

Log No 33R04B

POWER PURCHASE AND SALE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY

(as "Buyer")

and

San Joaquin Solar 2 LLC

(as "Seller")

As-Available Product

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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

Appendix IV Project Description Including Description of Site

Appendix V Form of Certification

Appendix VI Commercial Operation Certification Procedure and Procedure for Subsequent Capacity Terms

Appendix VII Form of Monthly Progress Report

Appendix VIII Outage Notification Form

Appendix IX Counterparty Notification Requirements for Outages and Generation Schedules

Appendix X Resource Adequacy

Appendix XI Notices List

Appendix XII Certification of Third Party Agreement

Appendix XIII Diagram of Interconnection Point

POWER PURCHASE AND SALE AGREEMENT

PREAMBLE

This Power Purchase and Sale Agreement, together with the appendices and any other attachments referenced herein, is made and entered into between **Pacific Gas and Electric Company**, a California corporation (“**Buyer**” or “**PG&E**”), and **San Joaquin SOLAR 2 LLC**, a Delaware limited liability company (“**Seller**”), as of the Execution Date set forth on the signature page hereof. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “**10-Minute Settlement Interval Average Price**” means the Imbalance Price as published by the CAISO every ten (10) minutes in order to reflect the prices for Imbalance Energy.

1.2 “**AAA**” means the American Arbitration Association.

1.3 “**Affiliate**” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.4 “**Agreement**” means this Power Purchase and Sale Agreement between Buyer and Seller, which is comprised of the Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, “agreement” has the meaning set forth in this Section 1.4.

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

1.6 “**As-Available Product**” means a Product for which, subject to the terms of this Agreement, (i) Seller is obligated to sell and deliver and (ii) Buyer is obligated to purchase and receive the Energy component of the Product from the Project whenever such Energy is capable of being generated from the Project.

1.7 “**Bankrupt**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

1.8 “**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.

1.9 “**Buyer**” has the meaning set forth in the Preamble.

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

1.11 “**CAISO Grid**” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

1.12 “**CAISO Penalties**” has the meaning set forth in Section 4.8.

1.13 “**CAISO Tariff**” means the CAISO FERC Electric Tariff, First Replacement Volume No. 1, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.14 “**California Renewables Portfolio Standard**” means the renewable energy program and policies established by Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

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

1.17 “**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.

1.18 “**Claims**” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination or expiration of this Agreement.

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

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

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

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

1.23 “**Construction Start Date**” means the later to occur of the date on which Seller delivers to Buyer (i) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (ii) a written Certification substantially in the form attached hereto as Appendix V.

1.24 “**Contract Capacity**” means the generation capacity designated for the Project in Section 3.1(f), net of all auxiliary loads, station electrical uses, and Electrical Losses.

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

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

1.27 “**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.

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

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

1.30 “**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

1.42 **“Development Failure”** means the failure of Seller to perform one or more of those obligations under this Agreement, despite Seller’s commercially reasonable efforts, that arise(s) out of or relate(s) to Seller’s obligations to (a) obtain a Governmental Approval for the Project, or (b) secure interconnection of the Project to the CAISO Grid, the Interconnection Facilities, or the Transmission Upgrades, or any of the components of (a) or (b).

1.43 **“Development Failure Notice”** means Seller’s Notice to Buyer claiming a Development Failure and containing a detailed description and explanation of the Development Failure including, but not limited to, providing any and all support (documentary or otherwise) for Seller’s claim and position regarding how and why the failure constitutes a Development Failure.

1.44 **“Disclosing Party”** has the meaning set forth in Section 10.7.

1.45 **“Disclosure Order”** has the meaning set forth in Section 10.7.

1.46 **“Dispatch Down Period”** means the period of time during which there is any of the following: (a) a curtailment ordered from the CAISO, for reasons including, but not limited to, any system emergency, as defined in the CAISO Tariff (**“System Emergency”**), which otherwise does not constitute a Force Majeure under Section 1.63(a)(iv); (b) a curtailment ordered by Buyer based on any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes Buyer’s electric system integrity or the integrity of other systems to which Buyer is connected, as determined by Buyer in Buyer’s sole discretion; (c) a curtailment ordered by Buyer due to over generation as defined in the CAISO Tariff; (d) a curtailment ordered by Buyer based upon Buyer’s forecast of over generation, including, but not limited to, a request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (e) a curtailment ordered by the Participating Transmission Owner, which otherwise does not constitute a Force Majeure under Section 1.63(a)(iv); or (f) scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point.

1.47 **“Distribution Loss Factor”** is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to PG&E’s distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of Interconnection, as defined in the PG&E Wholesale Distribution Interconnection Tariff, at the point where PG&E’s meter is physically located, and the first point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

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

1.49 **“Early Termination Date”** has the meaning set forth in Section 5.2.

1.50 **“Effective Date”** shall mean the date on which all of the Conditions Precedent set forth in Section 11. 1 have been satisfied or waived in writing by both Parties.

1.51 **“Electrical Losses”** means all applicable losses of Energy, including, but not limited to, the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; (b) the applicable GMM or any successor method to account for losses or congestion established by the CAISO (or successor organization) and assigned to the Delivery Point for the Project; and (c) the applicable Distribution Loss Factor, if applicable.

1.52 **“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.

1.53 **“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.

1.54 **“Energy”** means electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 1.74, “energy” has the meaning set forth in this Section 1.54.

1.55 **“Energy Tax Credit”** means the tax credit for solar energy property described in Section 48(a)(3)(A)(i) of the Internal Revenue Code of 1986, as it may be amended from time to time, or the successor to or equivalent of such a tax credit.

1.56 **“EPC Contract”** means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

1.57 **“EPC Contractor”** means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller’s.

1.58 **“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.

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

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

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

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

1.63 **“Force Majeure”** means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and

measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

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

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

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

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

(iv) emergencies declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy, including Energy to be delivered pursuant to this Agreement.

(b) Force Majeure shall not be based on:

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

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

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

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

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

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

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

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

1.64 **"Force Majeure Extension"** has the meaning set forth in Section 3.9(c)(iii)(A)(II).

1.65 **"Force Majeure Extension Notice"** means Seller's Notice to Buyer claiming a Force Majeure Extension and containing a detailed description and explanation of the reason for the Force Majeure Extension including, without limitation, providing any and all support (documentary or otherwise) for Seller's claim and position regarding how and why the event constitutes a Force Majeure. Such Notice shall include the number of days by which all affected Milestones including, without limitation, Guaranteed Project Milestones, will be extended, and a revised Appendix III, Milestones Schedule, setting forth all revised Milestone dates.

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

1.67 **"Fuel Handling Attributes"** has the meaning set forth in Section 3.2(i).

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

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

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

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

1.72 **“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.

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

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

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

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

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

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

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

1.80 “**Imbalance Energy**” means the amount of Energy, in any given hour, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

1.81 “**Imbalance Price**” has the meaning set forth in Section 4.7(a).

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

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

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

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

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

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

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

1.89 “**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.

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

1.91 “**Large Generator Interconnection Procedures**” or “**LGIP**” means the Standard Large Generator Interconnection Procedures set forth in Appendix U to the CAISO Tariff.

1.92 “**Law**” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Sections 10.2(b) and 10.12, “law” and “laws” have the meaning set forth in this Section 1.92.

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

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

1.95 “**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analyses of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which shall be calculated for the remaining term of the Transaction to determine the value of the Product. If (i) the Non-Defaulting Party is the Seller, and (ii) Seller declares an Early Termination Date (A) prior to the Commercial Operation Date, the term “Losses” shall include any loss of Energy Tax Credits or Production Tax Credits applicable to the Project, but shall exclude any other federal or state tax credits, benefits, or exemptions of any kind, including, without limitation, MACRS (collectively, “**Other Tax Benefits**”); or (B) after the Commercial Operation Date, the term “Losses” shall exclude any loss of Energy Tax Credits, Production Tax Credits or Other Tax Benefits.

Notwithstanding the foregoing, Seller may not claim lost Energy Tax Credits or Production Tax Credits as a component of Seller's Losses if Seller would not, had Seller performed its obligations and this Agreement remained in effect, have been able to obtain Energy Tax Credits or Production Tax Credits, or if the Project would not have been eligible or qualified for Energy Tax Credits or Production Tax Credits. To the extent that Seller obtains or the Project is eligible or qualifies for any Energy Tax Credits or Production Tax Credits following Seller's declaration of an Early Termination Date prior to the Commercial Operation Date, Seller shall refund to Buyer that portion of any Termination Payment made to Seller that is attributable to lost Energy Tax Credits or Production Tax Credits that Seller obtains or for which the Project is eligible or qualifies.

1.96 **"Modified Accelerated Cost Recovery System" or "MACRS"** means the method of accelerated asset depreciation described in Section 168 of the Internal Revenue Code of 1986, as it may be amended from time to time, or the successor to or equivalent of such a method of accelerated asset depreciation.

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

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

1.99 **"Monthly Progress Report"** means the report similar in form and content to that attached hereto as Appendix VII.

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

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

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

1.103 **"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.

1.104 **"MWh"** means megawatt-hour.

1.105 **"Negative Imbalance Energy"** has the meaning set forth in Section 4.5.

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

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

1.108 **"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.

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

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

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

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

1.113 **“Outage Notification Form”** means the notice form attached hereto as Appendix VIII, which shall be submitted by Seller to Buyer in accordance with the relevant provisions of Section 3.7. PG&E reserves the right to revise or change the form upon written Notice to Seller.

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

1.115 **“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.

1.116 **“Party”** means the Buyer or Seller individually, and **“Parties”** means both Buyer and Seller, collectively. For purposes of Section 10.12, “party” and “parties” have the meanings set forth in this Section 1.116.

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

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

1.119 **“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.

1.120 **“Positive Imbalance Energy”** has the meaning set forth in Section 4.5.

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

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.

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

1.138 “**Restructuring Event**” has the meaning set forth in Section 3.1(d).

1.139 “**Revocation Notice**” has the meaning set forth in Section 10.1(b)(i).

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

1.141 “**Schedule**,” except as used in Section 3.1(f), has the meaning set forth in the CAISO Tariff. For purposes of Section 3.1(f), “**Schedule**” means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinator, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.

1.142 “**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.

1.143 “**Scheduled Energy**” shall have the meaning set forth in Section 3.4(c)(i).

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

1.145 “**Seller**” shall have the meaning set forth in the Preamble.

1.146 “**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, or (c) Dispatch Down Period.

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

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

1.149 “**Site Control**” means Seller shall provide documentation to Buyer no later than the Execution Date, reasonably acceptable to Buyer, demonstrating that Seller controls the Site identified in Appendix IV by means of exclusive option agreements entitling the Seller to enter into one or more leases, each of which has a term of no less than the Term; and that Seller holds such easements as necessary to permit access to and utilization of the Site for the purposes contemplated in this Agreement.

- 1.150 “**Site Control Deadline**” has the meaning set forth in Section 3.1(n).
- 1.151 “**Term**” shall have the meaning provided in Section 2.5 of this Agreement.
- 1.152 “**Terminated Transaction**” means the Transaction terminated in accordance with Section 5.2 of this Agreement.
- 1.153 “**Termination Payment**” has the meaning set forth in Section 5.2.
- 1.154 “**Test Product**” has the meaning set forth in Section 3.1(b)(i).
- 1.155 “**TOD**” means time of delivery of Scheduled Energy from Seller to Buyer.
- 1.156 “**TOD Factors**” shall have the meaning set forth in Section 4.3(a).
- 1.157 “**TOD Period**” has the meaning set forth in Section 4.2.
- 1.158 “**Transaction**” means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.
- 1.159 “**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.
- 1.160 “**Transmission Upgrades**” means any additions and/or reinforcements to an electric transmission system that are required as the result of the interconnection of the Project to the Participating Transmission Owner’s electric system and/or to permit delivery of the Product to Buyer’s Load, as defined in the CAISO Tariff, safely and reliably, in the quantities and at the times at which delivery of such Product may be required under this Agreement, up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project.
- 1.161 “**Unit**” means the solar thermal hybrid technology designed to produce the Products from solar energy, the combustion of biofuel or a combination of both solar energy and biofuel combustion, as identified in Appendix IV for the Transaction entered into under this Agreement.
- 1.162 “**WECC**” means the Western Electricity Coordinating Council or successor agency.
- 1.163 “**WREGIS**” means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.
- 1.164 “**WREGIS Certificate Deficit**” has the meaning set forth in Section 3.1(k)(v).
- 1.165 “**WREGIS Certificates**” shall have 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.

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

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

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties. Nothing herein modifies, alters or affects in any way the Parties’ obligations under the Confidentiality Agreement entered into between the Parties in connection with the 2007 Renewables Portfolio Standard Solicitation from which this Agreement is the result.

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

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

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

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

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

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

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

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

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

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

2.5 Term. The Term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 11.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to Section 3.1(n), 5.2, 10.1, or Section 11.2 of this Agreement (the “**Term**”); provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for twenty-four (24) months and all rights and obligations under Section 5.7 and Section 10.1(e) shall survive termination of this Agreement until the Parties’ obligations under those Sections have been satisfied.

