

POWER PURCHASE AND SALE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

SPS White River, LLC
(as "Seller")

As-Available Product

Dated: January __, 2010

POWER PURCHASE AND SALE AGREEMENT

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APPENDICES

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

- Appendix I Form of Letter of Credit
- Appendix II Initial Energy Delivery Date Confirmation Letter
- Appendix III Milestones Schedule
- Appendix IV Project Description Including Description of Site
- Appendix V Form of Certification
- Appendix VI Commercial Operation Certification Procedure
- Appendix VII Form of Monthly Progress Report
- Appendix VIII Outage Notification Form
- Appendix IX Counterparty Notification Requirements for Outages and Generation Schedules
- Appendix X Resource Adequacy
- Appendix XI Notices List
- Appendix XII Form of Consent to Assignment
- Appendix XIII Seller Documentation Condition Precedent
- Appendix XIV Form of Actual Availability Report

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 SPS White River, LLC, a Delaware limited liability company (“Seller”), as of the Execution Date set forth on the signature page hereof. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS**ARTICLE ONE: GENERAL DEFINITIONS**

1.1 “AAA” means the American Arbitration Association.

1.2 “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.

1.3 “Agreement” means this Power Purchase and Sale Agreement between Buyer and Seller, which is comprised of the Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto.

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

1.5 “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.

1.6 “Available Capacity” means the capacity from the Project, expressed in whole MWac, that is available to generate Product.

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 4.5.

1.13 “CAISO Revenues” means (a) the credits and other payments received by Buyer, as Seller’s Scheduling Coordinator, as a result of test energy from the Project delivered to the real-time market by Seller during the Test Period, including revenues associated with CAISO dispatches and (b) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Project for, or attributable to, scheduling and deliveries from the Project under this Agreement.

1.14 “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.

1.15 “California Renewables Portfolio Standard” means the renewable energy program and policies established by Senate Bills 1038 and 1078, Chapter 515 and 516, California Statutes of 2002, 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.

1.16 “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.

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

1.18 “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.

1.19 “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.

1.20 “Commercial Operation” means the Project is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement; provided that the Project shall not so operate before it has been placed in service for purposes of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated or issued thereunder.

1.21 “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.

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

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

1.24 “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.

1.25 “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.

1.26 “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.

1.27 “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.

1.28 “Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Final Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Initial Energy Delivery Date.

1.29 “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.

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

1.31 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

1.32 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's.

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

1.34 "Daily Delay Damages" means with respect to a Guaranteed Project Milestone, an amount equal to (a) the Project Development Security Amount posted as of the first date that Daily Delay Damages are payable under this Agreement with respect to such Guaranteed Project Milestone, divided by (b) 180.

1.35 "Damage Payment" means the dollar amount equal to (a) the amount initially posted as Project Development Security pursuant to Section 8.4(a)(ii) hereof, less (b) amounts collected by Buyer as Daily Delay Damages pursuant to Section 3.9(c)(v).

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

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

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

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

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

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

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

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

1.44 "Dispatch Down Period" means the period of time during (a) curtailments ordered from the CAISO for reasons including, but not limited to, any system emergency, as defined in

the CAISO Tariff (“System Emergency”), which do not otherwise constitute a Force Majeure; (b) curtailments ordered by Buyer based on any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes Buyer’s electric system integrity or the integrity of other systems to which Buyer is connected, as determined by Buyer in Buyer’s sole discretion; (c) curtailments ordered by Buyer due to over generation as defined in the CAISO Tariff; (d) curtailments ordered by Buyer based upon a request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (e) curtailments ordered by the Participating Transmission Owner, which do not otherwise constitute a Force Majeure; or (f) there is scheduled or unscheduled maintenance or forced outage 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.

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

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

1.47 “Effective Date” means 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.

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

1.49 “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.

1.50 “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.

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

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

1.53 “Energy Property” means property described in Section 48(a)(3)(A)(i) of the Internal Revenue Code, as it may be amended or supplemented from time to time.

1.54 “Energy Investment Tax Credit” means the tax credit for property described in Section 48(a)(3)(A)(i), with respect to Energy Property, of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time, or the grant in lieu of such tax credit described in Section 1603 of the American Recovery and Investment Action of 2009.

1.55 “Energy Investment Tax Credit Law” means a law or statute providing for a tax credit for Energy Property in an energy percentage of at least thirty percent (30%).

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, which may be an affiliate of 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 "Exempt Wholesale Generator" has the meaning provided in 18 CFR Section 366.1.

1.61 "Execution Date" means the latest signature date found on the Cover Sheet of this Agreement.

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

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

1.64 "Final Commercial Operation Date" means the date on which Commercial Operation has occurred for all phases of the Project, Contract Capacity has been attained and Seller 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.

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

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

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

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

(b) Force Majeure shall not be based on:

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

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

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

(iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused directly 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;

(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; or

(ix) any suit, claim, action, investigation or proceeding pending or threatened against Seller, Seller's Affiliates, the EPC Contractors or subcontractors thereof or any other third party employed by Seller to work on the Project.

1.66 “Force Majeure Construction Extension” has the meaning set forth in Section 3.9(c)(iii)(B).

1.67 “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.

1.68 “Forecasting Penalties” has the meaning set forth in Section 4.5(c)(iii)

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

1.70 “GMM” means the Generation Meter Multiplier as defined in the CAISO Tariff.

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

1.72 “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.

1.73 “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.

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

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

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

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

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

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

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

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

1.81 "Interim Operation Period" means the period between the Initial Energy Delivery Date and the Final Commercial Operation Date.

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

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

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)(i).

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 (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating TO and CAISO governing the terms and conditions of Seller's interconnection with the Participating TO's transmission lines, including, without limitation, any description of the proposed plan for interconnecting to the Participating TO's transmission lines.

1.91 "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.

1.92 "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.

1.93 "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.

1.94 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of Energy Investment Tax Credits, or other federal or state tax credits or benefits related to the Project or generation therefrom.

