

**AMENDED AND RESTATED
POWER PURCHASE AND SALE AGREEMENT**

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as “Buyer”)

and

High Plains Ranch III, LLC
(as “Seller”)

**AMENDED AND RESTATED
POWER PURCHASE AND SALE AGREEMENT**

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SCHEDULES AND APPENDICES

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

- Schedule 1.42 Deemed Delivered Product
- Schedule 3.1(e) Contract Quantity
- Schedule 3.1(h) Interconnection Point
- Schedule 3.11 Limited Operation Product
- 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 V, Attachment A: Form of Certification of Commercial Operation
- Appendix VI Solar Electric System Acceptance Tests and Certification Procedure
- Appendix VII Form of Monthly Progress Report
- Appendix VIII GEP Damages Calculation
- Appendix IX Notification Requirements for Available Capacity and Project Outages
- Appendix X Resource Adequacy
- Appendix XI Notices List
- Appendix XII Terms of Buyer’s Right of First Offer
- Appendix XIII Form of Guaranty
- Appendix XIV Form of Consent and Assignment

**AMENDED AND RESTATED
POWER PURCHASE AND SALE AGREEMENT**

PREAMBLE

This Amended and Restated 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 High Plains Ranch III, LLC, a Delaware limited liability company (“Seller”), as of the Execution Date set forth on the signature page hereof.

WHEREAS, the Parties entered into the Power Purchase and Sale Agreement, dated September 28, 2009 (the “Prior Agreement”);

WHEREAS, the Parties seek to amend and restate the Prior Agreement to reflect the Parties’ agreement to (i) allow Seller to provide liquidated damages to Buyer in the event that Seller is unable to meet the Guaranteed Energy Production standards, (ii) enable Buyer to forecast and schedule the Energy produced by the Project, and (iii) enhance the terms and conditions regarding termination and right of first offer rights related to a post-Commercial Operation Date Force Majeure event;

AND WHEREAS, upon the Effective Date the Parties agree that the Prior Agreement shall become null and void and of no further force or effect.

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

- 1.1 “AAA” means the American Arbitration Association.
- 1.2 “Additional Capacity” means any generation capacity at the Site that is proposed to be constructed after any permitted reduction of the Project’s Contract Capacity under this Agreement, not to exceed, together with the Contract Capacity, 40 MW in the aggregate.
- 1.3 “Adverse Change in Property Tax Law” has the meaning set forth in Section 10.1(c)(i).
- 1.4 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.5 “Agreement” means this Amended and Restated Power Purchase and Sale Agreement between Buyer and Seller, which is comprised of the Preamble, these General Terms

and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, the word “agreement” shall have the meaning set forth in this definition.

1.6 “Amendment” has the meaning set forth in Section 10.1(c)(iii).

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

1.8 “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.

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

1.10 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it (so long as such petition has not been dismissed within sixty (60) days of the commencement or filing of any such petition), (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

1.11 “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.

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

1.13 “Buyer’s Notice” has the meaning set forth in Appendix XII.

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

1.15 “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.

1.16 “CAISO Penalties” has the meaning set forth in Section 4.5.

1.17 “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.

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

1.19 “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.

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

1.21 “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.

1.22 “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.

1.23 “COD LD Payment” has the meaning set forth in Section 3.11(a).

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

1.25 “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.

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

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

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

1.29 “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.

1.30 “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.

1.31 “Contract Capacity Commitment” means, at a minimum, the amount of the Contract Capacity that may be constructed pursuant to the material Governmental Approvals received or obtained by Seller as of the Guaranteed Construction Start Date (as may be extended pursuant to Section 3.9(c)(iii)), not to exceed 40 MW in the aggregate.

1.32 “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.

1.33 “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.

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

1.35 “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.

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

1.37 “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.

1.38 “CPUC Filing” has the meaning set forth in Section 10.1(c)(iv)(A).

1.39 “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.

- 1.40 “Cure” has the meaning set forth in Section 8.5(a).
- 1.41 “Current CA Revenue and Taxation Code” means the California Revenue and Taxation Code as in effect on the Execution Date, and not as it may be amended or supplemented from time to time.
- 1.42 “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) 120.
- 1.43 “Day Ahead Schedule” has the meaning set forth in the CAISO Tariff.
- 1.44 “Day Ahead Availability Notice” has the meaning set forth in Section 3.4(c)(iii)(C).
- 1.45 “Deemed Delivered Product” means Product that would have been delivered by Seller to Buyer but for Buyer’s unexcused failure to take delivery. The amount of Deemed Delivered Product shall be calculated in accordance with Schedule 1.42.
- 1.46 “Defaulting Party” means the Party that is subject to an Event of Default.
- 1.47 “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.
- 1.48 “Delivery Point” means the point at which Buyer receives Seller’s Product, as set forth in Section 3.1(d).
- 1.49 “Delivery Term” has the meaning set forth in Section 3.1(c)(ii).
- 1.50 “Delivery Term Security” shall mean the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.
- 1.51 “Developmental Delay” means extensions to either of the Guaranteed Project Milestones due to Permitting Delay, Transmission Delay or Financing Extension.
- 1.52 “Disclosing Party” has the meaning set forth in Section 10.7.
- 1.53 “Disclosure Order” has the meaning set forth in Section 10.7.
- 1.54 “Dispatch Down Period” means the period of time during which (a) curtailments are ordered from the CAISO, for reasons including but not limited to any system emergency, as defined in the CAISO Tariff (“System Emergency”), (b) curtailments are 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 are ordered by Buyer due to over-generation as defined in the CAISO Tariff; (d) curtailments are ordered by Buyer based upon Buyer’s forecast of over-generation, including, but not limited to, a request by the CAISO to manage over-generation conditions pursuant to CAISO Operating

Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (e) curtailments are ordered by the Participating Transmission Owner, or (f) there is scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point.

1.55 "Downgrade Event" shall refer to any point in time when Seller's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's, if rated by one or more Ratings Agencies.

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

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

1.58 "Effective Date" shall mean the date on which all of the Conditions Precedent set forth in Section 11.1 have been satisfied or waived in writing by both Parties.

1.59 "Electrical Losses" means any applicable transmission or transformation losses up to the Delivery Point.

1.60 "Eligible Intermittent Resource Program" or "EIRP" means the Eligible Intermittent Resource Protocol, as may be amended from time to time or any successor or replacement regulatory regime for the scheduling of intermittent resources, as set forth in the CAISO Tariff or any successor regulation.

1.61 "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.

1.62 "Energy" means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 1.90, "Green Attributes," the word "energy" shall have the meaning set forth in this definition.

1.63 "Energy Deviation(s)" means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid (as defined in the CAISO Tariff) submitted for the Project for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and (b) Delivered Energy for the Settlement Interval.

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

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

1.66 "EPC Contractor" means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller's.

1.67 “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.

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

1.69 “Exclusivity Period” has the meanings set forth in Sections 3.10(e), 3.11(a), 5.2(b)(iii), 5.2(c), and 11.3(c), as applicable.

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

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

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

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

1.74 “Financing Extension” has the meaning set forth in Section 3.9(c)(iii)(A)(IV).

1.75 “Financial Incentives” means (i) financial incentives granted as a consequence of being a solar energy generator, (ii) financial incentives related to being in an enterprise development zone, an economic development zone or any other location that entitles the Project to financial incentives granted by a Governmental Authority; (iii) franchise, property, business or other tax rebates, reduction or waivers, (iv) guaranties or other financial enhancements provided by any Governmental Authority, (v) income tax credits or incentives under applicable state or federal Law, including the Energy Tax Credit, and (vi) revenue from conservation easements, advertising and other privately negotiated arrangements not related to the sale of Product.

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

1.77 “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

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

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

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

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

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

(b) Force Majeure shall not be based on:

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

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

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

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

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

- 1.78 “Force Majeure Cure Period” has the meaning set forth in Section 11.3.
- 1.79 “Force Majeure Extension” has the meaning set forth in Section 3.9(c)(iii)(A)(III).
- 1.80 “Force Majeure LD Payment” has the meaning set forth in Section 5.2(c).
- 1.81 “Forced Outage” means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in material part, in either case by more than ten percent (10%), in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of the Project in whole or in material part for operation, in whole or in part, for operation, maintenance or repair that is not a Planned Outage and not the result of Force Majeure.
- 1.82 “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 this Agreement and the Transaction hereunder 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 to determine the value of the Product.
- 1.83 “GHG Cap” has the meaning set forth in Section 3.1(j).
- 1.84 “GEP Cure” has the meaning set forth in Section 3.1(e)(ii)(B).
- 1.85 “GEP Failure” has the meaning set forth in Section 3.1(e)(ii)(B).
- 1.86 “Good Utility Practice” has the meaning provided in the CAISO Tariff.
- 1.87 “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.
- 1.88 “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.
- 1.89 “Governmental Charges” has the meaning set forth in Section 9.2.
- 1.90 “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.

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

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

1.93 "Guaranteed Energy Production" means the amount set forth in Schedule 3.1(e) for the applicable Performance Measurement Period.

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

1.95 "Guarantor" means SunPower Corporation or such other party as indicated in the Guaranty..

1.96 "Guaranty" means a guaranty, substantially in the form attached as Appendix XIII to this Agreement, from a person having a Required Credit Rating.

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

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

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

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

1.100 “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 the Delivery Point, including, but not limited to, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required pursuant to Good Utility Practices and in accordance with any agreements entered into by Seller necessary for interconnection to protect the Participating Transmission Owner’s electric system (or other systems to which the Participating Transmission Owner’s electric system is connected, including the CAISO Grid) and the Participating Transmission Owner’s or Transmission Provider’s, as applicable, customers from faults occurring at the Project.

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

1.102 “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.

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

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

1.105 “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.