2.6 Binding Nature.

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

- (i) Sections 3.1(n), 3.9(a)(vi), 5.1(a)(iv)-(v), 5.1(b)(v)-(vi);
- (ii) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.6;

- (iii) Sections 5.2 through 5.6;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;
- (v) Sections 10.2, 10.3(c), 10.6 through 10.8, and Sections 10.12 through 10.15; and
- (vi) Articles One, Two, Seven, Eleven, Twelve and Thirteen.

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

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

(b) Transaction.

(i) Unless specifically excused by the terms of this Agreement, during the Test Product Delivery Period (as defined below) and 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 or the Test Product Price (as defined below), as applicable, in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Negative Imbalance Energy. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except for Test Product. During the period commencing on the first date on which the Project is capable of delivering Product to Buyer and ending on the Initial Energy Delivery Date (the "**Test Product Delivery Period**"), after an initial thirty (30) days' prior Notice to Buyer, any Product produced by the Project before the Initial Energy Delivery Date ("**Test Product**") shall be sold by Seller to Buyer. The Test Product Delivery Period shall last for a maximum of ninety (90) days. The price to be paid by Buyer for each MWh of Test Product shall be the Contract Price multiplied by 90% ("**Test Product Price**"), as adjusted pursuant to Section 4.3(a). Prior to selling any Test Product to Buyer pursuant to this Section 3.1(b)(i), Seller shall obtain certification of the Project as an ERR, and register the Project in WREGIS and take the other actions described in Section 3.1(k). If at any time the Test Product purchased by Buyer pursuant to this Section 3.1(b)(i) is determined not to qualify as generation from an ERR, any amounts paid to Seller for such Test Product shall be refunded to Buyer by netting such amounts out of future payments by Buyer to Seller under this Agreement. Buyer shall have the option to terminate the Test Product Delivery Period and stop purchasing Test Product from Seller if Seller has not achieved the Commercial Operation Date by the Guaranteed Commercial Operation Date.

(ii) Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall

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

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

- Delivery shall be for a period of ten (10) Contract Years.
- Delivery shall be for a period of fifteen (15) Contract Years.
- Delivery shall be for a period of twenty (20) Contract Years.
- Non-standard Delivery shall be for a period of ____ 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 other than Test Product to Buyer from the Project (“**Initial Energy Delivery Date**”) in connection with this Agreement and continuing until the end of the twentieth Contract Year unless terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (i) the Commercial Operation Date has occurred; (ii) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; (iii) Seller shall have obtained the requisite CEC Certification and Verification for the Project; and (iv) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing; and (v) Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource to the extent such status is available at such time as the conditions in subsections (i) through (iv) of this Section 3.1(c) are satisfied. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the “**Initial Energy Delivery Date Confirmation Letter**” attached hereto as Appendix II on the Initial Energy Delivery Date.

(d) Delivery Point. The Delivery Point shall be the Interconnection Point. Upon implementation of MRTU or a successor program, the Delivery Point shall be the point designated by the CAISO as the P Node that most closely identifies the initial delivery point, or such successor delivery point that most closely resembles the initial delivery point. To the extent that Seller (at a nominal cost or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or losses (“Congestion Revenue Rights” or “CRRs”), whether due to CRRs or any Locational Marginal Price (“LMP”) adjustments (as defined or required for MRTU under the CAISO Tariff), market adjustments,

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

(e) Contract Quantity and Guaranteed Energy Production. The Contract Quantity during each Contract Year is expected to be at least 350,000 MWh. Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in any period of twenty-four (24) consecutive months during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Energy, as measured in MWh, equal to the product of (i) and (ii), where (i) is the product of two (2) times seventy percent (70%) of the Contract Quantity, and (ii) is the difference between (A) and (B), with the difference divided by (A), where (A) is the number of hours in the applicable Performance Measurement Period and (B) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period, which Guaranteed Energy Production is described by the following formula.

$$\text{Guaranteed Energy Production} = 2 * [xx]\% * [\text{Contract Quantity}]\text{MWh} * \frac{\text{Hours in Performance Measurement Period} - \text{Seller Excuse Hours}}{\text{Hours in Performance Measurement Period}}$$

If Seller delivers less than the Guaranteed Energy Production in any Performance Measurement Period, then within one hundred twenty (120) days after the last day of the last month of such Performance Measurement Period, Buyer shall notify Seller of such failure and Buyer may, at its option, declare an Event of Default. If during such one hundred twenty (120) day period, Buyer opts not to declare an Event of Default with respect to Seller’s failure to meet the Guaranteed Energy Production requirement, then Buyer shall waive its right to declare an Event of Default based on Seller’s failure with respect to the Performance Measurement Period which served as the basis for the default. For sake of certainty, in the event that Buyer waives its right to declare an Event of Default with respect to the Performance Measurement Period which served as the basis for such default, Buyer shall again have the right to declare an Event of Default, subject to the conditions set forth in this subsection (e), if as of the last day of the month following such Performance Measurement Period or any subsequent month, Seller again fails to achieve the Guaranteed Energy Production requirement for such subsequent Performance Measurement Period.

(f) Contract Capacity. The Contract Capacity of the Project shall be 53.4 MW. Throughout the Test Product Delivery Period and the Delivery Term, Seller shall sell and Schedule all Product produced by the Project solely to Buyer and in no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy or Scheduled Energy, that exceeds the Contract Capacity.

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

(h) Interconnection Facilities.

(i) Interconnection Point. The interconnection point shall be the point of interconnection with the CAISO Grid ("Interconnection Point"). A diagram of the Interconnection Point is set forth in Appendix XIII.

(ii) Seller Obligations. As between Buyer and Seller, Seller shall have sole responsibility for and shall, at its sole expense, be obligated to (A) maintain the Interconnection Facilities, including metering facilities; and (B) perform and fund all necessary (1) Transmission Upgrades and (2) Network Upgrades, as defined in the CAISO Tariff, which shall include Delivery Network Upgrades and Reliability Network Upgrades, as such terms are defined in the CAISO Tariff, in order to satisfy Seller's Transmission Upgrade obligation in subpart (B)(1) of this Section 3.1(h)(ii) and to ensure that the full Contract Capacity of the Project is deliverable to the Delivery Point.

(iii) Cooperation and Coordination. Seller shall use commercially reasonable efforts to pursue and actively seek the timely completion and execution of the LGIA, which shall include, without limitation, assisting and cooperating with the Participating TO and CAISO to minimize the time associated with the development, permitting and construction of the Transmission Upgrades required for the Project. Further, Seller shall use commercially reasonable efforts to (A) coordinate with Buyer in connection with the Transmission Upgrades and the development of the LGIA; (B) solicit Buyer's comments on such activities and provide to Buyer copies of all material correspondence related thereto; (C) to the extent reasonably practicable, include Buyer in its negotiation with the CAISO and the Participating TO of its LGIA; (D) grant to Buyer the right to communicate directly with the CAISO regarding the Project; and (E) provide Buyer with written reports of the status of the LGIA and Transmission Upgrades on a monthly basis. The foregoing shall not preclude Seller from executing an LGIA that it reasonably determines allows it to comply with its obligations under this Agreement and applicable law.

(i) Performance Excuses.

(i) Seller Excuses. Seller shall be excused from achieving the Guaranteed Energy Production for the applicable time period during Seller Excuse Hours.

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

(iii) Dispatch Down/Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce delivery amounts as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Dispatch Down Period, provided that for a Dispatch Down Period as described in Section 1.46(b) through (d), such Dispatch Down Period shall be no more than fifty (50) hours during any Contract Year.

(iv) No Excuse. Except for a failure or curtailment resulting from a Force Majeure or during a Dispatch Down Period, the failure of electric transmission service

shall not excuse performance with respect to either Party for the delivery or receipt of Energy to be provided under this Agreement.

(j) Climate Action Registry. Seller shall register the Project with the California Climate Action Registry as may be required by the CPUC pursuant to Decision 06-02-032 and any subsequent order, but in any event, no later than the beginning of the Test Product Delivery Period if Test Product is being sold pursuant to Section 3.1(b)(i), or no later than the Commercial Operation Date if Test Product is not being sold pursuant to Section 3.1(b)(i).

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

(i) No later than the beginning of the Test Product Delivery Period if Test Product is being sold pursuant to Section 3.1(b)(i), or no later than the Commercial Operation Date if Test Product is not being sold pursuant to Section 3.1(b)(i), Seller shall register the Project with WREGIS. During the Delivery Term, Seller shall establish and maintain an account with WREGIS ("Seller's WREGIS Account"). Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

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

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

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 6, Buyer shall make an

invoice payment for a given month in accordance Article 6 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.1(k). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 6.

(v) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Energy generated by the Project 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 Energy generated by the Project 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 Energy generated by the Project in the same calendar month.

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

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

(n) Proof of Site Control. No later than the Execution Date (“**Site Control Deadline**”) Seller shall provide Buyer with documentation, in a form acceptable to Buyer, demonstrating that Seller has Site Control (in the form of a deed, option, purchase contract, or other legal contract). Such documentation shall (i) include evidence that Seller has duly executed all applicable options or elections to secure Site Control for the Term (“Options”) and (ii) obligate Seller to exercise such Options no later than ten (10) Business Days following CPUC Approval of this Agreement. If Seller is unable to provide Buyer with acceptable documentation evidencing Site Control by the Site Control Deadline or Buyer finds such documentation unacceptable, Buyer shall have thirty (30) Business days following the Site Control Deadline to elect, in its sole discretion, to terminate this Agreement. If Buyer elects to

terminate the Agreement pursuant to this subsection (n), and Buyer does not declare an Early Termination Date pursuant to Section 5.1(b)(vi) (Seller Event of Default), Seller shall not have any liability to Buyer, including for a Termination Payment, by reason of such termination.

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.

(i) The Parties acknowledge that Seller may receive greenhouse gas reduction benefits or other emission offsets attributed to the Project's fuel handling ("**Fuel Handling Attributes**"). To the extent that such Fuel Handling Attributes are (A) upstream of the Product generated from the Project and (B) not associated with or tied to the production of Product under this Agreement, Seller shall be entitled to retain or transfer to persons other than Buyer such Fuel Handling Attributes.

(ii) Notwithstanding the foregoing, if a change in Law results in or prompts any reallocation or redistribution of Green Attributes or related credits, or redefines Renewable Energy Credits to include benefits or attributes such as Fuel Handling Attributes, Seller shall provide Buyer with sufficient Green Attributes from the Project to enable Buyer to meet any requirements relating to Green Attributes or Renewable Energy Credits as may be prescribed or issued after the Execution Date and applicable to the Project as a result of said change in Law, and to ensure that there are zero net emissions associated with the production of electricity from the Project for the Term of this Agreement.

3.3 **Resource Adequacy.** During the Test Product Delivery Period and 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 Test Product Delivery Period and the Delivery Term Seller shall, at a minimum, comply with the terms set forth in Appendix X to enable Buyer to use all of the capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements.

3.4 Transmission and Scheduling.

(a) Transmission.

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

charges due to deviations from the “**Schedule**” (as such term is defined in the CAISO Tariff), regardless of the cause thereof, electric transmission losses and congestion to the Delivery Point. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner’s applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement, Meter Service Agreement and PTO Generator Special Facilities Agreements, if applicable, so as to be able to deliver Energy to the CAISO Grid.

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

(b) EIRP Requirements.

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

(ii) Material Changes to EIRP. If either, (a) EIRP is no longer in effect or (b) EIRP is materially changed, then the Parties shall use commercially reasonable efforts to negotiate a mutually acceptable successor arrangement and modify this Agreement, as necessary, to arrive at a mutually agreeable amendment that will provide a scheduling or other arrangement for the delivery of Energy from the Project to Buyer during the Delivery Term. Unless and until such mutually agreeable amendment is executed and effective, each of the Parties’ obligations under this Agreement shall continue in full force and effect, including, but not limited to, the Parties’ obligations under Section 4.6.

(c) Scheduling.

(i) Scheduling Coordinator. Each of Seller and Buyer shall be its own Scheduling Coordinator with respect to this Transaction or designate a qualified third party to fulfill such role. Throughout the Test Product Delivery Period and the Delivery Term, Seller shall designate Inter-SC Trades (“IST”) for delivery of Energy generated from the Project and associated Integrated Forward Market (“IFM”) Load Uplift Obligation credit (as defined or required for MRTU under the CAISO Tariff), up to 100% of the Contract Capacity, solely to Buyer’s SC, based on a final Day-Ahead and/or Hour-Ahead Schedule (“**Scheduled Energy**”). Each Party or each Party’s SC shall conduct all scheduling in full compliance with the applicable CAISO Tariff, protocols and scheduling practices for Energy on a Day-Ahead and/or Hour-Ahead basis, as such terms are defined in the CAISO Tariff. Conduct of deliveries through SC-to-SC trades shall be in compliance with the CAISO Tariff.

(ii) EIRP. Whenever EIRP is applicable, Seller shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Scheduled Energy consistent with EIRP.