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

1.96 “Milestones” has the meaning set forth in Section 3.9(c)(i).

1.97 “Monthly Progress Report” means the report similar in form and content attached hereto as Appendix VII.

1.98 “Monthly Period” has the meaning set forth in Section 4.2.

1.99 “Monthly TOD Payment” has the meaning set forth in Section 4.3(b).

1.100 “Moody’s” means Moody’s Investor Services, Inc., or its successor.

1.101 “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.

1.102 “MWh” means megawatt-hour.

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

1.104 “NERC Holiday” has the meaning set forth in Section 4.2.

1.105 “Network Upgrade Commitment” has the meaning set forth in Section 3.1(h)(ii).

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

1.107 “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.

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

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

1.110 “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.

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

1.112 “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.

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

1.114 “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.

1.115 “Party” or “Parties” means the Buyer or Seller individually, or to both collectively.

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

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

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

1.119 “Permitted Extensions” means extensions to either of the Guaranteed Project Milestones due to Transmission Delay or Force Majeure Construction Extension as applicable to each Guaranteed Project Milestone pursuant to Section 3.9(c)(iii)(A) or (B), as applicable.

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

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

1.122 “Product” means the Energy, capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project, including, without limitation, renewable attributes, Renewable Energy Credits, and Green Attributes.

1.123 “Project” means all of the Unit(s), the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including but not limited to the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described in Appendix IV.

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

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

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

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

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

1.129 “RA Capacity” means the maximum megawatt amount that the CAISO recognizes from a Project that qualifies for Buyer’s Resource Adequacy Requirements and is associated with the Project’s Capacity Attributes.

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

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

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

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

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

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

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

1.137 “RFP” means the solicitation from which this Agreement is the result.

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

1.139 “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.

1.140 "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.

1.141 "Scheduled Energy" has the meaning set forth in Section 3.4(c).

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

1.143 "Seller" has the meaning set forth in the Preamble.

1.144 "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.

1.145 "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.

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

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

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

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

1.150 "Test Period" means the period of not more than ninety (90) consecutive days commencing on the later of (A) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Project to the CAISO Grid and (B) when Seller starts to deliver Energy to Delivery Point and ending when Seller advises Buyer of the occurrence of the Initial Energy Delivery Date; provided, however, that the Test Period shall not extend beyond five (5) consecutive days after the Commercial Operation Date.

1.151 "TOD" means time of delivery of Scheduled Energy from Seller to Buyer.

1.152 "TOD Factors" shall have the meaning set forth in Section 4.3(a).

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

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

1.155 "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 at this Agreement the Transmission Provider is CAISO.

1.156 “Unit” means the solar generation equipment and ancillary facilities used to produce the Products, which are identified in Appendix IV for the Transaction entered into under this Agreement.

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

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

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

1.160 “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.

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

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

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Cover Sheet, Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, constitutes the entire, integrated agreement between the Parties. Nothing herein modifies, alters or affects in any way the Parties’ obligations under the Confidentiality Agreement, dated on or about November 24, 2009, and entered into between the Parties in connection with the RFP.

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

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

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

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

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

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

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

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

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

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

2.5 Term. The Term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 11.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to Section 5.2, Section 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 twelve (12) months.

2.6 Binding Nature.

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

- (i) Section 3.9(a)(vi);
- (ii) Sections 5.1(a) and (b), 5.2 through 5.6;
- (iii) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;
- (iv) Sections 10.2, 10.3(a), 10.6 through 10.8, and Sections 10.12 through 10.15; and
- (v) Articles One, Two, Seven, Eleven, Twelve and Thirteen.

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

(c) For purposes of Section 3.1(k)(ix), prior to Delivery Term, "have been" shall be construed to mean "will be".

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

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

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

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

- Delivery shall be for a period of ten (10) Contract Years.
- Delivery shall be for a period of fifteen (15) Contract Years.

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

As used herein, "Delivery Term" shall mean the period of Contract Years specified above beginning on the first date that Seller delivers Product to Buyer from the Project ("Initial Energy Delivery Date") in connection with this Agreement and continuing until the end of the twenty-fifth (25th) Contract Year unless terminated as provided by the terms of this Agreement.

(ii) Interim Operation Period. The Parties acknowledge and agree that, as a result of the manner in which the Project will be constructed, portions of the Project will achieve Commercial Operation at various times between the Construction Start Date and the Final Commercial Operation Date. The Initial Energy Delivery Date shall be the date on which fifteen (15) MW of Product is first delivered by Seller to Buyer and all of the following have been satisfied: (i) with respect to such portion of the Project, Seller shall have demonstrated Commercial Operation pursuant to the terms of Appendix VI; (ii) Seller has met all its obligations under this Agreement to allow Buyer to receive delivery of the Product, including but not limited to Seller's requirements under Section 3.1(h) (Interconnection Facilities), Section 3.1(k) (WREGIS), Section 3.1(m) (CEC Certification), Section 3.4 (Transmission and Scheduling), and 3.6 (Metering); (iii) Buyer shall have received and accepted a pro rata portion of the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; and (iv) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix II on the Initial Energy Delivery Date. Notwithstanding anything herein to the contrary, certification as a Participating Intermittent Resource is not a condition for the Project to achieve its Initial Energy Delivery Date. Prior to the Initial Energy Delivery Date, Seller will notify Buyer at least ten (10) days and not more than thirty (30) days prior to the date each portion of the Project with a generation capacity of two-hundred fifty (250) kW (each an "Increment") will be completed and commence operation. The requirements in this section, 3.1(c)(ii) apply to each Increment. After the Initial Energy Delivery Date until the Guaranteed Commercial Operation Date, Buyer will purchase and receive, and Seller will sell and deliver the Product generated by the Project including all Increments, on the terms and conditions provided herein, including payment of the Contract Price minus \$15/MWh ("Initial Energy Delivery Price"), for all Product from such available capacity; provided, however, that, Buyer shall not be obligated to receive or pay for, any Energy in excess of the Contract Capacity. The time period between Initial Energy Delivery Date and Guaranteed Commercial Operation Date can not exceed five (5) months. If Final Commercial Operation Date does not occur by Guaranteed Commercial Operation Date, then all Product being generated by the Project after the Guaranteed Commercial Operation Date and before Final Commercial Operation Date will be purchased and received by the Buyer, and sold and delivered by the Seller at the simple average of the Day Ahead Integrated Forward Market hourly price, as published by the CAISO, for the Existing Zone Generation Trading Hub, in which the PNode resides ("Market Price").