1.106 “Inter SC Trade” or “IST” has the meaning set forth in the CAISO Tariff.

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

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

1.109 “Law” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Sections 1.37 “CPUC Approval,” 1.90 “Green

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

1.110 “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.

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

1.112 “Limited Operation Payment” has the meaning set forth in Section 3.11(b).

1.113 “Limited Operation Period” has the meaning set forth in Schedule 3.11.

1.114 “Limited Operation Plan” has the meaning set forth in Section 3.11(b).

1.115 “Limited Operation Product” has the meaning set forth in Section 3.11(b).

1.116 “Limited Operations Study” has the meaning set forth in Section 3.11(b).

1.117 “Losses” means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement or the Transaction hereunder 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 referent prices for renewable power established by the CPUC, market prices for comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining Delivery Term. Except for the Energy Tax Credit exception in the succeeding sentence, if the Non-Defaulting Party is Seller, then “Losses” shall exclude any loss of federal or state tax credits or benefits related to the Project or generation therefrom. Notwithstanding the proceeding sentence, if (i) the Non-Defaulting Party is the Seller, and (ii) Seller declares an Early Termination Date with respect to an Event of Default pursuant to Sections 5.1(a)(ii), 5.1(a)(iii), 5.1(a)(iv), or 5.1(a)(v) prior to the Commercial Operation Date, the term “Losses” shall include any loss of Energy Tax Credits which Seller has not been able to mitigate after use of commercially reasonable efforts and any limitation on Seller’s ability to depreciate the Project or any component thereof in accordance with 28 U.S.C. Section 168 or under any applicable state tax laws (“Depreciation”). For the avoidance of doubt, after the Commercial Operation Date, the term “Losses” shall not include any loss of Energy Tax Credits. Notwithstanding any of the foregoing, Seller may not claim lost Energy Tax Credits and/or Depreciation as a component of Seller’s Losses if (i) Seller in fact has been able to obtain Energy Tax Credits and Depreciation or

(ii) Seller is not able to obtain Energy Tax Credits and Depreciation, notwithstanding this Agreement and the performance of its obligations hereunder.

- 1.118 “Manager” has the meaning set forth in Section 12.2(a).
- 1.119 “Milestones” has the meaning set forth in Section 3.9(c)(i).
- 1.120 “Mitigation Exercise Period” has the meaning set forth in Section 10.1(c)(iii).
- 1.121 “Mitigation Offer” has the meaning set forth in Section 10.1(c)(ii).
- 1.122 “Mitigation Option” has the meaning set forth in Section 10.1(c)(iii).
- 1.123 “Monthly Progress Report” means the report similar in form and content attached hereto as Appendix VII.
- 1.124 “Monthly Period” has the meaning set forth in Section 4.2.
- 1.125 “Monthly TOD Payment” has the meaning set forth in Section 4.3(b).
- 1.126 “Moody’s” means Moody’s Investor Services, Inc., or its successor.
- 1.127 “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.
- 1.128 “MW” means megawatt.
- 1.129 “MWh” means megawatt-hour.
- 1.130 “NERC” means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.
- 1.131 “NERC Holiday” has the meaning set forth in Section 4.2.
- 1.132 “Network Upgrades” has the meaning set forth in the CAISO Tariff.
- 1.133 “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.
- 1.134 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.135 “Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Appendix XI contains the names and addresses to be used for Notices.
- 1.136 “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.

- 1.137 “Obligor” means the Party breaching the terms of this Agreement.
- 1.138 “Offer” has the meaning set forth in Appendix XII.
- 1.139 “Offer Acceptance Notice” has the meaning set forth in Section 10.1(c)(iii).
- 1.140 “Outage Notification Procedures” means the Notification Requirements for Available Capacity and Project Outages specified in Appendix IX, attached hereto. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.
- 1.141 “Participating Intermittent Resource” or “PIRP” shall have the meaning set forth in the CAISO Tariff.
- 1.142 “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, until notice otherwise from Buyer, the Participating Transmission Owner is Pacific Gas and Electric Company.
- 1.143 “Party” or “Parties” means the Buyer or Seller individually, or to both collectively. For purposes of Section 10.12 “Governing Law,” the word “party” or “parties” shall have the meaning set forth in this definition.
- 1.144 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security.
- 1.145 “Performance Measurement Period” has the meaning set forth in Section 3.1(e).
- 1.146 “Performance Tolerance Band” shall be calculated as set forth in Section 4.5(c)(ii).
- 1.147 “Permit Failure” has the meaning set forth in Section 3.10(a).
- 1.148 “Permit Failure LD Payment” has the meaning set forth in Section 3.10(b)(i).
- 1.149 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.
- 1.150 “PNode” has the meaning set forth in the CAISO Tariff.
- 1.151 “Preamble” means the paragraph that precedes Article One: General Definitions to this Agreement.
- 1.152 “Pre-Construction Failure” has the meaning set forth in Section 5.2(c).

