficient to meet the requirements of Section 8.4(a)(iv) of the Agreement;
- (e) the insurance coverage requirements of Section 10.12 of the Agreement have been satisfied;
- (f) all Governmental Approvals required to be obtained from any Governmental Authority to operate the Project in compliance with applicable law and this Agreement have been obtained and are in full force and effect; and
- (g) Commercial Operation has occurred.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on behalf of the Company as of the \_\_\_ day of \_\_\_\_\_ 200\_.

**FPL Energy Montezuma Wind, LLC**

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

## APPENDIX VII

### GEP DAMAGES CALCULATION

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

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

Where:

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

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

C = \$50/MWh

## APPENDIX VIII

### NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

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

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

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

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

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



***i. Email subject Field: dd/mm/yyyy – dd/mm/yyyy XYZ Company Project #2 Outage Notification***

***ii. Email body:***

- 1. Type of Outage: Planned Outage, Forced Outage, Prolonged Outage***
- 2. Start Date and Start Time***
- 3. Estimated or Actual End Date and End Time***
- 4. Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted***
- 5. Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage required by the CAISO.***

**APPENDIX IX**

**CERTIFICATION OF THIRD PARTY AGREEMENT**

The following certification is delivered by FPL Energy Montezuma Wind, LLC (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with Section II.(\_\_\_\_) of that certain Amended and Restated Power Purchase Agreement, dated \_\_\_\_\_, 2009, between Seller and Buyer (as amended, the “PPA”). Based on Seller’s analysis of the key contract terms listed below in the PPA (the “Contract Terms”), and the similar terms and conditions in [describe third party agreement] (the “Proposed Third Party Agreement”), I [insert name, company, and title] certify that under the terms and conditions of the Proposed Third Party Agreement Seller does not expect to receive a lower rate of return on its development and operation of the Project than the rate of return projected by Seller as a result of selling the Product produced by the Project to Buyer under the First Offer pursuant to Section \_\_\_\_\_ of the PPA.

Capitalized terms not defined herein shall have the meaning set forth in the PPA.

Contract Terms:

1. MW amount of Contract Capacity
2. Product
3. Guaranteed Commercial Operation Date
4. Delivery Term
5. Delivery Point
6. Contract Price (including escalation)
7. Contract Quantity - expected annual volume of deliveries inclusive of outages
8. Guaranteed Energy Production target - minimum volume of delivery on an annual basis
9. Security Requirements applicable to Seller
10. Other key contract terms identified at the election of FPL Energy Montezuma Wind, LLC

**IN WITNESS WHEREOF**, the undersigned has executed this certificate this \_\_\_ day of [\_\_\_\_\_].

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

Name:

Title:

## APPENDIX X

### RESOURCE ADEQUACY

1. Seller and Buyer agree that throughout the Delivery Term and consistent with the provisions of Section 3.3 of that certain Amended and Restated Power Purchase Agreement, dated \_\_\_\_\_, 2010, between Seller and Buyer (as amended, the "PPA") the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to, the following:
  - A. Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CAISO and/or CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the 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. Subject to Section 3.3 of the PPA, Seller shall comply with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff as may be changed from time to time, including but not limited to the following:
  - A. Taking all actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity;
  - B. Coordinating with Buyer on the submission to the CAISO of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff;
  - C. Complying with the dispatch requirements applicable to the Project's resource type, as set forth in Section 40 of the CAISO Tariff; and
  - D. Complying with the applicable reporting requirements, such as submitting Supply Plans to the CAISO.
3. RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Interconnection Point for the Project.

**APPENDIX XI**

**NOTICES LIST**

Name: FPL Energy Montezuma Wind, 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:

Street: 700 Universe Boulevard  
City: Juno Beach State: FL Zip: 33408

Delivery Address:

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

Mail Address: (if different from above)  
c/o NextEra Energy Resources, LLC  
P O Box 14000  
Juno Beach FL 33408

Mail Address:  
P.O. Box 770000, Mail Code N12E  
San Francisco, CA 94177

Attn: [REDACTED]

Attn: Candice Chan (CWW9@pge.com)  
Director, Contract Mgmt & Settlements

Phone: [REDACTED]  
Facsimile: [REDACTED]

Phone: (415) 973-7780  
Facsimile: (415) 973-5507

DUNS: [REDACTED]  
Federal Tax ID Number: 06-1739279

DUNS:  
Federal Tax ID Number:

**Invoices:**

[REDACTED]