(d) Delivery Point. The Delivery Point shall be the Interconnection Point set forth in Section 3.1(h)(i).

(e) Contract Quantity and Guaranteed Energy Production. The Contract Quantity during each Contract Year is set forth in Schedule 3.1(e). Throughout the Delivery

Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production, as set forth in Section 3.1(e), in any period of twenty-four (24) calendar 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 70% of the Contract Quantity as set forth in Schedule 3.1(e), 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 adjusts the Contract Capacity pursuant to Section 3.1(f) below, then the Contract Quantity and Guaranteed Energy Production shall change in proportion to the change in the Contract Capacity. If Seller delivers less than the Guaranteed Energy Production in any Performance Measurement Period, then within 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 subpart (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 as of the Final Commercial Operation Date shall be 20 MWac; thereafter, Contract Capacity of the Project shall be reduced on the first day of each subsequent year in amount equal to the yearly degradation as reflected in Schedule 3.1(e); provided that, no later than one year following the Final Commercial Operation Date, Seller may make a one-time downward adjustment to the Contract Capacity by no more than five percent (5%) after giving Buyer ninety (90) days prior written Notice. Upon any such adjustment, the Contract Quantity and Guaranteed Energy Production shall change in proportion to the one-time change in the Contract Capacity. Throughout 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. Except as provided in Section 3.1(f), 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 is the 115kV busbar at the new interconnection facility that will be built adjacent to the 115kV transmission

line owned by Pacific Gas and Electric Company that runs between Smyrna and Alpaugh substations.

(ii) Seller Obligations. Seller shall, at its sole expense, be obligated to (A) maintain the Interconnection Facilities, including metering facilities; and (B) perform all necessary 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 Network Upgrade obligation in subpart (B) of this Section 3.1(h)(ii).

(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 1.44(b) through (f), such Dispatch Down Periods shall be no more than fifty (50) hours in the aggregate 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) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any.

(k) WREGIS. Seller shall, at its sole expense subject to Section 4.8, take all commercially reasonable 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 and the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

(i) Prior to the Commercial Operation Date, 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.

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

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

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

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the following data on a real-time and historical basis: (A) read-only access to meteorological measurements, inverter and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (H) of this list, and energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project; (B) read-only access to the Project's CAISO revenue meter and all Project meter data at the Site; (C) full, real time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application; (D) electrical output of each electrical generator; (E) auxiliary power consumption, by Unit and Facility; (F) net plant electrical output at each Electric Revenue Meter; (G) time-average data including 10-minute and hourly values of global horizontal and global collector plane insolation, total global radiation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and visibility in winter fog areas by Facility; and (H) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of solar insolation and temperature. Such equation shall take into account the expected availability of the facility. For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Settlement Interval Actual Available Capacity of the Project for each month in the form set forth in Appendix XIV ("Actual Availability Report"). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report.

(ii) Buyer reserves the right to validate the data provided pursuant to Section 3.1(l)(i) with information publicly available from NOAA and nearby weather stations and substitute such data for its settlement purposes if Seller's data is inconsistent with the publicly available data or is missing.

(iii) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 3.1(l)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(iv) Installation, Maintenance and Repair.

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

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

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

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

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

(vi) No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide a minimum of one (1) year of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (A) global horizontal and global collector plane insolation, total global radiation, air temperature, wind speed and direction, precipitation, barometric pressure, visibility (forward scatter sensor) and humidity at the Site and visibility in winter fog areas; (B) elevation, latitude and longitude of the weather station; and (C) any other data that would be required for participation in the EIRP.

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

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

filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

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

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

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller Obligations. As of the Test Period and during the Delivery Term, Seller shall arrange and be responsible for transmission service, if any, including risk of transmission outage or curtailment, to and at 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 fulfill all contractual, metering and applicable interconnection requirements, including those set forth in 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. As of the Test Period and during the Delivery Term, Buyer shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment. During 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 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 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 use commercially reasonable efforts to cause the Project to become certified as a Participating Intermittent Resource including negotiating and executing all necessary documents to become a Participating Intermittent Resource (each as defined by the CAISO Tariff and collectively, the “Program Agreements”). Seller shall provide Buyer with a copy of the notice from CAISO certifying the Project as a Participating Intermittent Resource as soon as practicable after Seller’s receipt of such notice of certification. Following certification and whenever applicable, Seller and Buyer shall comply with EIRP and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during the Delivery Term. Buyer, as Scheduling Coordinator, shall also facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to assist Seller’s participation in and compliance with EIRP and such additional protocols, to the extent such actions are of minimal cost to Buyer.

(ii) [reserved].

(c) Scheduling

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

(A) Designation as Scheduling Coordinator.

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

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

(B) Buyer’s Responsibilities as Scheduling Coordinator.

During the Delivery Term, Buyer or Third-Party SC shall comply with all obligations as Seller’s Scheduling Coordinator under the CAISO Tariff and shall conduct all Scheduling in full compliance with the terms and conditions of this Agreement, the applicable CAISO Tariff, and protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff.