1.153 “Price Increase Approval” means the CPUC’s final and non-appealable approval of Buyer’s (a) exercise of the Mitigation Option and execution of the Amendment, and (b) recovery of all additional payments to be made by Buyer under the Amendment, subject to the Buyer’s continued administration of the Agreement.

1.154 “Product” means the Energy, capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project, including, without limitation, renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes but not including any Financial Incentives.

1.155 “Program Agreements” has the meaning set forth in Section 3.4(b)(i).

1.156 “Project” means all of the solar energy generation facility on the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility as more particularly described on Appendix IV.

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

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

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

1.160 “Purchased Energy” has the meaning set forth in Section 4.1(c).

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

1.162 “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.

1.163 “RA Cost Threshold” has the meaning set forth in Section 3.3.

1.164 “RA Upgrade Agreement” has the meaning set forth in Section 3.3.

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

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

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

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

1.169 “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.

1.170 “Required Credit Rating” means (i) as to a Letter of Credit, a Credit Rating of at least A from S&P or A2 from Moody’s, and (ii) as to a Guaranty (other than from SunPower Corporation pursuant to clause (iii)), with Credit Rating of at least BBB from S&P or Baa2 from

Moody's, and (iii) as to a Guaranty from SunPower Corporation, no Credit Rating shall be required so long as SunPower Corporation is not rated by either S&P or Moody's; provided, that such Guaranty shall not exceed six million seven hundred thousand dollars (\$6,700,000.00) and provided further, that if SunPower Corporation is rated by either S&P or Moody's and such Credit Rating is acceptable to Buyer, the Guaranty may be for up to the maximum amount of the Performance Assurance.

1.171 "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.

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

1.173 "Restructuring Event" has the meaning set forth in Section 3.1(d).

1.174 "RFP" means the solicitation from which this Agreement is the result.

1.175 "RPS Qualification Expenditure Maximum" has the meaning set forth in Section 5.7.

1.176 "RPS Qualification Improvement" has the meaning set forth in Section 5.7.

1.177 "RPS Qualification Improvement Amount Agreement" has the meaning set forth in Section 5.7.

1.178 "RPS Qualification Improvement Notice" has the meaning set forth in Section 5.7.

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

1.180 "Schedule" has the meaning set forth in the CAISO Tariff.

1.181 "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.

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

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

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

1.185 "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.

1.186 “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.

1.187 “Site” means the location of the Project as described in Appendix IV.

1.188 “Term” has the meaning set forth in Section 2.5 of this Agreement.

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

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

1.191 “Test Energy” means Product measured in MWh net of auxiliary loads and station electrical uses (unless otherwise specified) that is scheduled and/or delivered during the Test Period from not less than 1 MW of installed capacity.

1.192 “Test Energy Price” means \$103.18/MWh of Delivered Energy, as may be adjusted in accordance with Section 4.1(b).

1.193 “Test Period” means the period commencing on the first date that Seller schedules Test Energy from the Project to Buyer, pursuant to the terms of this Agreement, after the CAISO informs Seller in writing that Seller may deliver Test Energy from the Project to the CAISO Grid and ending with the Initial Energy Delivery Date.

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

1.195 “TOD” means time of delivery of Scheduled Energy from Seller to Buyer.

1.196 “TOD Factors” has the meaning set forth in Section 4.3(a).

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

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

1.199 “Transmission Delay” has the meaning set forth in Section 3.9(c)(iii)(A)(II).

1.200 “Transmission LD Payment” has the meaning set forth in Section 3.11(c).

1.201 “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.

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

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

1.204 “WREGIS Cap” has the meaning set forth in Section 3.1(k)(vii).

1.205 “WREGIS Cap Notice” has the meaning set forth in Section 3.1(k)(viii).

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

1.207 “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.

1.208 “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.

1.209 “WREGIS Update” has the meaning set forth in Section 3.1(k)(vii).

1.210 “WREGIS Update Agreement” has the meaning set forth in Section 3.1(k)(viii).

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

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties. Nothing herein modifies, alters or affects in any way the Parties’ obligations under the Confidentiality Agreement, dated July 9, 2008 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 existing at the applicable time to which such construction applies.

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

(d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities

(whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

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

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

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

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

2.4. Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Agreement, 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 Sections 3.10, 3.11, 5.2, 10.1, 11.2 or 11.3 of this Agreement (the “Term”); provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for twenty-four (24) months. The rights and obligations set forth in Sections 3.10, 3.11, 5.2, 10.7, and 11.3 shall survive the termination of this Agreement until the Parties’ obligations under those Sections have been satisfied.

2.6 Binding Nature.

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

(i) Sections 3.9(a)(vi), 5.1(a)(iv)-(v), and 5.1(b)(iv);

- (ii) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.6;
- (iii) Sections 5.2 through 5.6;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;
- (v) Sections 10.2, 10.6 through 10.8, and Sections 10.12 through 10.16; and
- (vi) Articles One, Two, Seven, Eleven, Twelve and Thirteen.