(iii) Annual Forecast of Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month’s average-day Scheduled Energy, by hour, for the following calendar year.

(iv) Monthly Forecast of Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term and, if applicable, during the Test Product Delivery Period, Seller shall provide a non-binding forecast of each day’s average Scheduled Energy, by hour, for the following month (“**Monthly Delivery Forecast**”).

(v) Daily Delivery Schedules. During the Delivery Term and, if applicable, during the Test Product Delivery Period, Seller shall provide the Day-Ahead Schedule to Buyer via Buyer’s internet site, as provided in Appendix IX, no later than fourteen (14) hours before the beginning of the “**Preschedule Day**” as defined by the WECC. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (A) Monday – Preschedule Day for Tuesday
- (B) Tuesday – Preschedule Day for Wednesday
- (C) Wednesday – Preschedule Day for Thursday
- (D) Thursday – Preschedule Day for Friday and Saturday
- (E) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title,

“Prescheduling Calendar.” Each Day-Ahead Schedule shall clearly identify, for each hour, Seller’s best estimate of all amounts of Energy to be delivered and sold to Buyer pursuant to this Agreement. Seller shall deliver Energy in accordance with its Day-Ahead Schedule, which shall accurately reflect the expected generation of the Project, subject to the applicable CAISO Tariff, and may not change such schedule past the deadlines provided in this Section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO. Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating a change in Scheduled Energy from the then-current Schedule which is provided to the CAISO, including, whenever EIRP is applicable, under EIRP and scheduling protocols issued by the CAISO. These notices and changes to the Schedules shall be sent to both Buyer’s internet site and Day-Ahead Trading Desk email notification address:

Day-Ahead Trading Desk
Phone: 415-973-6222
Fax: 415-973-0400
Email: daenergy@pge.com

If Seller fails to provide Buyer with a Day-Ahead Schedule as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery schedule provided in the Monthly Delivery Forecast and Seller shall be liable for such delivery based on the Monthly Delivery Forecast.

(vi) Hourly Delivery Schedules. During the Delivery Term and, if applicable, during the Test Product Delivery Period, within fifteen (15) minutes of receipt of an EIRP forecast, if applicable, Seller’s SC will provide Buyer with a copy of such EIRP forecast and the resulting Schedule. Other than as required as part of Seller’s participation in EIRP, in the event that Seller changes its Schedule on the actual date of delivery of Energy for any reason, including a Forced Outage or a scheduling change imposed by Buyer or CAISO, which results in a change to the Project’s deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer’s on-duty Scheduling Coordinator to provide any and all changes to the Day-Ahead Schedule and to provide a revised schedule as soon as possible, but in no event later than (1) hour before Buyer’s Scheduling Coordinator is required to submit Hour-Ahead schedules to the CAISO. With respect to any Forced Outage, Seller shall (a) use commercially reasonable efforts to notify Buyer, orally, of such outage within ten (10) minutes of the occurrence of such outage, (b) provide a written estimate of the expected duration of such outage within one (1) hour after submittal of the initial notification pursuant to clause (a) of this Section, and (c) submit an Outage Notification Form, as provided in Appendix VIII of this Agreement, to Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Unit during or after the end of such outage. These notices and changes to the Schedule shall be sent to both Buyer’s internet site and Hour-Ahead Trading Desk email notification address:

Hour-Ahead Trading Desk
Phone: 415-973-7900
Fax: 415-972-5340
Email: realtime@pge.com

3.5 Standards of Care.

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

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

(c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and CAISO reliability requirements, including Resource Adequacy Requirements and, if applicable, CPUC General Order No.167, “**Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities**”, and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner. Seller shall enter into and comply with the WECC Reliability Management System (Generator) Agreement, or successor agreement, as of the beginning of the Test Product Delivery Period (if applicable), or the Commercial Operation Date if Test Product is not being sold pursuant to Section 3.1(b)(i), and throughout the Delivery Term.

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

3.7 Outage Notification.

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

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a completed

Outage Notification Form in accordance with the provisions set forth in Appendix IX no later than August 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Notwithstanding the submission of the Outage Notification Form described in the previous sentence, Seller shall also submit a completed Outage Notification Form in accordance with the provisions set forth in Appendix IX below no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of January, June through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage Schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request. Unless Buyer is transmitting a CAISO order to Seller once a Planned Outage schedule has been finalized by Buyer and Seller, Buyer may not change Seller's Planned Outage schedule without Seller's approval.

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

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

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

Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

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

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

(h) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7 or 3.8 or Appendix IX, Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, outage notification procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer.

3.8 Operations Logs and Access Rights.

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

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

3.9 New Generation Facility.

Add Section 3.9.

If not checked, this Section 3.9 is inapplicable.

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

(i) Design and construct the Project.

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

(iii) Acquire all permits and other approvals necessary for the construction, operation, and maintenance of the Project.

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

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any changes in the Project and provide to Buyer specifications and design drawings of any such changes.

(vi) Within fifteen (15) days after the close of each month from the first month following the Execution Date until the Commercial Operation Date, provide to Buyer a Monthly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The Monthly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

(vii) Provide Buyer with a copy of written authorization received from the CAISO permitting Seller to deliver Energy from the Project to the CAISO Grid.

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

(i) Notify Seller in writing of the results of the review within thirty (30) days of Buyer's receipt of all specifications for the Project, including a description of any flaws perceived by Buyer in the design.

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

(c) Milestones.

(i) The Parties agree time is of the essence in regards to the Transaction. As such, the Parties also agree certain milestones for the construction of the Project as set forth in Appendix III hereto (“**Milestones**”) must be achieved in a timely fashion or Buyer will suffer damages; provided that, the Milestones shall be subject to adjustment for delay caused by any Developmental Delay or Force Majeure Extension, as defined below. Seller shall provide Buyer with any requested documentation to support the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

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

(iii) “**Guaranteed Project Milestones**” are as follows:

(A) The Construction Start Date shall occur no later than June 30, 2010 (the “**Guaranteed Construction Start Date**”); provided that, the Guaranteed Construction Start Date shall be extended on a day-for-day basis as set forth in subpart (I) or (II) below, and such extensions in subparts (I) and (II) shall be cumulative rather than concurrent, if Seller provides a Developmental Delay Notice or Force Majeure Extension Notice (as applicable) upon the earlier of five (5) Business Days prior to June 30, 2010 or five (5) Business Days following the date on which Seller determines that the Developmental Delay or Force Majeure Extension has occurred:

(I) If a Developmental Delay Notice is provided, the Guaranteed Construction Start Date shall be extended for not more than one hundred fifty (150) days due to delays beyond the reasonable control of Seller with respect to (a) obtaining a Governmental Approval(s) for the Project, (b) the physical interconnection of the Project to the CAISO Grid or completion of the Transmission Upgrades needed in order to interconnect the Project to the CAISO Grid, or (c) the inability to obtain timely delivery of materials, parts and equipment (excluding any fuel supply) (“**Supplier Equipment**”) required for construction of the Unit because the suppliers of such Supplier Equipment failed to meet the delivery deadlines in their written contracts with Seller due to excess worldwide demand for the Supplier Equipment, provided that, Seller demonstrates to the reasonable satisfaction of Buyer that Seller exercised commercially reasonable efforts to prevent or mitigate the effect of such delay in delivery and the delay was not the direct or indirect result of Seller’s negligence, action or inaction (“**Developmental Delay**”); and

(II) If a Force Majeure Extension Notice is provided, the Guaranteed Construction Start Date shall be extended for not more than ninety (90) days (“**Force Majeure Extension**”).

(III) In no event shall any extension of the Guaranteed Construction Start Date under subpart (I) or (II) extend or delay the Guaranteed Construction Start Date by more than one hundred fifty (150) days.

(B) Seller shall have demonstrated Commercial Operation per the terms of Appendix VI no later than June 30, 2011 (the “**Guaranteed Commercial Operation Date**”); provided that, the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis to reflect any extension(s) claimed by Seller pursuant to subsection (iii)(A) above and for Force Majeure up to ninety (90) days.

(iv) If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date or the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (A) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of ninety (90) days (“**Project Cure Period**”); or (B) the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, up to a total of ninety (90) days (“**Construction Cure Period**”). Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone, would be difficult or impossible to predict with certainty, and (II) the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller’s failure to meet the Guaranteed Construction Start Date, only if Seller meets the Guaranteed Commercial Operation Date, as provided further in Section 8.4(c) of this Agreement. For sake of certainty, Buyer shall retain all Daily Delay Damages drawn as a result of Seller’s failure to meet the Guaranteed Commercial Operation Date and the Guaranteed Construction Start Date, if Seller fails to meet the Guaranteed Commercial Operation Date.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price. The Contract Price shall be equal to \$89.26 per MWh during the period beginning on the Initial Energy Delivery Date and continuing through the end of the first Contract Year. Effective as of the first day of the second Contract Year and the first day of each Contract Year through and including the twentieth Contract Year, the Contract Price shall be adjusted by an annual allowance of one percent (1%) each Contract Year as set forth in the table below.

<u>Contract Year</u>	<u>Contract Price (\$/MWh)</u>
1	89.26
2	90.15
3	91.05
4	91.96
5	92.88

6	93.81
7	94.75
8	95.70
9	96.66
10	97.62
11	98.60
12	99.58
13	100.58
14	101.59
15	102.60
16	103.63
17	104.66
18	105.71
19	106.77
20	107.84

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

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

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

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

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

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

“**NERC Holidays**” mean the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “**NERC Holiday**” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “**NERC Holiday**” remains on that Saturday. Notwithstanding anything to the contrary in this Section 4.2, NERC Holidays shall be calculated as “**Shoulder**” hours for all non-”Night” hours and any remaining hours shall be calculated as “**Night**” hours.

4.3 TOD Factors and Monthly TOD Payment.

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

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June – September	2.037	0.9210	0.7000
B. Oct. – Dec.; Jan. & Feb.	1.203	1.049	0.841
C. Mar. – May	1.030	0.855	0.656

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

4.4 Excess Scheduled Energy. In any Contract Year, if Seller delivers Scheduled Energy in excess of 110% of the annual Contract Quantity amount (“**Excess Scheduled Energy**”), the Contract Price for such Energy in excess of such 110% shall be adjusted as follows:

(i) If the total Excess Scheduled Energy is greater than 110% but less than or equal to 120%, the Contract Price for such Excess Scheduled Energy shall be adjusted to be 85% of the applicable Contract Price; and

(ii) If the total Excess Scheduled Energy is greater than 120%, the Contract Price for such Excess Scheduled Energy shall be adjusted to be 75% of the applicable Contract Price.

4.5 Imbalance Energy. Seller shall be responsible for settlement of Imbalance Energy with the CAISO. Seller shall also be responsible for any imbalance penalties or other charges that CAISO may assess in connection with Imbalance Energy. Buyer and Seller recognize that

from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered “Positive Imbalance Energy”; when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the “Negative Imbalance Energy”.

4.6 Treatment of Imbalance Energy When Seller is Not Eligible or Does Not Participate in EIRP. For any CAISO settlement time interval that Seller is not eligible for or does not participate in EIRP as a Participating Intermittent Resource (including, without limitation, if EIRP is no longer in effect or is materially changed and a mutually agreeable amendment has not been executed and has not become effective under Section 3.4(b)(ii)), and there is an imbalance between Scheduled Energy and Delivered Energy, the following adjustments shall be made:

(a) Imbalance Price. For each CAISO settlement time interval in any month in which there is Positive Imbalance Energy, the Imbalance Price shall be the 10-Minute Settlement Interval Average Price as published by the CAISO with respect to positive uninstructed imbalance energy charges for the applicable CAISO settlement time interval and zone. For each CAISO settlement time interval in any month in which there is Negative Imbalance Energy, the Imbalance Price shall be the 10-Minute Settlement Interval Average Price as published by the CAISO with respect to negative uninstructed imbalance energy charges for the applicable CAISO settlement time interval and zone.