(C) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller’s availability forecasts below shall include Project availability and updated status of photovoltaic panels, inverters, transformers, and any

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

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

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

(iii) Daily Forecast of Available Capacity. During each month of the Delivery Term, Seller or Seller's agent shall provide a binding day ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or Third-Party SC (as applicable) via Buyer's internet site, as provided in Appendix IX, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. The current industry standard Preschedule Day timetable in the WECC is as follows:

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

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, "Prescheduling Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's best estimate of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day-Ahead Schedules, then Seller must notify Buyer of such change by telephone and shall send a revised notice to Buyer's Internet site set forth in Appendix VIII. Seller shall promptly provide Buyer with Notice of any changes in Available Capacity, whether due to Forced Outage, Force Majeure or other cause, at the same time as such information is provided to the CAISO. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO as communicated to Seller by Buyer or Third-Party SC (as applicable). These notices shall be sent to Buyer's internet site. If

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Buyer's internet site is unavailable or at Buyer's direction, notices shall be sent to Buyer's Day-Ahead Trading Desk email notification address:

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

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

(iv) Hourly Forecast of Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible and shall provide a revised forecast of Available Capacity as soon as possible, and to the extent reasonably possible no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit Hour-Ahead schedules to the CAISO. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO as communicated to Seller by Buyer or Third-Party SC (as applicable). With respect to any Forced Outage, Seller shall (A) use commercially reasonable efforts to notify Buyer, orally, of such outage within ten (10) minutes of the occurrence of such outage and update Available Capacity via SLIC, (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, in the form provided in Appendix VII of this Agreement. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Project during or after the end of such outage. These notices and changes to Available Capacity shall be communicated by telephone to Buyer's Hour-Ahead Trading Desk and be sent to Buyer's internet site:

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

(D) Replacement of Scheduling Coordinator.

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

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

3.5 Standards of Care.

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

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

(c) Reliability Standard. Seller agrees to abide by all (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 Commercial Operation Date and throughout the Delivery Term.

3.6 Metering. All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(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 first 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, delayed, or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage Schedule without Buyer's approval, not to be unreasonably withheld 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 actual knowledge 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. For the avoidance of doubt, Buyer has no right to direct or control the operation of the Project.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of 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. As and to the extent permitted by applicable law and the terms and conditions of this Agreement, Buyer shall treat all commercially sensitive information provided by Seller pursuant to this Section 3.8(a) as confidential.

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

3.9 New Generation Facility.

- (a) Seller, at no cost to Buyer, shall be responsible to:
- (i) Design and construct the Project.

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

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

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

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

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

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

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

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

(c) Construction Milestones.

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

(ii) If Seller misses two (2) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) Milestone by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan"), which shall provide a detailed description of Seller's course of action and plan to achieve the missed 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 April 1, 2012 (the “Guaranteed Construction Start Date ”); provided that the Guaranteed Construction Start Date may be extended on a day for day basis for not more than three hundred sixty-five (365) days if Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to have the Project physically interconnected to the CAISO Grid and to complete all Electric System Upgrades needed, if any, in order to interconnect the Project to the CAISO Grid, but fails to secure any necessary commitments from CAISO or the Participating Transmission Owner for such interconnection and upgrades due to delays beyond Seller’s reasonable control (“Transmission Delay”);

(B) Seller shall have demonstrated Commercial Operation per the terms of Appendix VI no later than July 1, 2012 (the “Guaranteed Commercial Operation Date”); provided that (I) the Guaranteed Commercial Operation Date shall be extended on a day for day basis equal to any extension claimed by Seller pursuant to and in accordance with Section 3.9(c)(iii)(A), and (II) the Guaranteed Commercial Operation Date may be extended on a day for day basis for Force Majeure occurring after the Construction Start Date provided that the total number of such extension days shall not exceed two (2) years (“Force Majeure Construction Extension”); and

(C) If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days Notice prior to original date of the applicable Guaranteed Project Milestone, which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension; provided that in the case of a Force Majeure Construction Extension, if sixty (60) days is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(iv) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, as it may be extended pursuant to and in accordance with Section 3.9(c)(iii)(B). If Seller’s development plans would permit a Commercial Operation Date before the Original Guaranteed Commercial Operation Date, Seller may with at least twenty (20) Business Days’ prior Notice to Buyer accelerate the Commercial Operation Date by no more than one hundred eighty (180) days before the Original Guaranteed Commercial Operation Date.

(v) 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 (as may be extended pursuant to and in connection with Section 3.9(c)(iii)(A) or Section 3.9(c)(iii)(B) or delayed on a day by day basis by Force Majeure up to ninety (90) days for either Guaranteed Project Milestone), 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 one hundred-eighty (180) days (“Project Cure Period”); or (B) the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, up to a total of one hundred-eighty (180) days (“Construction Cure Period”). Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to delay in achieving either the Guaranteed Commercial Operation Date or the Guaranteed Construction Start Date, 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 may be extended as described above), as provided further in Section 8.4(c) of this Agreement. For sake of certainty, (I) Buyer shall retain all Daily Delay Damages drawn as a result of Seller's failure to meet the Guaranteed Commercial Operation Date (as may be extended, as described above) and the Guaranteed Construction Start Date, if Seller fails to meet the Guaranteed Commercial Operation Date; and (II) to the extent that Seller has used all commercially reasonable efforts to develop Project as required under this Sections 3.9(c)(iii) and (iv), such forfeiture of the Project Development Security shall be the sole remedy as liquidated damages in the event that Project never reaches Commercial Operation

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price.

(a) Contract Price. The Contract Price for each MWh of Delivered Energy in each Contract Year is set forth in Schedule 4.1. For the avoidance of doubt, the Contract Price set forth in Schedule 4.1, and the TOD Periods and TOD Factors set forth in Section 4.2 and 4.3, respectively, shall not be changed or altered during the Term of this Agreement, regardless of any change in Law.

(b) [reserved].

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 Delivered Energy shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified TOD Periods in which Delivered Energy is delivered:

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

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

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

4.5 CAISO Charges.

(a) Seller shall assume all liability and pay for all congestion charges up to and at the Delivery Point. Except to the extent otherwise expressly stated in this Agreement, each Party shall reimburse the other for any and all charges, including CAISO Penalties, as defined below, incurred by the other as a result of the Party’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 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.