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

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

(b) Transaction. Unless specifically excused by the terms of this Agreement, 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 addition, during the Test Period, Seller may sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received Test Energy, at the Delivery Point, and Buyer shall pay Seller the Test Energy Price in accordance with the terms hereof. Notwithstanding any other provision of this Agreement, Buyer is not obligated to receive or pay for Test Energy and/or any Product if Seller is in breach of its obligation to post, maintain and/or pay Project Development Security. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Imbalance Energy pursuant to Section 4.6. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except for Test Energy in accordance with this Agreement. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product from the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(c) Delivery Term.

(i) Prior to the Initial Energy Delivery Date, Buyer agrees to accept Test Energy from Seller at the Delivery Point during the Test Period, and pay for such Test Energy at the Test Energy Price pursuant to the terms set forth in this Agreement; provided that (A) Seller shall have satisfied conditions (A) and (D) listed in Section 3.1(c)(ii), (B) Seller shall provide evidence to Buyer that the Project has been certified by the CEC as an Eligible Renewable Energy Resource, and (C) Seller has provided to Buyer a Licensed Professional Engineer certification in the form provided in Appendix V. If providing Test Energy, Seller shall

provide Buyer with at least five (5) Business Day's advance written notice prior to scheduling Product from the Project to Buyer or the CAISO.

(ii) 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 (other than Test Energy) 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. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (A) the Commercial Operation Date has occurred; (B) Buyer shall have received the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; (C) all of the applicable Conditions Precedent in Article Eleven of the Agreement have been satisfied or waived in writing, and (D) Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource. If subsection (D) is applicable, Seller shall obtain such certification no later than one hundred twenty (120) days following the Commercial Operation Date. 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.

(iii) Prior to the Commercial Operation Date Seller shall complete Appendix XI by providing Buyer with Seller's Federal Tax ID Number and Wire Transfer information.

(d) Delivery Point. The Delivery Point shall be the point designated by the CAISO as the PNode; provided that if the PNode is not in close proximity to the Interconnection Point, as determined by Seller in its sole discretion, then Seller may designate the Delivery Point as the Interconnection Point; provided further that if Seller elects to make such designation, then Seller must do so prior to the first day on which Seller delivers Test Energy to Buyer. If the market structure established by the CAISO is materially modified or replaced by the CAISO as a result of a successor program to the MRTU ("Restructuring Event"), the Delivery Point shall be the point designated by the CAISO as such successor delivery point that most closely resembles the initial delivery point. 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"), whether due to CRRs or any Locational Marginal Price adjustments (as defined or required for MRTU under the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the delivery of Product in accordance with the terms of this Agreement (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and

Seller shall retain the Reductions. If a Restructuring Event occurs and if such event results in incremental settlement costs, CAISO congestion costs or losses related invoice costs (excluding SC and Imbalance Energy costs and net of Reductions) to Seller in excess of twenty thousand dollars (\$20,000.00) in any Contract Year, then the Parties will negotiate in good faith to amend this Agreement, subject to CPUC Approval, to restore the original balance of benefits and burdens that would have resulted prior to such Restructuring Event had the Delivery Point remained at the Interconnection Point.

(e) Contract Quantity and Guaranteed Energy Production.

(i) The Contract Quantity after the Commercial Operation Date shall be as shown in Schedule 3.1(e), as may be adjusted pursuant to Section 3.1(f), Section 3.10, Section 5.2(b), or Section 11.3. Seller shall have the right at any time during the Delivery Term to increase the number of photovoltaic cells and related equipment in the Project for the purpose of meeting the Guaranteed Energy Production; provided, that the maximum nominal capacity of the Project (net of auxiliary loads and station electrical uses) to generate electricity shall not exceed 40 MW.

(ii) Guaranteed Energy Production After Commercial Operation Date.

(A) Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term (“Performance Measurement Period”). Guaranteed Energy Production for each Performance Measurement Period is set forth in Schedule 3.1(e).

(B) (I) If Seller delivers less than the Guaranteed Energy Production in any Performance Measurement Period (a “GEP Failure”), then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall promptly notify Seller of such GEP Failure. Seller may cure the GEP Failure by delivering to Buyer no less than ninety percent (90%) of the Contract Quantity over the next following Contract Year (“GEP Cure”). If Seller fails to generate sufficient Delivered Energy to make the GEP Cure for a given Performance Measurement Period, Seller shall pay GEP Damages, calculated pursuant to Appendix VIII (GEP Damages Calculation). To the extent Seller’s inability to deliver the Guaranteed Energy Production in any Performance Measurement Period is due to a reduction in solar insolation, Seller shall submit a plan to Buyer which shall explain the cause of the impact of such reduction on the Project’s ability to produce Energy and a plan to (i) remedy the effects of the reduced solar insolation, if possible and (ii) continue to operate and maintain the Project.

(II) The Parties agree that the damages sustained by Buyer associated with Seller’s failure to achieve the Guaranteed Energy Production requirement would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay GEP Damages.