(b) True Up Adjustment for Positive Imbalance Energy (Over Deliveries). For each CAISO settlement time interval in which there is Positive Imbalance Energy and the Imbalance Price is higher than the product of the Contract Price and the applicable TOD Factor, Buyer shall deduct from the Monthly TOD Payment to Seller an amount equal to the product of (i) the quantity of Positive Imbalance Energy and (ii) the difference between (A) the Imbalance Price and (B) the product of the Contract Price and the applicable TOD Factor.

$$\begin{aligned} \text{True-Up Adjustment for Positive Imbalance Energy}_{\text{month}} = & \\ \sum_{\text{hour}=1}^n & \left(\text{Imbalance Price}_{10\text{-Minutes}} - (\text{Contract Price} * \text{TOD Factor}) \right) \\ & * \text{Positive Imbalance Energy}_{\text{hour}} \\ \text{where } \text{Imbalance Price}_{10\text{-Minutes}} & > (\text{Contract Price} * \text{TOD Factor}) \end{aligned}$$

(c) True Up Adjustment for Negative Imbalance Energy (Under Deliveries). For each CAISO Settlement time interval in which there is Negative Imbalance Energy and the Imbalance Price is lower than the product of the Contract Price and the applicable TOD Factor, Buyer shall deduct from Monthly TOD Payment to Seller an amount equal to the absolute value of the product of (i) the quantity of the Negative Imbalance Energy and (ii) the difference between (A) the Imbalance Price and (B) the product of the Contract Price and the applicable TOD Factor.

$$\begin{aligned} \text{True-Up Adjustment for Negative Imbalance Energy}_{\text{month}} = & \\ \sum_{\text{hour}=1}^n & \left((\text{Contract Price} * \text{TOD Factor}) - \text{Imbalance Price}_{10\text{-Minutes}} \right) \\ & * \text{Negative Imbalance Energy}_{\text{hour}} \\ \text{where } (\text{Contract Price} * \text{TOD Factor}) & > \text{Imbalance Price}_{10\text{-Minutes}} \end{aligned}$$

4.7 Payment and Imbalance Energy Procedures.

(a) Records for Payments. On or about the tenth (10th) day of each month, beginning with the second month of the first Contract Year and continuing every month thereafter, including the first month following the end of the Delivery Term, Seller shall provide to Buyer complete records for the applicable settlement interval of Delivered Energy and Scheduled Energy for the preceding month, including, pursuant to Section 6.1 of this Agreement an invoice for all Scheduled Energy delivered to Buyer. For any CAISO settlement time interval where Seller is unable to participate in EIRP as a Participating Intermittent Resource, Seller and Buyer agree to use the Imbalances Energy prices that the CAISO has posted on or about the fifth (5th) day of the month, following the delivery month and to settle the Imbalance Energy calculations pursuant to Section 4.7(c) below, if such day is not a Business Day, then such prices posted on the next following Business Day. Buyer shall receive all Green Attributes for all Delivered Energy received by Buyer during the Delivery Term and Test Product delivered during the Test Product Delivery Period, regardless of whether any or all of such Product was sold to Buyer directly pursuant to an SC-to-SC trade.

(b) Billing. Monthly billing for Imbalance Energy, as defined above, shall be accomplished using the Imbalance Price and formulae described in this Article Four. Beginning in the first month in which the Imbalance Price becomes available for the applicable month, there shall be a true-up adjustment for the Imbalance Price payable for the Imbalance Energy, as provided herein, in the monthly invoice, provided pursuant to Section 6.1 of this Agreement.

(c) Imbalance Energy Adjustments. Because the Parties recognize that the Imbalance Prices retrieved from the CAISO on or about the fifth (5th) day of each month, as provided in Sections 4.5 and 4.6 above, may not be the final posted price, either Party shall have the right to request a true-up on the Imbalance Energy calculations once the CAISO has posted the final price for that month, which shall not be more than ninety (90) days from the date on which the initial Imbalance Price was retrieved. Any such adjustment shall be netted against the next following invoice.

4.8 CAISO Charges. Seller shall assume all liability and pay for all congestion charges up to the Delivery Point. Seller shall also assume all liability and reimburse Buyer for any and all charges, including CAISO Penalties, as defined below, incurred by Buyer as a result of Seller's failure to abide by the CAISO Tariff and all applicable protocols. Seller shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller's responsibilities for payment for all imbalance and congestion charges and CAISO Penalties, as defined below, under this Agreement. As used herein, "CAISO Penalties" means any fees, liabilities, assessments, or similar charges assessed by the CAISO.

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

Transmission Upgrades as contemplated in Section 3.1(h)(ii) or Fuel Handling Attributes as provided in Section 3.2(i).

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

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

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

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

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.2(b), becomes false or misleading in any material respect during the Delivery Term; provided, however, that, if a change in Law occurs after the Execution Date of this Agreement that causes the representation and warranty made by Seller in Section 10.2(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b) shall not be an Event of Default provided that Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading;

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

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

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

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

(ii) an outage resulting from an event of Force Majeure that prevents the Project from delivering at least sixty percent (60%) of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months, provided that, such twelve-month

period may be extended on a day-for-day basis for no more than one hundred eighty (180) days in Buyer's sole discretion (not to be unreasonably withheld) if, commencing no later than five (5) days after the conclusion of such Force Majeure event, Seller undertakes and continues to undertake commercially reasonable efforts to repair or restore the Project, as necessary, to deliver the Contract Quantity in accordance with this Agreement and Seller demonstrates with documentary evidence such commercially reasonable efforts to the reasonable satisfaction of Buyer;

(iii) failure by Seller to meet either of the Guaranteed Project Milestones, set forth in Section 3.9(c)(iii), in each case after the applicable cure period has expired;

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

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

(vi) Seller willfully delays Site Control, withholds any relevant documentation or information relating to Site Control, or fails to exercise commercially reasonable efforts to obtain Site Control by the Site Control Deadline; or

(vii) Seller provides a Development Failure Notice to Buyer upon the earlier of five (5) Business Days prior to June 30, 2010 or five (5) Business Days following the date on which Seller determines that a Development Failure has occurred, provided that, if the Guaranteed Construction Start Date has been extended under Section 3.9(c)(iii)(A)(I) because of a Developmental Delay then Seller's right to claim a Development Failure shall be waived in its entirety.

5.2 Declaration of Early Termination Date. Subject to Section 5.7(a) below, if an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**"), (b) to accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term (or Test Product Delivery Period, if applicable) effective as of the Early Termination Date and collect liquidated damages ("**Termination Payment**"), which shall be calculated in accordance with Section 5.3 below; (ii) withhold any payments due to the Defaulting Party under this Agreement; (c) suspend performance; and (d) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. The Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the "**Settlement Amount**" is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

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

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

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

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

5.7 Liquidated Damages for Development Failure and Buyer's Rights.

(a) Default Payment. Upon an Early Termination Date declared by Buyer because of an Event of Default occurring as a result of a Development Failure, in which case the Early Termination Date shall be five (5) Business Days following Buyer's receipt of such Notice, (i) Seller, as the Defaulting party, shall pay to Buyer, as the Non-Defaulting Party, a default payment equal to the full amount of the Project Development Security posted by Seller pursuant to Section 8.4(a)(i) or 8.4(a)(ii), as the case may be, as either such amount may have

been reduced by any amount previously drawn from the Project Development Security as Daily Delay Damages or otherwise (“**Default Payment**”); and (ii) the Right of First Refusal shall apply, as specified in Section 5.7(b). In order to satisfy all or a portion of any such Default payment, Buyer, in its sole discretion, shall be entitled to draw on the cash, Letter of Credit or other security posted pursuant to Article Eight.

(b) Development Failure and Buyer’s Rights.

(i) If this Section 5.7(b) applies, then neither Seller, its successors and assigns, nor its Affiliates shall, for a period of thirty-six (36) months following the Early Termination Date, enter into a binding obligation to sell or otherwise transfer any Products from the Project at the Site, as more particularly described as the “**Site**” in Appendix IV (which includes the coordinates and a map of the Site), or any portion of the Site, to any third party, unless Seller first offers, in writing, to sell such Products from the Project to Buyer (“**Offer**”).

(ii) If Buyer elects to negotiate or accept the Offer made by Seller, Buyer shall give Notice to Seller within thirty (30) Business Days of receipt of the Offer (“**Buyer’s Notice**”) and the Parties shall have not more than ninety (90) days from the date of Buyer’s Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, in either case subject to CPUC Approval, unless agreed to otherwise by the Parties.

(iii) If Buyer does not provide Buyer’s Notice or if Buyer and Seller are unable to enter into a power purchase agreement or amend this Agreement pursuant to subpart (ii) above, Seller may enter into an agreement to sell the Products from the Project to a third party on terms and conditions no more favorable to the third party than those offered to Buyer. Prior to the execution of any such agreement with any third party, Seller shall deliver a certificate of an authorized officer of Seller summarizing the materials terms and conditions of such agreement, which certificate shall be in substantially the form attached hereto as Appendix XII. If Buyer, in its sole discretion, determines that Seller has offered Products from the Project to a third party on terms and conditions more favorable to the third party than those offered to Buyer, Buyer shall have ten (10) Business Days from Buyer’s receipt of the certificate to (A) notify Seller that it objects to Seller’s agreement with the third party and (B) offer to purchase the Products from the Project from Seller on equivalent terms as those offered to or by the third party. If Buyer does not notify Seller, as permitted in the preceding sentence, then Seller may enter into the agreement with the third party. If Buyer notifies Seller of its objection and offer with respect to the third party agreement, then the Parties shall have not more than ninety (90) days from the date of Seller’s receipt of such notice to Buyer to negotiate and enter into a power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, in either case subject to CPUC Approval, unless agreed to otherwise by both Parties.

(c) Liquidated Damages; Survival. The Default Payment and the rights and obligations set forth in Section 5.7(a) and (b) shall constitute liquidated damages and Buyer’s sole remedies for any Development Failure. Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to a Development Failure would be difficult or impossible to predict with certainty, and (II) the Default Payment and the rights and obligations set forth in Section 5.7(a) and (b) are an appropriate approximation of such damages. Upon payment of the

Default Payment and Buyer's receipt of such payment, this Agreement shall terminate and, other than the rights and obligations set forth in Section 5.7(a) and (b) and this Section 5.7(c) (which shall survive termination of this Agreement until the Parties' obligations under such Sections have been satisfied), and indemnities arising out of claims by third parties pursuant to Section 10.5 that do not arise from a Development Failure (which shall survive termination of this Agreement for a period of twenty-four (24) months), both Parties shall be released of any further liabilities and obligations under this Agreement. In respect of an Early Termination Date arising from something other than a Development Failure, Buyer's Losses shall not be limited to the amount of the Performance Assurance and, to such extent, this Section 5.7 shall not be applicable.

ARTICLE SIX: PAYMENT

6.1 **Billing and Payment; Remedies.** On or about the tenth (10th) day of each month beginning with the second month following the earlier of either Seller's first delivery of any Test Product to Buyer pursuant to Section 3.1(b)(i) or of the first Contract Year, and every month thereafter and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including read-only access to invoices or settlement data from the CAISO market settlement website, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Sections 4.3 and 4.4, as adjusted for Imbalance Energy pursuant to Section 4.5 (which may include preceding months), and, if applicable, Section 4.6. Notwithstanding the prior sentence, to the extent the determination of amounts due under this Agreement on based on invoices rendered by the CAISO, the Parties acknowledge and agree that the amounts set forth in the monthly invoices may relate to prior calendar months in accordance with CAISO settlement cycles. Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 **Disputes and Adjustments of Invoices.** In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify

the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the date on which the final CAISO invoice is rendered, or any specific adjustment to the invoice is made, for the month during which performance under the Transaction occurred; provided, however, such waiver shall not be applicable if a Party was misled by the other Party or lacked the information or ability to discover or otherwise identify the inaccuracy in an invoice prior to expiration of the twelve (12) month limitation. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

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

INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 **Buyer Financial Information.** If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com 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 to Buyer (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of the Seller's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

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

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

8.4 Performance Assurance.

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

(i) Project Development Security pursuant to this subsection (a)(i) in the amount of \$160,200 and in the form of a Letter of Credit from the Execution Date of this Agreement until Seller posts Project Development Security pursuant to subsection (a)(ii) below, with Buyer;

(ii) Project Development Security pursuant to this subsection (a)(ii) in the amount of \$2,136,000 and in the form of a Letter of Credit from a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Article Eleven are either satisfied or waived until Seller posts Delivery Term Security pursuant to subsection (a)(iii) below, with Buyer; and

(iii) Delivery Term Security pursuant to this subsection (a)(iii) in the amount of \$24,000,000 and in the form of cash or a Letter of Credit from the Commercial Operation Date until the end of the Term.

Any such Performance Assurance shall not be deemed a limitation of damages, except with respect to the Default Payment set forth in Section 5.7(a).

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

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages associated with delays in the Commercial Operation Date or in respect of the period prior to the Commercial Operation Date are due and owing to Buyer under this Agreement, then (i) Seller shall no longer be required to maintain the Project Development Security and (ii) Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). If Seller has met the Guaranteed Commercial Operation Date, then the Project Development Security returned shall include amounts previously deducted as Daily Delay Damages due to a delayed Construction Start Date. Return of Seller's project Development Security (as provided in this Section 8.4(c)) shall be made within ten (10) Business Days of Seller's provision of the Delivery Term Security; provided

however, that with Buyer's consent, Seller may elect to apply the Project Development Security, or portion thereof, that is eligible to be returned toward the Delivery Term Security, if any, provided pursuant to this Section 8.4.

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

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

8.5 Letter of Credit.

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

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

ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any governmental authority ("**Governmental Charges**") on or with respect to the Product or the Transaction arising prior to and at the Delivery Point, including, but not limited to, ad valorem

taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party's exemption is lost or reduced, each Party's responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section 9.2.

ARTICLE TEN: MISCELLANEOUS

10.1 No Fault Termination: Production Tax Credit; Energy Tax Credit; MACRS. If the Production Tax Credit, Energy Tax Credit and/or MACRS is specified below as being "Applicable," then the designated provision in this Section 10.1 shall apply.