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

(c) Forecasting Penalties.

(i) Except as a result of Force Majeure, in the event Seller does not in a given hour (A) provide the access and information required in Section 3.1(l)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(l)(iv); or (C) provide the forecast of Available Capacity required in Section 3.4(c)(iii), and the net sum of Energy Deviations of the Settlement Intervals in the relevant daily TOD Period exceeds the Performance Tolerance Band defined below, then upon Buyer's Notice of Seller's failure to comply with subparts (A) – (C) above, Seller will be responsible for Forecasting Penalties as set forth below.

(ii) During the Interim Operation Period, the Performance Tolerance Band is the lesser of (A) two hundred fifty (250) kW multiplied by one (1) hour (the interval of time for monitoring availability forecasting requirements) or (B) three (3) percent multiplied by Contract Capacity multiplied by one (1) hour. Following the Final Commercial Operation Date, the Performance Tolerance Band is the lesser of (A) five (5) MW multiplied by one (1) hour (the interval of time for monitoring availability forecasting requirements) or (B) three (3) percent multiplied by Contract Capacity multiplied by one (1) hour.

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

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

4.7 Additional Compensation.

(a) To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Project, including, but

not limited to, compensation for Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining Energy Investment Tax Credits (or passing such credits to an investor or lessee) or credits related to Network Upgrades as contemplated in Section 3.1(h)(ii).

(b) To the extent that Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or losses (“Congestion Revenue Rights” or “CRRs”) which would otherwise be the responsibility of Buyer, 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 to the extent permitted to do so; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions.

4.8 Cost Reimbursement for Costs of Compliance.

(i) Compliance Cost Cap. The Parties agree that Seller’s direct cost of complying with the WREGIS requirements in Section 3.1(k), the Greenhouse Gas Emissions reporting requirements in Section 3.1(j), the Green Attributes requirements in Section 3.2, and Resource Adequacy Requirements in Section 3.3 shall be capped at a total amount of Six Hundred Thousand Dollars (\$600,000.00) over the Term of this Agreement (“Compliance Cost Cap”).

(ii) Compliance Cost Procedure. Within ninety (90) days after the end of each Contract Year, Seller shall provide Buyer with a report of the Compliance Costs that Seller incurred during that Contract Year. If Seller determines that it will likely incur costs in excess of the Compliance Cost Cap, Seller shall promptly notify Buyer and provide documentation and calculations to support the expected excess costs (“Compliance Cost Excess Notice”). Buyer shall then have ninety (90) days after receipt of the Compliance Cost Excess Notice to verify or dispute Seller’s documentation and calculation. The Parties shall agree upon a reasonable allocation, as between Seller and Buyer, over the remaining Term of Compliance Costs that are incurred after the twenty-fifth (25th) Contract Year and that are expected to benefit the Project beyond the Term of this Agreement. Once the Parties have agreed in writing or obtained resolution in accordance with Article 12 on the amount by which Seller will exceed the Compliance Cost Cap (“Compliance Cost Excess Amount Determination”), Buyer may then: (1) elect to pay Seller the amount set forth in the Compliance Cost Excess Amount Determination and notify Seller of such election, and Seller shall, upon receipt of such payment from Buyer, comply with the WREGIS requirements; or (2) elect not to pay Seller for the amount set forth in the Compliance Cost Excess Amount Determination and notify Seller of such decision, in which case this Agreement shall continue in full force and effect and Seller shall continue to be excused from performing any obligation that causes, or would cause, Seller to incur such Compliance Costs in excess of the Compliance Cost Cap. Following the Compliance Cost Excess Amount Determination, Seller shall have no obligation, and shall be free from liability under this Agreement if it fails to take any action that causes, or would cause, it to incur Compliance Costs in excess of the Compliance Cost Cap unless and until Seller receives payment from Buyer in the amount specified in accordance with the Compliance Cost Excess Amount Determination.

**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 ninety (90) days after Notice;

(iv) such Party becomes Bankrupt; or

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

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

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

(ii) [*intentionally omitted*];

(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 as extended by any Permitted Extensions; or

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

5.2 Declaration of Early Termination Date. Subject to the limitations 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 ten (10) days after such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date"), (b) to accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date and collect liquidated damages ("Termination Payment"), which shall be calculated in accordance with Section 5.3 below; (ii) withhold any payments due to the Defaulting Party under this Agreement; (c) collect the Damage Payment if the Event of Default occurred due to a Force Majeure Development Failure under Section 5.7(a)(ii) or collect the Termination Payment for any other Event of Default; (d) suspend performance; and (e) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. The Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the "Settlement Amount" is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. 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 an Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether a 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 Force Majeure Termination Event.

(a) Force Majeure Failure. Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following:

(i) if after the Commercial Operation Date, the Project fails to deliver at least sixty percent (60%) of the Contract Quantity to the Delivery Point for a period of twenty-four (24) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project ("Force Majeure Project Failure"); provided that:

(A) if the Project may be capable of resuming normal production, then Seller shall be entitled to an additional period of time (not to exceed six (6) months) to remedy the Force Majeure if within forty-five (45) days of receipt of Notice from Buyer that a Force Majeure Project Failure has occurred, Seller presents Buyer with a plan for mitigation of the effect of the Force Majeure which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer's written acknowledgement of such plan, and Seller diligently pursues such mitigation plan throughout said additional period; or

(B) if the Project is destroyed or rendered inoperable by a Force Majeure caused by a catastrophic natural disaster, upon Buyer's written request to Seller, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and provide Buyer a copy of the engineer's report, at no cost to Buyer.