(III) After the GEP Cure period has run, if Seller has not achieved the GEP Cure, Buyer shall have forty-five (45) days to notify Seller of such failure. Within forty-five (45) days of the end of the GEP Cure period, Buyer shall provide

Notice to Seller in writing of the amount of the GEP Damages, if any, which Seller shall pay within sixty (60) days of receipt of the Notice. If Seller does not pay the GEP Damages within the sixty (60) day time period, Buyer may, at its option, declare an Event of Default pursuant to Section 5.1(b)(vi)(A). If Buyer does not (1) notify Seller of the GEP Failure or (2) declare an Event of Default pursuant to Section 5.1(b)(vi), if Seller has failed to pay the GEP Damages, then Buyer shall be deemed to have waived 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 notice of GEP Failure, GEP Damages, or default, subject to the limitations set forth in Section 5.1(b)(vi)(B).

(f) Contract Capacity. Subject to Section 4.4, the Contract Capacity of the Project shall be 40 MW. 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 one hundred and ten percent (110%) of the Contract Capacity.

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Except as set forth in Section 3.1(e)(i), Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity or the anticipated output of the Project without Buyer's prior written consent, which consent shall not be unreasonably withheld. The Project is further described in Appendix IV.

(h) Interconnection Facilities.

(i) Interconnection Point. The interconnection point is the point at which the Interconnection Facilities interconnect with the CAISO Grid, as more fully shown in Schedule 3.1(h).

(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 (1) Network Upgrades (subject to Section 4.1(b)) and (2) Network Upgrades, as defined in the CAISO Tariff, which shall include Delivery Network Upgrades and Reliability Network Upgrades, as such terms are defined in the CAISO Tariff, in order to satisfy Seller's Network Upgrade obligation in subpart (B)(1) of this Section 3.1(h)(ii).

(iii) Coordination with Buyer. Seller shall exercise reasonable efforts to (A) coordinate with Buyer in connection with the Network Upgrades and development of the LGIA; (B) solicit Buyer's comments on such activities; (C) provide to Buyer copies of all material correspondence related thereto; (D) to the extent reasonably practicable, include Buyer in its negotiation with the CAISO and the Participating TO of its LGIA; and (E) provide Buyer with written reports of the status of the LGIA and Network Upgrades on a monthly basis. The foregoing shall not preclude Seller from executing an LGIA that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law.

(i) Performance Excuses.

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

(ii) Buyer Excuses. The performance of Buyer to receive or pay for the Product shall be excused only (A) during periods of Force Majeure, (B) by Seller's failure to perform under this Agreement, or (C) during Dispatch Down Periods. If Buyer does not take delivery of or pay for Product and is not excused by any of the foregoing events, then Seller shall be deemed to have delivered, and Buyer shall be deemed to have accepted and shall pay for, the Deemed Delivered Product. The price for such Deemed Delivered Product shall be determined in accordance with Schedule 1.42.

(iii) Dispatch Down/Curtailment. Notwithstanding Section 3.1(b) and 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 the Dispatch Down Period pursuant to Section 1.52(b)-(f) shall not exceed fifty (50) hours during any Contract Year (and no more than ten (10) hours in any Super Peak Period as such period is defined in Section 4.2) and if such Dispatch Down Period exceeds such number of hours or occurs during such periods, then Buyer shall purchase from Seller the Deemed Delivered Product attributable to the period of excessive Dispatched Down Period. The price for such Deemed Delivered Product shall be determined in accordance with Schedule 1.42.

(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. Notwithstanding the foregoing, Seller shall not be obligated to undertake any actions pursuant to this Section 3.1(j) that have resulted or would result in costs or expenses to Seller in excess of one hundred thousand dollars (\$100,000.00) over the Delivery Term ("GHG Cap"); provided that Seller shall nonetheless be required to undertake such actions if Buyer agrees in writing to reimburse Seller for any costs or expenses in excess of the GHG Cap.

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

(i) As of the Test Period Seller shall register the Project with WREGIS. As of the Test Period and throughout 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 2010, the WREGIS Certificates will be created in WREGIS no later than April 30, 2010. 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 Six, Buyer shall make an invoice payment for a given month in accordance Article Six 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 Six.

(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 Six 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 Six, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller pursuant to Article Six.

(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 ("WREGIS Update"), the Parties shall promptly 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. Seller shall not be obligated to undertake any actions to implement the WREGIS Updates that have resulted or would result in costs or expenses to Seller in excess of one hundred thousand dollars (\$100,000.00) over the Delivery Term ("WREGIS Cap"); provided that Seller shall nonetheless

be required to comply with (A) the WREGIS Operating Rules in effect prior to the WREGIS Update and (B) the WREGIS Update if Buyer agrees in writing to reimburse Seller for any costs or expenses in excess of the WREGIS Cap, subject to subpart (viii) below.