(a) For Production Tax Credit:

- Not Applicable
- Applicable

If federal legislation providing for an extension of the Production Tax Credit for a period of at least ten (10) years in the amount of at least \$10 per MWh for a qualified open loop biomass facility ("PTC Legislation") placed in service before June 30, 2011 is not enacted by April 30, 2010, then all Milestones, including, without limitation, all Guaranteed Milestones, under this Agreement shall be extended by one (1) full calendar year ("PTC Deadline"); provided that, the PTC Deadline shall be extended on a day-for-day basis to reflect any extension(s) claimed by Seller pursuant to Section 3.9(c)(iii)(A) or 3.9(c)(iii)(B).

(b) For Energy Tax Credit:

- Not Applicable
- Applicable

If federal legislation providing for an extension of the Energy Tax Credit in the amount of at least 30 percent (30%) of the basis of a qualified solar facility ("ETC Legislation") placed in service before June 30, 2011 is not enacted by April 30, 2010, then all Milestones, including, without limitation, all Guaranteed Milestones, under this Agreement shall be extended by one (1) full calendar year ("ETC Deadline"); provided that, the ETC Deadline

shall be extended on a day-for-day basis to reflect any extension(s) claimed by Seller pursuant to Section 3.9(c)(iii)(A) or 3.9(c)(iii)(B).

(c) For MACRS:

Not Applicable

Applicable

If, prior to April 30, 2010, the method for calculating depreciation under the five (5) year MACRS for qualified solar and open loop biomass facilities placed in service before June 30, 2011 is modified such that the modified method is less beneficial by more than five percent (5%) when compared to the method in effect on the Execution Date (“**Modified MACRS Legislation**”) and such Modified MACRS Legislation is applicable to the Project, then all Milestones, including, without limitation, all Guaranteed Milestones, under this Agreement shall be extended by one (1) full calendar year (“**MACRS Deadline**”); provided that, the MACRS Deadline shall be extended on a day-for-day basis to reflect any extension(s) claimed by Seller pursuant to Section 3.9(c)(iii)(A) or 3.9(c)(iii)(B).

(d) Seller’s Mitigation Option.

(i) Mitigation Offer. At least six (6) months before April 30, 2011 (as shall be extended on a day-for-day basis to reflect any extensions claimed by Seller pursuant to Section 3.9(c)(iii)(A) or 3.9(c)(iii)(B)), Seller shall propose changes to the Agreement to mitigate the impact on Seller resulting from the unavailability of the ETC Legislation or PTC Legislation, or from the application of Modified MACRS Legislation to the Project, including, without limitation, proposed changes to the Contract Price and Contract Capacity (“**Mitigation Offer**”) by sending Buyer Notice of the Mitigation Offer (“**Mitigation Notice**”). In addition to the above, Seller’s Mitigation Offer must include alternative proposed changes to the Agreement (I) in the event that, after such time as the Mitigation Offer is accepted, the ETC Legislation or PTC Legislation is reinstated or the Modified MACRS Legislation is no longer applicable, and (II) in the event that ETC Legislation, PTC Legislation or MACRS is made available on a retroactive basis and Seller, by virtue of its interest in the Project, is eligible to claim such tax credit or benefit on a retroactive basis.

(ii) Right of First Refusal.

(A) Mitigation Option. Within sixty (60) days after its receipt of a Mitigation Notice (“**Mitigation Exercise Period**”), Buyer, in its sole discretion, shall have the right (“**Mitigation Option**”), but not the obligation, to accept Seller’s Mitigation Offer in its entirety by sending a notice (“**Offer Acceptance Notice**”) to Seller. Within sixty (60) days after Seller’s receipt of an Offer Acceptance Notice, the Parties shall amend this Agreement and, if necessary, other documents related to the Transaction to give effect, subject to Mitigation Option Approval, as defined below, to the changes set forth in the Mitigation Notice.

(B) Mitigation Option Approval. If the Parties complete amendments to this Agreement (“**Amendments**”) and other necessary documents as described in Section 10.1(d)(ii)(A) above, Buyer shall within thirty (30) days of the date the Parties execute

the Amendments submit to the CPUC an advice filing or other appropriate application (“**CPUC Filing**”) seeking: (1) a CPUC Approval of the Buyer’s exercise of the Mitigation Option and the Amendments, and (2) recovery in rates of all payments to be made by Buyer under this Agreement, as modified, subject to the Buyer’s administration of the Agreement (“**Mitigation Option Approval**”). The effectiveness of the Amendments shall be subject to Mitigation Option Approval. If such Mitigation Option Approval does not occur on or prior to one hundred eighty (180) days after the CPUC Filing, the Mitigation Option shall be deemed as having terminated without having been exercised and the provisions of Section 10.1(d)(ii)(C) shall apply.

(C) **Seller’s Termination Right.** After such date as the Seller has issued a Mitigation Notice and subject to Section 10.1(d)(iii), Seller may terminate the Agreement only upon the occurrence of any of the following events: (I) Buyer provides Notice to Seller stating Buyer’s decision not to exercise the Mitigation Option, (II) the Mitigation Exercise Period expires without the Mitigation Option being exercised, (III) Buyer fails to seek Mitigation Option Approval within thirty (30) days of the date on which the Parties execute the Amendments, or (IV) Buyer fails to obtain Mitigation Option Approval within one hundred eighty (180) days after Buyer’s submittal of the CPUC Filing. Seller may terminate the Agreement pursuant to this Section 10.1(d)(ii)(C) by sending Notice of termination, and, such termination shall be effective five (5) days from the date on which Seller delivers such Notice. Neither Party shall have any obligation or liability to the other, including for a Termination Payment, by reason of such termination and, upon such termination, any Project Development Security shall thereupon be released by Buyer. Both Parties shall continue to perform under this Agreement until the effectiveness of any such termination by Seller. Seller’s right to terminate pursuant to clause (I), (II), (III) or (IV), above, expires ninety (90) days after the date on which the condition set forth in the clause upon which Seller is relying is met.

(iii) **Reinstatement.** If after April 30, 2011 (as shall be extended on a day-for-day basis to reflect any extensions claimed by Seller pursuant to Section 3.9(c)(iii)(A) or 3.9(c)(iii)(B)) (“**Applicable Tax Deadline**”), whichever of the ETC Legislation or PTC Legislation was not extended or enacted prior to the Applicable Tax Deadline is reinstated, or in the event that Modified MACRS Legislation is no longer applicable to the Project (“**Reinstatement Date**”), and if as of the Reinstatement Date the Agreement is still in effect and Buyer has not delivered an Offer Acceptance Notice, then Seller shall not be permitted to terminate this Agreement, and both Parties shall continue to perform under this Agreement, without amendment, provided that each of the Guaranteed Project Milestones shall be further extended by the number of days between the Applicable Tax Deadline and the Reinstatement Date. If the Reinstatement Date occurs while this Agreement is still in effect but after the date an Offer Acceptance Notice is delivered by Buyer, then the Amendments shall incorporate the terms of the Mitigation Offer dealing with such a circumstance. If the ETC Legislation and/or PTC Legislation was not extended or enacted prior to the Applicable Tax Deadline, and/or Modified MACRS Legislation is applicable to the Project prior to the Applicable Tax Deadline, but is extended or enacted (in the case of ETC Legislation or PTC Legislation) or is no longer applicable to the Project (in the case of Modified MACRS Legislation) after the Applicable Tax Deadline, then the Reinstatement Date shall be the date on which the last of which is extended or enacted (in the case of ETC Legislation or PTC Legislation) or is no longer applicable to the Project (in the case of Modified MACRS Legislation). In all cases, the Amendments shall incorporate terms providing Buyer with a refund or offset right if ETC Legislation, PTC

Legislation or MACRS is made available on a retroactive basis and Seller, by virtue of its interest in the Project, is eligible to claim such tax credit or benefit on a retroactive basis.

(e) Exclusivity and Most Favored Nation. In the event this Agreement is terminated by Seller pursuant to the terms of Section 10.1(d), this Section 10.1(e) shall survive such termination until the Parties' obligations under this Section have been satisfied. If this Section 10.1(e) applies, then neither Seller, its successors and assigns, nor its Affiliates shall, for a period of thirty-six (36) months following the termination date ("Exclusivity Period") enter into a binding obligation or agreement to sell or otherwise transfer any Products from the Project to any third party on terms and conditions that are more favorable to the third party than those offered to Buyer. If, during the Exclusivity Period, Seller intends to enter into an agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller summarizing the material terms and conditions of such agreement, which certificate shall be in substantially the form attached as Appendix XII. If Buyer, in its sole discretion, determines that Seller has offered Products from the Project to a third party on terms and conditions more favorable to the third party than those offered to Buyer, Buyer shall have ten (10) Business Days from Buyer's receipt of the certificate to (A) notify Seller that it objects to Seller's agreement with the third party and (B) offer to purchase the Products from the Project from Seller on equivalent terms as those offered to or by the third party. If Buyer does not notify Seller, as permitted in the preceding sentence, then Seller may enter into the agreement with the third party. If Buyer notifies Seller of its objection and offer with respect to the third party agreement, then the Parties shall have not more than ninety (90) days from the date of Seller's receipt of such notice to negotiate and enter into a power purchase agreement, subject to CPUC Approval, unless agreed to otherwise by both Parties.

10.2 Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Test Product Delivery Period and the Delivery Term:

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

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

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

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

(b) Seller Covenants.

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

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

(c) Buyer Covenants. The Parties shall coordinate their good faith efforts with respect to seeking CPUC Approval of this Agreement, including responses to any data requests to Buyer from the CPUC regarding this Agreement. Buyer shall file this Agreement for CPUC Approval within thirty (30) days after the Execution Date.

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

10.5 Indemnities.

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

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney’s fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point, or Buyer’s actions or inactions with respect to this Agreement, including, without limitation, any loss, Claim, action or suit, for or on account of injury, bodily or otherwise, to or

death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others resulting therefrom, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its agents, employees, directors or officers.

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

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

10.7 Confidentiality.

Confidentiality Applicable

If not checked, this Section 10.7 is inapplicable.

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

Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party's employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 10.8 of this Agreement; (v) in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("**Disclosing Party**"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC. In connection with requests made pursuant to clause (v) of this Section 10.7 ("**Disclosure Order**") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for

monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

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

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

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

(a) Workers' Compensation and Employers' Liability.

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

(ii) Employers' Liability 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 (A) \$10,000,000 commencing on the Construction Start Date and continuing until the Initial Energy Delivery Date and (B) \$4,000,000 commencing on the Initial Energy Delivery Date and continuing through the conclusion of the Delivery Term each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an

umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) Coverage shall:

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

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

(C) include a severability of interest clause.

(c) Business Auto.

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

(ii) The limit shall not be less than \$2,000,000 each accident for bodily injury and property damage.

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

(d) Aircraft Liability.

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

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

(iii) Coverage shall:

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

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

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

(e) Seller's Pollution Liability.

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

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

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

(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 the Seller during the course of Work, at the Site, offsite or while in transit to the Site.

(ii) Coverage shall be written to cover the full replacement cost of the property. Limits and deductibles shall be approved by PG&E.

(iii) PG&E shall be named as loss payee.

(g) Additional Insurance Provisions.

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

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

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

Pacific Gas and Electric Company
Insurance Department—Suite 2400
One Market, Spear Tower

San Francisco, CA 94105

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

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

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

(h) Form And Content.

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

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

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

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

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

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

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

10.12 Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state

of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

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

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

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

ARTICLE ELEVEN: CONDITIONS PRECEDENT

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

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

(b) CPUC Approval has been obtained; and

(c) Buyer receives a final and non-appealable order of the CPUC that finds that Buyer's entry into this Agreement is reasonable and that payments to be made by Buyer hereunder are recoverable in rates (such occurrences in subsections (a) through (c) shall be referred to collectively as "**Conditions Precedent**").

11.2 Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied or waived in writing by both Parties on or before two hundred forty (240) days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment, by reason of such termination.