(ii) if prior to the Construction Start Date or Commercial Operation Date, as applicable, Seller is unable, due solely to a Force Majeure event, to achieve the Construction Start Date or place the Project into Commercial Operation by either of the Guaranteed Milestones, after applicable extensions or cure periods have run, as set forth in Sections 3.9(c)(iii) and 3.9(c)(iv) (in either case a "Force Majeure Development Failure"); provided that in the event of a Force Majeure caused by a catastrophic natural disaster, upon Buyer's written request to Seller, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and provide Buyer a copy of the engineer's report, at no cost to Buyer;

(b) Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then for a period of three (3) years from the date on which Buyer Notifies Seller of such termination ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products

from the Project to any third party, unless Seller, its successor and assignee, first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below (the "Offer"), and Buyer accepts, rejects, or fails to accept such Offer in accordance with the provisions herein.

(ii) If Buyer accepts the Offer, Buyer shall Notify Seller of such acceptance within thirty (30) days of receipt of the Offer, subject to Buyer's management approval and CPUC Approval ("Buyer's Notice"), and then 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, subject to CPUC Approval, if necessary; with substantially similar terms, including, but not limited to the Contract Capacity, Product, Contract Price (including escalation), Contract Quantity (expected annual volume of deliveries inclusive of outages) and security requirements applicable to Seller; provided that the Offer may reflect an updated Project description, Contract Capacity, and Contract Quantity) as necessary to reflect the Project capabilities following the Force Majeure event and the Contract Price may be increased only to reflect Seller's documented incremental direct costs in overcoming the Force Majeure event.

(iii) If within thirty (30) days of receipt of Seller's Offer the Buyer rejects, or fails to accept by Notice to Seller the Offer, or the parties do not enter into a new power purchase agreement or the amended Agreement within the ninety (90) day period allowed for in subpart (ii) above, or such power purchase agreement or the amended Agreement does not obtain the CPUC Approval, then Seller, its successor and assignee will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party.

(c) Delivery Term Security.

(i) If the Buyer terminates this Agreement pursuant to Section 5.7(a)(i), Buyer shall retain Delivery Term Security for the duration of the Exclusivity Period.

(ii) If during or at the end of the Exclusivity Period, Buyer and Seller enter into a new purchase agreement for the purchase of Products from the Project, the Delivery Term Security under this Agreement shall be applied to the Delivery Term Security under such new agreement and Buyer shall have no ownership or interest in the Delivery Term Security except as defined under such new agreement.

(iii) If Buyer rejects or fails to accept the Offer pursuant to Section 5.7(b)(iii) and Seller abandons Project or sells Product from Project to any entity other than Buyer or its Affiliates during or at the end of the Exclusivity Period, Buyer shall return the Delivery Term Security to Seller within ninety (90) Business Days.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation

of Product by the Project for any CAISO settlement time interval during the preceding month, (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Sections 4.3 and 4.4. 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 invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE

THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.4 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

8.2 Seller Financial Information. The applicable financial information shall be provided as specified under either Option A or Option B described in this Section 8.2. The Option selected is indicated below:

Option A

Option B

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

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

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

8.4 Performance Assurance.

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

(i) Project Development Security pursuant to this subsection (a)(i) in the amount of \$60,000.00 and in the form of cash or Letter of Credit from the Execution Date of this Agreement until Seller posts Project Development Security pursuant to subsection (a)(ii) below with Buyer;

(ii) Project Development Security pursuant to this subsection (a)(ii) in the amount of \$1,000,000.00 and in the form of cash or 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; provided that, with Buyer's consent, Seller may elect to

apply the Project Development Security posted pursuant to subsection (a)(i) toward the Project Development Security posted pursuant to this subsection (a)(ii); and

(iii) Delivery Term Security pursuant to this subsection (a)(iii) in the amount of \$6,000,000.00 and in the form of cash, Letter of Credit or Guarantee from the Commercial Operation Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to subsection (a)(ii) toward the Delivery Term Security posted pursuant to this subsection (a)(iii).

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

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

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). If Seller has met the Guaranteed Commercial Operation Date, then the Project Development Security returned shall include amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date. The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) toward the Delivery Term Security pursuant to Section 8.4(a)(iii). For the avoidance of doubt, the provisions of this Section 8.4(c) do not modify the provisions of Sections 10.1 concerning the return of Project Development Security in accordance with the terms described in those Sections.

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

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller 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 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.

ARTICLE TEN: MISCELLANEOUS

10.1 [intentionally omitted]

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 and authorities necessary to install, operate and maintain the Project and sell Product 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 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) Subject to Section 3.3, Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer’s ability to rely on the Project in order to satisfy its Resource Adequacy Requirements; and

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

10.4 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person arising prior to 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, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its agents, employees, directors, or officers. Seller shall further indemnify Buyer for all penalties assessed against Buyer by the CPUC pursuant to the California Renewables Portfolio Standard to the extent caused by Seller's failure to deliver the Product, unless such failure is caused by Force Majeure, or Buyer's breach or default under this Agreement.

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

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

10.6 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent, estoppels, assurances, certificates, acknowledgements and verifications that may be reasonably required for financing shall not be unreasonably withheld, conditioned, or delayed; 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.

X 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 (“Confidential Information”) to a third party, other than (i) the Party’s employees, lenders, prospective 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 10.7 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: (a) to notify the other Party prior to disclosing the Confidential Information and (b) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (a) prohibited from complying with a Disclosure Order or (b) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the Confidential Information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

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

(a) Workers’ Compensation and Employers’ Liability.

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

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

(b) Commercial General Liability.

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

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

(iii) Coverage shall:

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

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

(C) include a severability of interest clause.

(c) Business Auto.

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

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

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

(d) Aircraft Liability.

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

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

(iii) Coverage shall:

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

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

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

(e) Watercraft Liability.

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

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

(iii) Coverage shall:

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

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

(f) Seller's Pollution Liability.

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

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

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

(g) All Risk Property Insurance.

(i) An All Risk Property insurance policy 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.

(h) Professional Liability Insurance.

(i) If the scope of work of the applicable contract involves professional services, Errors and Omissions Liability insurance appropriate to the Seller's profession. Coverage shall be for a professional error, act or omission arising out of the scope of services shown in the Agreement, including coverage for bodily injury, property damage, and consequential financial loss.