**Invoices:**

Attn: Amol Patel (AxPx@pge.com)

Phone: [REDACTED]  
Facsimile: [REDACTED]

Manager, Bilateral Settlements  
Phone: (415) 973-6510  
Facsimile: (415) 973-2151

**Scheduling:**

Attn:  
Phone:  
Facsimile:

**Scheduling:**

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

**Payments:**

[REDACTED]

**Payments:**

Attn: Amol Patel (AxPx@pge.com)

[REDACTED]

Manager, Bilateral Settlements  
Phone: (415) 973-6510  
Facsimile: (415) 973-2151

**Wire Transfer:**

BNK:  
ABA:  
ACCT:

**Wire Transfer:**

BNK:  
ABA:  
ACCT:

**Credit and Collections:**

[REDACTED]

With additional Notices of an Event of Default to:

[REDACTED]

**Credit and Collections:**

Attn: David Medrano (D6MD@pge.com)  
Manager, Credit Risk Management  
Phone: (415) 973-9099  
Facsimile: (415) 973-4071

**Contract Manager:**

Attn: Chad Curran (CRCq@pge.com)  
Manager, Contract Management  
Phone: (415) 973-6105

Facsimile: (415) 972-5507

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

## APPENDIX XII

### FORM OF CONSENT TO ASSIGNMENT

#### CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [\_\_\_\_\_, 2\_\_\_\_], between PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”), and [\_\_\_\_\_] , as collateral agent<sup>1</sup> (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [\_\_\_\_\_] (“Seller”). PG&E, Seller, and the Financing Provider shall each individually be referred to a “Party” and collectively as the “Parties”.

#### **Recitals**

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

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the Assigned Agreement, in connection with such financing.

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

#### **Agreement**

1. **Definitions.** Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. **Consent.** Subject to the terms and conditions of this Consent and Agreement: (a) PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Financing Documents of all right, title and interest of Seller in, to and under the Assigned Agreement; (b) Financing Provider shall be entitled to exercise all rights to cure any defaults of Borrower under the Assigned Agreement and PG&E agrees to accept such cure by Financing Provider subject to the limitations and other provisions in the Assigned Agreement (in the event such limitations and provisions of the Assigned Agreement conflict with this Consent and

---

<sup>1</sup> This form assumes that a collateral agent will hold the security on behalf of a syndicate of lenders and therefore, the consent would be signed by the collateral agent in such capacity for the benefit of the secured parties. The parties acknowledge that Seller may elect to use a different type of financing. In the event that Seller chooses an alternate type of financing (e.g., a lease), this form of Consent and Agreement will be revised to reflect the alternate form of financing in a manner reasonably satisfactory to PG&E and Seller consistent with the rights and obligations under the PPA.

Agreement, the terms of this Consent and Agreement shall be deemed to control); and (c) PG&E agrees to make all payments to be made by it under the Assigned Agreement directly to Financing Provider for the benefit of the Secured Parties in accordance with the instructions set forth in Section 8 below.

3. Assignment.

(a) Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, neither Financing Provider nor its designee (a "Designee") shall assume, sell or otherwise transfer the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or transfer, Financing Provider or such Designee, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (i) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (ii) executes and delivers to PG&E a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (iii) provides such enforceability assurance as PG&E may reasonably request, and (iv) is a Permitted Transferee (as defined below). PG&E agrees that it shall thereupon acknowledge such party as "Seller" under the Assigned Agreement for all purposes of the Assigned Agreement.

"Permitted Transferee" shall mean any person or entity which: (i) satisfies the criteria pertaining to, or causes to be posted Performance Assurances on its behalf from, a Qualified Guarantor; and (ii) in the reasonable opinion of PG&E, has the technical expertise and capability (or has retained such technical expertise and capability) to perform Seller's obligations under the Assigned Agreement.

(b) Financing Provider further acknowledges that the assignment of the Assigned Agreement is for security purposes only and that Financing Provider has no rights under the Assigned Agreement to enforce the provisions of the Assigned Agreement unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a "Financing Default"), in which case, Financing Provider or its Designee, as the case may be, shall, subject to the provisions of Section 3(a), be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

4. Cure Rights.

(a) Notice to Financing Provider by PG&E. PG&E shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each an "Event of Default") to Seller (a "Default Notice"), provide a copy of such Default Notice to Financing Provider pursuant to Section 9 herein. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a), PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined

below) to cure such Event of Default. For purposes of this Consent and Agreement “Additional Cure Period” means (i) with respect to a monetary default, twenty (20) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, a reasonable period of time, but not more than thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, to cure such Event of Default; provided, however, if such non-monetary Event of Default cannot be cured within such thirty (30) day period and the Financing Provider or its Designee shall have commenced to cure the Event of Default within such thirty-day period and thereafter diligently pursues such cure to completion (as documented or demonstrated to PG&E’s reasonable satisfaction) and continues to perform all monetary obligations under the Assigned Agreement, then the Additional Cure Period for non-monetary Events of Default may be extended for a period of up to one hundred twenty (120) days if such extended period of time is needed to cure the particular non-monetary Event of Default.