ARTICLE TWELVE: DISPUTE RESOLUTION

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

12.2 Management Negotiations.

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

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

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

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

12.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the AAA. As the first step, the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by Arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("**Arbitration**"). The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the AAA a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

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

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

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

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

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

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

ARTICLE THIRTEEN: NOTICES

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

SIGNATURES

Agreement Execution

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

**SAN JOAQUIN SOLAR 2 LLC, a Delaware
limited liability company**

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

Signature: 

Signature:  CAN

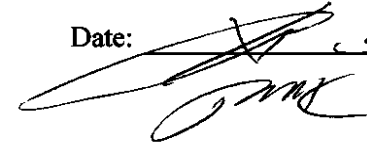
Name: Ricardo Abecassis

Name: Roy M. Kuga

Title: COMPANY OFFICER

Title: Vice President - Energy Supply

Date: 05/02/2008

Date: 5/16/08


APPENDIX I

FORM OF LETTER OF CREDIT

ISSUING BANK LETTERHEAD ADDRESS

Date: _____

Irrevocable Standby Letter of Credit Number: _____

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

Applicant: _____
[insert Applicant's address] _____

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

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

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

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

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

AND

2. Beneficiary’s signed statement certifying:

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

OR

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

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

Special Conditions:

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

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

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

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

By: _____
Authorized Signature

Name: _____

Title: _____

APPENDIX II

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“**Agreement**”) by and between Pacific Gas and Electric Company (“**Buyer**”) and San Joaquin Solar 2 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**] [**Qualifying Facility**]. Additionally Seller provides the following FERC Tariff information for reference purposes only:

Tariff:

Dated:

Docket Number:

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

SAN JOAQUIN SOLAR 2 LLC

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX III

MILESTONES SCHEDULE

Identify Milestone	Date for Completion
Development Financing	May 2008
Site Secured	May 2008
Interconnection Application Complete	April 2008
Application for Certification to CEC deemed Data Adequate	November 2008
CEC Certification Received	September 2009
City and/or County Approvals	September 2009
Air Board Approvals	September 2009
Other State Agencies Approvals	September 2009
Final Design Completed	September 2009
Construction Financing	September 2009
Solar Field Components Ordered	December 2008
Steam Turbines Ordered	December 2008
Execution of EPC Contract	December 2008
Issuance of Full Notice to Proceed	December 2009
Guaranteed Construction Start Date	June 30, 2010
Solar Field Components Delivered to Site	March 2010
Steam Turbines Delivered to Site	May 2010
Electrical Interconnection Complete	June 2010
Guaranteed Commercial Operation Date	June 30, 2011

APPENDIX IV

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

FACILITY DESCRIPTION

Facility name: San Joaquin Solar 2 Project

Facility Site name: William J. Mouren Farm – Section 3

Facility physical address: Jayne Avenue

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

One (1) of two (2)

Technology Type: Solar Thermal Hybrid

Substation: Gates

The term “Site” as defined in the Agreement means the parcel upon which the facility is located, as described below.

The nameplate capacity of the facility is 53.4 MW.

The Unit utilized as generation assets as part of the facility is described below.

San Joaquin 1 and San Joaquin 2 Solar Thermal Hybrid Projects – Brief Project Description

The San Joaquin 1 and San Joaquin 2 Solar Thermal Hybrid Projects (“Projects”) will be individual neighboring 53.4 MW facilities each providing power to PG&E under separate PPAs and each owned by separate LLCs.

The designs of the two Projects will be identical. Each will apply the Solar Electric Generating System (SEGS) technology that was originally developed by LUZ International in the 1980s, complemented by design improvements and lessons learned from the construction, operations and maintenance of those facilities and by enhancements to the systems, components and materials over the last decade. Biofuel will be integrated with the operation of the solar field to extend production of the Projects to non-solar and shoulder solar radiation periods. Figure 1 shows an aerial view of the SEGS facilities currently in operation in the Mojave Desert. First operation of these facilities started in the early 1980s and currently there are over 350 MW of operating SEGS units.

The sites for the Projects will be on the northern perimeter of the San Joaquin Valley farm district on a 640-acre parcel located just east of Coalinga, California, about 4 miles from Interstate 5 on Jayne Avenue. Figure 2 provides an aerial view of the sites that were evaluated for the Projects and their relative proximity to the Gates Substation. The selected sites were preferred due to their convenient access relative to the Gates Substation. The Gates Substation is a major interconnection point with PG&E and is

located about 5 miles to the east of the sites, with capability to accept transmission interconnection from the Projects at 230 kV. The application for transmission interconnection has been submitted to the California Independent System Operator.

The Project Site currently is active farm land. Water rights will come from well water associated with the Site, with additional potential water sources, including treated tertiary waste water from the adjacent state mental hospital and from a planned water treatment facility owned by the City of Coalinga.

Figure 3 provides a schematic overview of the solar hybrid system. Each of the San Joaquin 1 and San Joaquin 2 Projects will be a hybrid design, sized for a nominal 53.4 MW of solar generation, complemented by 40 MW of biofuel-capable production. The biofuel production will be subordinated to production from the solar field, supplementing solar production shoulder hours and replacing solar production at night, such that the production from the Project will not typically exceed 53.4 MW of combined output on solar power and biofuel, and will be limited to 40 MW when operating on biofuel only. Clean renewable energy will be produced from heat derived from the collection of solar radiation and the combustion of biofuel, and employed to power a conventional steam turbine cycle.

The commercial on-line date for the Project is targeted to be March 2011, subject to receipt of permits and scheduling of deliverables of key components.

Solar Field Overview

Figure 4 provides a schematic of the layout of the solar field, illustrating the looped arrangement of the parabolic mirrors. The SEGS system uses sunlight as its primary source to generate power. An array of parabolic mirrored glass panels concentrates the sun's energy into heat collection elements, positioned at the focal point of parabolic collector panels. Principals Bethel Solar Partners LLC (BSP) and their employees will provide critical strategic support for San Joaquin Solar. BSP has a long history of experience with construction, operation and maintenance of hybrid solar thermal applications based on the operating experience gained at SEGS I – IX dating back to the mid 1980's.

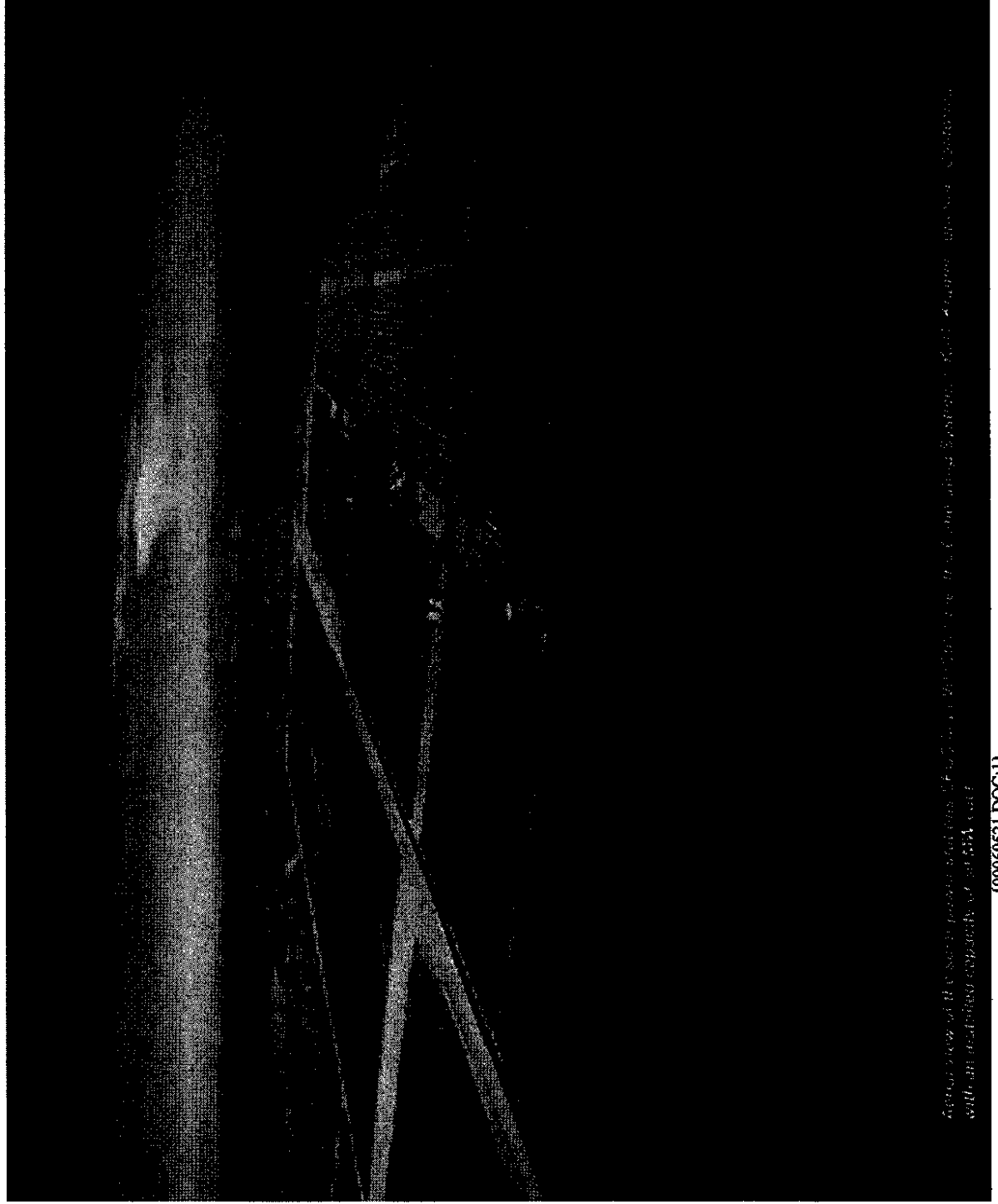
Biomass Facilities Overview

Figure 5 provides an artist's rendition of the biomass facility and power block. Complementing the excellent solar conditions available to the Projects is an abundant source of biofuel in the San Joaquin Valley. The SEGS technology provides a unique opportunity for hybrid generation because the thermal-based steam generating system can be fuelled by solar energy or by heating the hot fluid with a biofuel fired heater. Biofuel firing enhances the operating factor and economic performance of the Projects by supplementing solar based energy production with clean renewable biofuel based energy, while converting a problematic waste product in the Imperial Valley to a clean energy source. Substantial emissions offsets are expected from the Projects as summarized below.

San Joaquin 1 and San Joaquin 2 Solar Hybrid Project – Facility Operating Parameters

Parameter	Value	Comments
Net name-plate generating capacity	53.4 MW	On solar field alone or combined operation of solar field and biofuel
Maximum net capacity on biofuel only	~40 MW	
Maximum net capacity on solar only	~53.4 MW	Only during peak solar hours, typically in the summer
Land area of solar field	~300 acres	
Number of Collector Loops	~90	
Design Approach	BACT	
Annual consumption of biofuel	~200,000 tpy / project	Est. biofuel 6250 Btu / lb HHV
Annual displacement of VOCs	~30,000 - 60,000 tpy / project ~60,000 - 120,000 tpy / total	Est. biofuel 22% carbon as received, 50% half life to CO, CH4 decomposition
Annual offset of fossil CO2 emissions represented by combined 106.8 MW San Joaquin 1 and San Joaquin 2 solar capacity and biofuel generation	~370,000,000 lb / yr or ~200,000 tons CO2 / year	

Figure 1 - Aerial View of Operating SEGs Facilities in the Mojave Desert



Approved for release pursuant to E.O. 13526, which is hereby approved in full. Approved by the Director, Information Management and Security, Department of Energy.