(viii) If after the WREGIS Update is finalized or implemented, whichever is earlier, Seller determines that it will exceed the WREGIS Cap, Seller shall notify Buyer and provide documentation and calculations to support the expected exceedence (“WREGIS Cap Notice”). Buyer shall then have ninety (90) days to verify or dispute Seller’s documentation and calculation. Once the Parties have agreed in writing on the amount by which Seller will need to exceed the WREGIS Cap to accommodate the WREGIS Update (“WREGIS Update Agreement”), Buyer may then:

(A) elect to pay Seller the amount set forth in the WREGIS Update Agreement and notify Seller of such election, subject to CPUC Approval, within forty-five (45) days of the effective date of the WREGIS Update Agreement. If Buyer so elects, Seller shall, upon receipt of payment from Buyer, implement the WREGIS Update; or

(B) elect not to pay Seller for the amount set forth in the WREGIS Update Agreement and notify Seller of such decision within forty-five (45) days of the effective date of the WREGIS Update Agreement, in which case this Agreement shall continue in full force and effect and Seller shall not be required to implement any further or additional WREGIS Update that would cause Seller to exceed the WREGIS Cap.

(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 basis and, if applicable, historical basis:

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

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

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

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

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

(F) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of solar insolation, temperature, wind speed, and,

if applicable, wind direction. 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 Project's monthly Settlement Interval Actual Available Capacity in the form set forth in Appendix XIV (Form of Actual Availability Report). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(1)(i); provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

(ii) Buyer reserves the right to validate the data provided pursuant to Section 3.1(1)(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; provided that Buyer shall notify Seller promptly of Buyer's substitution of such data.

(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(1)(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(1)(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(1)(i) of this Agreement.

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

(C) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, 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) total global horizontal irradiance or direct normal insolation, air temperature, wind speed and direction, precipitation, barometric pressure, visibility in winter fog areas (forward scatter sensor) and humidity at the Site, as well as time-average data including 10-minute and hourly values of irradiance or insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and visibility in winter fog areas; (B) elevation, latitude and longitude of the weather station; and (C) any other data that would be required for participation in the EIRP.

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

(n) Obtaining and Maintaining CEC Certification and Verification. Seller 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; *provided, however* that this obligation shall not apply to the extent that Seller is unable to obtain and maintain CEC Certification and Verification because of a change in the California Renewables Portfolio Standard, or the rules or regulations relating thereto, occurring after the Execution Date and Seller has made commercially reasonable efforts to obtain and maintain CEC Certification and Verification under the then-current Law. The term "commercially reasonable efforts" as used in this Section shall not require Seller to incur out of pocket costs, either individually or in the aggregate, in excess of one hundred thousand dollars (\$100,000.00) over the Delivery Term in order to obtain and maintain CEC Certification and Verification under the then-current Law, unless Buyer agrees to reimburse Seller for such costs.

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. Notwithstanding the foregoing, Seller shall not be required to implement any change or improvement to the Project, during any Contract Year on or after the Initial Energy Delivery Date in order to comply with Resource Adequacy Requirements that in the aggregate has resulted or would result in an unreimbursed capital cost and/or operating expense that would exceed twenty thousand dollars (\$20,000.00) per Contract Year (the "RA Cost Threshold"); provided, however, that Seller shall promptly notify Buyer of any change or improvement that would exceed the RA Cost Threshold, the amount of the exceedence, and provide documentation and calculations to support such exceedence. Buyer shall then have ninety (90) days to verify or dispute Seller's documentation and calculation. Once the Parties have agreed in writing on the amount by which Seller will need to exceed the RA Cost Threshold to accommodate Buyer's Resource Adequacy Requirements ("RA Upgrade Agreement") Buyer may then:

(a) elect to pay Seller the amount set forth in the RA Upgrade Agreement and notify Seller of such election, subject to CPUC Approval, within forty-five (45) days of the effective date of the RA Upgrade Agreement. If Buyer so elects, Seller shall, upon receipt of payment from Buyer, implement the changes or improvements needed to continue to comply with the Resource Adequacy Requirements; or

(b) elect not to pay Seller for the amount set forth in the RA Upgrade Agreement and notify Seller of such decision within forty-five (45) days of the effective date of the RA Upgrade Agreement, in which case this Agreement shall continue in full force and effect and Seller shall not be required to implement any further improvements or changes to the Project to comply with the Resource Adequacy Requirements that would cause Seller to exceed the RA Cost Threshold.

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller Obligations.

(A) From the date on which Test Energy is first scheduled or delivered by the Seller to the Buyer until the end of the Delivery Term, Seller shall arrange and be responsible for transmission service, including risk of transmission outage or curtailment, to the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment;

(B) Seller shall arrange and pay independently for any and all necessary electrical interconnection costs imposed by the Participating Transmission Owner, 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; and

(C) Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards

and requirements, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement, Meter Service Agreement and PTO Generator Special Facilities Agreements, if applicable, so as to be able to deliver Energy to the CAISO Grid.