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

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for the Financing Provider or its Designee to cure an Event of Default under the Assigned Agreement, and Financing Provider declares a default under the Financing Documents, Financing Provider will be allowed a reasonable period of time in addition to the Additional Cure Period if such extra time is needed to complete such proceedings to obtain possession of the Project; provided, that Financing Provider shall provide a written notice to PG&E (a “Foreclosure Notice”) that it intends to commence or has commenced such proceedings with respect to Seller (including a good faith estimate of the time necessary to complete such proceedings and cure the Event of Default) within sixty (60) days of receiving a Default Notice from PG&E or Seller, whichever is received first and, provided, further, that Financing Provider or its designee(s) or assignee(s) is diligently pursuing completion of such proceedings. Such extra time period to complete such proceedings shall not exceed one hundred twenty (120) days from the date the Foreclosure Notice is received by PG&E. If Financing Provider or its Designee(s) are prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, Financing Provider shall provide a written notice to PG&E (an “Extension Notice”) within ten (10) days of such prohibition documenting the prohibition (including a good faith estimate of the time necessary to complete such proceeding and cure the Event of Default) and the foregoing additional time period described above in this Section 4(d) may be extended by Seller for the period of such prohibition not to exceed one hundred eighty (180) days from the date the Extension Notice is received by PG&E if Financing Provider or its designee(s) or assignee(s) is diligently pursuing the removal or cessation of any such prohibition through commercially reasonable steps in the bankruptcy or insolvency proceedings. In the event Financing Provider or its Designee succeeds to Seller’s interest in the Project as a result of a foreclosure proceeding, the Financing Provider or its Designee succeeding to Seller’s interest in the Project shall be subject to the requirements of Section 3 of this Consent and Agreement.



(e) Rejection in Bankruptcy. In the event that the Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the Assigned Agreement is terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding for any reason other than an Event of Default which could have been but was not cured by the Financing Provider as provided in Section 4, and if, within forty-five (45) days after such rejection or termination, Financing Provider or its Designee shall so request, PG&E will execute and deliver to such person a new power purchase agreement, subject to CPUC Approval (if necessary) and on the same terms and conditions as the original Assigned Agreement for the remaining term of the Assigned Agreement before giving effect to such termination (the “New Contract”). Thereafter, PG&E shall file the New Contract for CPUC Approval if it is necessary to do so within a time period commensurate with other similar power purchase agreements for renewable energy being entered into by PG&E at the time and shall diligently pursue any requisite CPUC Approval thereafter.

5. Setoffs and Deductions. All payments required to be made by either party under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than as expressly allowed by the terms of the Assigned Agreement.

6. Representations and Warranties.

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

(b) PG&E represents and warrants as follows:

(i) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(ii) No Previous Assignments. [Except as described in Schedule II hereto,] PG&E affirms that it has no notice of any assignment relating to the right, title and interest of Seller in, to and under the Assigned Agreement other than the pledge and assignment to the Financing Provider referred to in Section 2 above.

(iii) No Termination Event; No Disputes. [Except as described in Schedule III hereto,] and to the knowledge of PG&E without any investigation, after giving effect to the pledge and assignment referred to in Section 2, and after giving effect to the consent to such pledge and assignment by PG&E, (i) there exists no Event of Default that would, either immediately or with the passage of time or giving of notice, or both, entitle PG&E or, to PG&E’s knowledge, Seller to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement, (ii) there are no unresolved disputes between the Parties under the Assigned Agreement, and (iii) all amounts due under the Assigned Agreement as of the date hereof have been paid in full.

7. Amendment to Assigned Agreement. PG&E shall not, without prior written notice to the Financing Provider, amend or modify the Assigned Agreement.