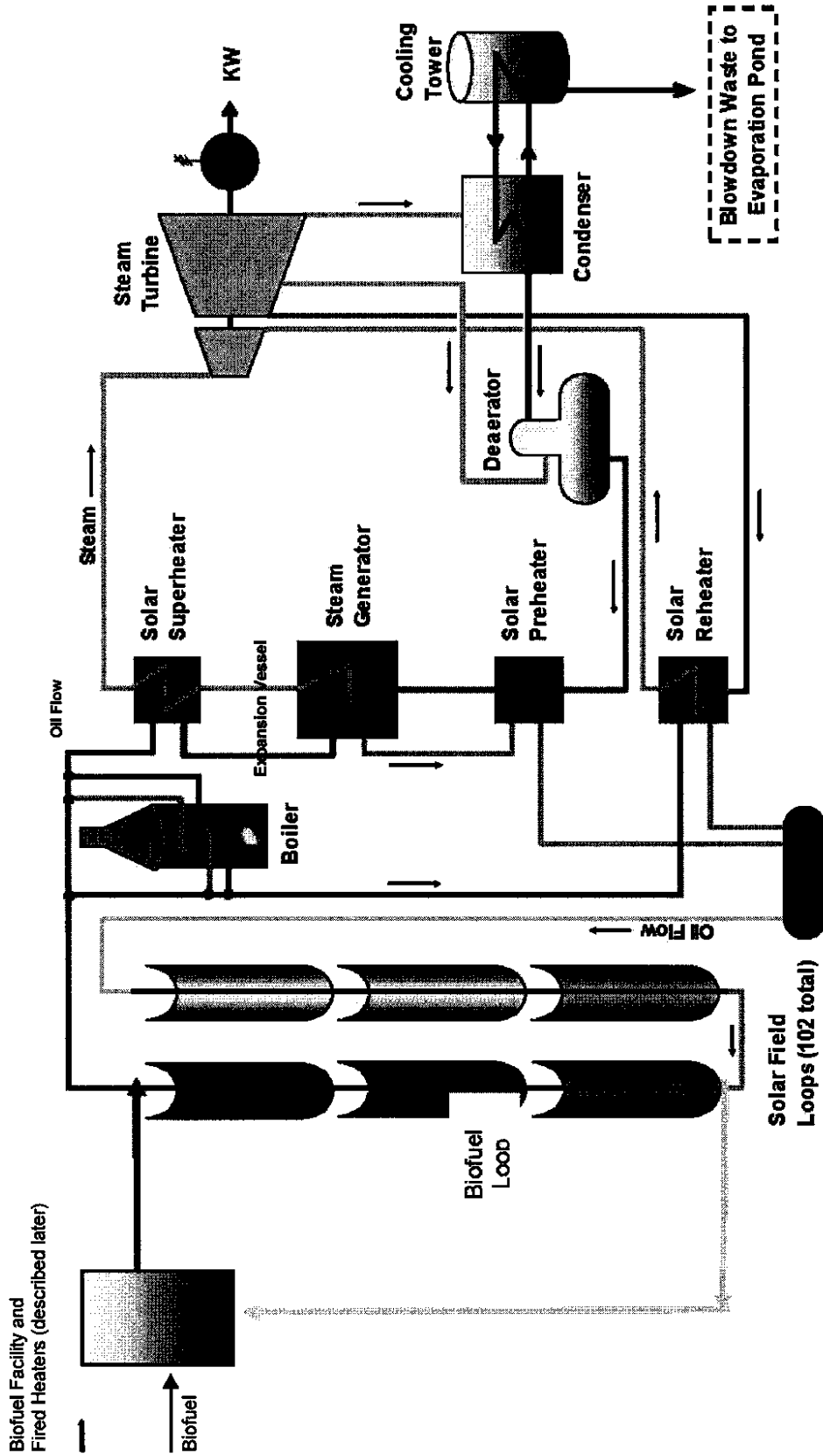


Figure 3 - Solar Hybrid Field Schematic

Figure 4 - Solar Field Schematic

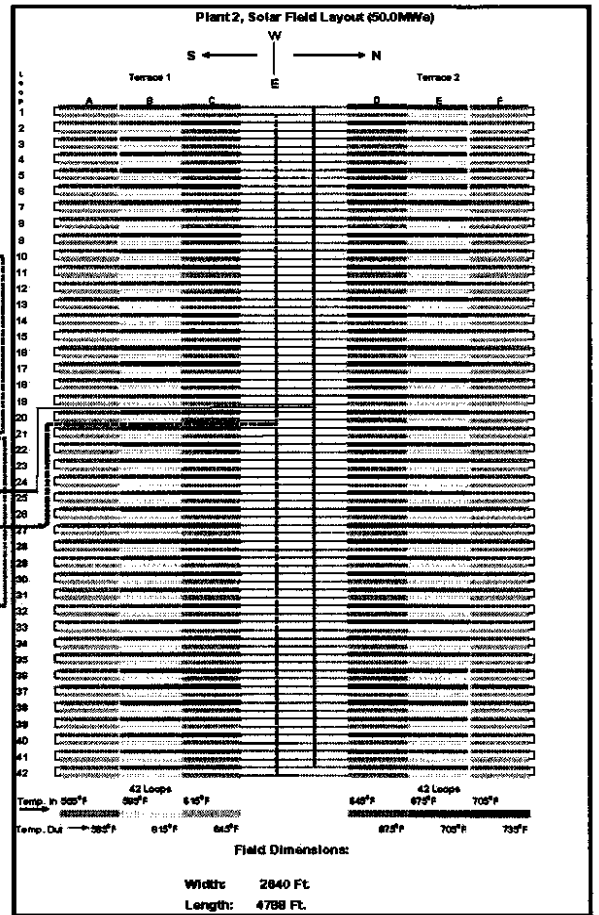
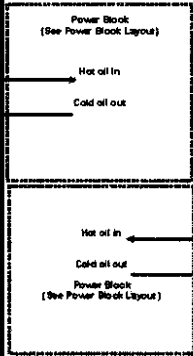
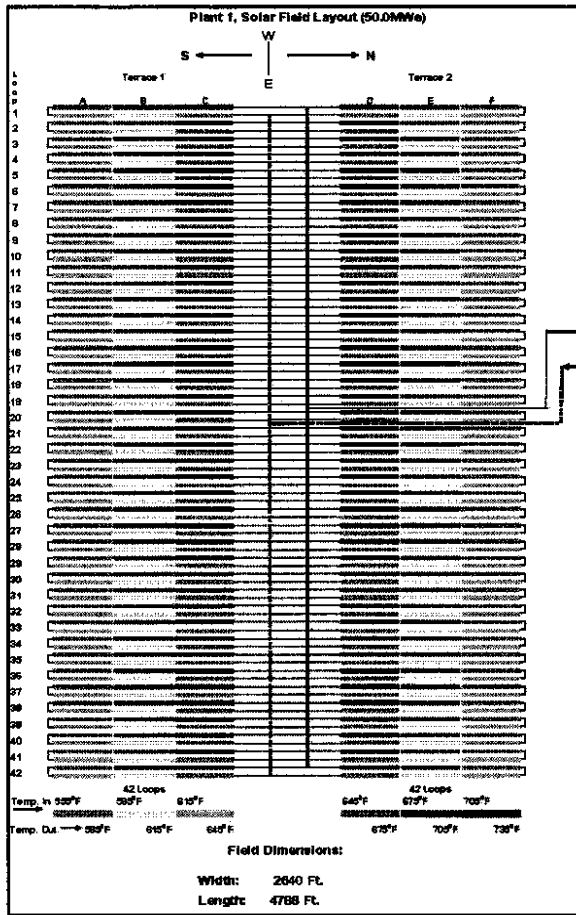
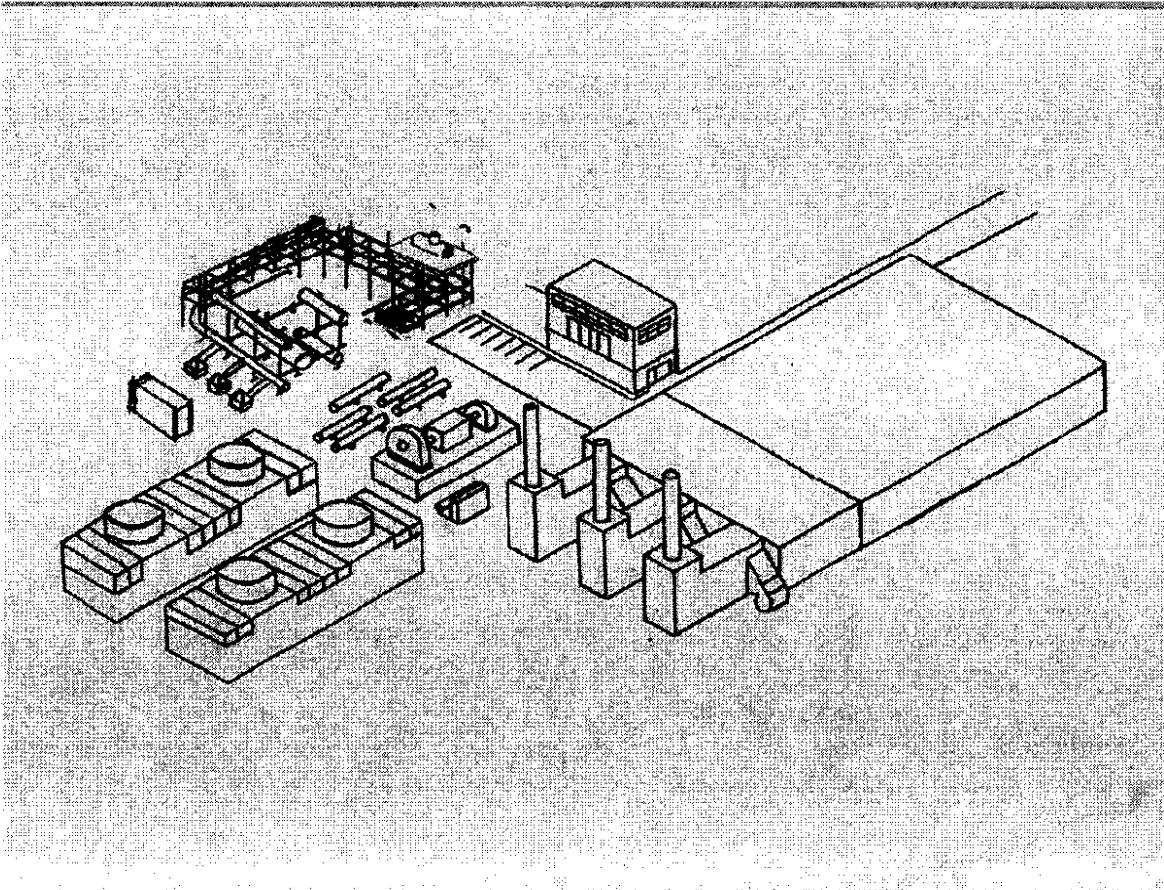


Figure 5 – Biofuel Facilities Schematic



APPENDIX V
FORM OF CERTIFICATION

The undersigned, SAN JOAQUIN SOLAR 2 LLC (“Seller”), does hereby deliver this Certificate of Commercial Operation to Pacific Gas and Electric Company (“Buyer”). All capitalized terms not defined herein shall have the meaning set forth in the Power Purchase and Sale Agreement dated _____, 2008 (the “Agreement”) between Seller and Buyer.

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

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

a. The Project has achieved the following:

1. Solar Collection Field Mechanical Completion, as defined in Appendix VI of the Agreement; and
2. Power Block Mechanical Completion, as defined in Appendix VI of the Agreement; and
3. Turbine Mechanical Completion, as defined in Appendix VI of the Agreement; and
4. Turbine Commissioning Completion, as defined in Appendix VI of the Agreement.

b. The Project is operational and interconnected with the CAISO Controlled Grid and capable of delivering Energy through either (a) the permanent Interconnection Facilities or (b) a temporary interconnection or other alternative interconnection arrangement that permits the Project to transmit Energy, in accordance with all requirements of the Agreement applicable as of the Commercial Operation Date.

APPENDIX VI

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

In accordance with its obligation under that certain Power Purchase and Sale Agreement dated _____, 2008 (the "Agreement") by and between Pacific Gas and Electric Company ("Buyer") and SAN JOAQUIN SOLAR 2 LLC ("Seller") to declare and recognize the Commercial Operation Date, Seller shall notify Buyer that the Project is operating and able to produce and deliver Energy to Buyer in accordance with the terms of the Agreement ("Commercial Operation") by delivering the Certificate of Commercial Operation, as described below, from a Licensed Professional Engineer with respect to the Project's ability to deliver an As-Available Product. All terms not defined herein shall have the meaning set forth in the Agreement.

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

- 1) A statement that the Solar Field, as described in Appendix IV, has been erected to the extent required to allow Commercial Operation to be achieved, and in accordance with the manufacturer's specifications ("Solar Collection Field Mechanical Completion").
- 2) A statement that the Power Block (steam generating equipment, multi-stage steam turbine, electric generator, condenser, and cooling tower) has been erected to the extent required to allow Commercial Operation to be achieved, and in accordance with the manufacturer's specifications ("Power Block Mechanical Completion").
- 3) A statement signed by the manufacturer of the Turbines that the Turbines have been erected to the extent required to allow Commercial Operation to be achieved, and in accordance with the manufacturer's specifications ("Turbine Mechanical Completion").
- 4) A statement signed by the manufacturer of the Turbines that turbine commissioning is complete for those Turbines that have achieved Turbine Mechanical Completion. Turbine commissioning is complete when the electrical and control systems have been energized and tested in accordance with the manufacturer's specifications and the Turbines are released for electrical generation of power ("Turbine Commissioning Completion").
- 5) Statement that the Project is operational and interconnected with the CAISO Controlled Grid and capable of delivering Energy through either (a) the permanent Interconnection Facilities or (b) a temporary interconnection or other alternative interconnection arrangement that permits the Project to transmit Energy.

EXECUTED by SELLER this _____ day of _____, 20__

SAN JOAQUIN SOLAR 2 LLC

By: _____

Name: _____

Title: _____

**[LICENSED PROFESSIONAL ENGINEER] as the
Professional Engineer**

By: _____

Name: _____

Title: _____

APPENDIX VII
FORM OF MONTHLY
PROGRESS REPORT
Monthly Progress Report
of
San Joaquin Solar 2 LLC
(“Seller”)

provided to
Pacific Gas and Electric Company
(“Buyer”)

[Date]

1.0 Instructions.

Any capitalized terms used in this report which are not defined herein shall have the meanings ascribed to them in the Power Purchase and Sale Agreement by and between San Joaquin Solar 2 LLC (“Seller”) and Pacific Gas and Electric Company dated _____, 2008 (the “Agreement”).

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

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

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

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

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

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

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

2.0 Executive Summary.

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

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

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

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

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

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

3.0 Permitting.

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

3.1 State and/or Federal Governmental Approvals.

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

DESCRIPTION	STATUS

3.2 Local and/or county Governmental Approvals.

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

DESCRIPTION	STATUS

3.3. Permitting activities that occurred during the previous month.

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

3.4 Permitting activities occurring during the current month.

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

3.5 Permitting Notices received from EPC Contractor.

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

4.0 Design Activities.

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

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

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

4.2 Design activities to be performed during the current month.

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

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

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

5.0 Property Acquisition Activities.

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

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

ACTIVITY	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

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

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

6.0 Engineering Activities.

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

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

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

6.2 Engineering activities to be performed during the current month.

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

6.3. Engineering activities completed during the previous month.

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

6.4. Three-month look-ahead engineering schedule.

Please provide a three-month look ahead engineering schedule.