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

(iii) Coverage shall:

(A) 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

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

(i) Additional Insurance Provisions.

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

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

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

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

(iv) Reviews of such insurance may be conducted by PG&E on an annual basis and, in addition, PG&E may inspect the 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.

(j) Form And Content.

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

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

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

10.11 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, waived or extended 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 subsection (a) above, refuses or does not meet within the ten (10) Business Day period specified in subsection (a) above, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the AAA. As the first step, the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be 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); a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it

was sent or such earlier time as is confirmed by the receiving Party; and a Notice of first class mail shall be deemed to have been received (5) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.

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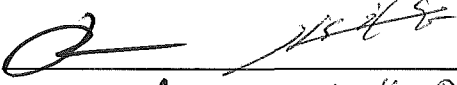
SIGNATURES


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:

SPS White River, LLC, a Delaware limited liability company

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

Signature: 
Name: Michael Skoras / Chandler Park
Title: Manager, SPS, White River
Date: 1-26-2010

Signature: 
Name: Roy M. Kujala
Title: VP - Energy Supply Management
Date: 1/26/2010

SCHEDULE 3.1(e)**CONTRACT QUANTITY**

Contract Year	Contract Quantity – Thin film
1	33,427 MWh
2	33,143 MWh
3	32,861 MWh
4	32,582 MWh
5	32,305 MWh
6	32,031 MWh
7	31,758 MWh
8	31,488 MWh
9	31,221 MWh
10	30,955 MWh
11	30,692 MWh
12	30,431 MWh
13	30,173 MWh
14	29,916 MWh
15	29,662 MWh
16	29,410 MWh
17	29,160 MWh
18	28,912 MWh
19	28,666 MWh
20	28,423 MWh
21	28,181 MWh
22	27,941 MWh
23	27,704 MWh
24	27,468 MWh
25	27,235 MWh

SCHEDULE 4.1**CONTRACT PRICE**

Contract Year	Contract Price (\$/MWh)
1	122.90
2	125.50
3	128.10
4	130.80
5	133.60
6	136.40
7	139.20
8	142.10
9	145.10
10	148.20
11	151.30
12	154.50
13	157.70
14	161.00
15	164.40
16	167.90
17	171.40
18	175.00
19	178.70
20	182.40
21	186.20
22	190.10
23	194.10
24	198.20
25	202.40

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

PG&E-SPS White River PPA

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“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 _____ (“Buyer”) and _____ (“Seller”), this letter (“Initial Energy Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and Buyer has received the Product, as specified in the Agreement, as of this ____ day of _____, _____ (the “Initial Energy Delivery Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

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

Tariff:

Dated:

Docket Number:

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

[SELLER]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX III

MILESTONES SCHEDULE

Identify Milestone	Date for Completion
Guaranteed Construction Start Date	April 1, 2012
Guaranteed Commercial Operation Date	July 1, 2012

APPENDIX IV

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

FACILITY DESCRIPTION

Facility name: White River 20MVA PV Solar Generating Station

Facility Site name: White River

Facility physical address: Road 48 / Ave 48, Alpaugh, CA 93201

Total number of Units at the facility (committed and not committed to Buyer): one 20 MVA – AC Unit committed to Buyer

Technology Type: Solar PV

Substation: White River 20 MVA 115 kV/21KV

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

APN no 311-100-024, 311-100-026, 333-130-020, 330-130-019, 330-100-022, 330-130-011, 330-130-013, 330-130-018, 311-100-046, 330-130-012, 330-130-014,
Tulare County

The nameplate capacity of the Project is: 20 MW

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

- 174,075 solar modules
- 80 - 250kVa 600V DC to 480V AC inverters
- 20 -1,600 amp 480V panels
- 2 miles of 21kV cable
- 2 miles of 600V cable
- 20 -1,000 kVa - 21 kV to 480V transformers

Interconnect Status as of Execution Date:

- Control Area – CAISO
- Interconnect System Level – Transmission SGIA
- Interconnect Status - System Analysis complete – Facility Analysis Pending
- Queue # 479
- Interconnect point – Smyrna Alpaugh 115KV

See attached:

- Preliminary Site Plan
- Subtransmission System Diagram

APPENDIX V

FORM OF CERTIFICATION

This certification (“Certification”) is delivered by _____ (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

[To be developed by Buyer and Seller]

APPENDIX VI

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

The Generating Facility will conform to the following Supplier acceptance testing procedures:

Supplier defined a "system" as an interconnected grouping of the following components:

- a. DAS kWh meter
- b. Inverter
- c. Photovoltaic modules connected to the inverter
- d. Equipment necessary for interconnection to the utility distribution system

Supplier treats each system (or "segment") as a unit that can be installed, brought online, inspected, tested, and monitored independently of all other systems at the Generating Facility Site. During the system startup period or at system commissioning, Supplier will take the following steps prior to accepting each system:

Item	Description	Allowable Range	Fix
1. Comprehensive System Inspection			
Electrical and Mechanical Components	100-point checklist verifying project installation per PowerLight specifications	Pass/fail for all individual line items	Corrects failed items prior to acceptance
2. System Testing			
Open Circuit voltage	Ensure that all strings are properly connected and all PV modules are functioning	±1% from manufacturer's specifications	Reattach connectors, re-solder j-box tabs, replace module
DC Amperage	Ensure that all strings are producing the same operating current	±5% variance given meteorological differences during test	Replace modules with cracks or poor electrical connections
Megger Testing	Measure the degree of isolation between the string conductors and ground.	> 50 M-ohms	Repair any damaged or improperly connected wiring or faulty ground conductors
3. Performance Data Review			
Power Rating	Compare UPVG rating based on a regression of measured data to the projected rating	±5% difference	Investigate further with I-V curve tracer
Energy Output	Compare to PVGrid simulation based on measured weather data	±5% difference	Investigate further
Meter Accuracy	Verify output of DAS kWh meter with 3-phase handheld meter	±2% difference	Replace faulty meter, change inaccurate multipliers
Meteorological Sensor Data	Verify proper function		Replace faulty sensors, change inaccurate multipliers