8. Payments under Assigned Agreement. Unless directed otherwise by the Financing Party in a written notice delivered pursuant to Section 9, PG&E shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [\_\_\_\_], as depository agent, to ABA No. [\_\_\_\_], Account No. [\_\_\_\_], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, PG&E and Financing Provider agrees that each such payment by PG&E to such depository agent of amounts due to Seller from PG&E under the Assigned Agreement shall satisfy PG&E's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

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

If to Financing Provider:

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

If to PG&E:

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

If to Seller:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

(b) Successors and Assigns. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of PG&E, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under the Financing Documents.

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

(d) Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of New York without regard to its conflicts of laws principles (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

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

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

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement other than the Secured Parties.

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

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

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

PACIFIC GAS AND ELECTRIC COMPANY  
(PG&E)

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

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

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

**ACKNOWLEDGEMENT**

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

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

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

## **APPENDIX XIII**

### **SELLER DOCUMENTATION CONDITION PRECEDENT**

Seller shall provide to Buyer, pursuant to the terms of Section 2.4(a)(iv) of the Agreement, all of the following documentation at least two (2) Business Days following the Execution Date:

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

## APPENDIX XIV

### FORM OF ACTUAL AVAILABILITY REPORT

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

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

**APPENDIX XIV Attachment A**

**Form of Actual Availability Report**

**[Seller's Actual Availability Report**

*All amounts are in MWs*

| <b>Settlement Interval No.</b> | <b>Date</b> | <b>HE1</b> | <b>HE2</b> | <b>HE3</b> | <b>HE4</b> | <b>HE5</b> | <b>HE6</b> | <b>HE7</b> | <b>HE8</b> | <b>HE9</b> | <b>HE10</b> | <b>HE11</b> | <b>HE12</b> | <b>HE13</b> | <b>HE14</b> | <b>HE15</b> | <b>HE16</b> | <b>HE17</b> | <b>HE18</b> | <b>HE19</b> | <b>HE20</b> | <b>HE21</b> | <b>HE22</b> | <b>HE23</b> | <b>HE24</b> |
|--------------------------------|-------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 1                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 2                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 3                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 4                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 5                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 6                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 1                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 2                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 3                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 4                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 5                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 6                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 1                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 2                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 3                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 4                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 5                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| 6                              | mm/dd/yyyy  |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
|                                |             |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
|                                |             |            |            |            |            |            |            |            |            |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |

Date/Time of Submittal

**APPENDIX XV**

**FORM OF GUARANTY**

GUARANTY

This Guaranty (this "Guaranty"), dated effective as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), is made and entered into by \_\_\_\_\_ ("Guarantor").

**WITNESSETH:**

WHEREAS, PACIFIC GAS & ELECTRIC COMPANY, a California corporation ("Counterparty") and FPL ENERGY MONTEZUMA WIND, LLC, a limited liability company organized under the laws of the State of Delaware ("MONTEZUMA") and an indirect, wholly-owned subsidiary of Guarantor, have entered into that certain Amended and Restated Power Purchase Agreement, dated as of \_\_\_\_\_, (the "Agreement"); and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreement entered into between MONTEZUMA and Counterparty;

NOW THEREFORE, in consideration of Counterparty performing obligations and receiving benefits from the Agreement, Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of MONTEZUMA (the "Obligations") to Counterparty under the Agreement. This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) The aggregate amount covered by this Guaranty shall not exceed U.S. \$[INSERT AMOUNT].

(b) Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages) as well as costs of collection and enforcement of this Guaranty (including attorney's fees) to the extent reasonably and actually incurred by the Counterparty (all of which such liability in the aggregate will be subject to the limitation set forth in Section 1(a) above) but in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive or tort damages, or, except to the extent specifically provided in the Agreement, any other damages.

2. DEMANDS AND NOTICE. Upon the occurrence and during the continuance of an Event of Default, as defined in the Agreement, if MONTEZUMA fails or refuses to pay any Obligations and Counterparty has elected to exercise its rights under this Guaranty, Counterparty shall make a demand upon Guarantor (hereinafter referred to as a "Payment Demand"). A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount MONTEZUMA has failed to pay and an explanation of why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. A Payment Demand satisfying the foregoing requirements shall be required with respect to Obligations before Guarantor is required to pay such Obligations hereunder and shall be deemed sufficient notice to Guarantor that it must pay the Obligations within five (5) Business Days after its receipt of the Payment Demand. A single written Payment Demand shall be