7.0 Major Equipment Procurement.

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

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

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

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

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

7.3 Major Equipment procurement activities completed during the previous month.

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

8.0 Construction and Interconnection Activities.

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

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

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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

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

8.3 Construction and interconnection activities completed during the previous month.

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

8.4 EPC Contractor Monthly Progress Report.

Please attach a copy of the Monthly Progress Reports received during the previous month 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.

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

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

9.0 Milestones.

9.1 Milestone schedule.

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

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

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

9.2.1 Missed Milestone

9.2.2 Plans to achieve missed Milestone

9.2.3 Plans to achieve subsequent Milestone

9.2.4 Delays in engineering schedule

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

9.2.5 Delays in Major Equipment procurement

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

9.2.6 Delays in construction and interconnection schedule

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

10.0 Safety and Health Reports

10.1 Please list all accidents from the previous month:

10.2 Any work stoppage from the previous month:

10.3 Work stoppage impact on construction of the Project:

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

By: _____

Name: _____

Title: _____

Date: _____



PLEASE DO NOT ALTER THIS

APPENDIX VIII

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

SEND VIA FAX
To Pacific Gas & Electric Company

DATE: _____

Attention: Manager Electric Settlements	FAX NUMBER: (415) 973-2151
Attention: Outage Coordinator	FAX NUMBER: (415) 973-5333

PG&E LOG NUMBER: _____

Unit/Project Name: _____

NOTIFICATION OF:

SCHEDULED OUTAGE / FORCED OUTAGE / CURTAILMENT / PROLONGED OUTAGE

The Unit will shut down for SCHEDULED OUTAGE from:

_____ to _____
(Date and Time) (Date and Time)

The Unit experienced a FORCED OUTAGE/CURTAILMENT/PROLONGED OUTAGE (circle applicable outage) from:

_____ to _____
(Date and Time) (Date and Time)

The FORCED OUTAGE/CURTAILMENT /CHANGE IN AVAILABILITY was confirmed via telephone on _____ with _____

(Date and Time) (Name of PG&E Individual)

COMMENTS: Description and Cause of Forced Outage/Curtailment/Planned Outage (circle applicable outage)

Outage Notification Form submitted by: _____ Phone #: _____
(Print Name)

APPENDIX IX
COUNTERPARTY NOTIFICATION REQUIREMENTS FOR
OUTAGES AND GENERATION SCHEDULES

A. NOTIFICATION REQUIREMENTS FOR START-UP AND SHUTDOWN

Prior to paralleling to or after disconnecting from the electric system, ALWAYS notify your designated Area Control Center as follows:

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

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

1. Send Day Ahead Schedule by the following method:
 - a. Internet site. Access and your password to this web site to be provided upon execution of the related power purchase and sale agreement; or
 - b. E-mail. If the Internet site is not available, then send data via e-mail with an attached Excel spreadsheet in the format provided by PG&E. The spreadsheet must contain the following information: assigned log # of unit in first column; date and time (i.e., Hour Ending) in second column; and, generation level in kW in third column. Contact your designated PG&E Settlement Analyst or the Manager of Electric Settlements if you encounter any issue; or
 - c. Via Facsimile, Attention: Manager of Electric Settlements. If e-mail is not available, then the send via facsimile, a spreadsheet in the format specified above in subpart (b), submit your Project schedules and be sure to include the name and phone number of the individual that is providing this information. This method is discouraged as it involves additional steps, one of which may be manual data entry if the document cannot be scanned and read properly.

2. Send Hour Ahead notification of changes to Day Ahead Schedules by both of the following methods:
 - 2.1 Internet site. Access and your password to this web site to be provided upon execution of the power purchase and sale agreement; and
 - 2.2 Phone: Call PG&E's Hour-Ahead Trading Desk with any changes to the schedule or notifications at least 30 minutes prior to the ISO scheduling hour-ahead deadline for that delivery hour.
3. Send the Outage Notification Form by the following method:
 - 3.1 Internet site. Access and your password to this web site to be provided upon execution of the power purchase and sale agreement; or
 - 3.2 Email. If the Internet site is not available, then send via e-mail, a completed Outage Notification Form and be sure to include the name and phone number of the individual that is providing this information. Contact your designated PG&E Settlement Analyst or the Manager of Electric Settlements if you encounter any issue; or
 - 3.3 Via Facsimile, Attention: Manager of Electric Settlements. If e-mail is not available, then send via facsimile a completed Outage Notification Form and be sure to include the name and phone number of the individual that is providing this information. This method is discouraged as it involves additional steps, one of which may be manual data entry if the document cannot be scanned and read properly.

C. REASONS TO SEND NOTIFICATION AND TIMING REQUIREMENTS

This subpart C addresses (I) instructions for submitting generation and outage information to PG&E for each Unit and (II) the cut off times that determine when certain of these notifications need to be communicated directly (i.e., called in) to PG&E's Short-Term Electric Supply.

I. Submission of Outages, Generation Whenever the Unit experiences an outage, plans to schedule maintenance, or is subject to a curtailment, PG&E's web site which contains the Outage Notification Form or its equivalent, is to be used to comply with the notification requirements under the contract. The Outage Notification Form or its equivalent shall be used when reporting outages or curtailment. The Outage Notification Form or its equivalent must be completely filled out, including date and start time of event, cause of the outage or curtailment, expected duration, expected time and date of return to service or full output and transmitted to Power Trading and Power Settlements.

1. Testing the Unit(s) During an Outage. Notify the designated PG&E Control Center by telephone and the Power Settlements Department as provided above before testing the Unit(s) during an Outage. Indicate on

the original Outage Notification Form if testing will be conducted during an Outage.

2. Communication with PG&E Control Center. Seller shall maintain operating communications with the PG&E Control Center at _____. The operating communications shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled Outages, equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.
3. Logs of Communication Records with PG&E's Area Control Center and Electric Settlements personnel: Seller shall maintain written records of all communiqués with PG&E which will be available for audit at PG&E's request. These records shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled outages, equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.

II. Cut Off Times for Notifications to Electric Settlements Versus Having to Contact Short-Term Electric Supply Directly

Even though PG&E's Electric Settlements department requires that all Day-Ahead and Hour-Ahead Schedules and outages be submitted via the Internet web site, (or in the event it is not available email, or facsimile) in cases where information has changed (i.e., exceptions) Seller must call:

- (a) the Day-Ahead Trading Desk with updated Day-Ahead information at least 5 hours prior to the ISO Day-Ahead scheduling deadline for that delivery day;
- (b) the Hour Ahead Trading Desk with any Hour Ahead changes or modifications at least 30 minutes prior to the ISO scheduling deadline for that delivery hour: and
- (c) the Outage Coordinator with any outage information that was not submitted to Electric Settlements at least 38 hours prior to the delivery day.

APPENDIX X

RESOURCE ADEQUACY

1. Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to, the following:
 - A. Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the CAISO Interconnection Point; and
 - B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.
2. Seller shall comply with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff, 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 with regard to the submission of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff, to the CAISO.
 - C. Complying with the dispatch requirements applicable to the Project's resource type, as set forth in Section 40 of the CAISO Tariff; and
 - D. Complying with the applicable reporting requirements.
3. RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Interconnection Point for the Project.

APPENDIX XI

NOTICES LIST

Name: San Joaquin Solar 2 LLC, a Delaware limited liability company (“Seller”)

All Notices:

Delivery Address:
12555 High Bluff Drive, Ste. 100
San Diego, CA 92130

Mail Address: (if different from above)

Attn:

Phone:
Facsimile:



Invoices:

Attn: Lisa Matich

Phone: (858) 947-7038
Facsimile: (858) 513-1205

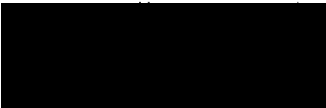
Scheduling:

Attn: Tony Williams
Phone: (858) 947-7040
Facsimile: (858) 513-1205

Payments:

Attn: Lisa Matich
Phone: (858) 947-7038
Facsimile: (858) 513-1205

Wire Transfer:



Credit and Collections:

Attn: Lisa Matich
Phone: (858) 947-7038
Facsimile: (858) 513-1205

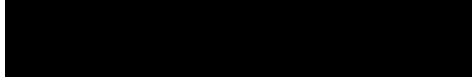
Name: Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”)

All Notices:

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

Mail Address:

P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177
Attn: Kelly A. Everidge (kabd@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-0070
Facsimile: (415) 973-9176



Invoices:

Attn: Alice Gong (axl3@pge.com)
Manager, Bilateral Settlements
Phone: (415) 973-4569
Facsimile: (415) 973-2151

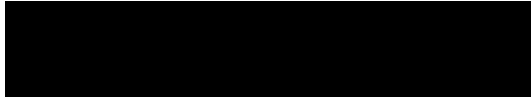
Scheduling:

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

Payments:

Attn: Alice Gong (axl3@pge.com)
Manager, Bilateral Settlements
Phone: (415) 973-4569
Facsimile: (415) 973-2151

Wire Transfer:



Credit and Collections:

Attn: Kenneth Lock
Credit Risk Management
Phone: (415) 972-5188
Facsimile: (415) 973-7301

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

Attn: Joyce & Joyce

Phone: (858) 454-2018

Facsimile: (858) 454-3346

Contract Manager:

Attn: Jeannette Woo (jxw7@pge.com)

Manager, Contract Management

Phone: (415) 973-5097

Facsimile: (415) 973-2207

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

CERTIFICATION OF THIRD PARTY AGREEMENT

In accordance with Section 5.7(b)(iii) or 10.1(e), as applicable, of the Power Purchase and Sale Agreement dated _____ between Pacific Gas and Electric Company and San Joaquin Solar 2 LLC (“**Seller**”), the undersigned, representative of Seller hereby delivers this certificate summarizing Seller’s proposed third party agreement to sell Products from the Project as referenced in Section 5.7(b) or 10.1(e), as applicable. The material terms and conditions are as follows:

Price (describe any applicable escalation, TOD factors, and/or other key terms)	
Energy Amount (annual)	
Capacity Amount	
Delivery Term	
Delivery Point	
Form and Amount of Security	
Guaranteed Commercial Operation Date	
Other key terms	

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

SAN JOAQUIN SOLAR 2 LLC

By: _____

Name: _____

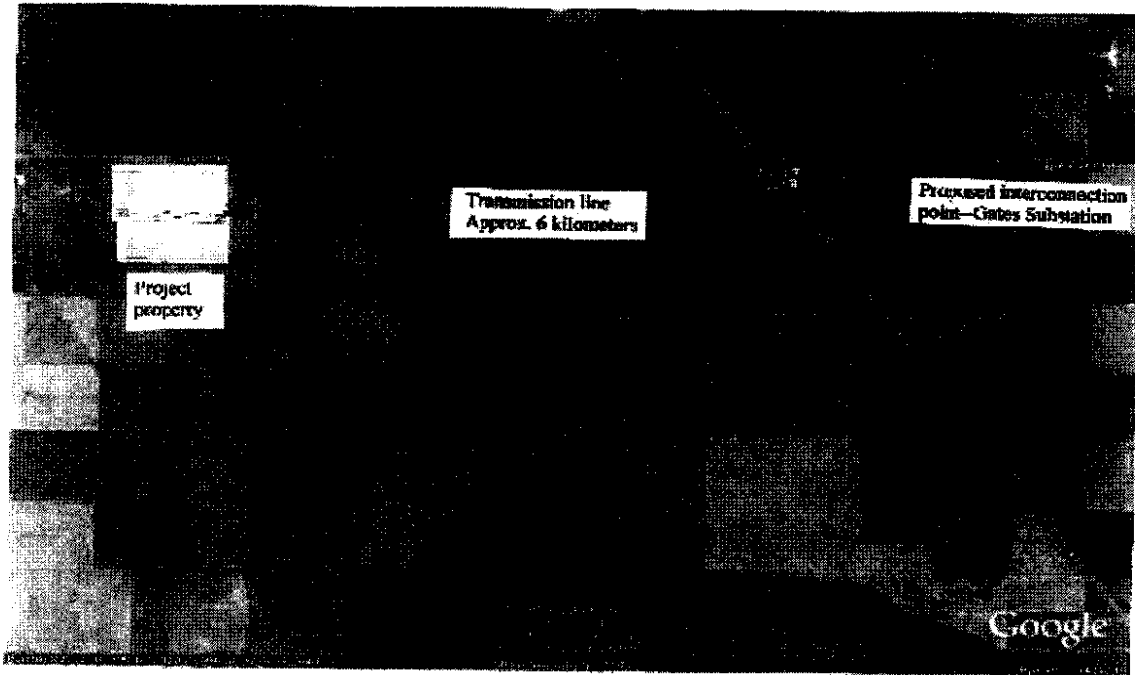
Title: _____

Date: _____

APPENDIX XIII

Diagram of Interconnection Point

Sketch - S11001



Appendix XIII

 Transmission Line