APPENDIX VII

**FORM OF MONTHLY
PROGRESS REPORT**

**Monthly Progress Report
of**

("Seller")

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

[Date]

1.0 Instructions.

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

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

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

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

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

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

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

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

2.0 Executive Summary.

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

Please provide a brief summary of the Major¹ activities to be performed for each of the following aspects of the Project during the current month:

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

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

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

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

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

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 lists 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:**

PG&E-SPS White River PPA

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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/ProjectName: _____

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 communications 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: SPS White River, LLC, a Delaware limited liability company
("Seller")
All Notices:

Delivery Address:
14251 E. Firestone Blvd.
La Mirada, CA 90638

Mail Address: (if different from above)

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

Duns:
Federal Tax ID Number:

Invoices:
Attn: *same as above*
Phone:
Facsimile:

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

Payments:
Attn: *same as above*
Phone:
Facsimile:

Wire Transfer:
BNK:
ABA:
ACCT:

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

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

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

Facsimile: (415) 973-9176

Duns: [REDACTED]
Federal Tax ID Number: 94-0742640

Invoices:
Attn: Jay Bukowski (jbbsi@pge.com)
Sr. Manager, Energy Settlements
Phone: (415) 973-1727
Facsimile: (415) 973-2151

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

Payments:
Attn: Jay Bukowski (jbbsi@pge.com)
Sr. Manager, Energy Settlements
Phone: (415) 973-1727
Facsimile: (415) 973-2151

Wire Transfer:
BNK: [REDACTED]
ABA: [REDACTED]
ACCT: [REDACTED]

Credit and Collections:

Attn:
same as above
Phone:
Facsimile:

With additional Notices of an Event of Default to:

Attn: [REDACTED]

Phone: [REDACTED]
Facsimile: [REDACTED]

With additional Notices of an Event of Default
to:

[REDACTED]
Wilson Sonsini Goodrich & Rosati
One Market Street, Ste. 3300
San Francisco, CA 94105-1126
Phone: [REDACTED]
Facsimile: [REDACTED]

Credit and Collections:

Attn:
Manager, Credit Risk Management
Phone:
Facsimile:

Contract Manager:

Attn: Ted Yura (thyl@pge.com)
Sr. Manager, Energy Contract Management &
Settlement
Phone: (415) 973-8860
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

FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2___], between PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”), and [_____] , as collateral agent² (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”).

Recitals

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

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

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

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. Consent. Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the [Security Agreement] of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).
3. Limitations on Assignment. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) executes and delivers to

² This form assumes that a collateral agent will hold the security on behalf of a syndicate of lenders and therefore, the consent would be signed by the collateral agent in such capacity for the benefit of the secured parties. If that is not the case, please modify.

PG&E a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as PG&E may reasonably request, and (e) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a "Financing Default"), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

"Permitted Transferee" means any person who is reasonably acceptable to PG&E. Financing Provider may from time to time, following the occurrence of a Financing Default, notify PG&E in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider's rights under the Financing Documents, and PG&E shall, within thirty (30) business days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if PG&E shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a "Permitted Transferee".

4. Cure Rights.

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

(b) Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a), PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement "Additional Cure Period" means (i) with respect to a monetary default, ten (10) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) Failure by PG&E to Deliver Default Notice. If neither PG&E nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider's applicable cure period shall begin on the date on which notice of an Event of Default is delivered to Financing Provider by either PG&E or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in PG&E's ability to terminate the Assigned

Agreement (in each case only if both PG&E and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of PG&E to deliver any Default Notice shall not waive PG&E's right to take any action under the Assigned Agreement and will not subject PG&E to any damages or liability for failure to provide such notice.

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving notice of an Event of Default from PG&E or Seller, whichever is received first, Financing Provider shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) days; provided, however, that Financing Provider shall provide a written notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that PG&E shall have the right to set off or deduct from payments due to Seller each and every amount due PG&E from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action PG&E may have against Seller.

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

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that PG&E may agree with Seller to modify or amend the Assigned Agreement, and that PG&E is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases PG&E from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. PG&E shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [____], as depositary agent, to ABA No. [____], Account No. [____], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, PG&E and Financing Provider agrees that each such payment by PG&E to such depositary agent of amounts due to Seller from PG&E under the Assigned Agreement shall satisfy PG&E's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

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

If to Financing Provider:

Name: _____
Address: _____

Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

If to PG&E:

Name: _____
Address: _____

Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

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

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

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

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

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

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

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

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

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

PACIFIC GAS AND ELECTRIC COMPANY
(PG&E)

By: _____
Name: _____
Title: _____

[_____]
(Financing Provider), as collateral agent

By: _____
Name: _____
Title: _____

APPENDIX XIII

SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer, pursuant to the terms of Section 11.1 of the Agreement, all of the following documentation at least five (5) Business Days after the Execution Date:

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

APPENDIX XIV

FORM OF ACTUAL AVAILABILITY REPORT

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

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

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

**APPENDIX XIV
ATTACHMENT 1**

Form of Microsoft Excel Worksheet

**[Seller]'s Availability
Report**
*All amounts are in
MWs*

<u>Settlement Interval No.</u>	<u>Date</u>	<u>H E1</u>	<u>H E2</u>	<u>H E3</u>	<u>H E4</u>	<u>H E5</u>	<u>H E6</u>	<u>H E7</u>	<u>H E8</u>	<u>H E9</u>	<u>HE 10</u>	<u>HE 11</u>	<u>HE 12</u>	<u>HE 13</u>	<u>HE 14</u>	<u>HE 15</u>	<u>HE 16</u>	<u>HE 17</u>	<u>HE 18</u>	<u>HE 19</u>	<u>HE 20</u>	<u>HE 21</u>	<u>HE 22</u>	<u>HE 23</u>	<u>HE 24</u>	
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Date/Time of
Submittal