effective as to any specific default during the continuance of such default, until MONTEZUMA or Guarantor has cured such default, and additional written demands concerning such default shall not be required until such default is cured. As used herein, the term "Business Day" shall mean a day on which commercial banks or financial institutions are open for business in the States of [REDACTED] and New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of [REDACTED] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty, when executed and delivered, will constitute a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. SETOFFS AND COUNTERCLAIMS. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which MONTEZUMA is entitled to arising out of the Agreement, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of MONTEZUMA or the lack of power or authority of MONTEZUMA to enter into and/or perform the Agreement.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVER; TERMINATION. Except as required in Section 2 above, Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment and demand concerning the liabilities of Guarantor; and (c) any right to require that any action or proceeding be brought against MONTEZUMA or any other person, or to require that Counterparty seek enforcement of any performance against MONTEZUMA or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of Counterparty in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreement.

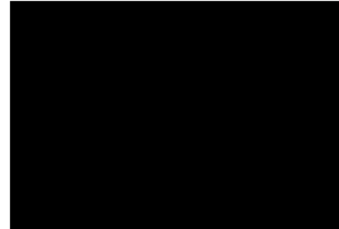
Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy of MONTEZUMA, or otherwise, all as though such payments had not been made.

This Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the date all Obligations have been paid in full by MONTEZUMA or the Guarantor, or (ii) the twenty-eighth anniversary of the Effective Date.

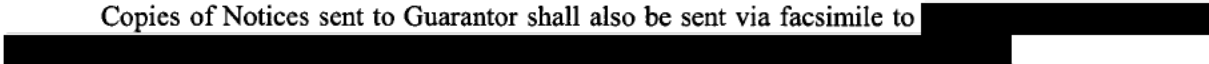
7. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or telecopier, as follows:

To Counterparty: Pacific Gas & Electric Company  
77 Beale Street, Mail Code B28L  
San Francisco, California 94105  
Attn: Manager of Credit Risk  
Management Unit  
Fax No.: (415) 973-4071

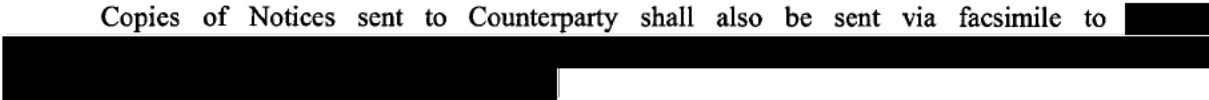
To Guarantor:



Copies of Notices sent to Guarantor shall also be sent via facsimile to



Copies of Notices sent to Counterparty shall also be sent via facsimile to



Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if not received during the recipient's normal business hours. All Notices by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. MISCELLANEOUS. This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws (other than Section 5-1401 of the New York General Obligations Law). Any legal action or proceeding by or against Guarantor with respect to or arising out of this guaranty shall only be brought in or removed to the courts of the State of New York, in and for borough of Manhattan, or of the United States of America for the Southern District of New York. Guarantor by its delivery of this Guaranty, and Counterparty by its acceptance of this Guaranty, each hereby agrees to waive any right to stay or dismiss any action or proceeding under or in connection with this Guaranty brought before the foregoing courts on the basis of lack of jurisdiction or *forum non-conveniens*, and each hereby further agrees to waive the right to a trial by jury.

This Guaranty shall be binding upon Guarantor and its permitted successors and assigns and inure to the benefit of and be enforceable by Counterparty and its permitted successors and assigns. The Guarantor may not assign this Guaranty in part or in whole without the prior written consent of the Counterparty. The Counterparty may not assign its rights or benefits under this Guaranty in part or in whole except (i) with the prior written consent of the Guarantor, or (ii) pursuant to a permitted assignment of the Agreement ("Assigned Agreement"), in which case the assignee will succeed to the rights of Counterparty hereunder only with respect to such Assigned Agreement. The Guarantor's liability hereunder with respect to any and all such Assigned Agreement, together with any other liability of the Guarantor hereunder, will in all cases be subject to the Guarantor's maximum aggregate liability set forth in Section 1(a) herein. Neither the Guarantor nor the Counterparty will unreasonably withhold or delay consent to assignment.

This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

Time is of the essence of this Guaranty. The remedies provided to Counterparty in this Guaranty are cumulative and not exclusive of any other remedies provided by law.

Words importing the singular number hereunder shall include the plural number and vice versa and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

[Signature on next page]

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on \_\_\_\_\_, 20\_\_ but it is effective as of the Effective Date.



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

**APPENDIX XVI**  
**LAND USE PERMIT**