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

(A) Buyer shall arrange and be responsible for transmission service at and from the Delivery Point.

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

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

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

(b) EIRP Requirements.

(i) Participating Intermittent Resource. Seller shall use best 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 the 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 from the date on which Test Energy is first scheduled or delivered by the Seller to the Buyer until the end of the Delivery Term.

(ii) Material Changes to EIRP. If Seller participates in EIRP after the Execution Date and either, (A) EIRP is no longer in effect or (B) EIRP is materially changed, then (I) the Parties shall use commercially reasonable efforts to negotiate a mutually acceptable successor arrangement and modify this Agreement, as necessary, to arrive at a mutually agreeable amendment that will provide a scheduling or other arrangement for the delivery of Energy from the Project to Buyer during the Delivery Term. Unless and until such mutually agreeable amendment is executed and effective, each of the Parties' obligations under this Agreement shall continue in full force and effect.

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

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the beginning of the Test Period, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller's Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO

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

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

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

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include Project availability and updated status of 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.

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

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

(C) Daily Forecast of Available Capacity. During the Test Period and thereafter during 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 forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day but 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 IX. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

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

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

(D) Hourly Forecast of Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit Schedules to the CAISO in accordance with the Hour-Ahead Scheduling Process. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall (I) use commercially reasonable efforts to notify Buyer of such outage immediately following Seller Available Capacity notification to the CAISO via SLIC and Seller shall follow the Outage Notification Procedures in Appendix IX of this Agreement. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Project during or after the end of such outage. These notices and changes to Available Capacity shall be communicated by telephone to Buyer’s Hour-Ahead Trading Desk and shall be sent to Buyer’s internet site as set forth in Appendix IX:

Hour-Ahead Trading Desk

Primary Telephone: (415) 973-4500

(iv) Replacement of Scheduling Coordinator.

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

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

3.5 Standards of Care.

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

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

(c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and CAISO reliability 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 reasonably acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project site. 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 complying with the Annual Forecast of Available Capacity procedure 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. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of June through September. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld 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) Reserved.

(d) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable under the circumstances 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. To the extent reasonably practicable, within seventy-two (72) hours after the commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks after 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 shall constitute 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; provided, however, during a Force Majeure period, Buyer shall not be relieved from any payments for Products received by Buyer prior to Force Majeure.

(f) 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 use commercially reasonable efforts to 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.

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

3.8 Operations Logs and Access Rights.

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

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

3.9 New Generation Facility.

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

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

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

(ii) If Seller misses three (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) 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 January 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:

(I) three hundred sixty (360) days if Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Project, but is unable to obtain such permits due to delays beyond Seller’s reasonable control (“Permitting Delay”);

(II) five hundred forty (540) days due to delays as set forth in Section 3.11(b) (“Transmission Delay”); provided that if Buyer exercises its right under Section 3.11(b) and Seller interconnects the Project to the CAISO Grid under a Limited Operation Plan, then Seller may not claim any Transmission Delay extension days beyond the date on which the Project is so interconnected to the CAISO Grid;

(III) three hundred sixty (360) days in the event of Force Majeure (“Force Majeure Extension”), provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer’s written request; or

(IV) three hundred sixty (360) days if Seller has used commercially reasonable efforts to obtain construction financing for the Project on terms reasonably acceptable to Seller but is unable to obtain and close such financing by the date that is sixty (60) days prior to the Guaranteed Construction Start Date and has provided documentation to Buyer of its efforts and inability to obtain such financing (“Financing Extension”).

Notwithstanding the foregoing, if Seller claims Permitting Delay, Force Majeure Extension, Transmission Delay and Financing Extension, or any combination thereof, such extensions cannot cumulatively exceed five hundred forty (540) days and all such extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(B) Seller shall have demonstrated Commercial Operation per the terms of Appendix VI no later than December 31, 2012, (the “Guaranteed Commercial Operation Date”); provided that Seller shall be entitled to extend the Guaranteed Commercial Operation Date (I) for Force Majeure Extension and (II) on a day for day basis to reflect extensions claimed by Seller for any Guaranteed Construction Start Date pursuant to subpart (A) above.

(iv) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date may occur up to one hundred eighty (180) days prior to the

Guaranteed Commercial Operation Date so long as Seller provides notice to Buyer of such Commercial Operation Date at least ninety (90) days prior to Seller's anticipated date of achieving Commercial Operation. 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 (other than as such dates may be extended under clause (iii) above), Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (A) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of ninety (90) days ("Project Cure Period"); or (B) the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, up to a total of ninety (90) days ("Construction Cure Period"). Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone would be difficult or impossible to predict with certainty, and (II) the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller's failure to meet the Guaranteed Construction Start Date, only if Seller meets the Guaranteed Commercial Operation Date (as may be extended by Force Majeure or Development Delay, as described above), as provided further in Section 8.4(c) of this Agreement. For sake of certainty, Buyer shall retain all Daily Delay Damages drawn as a result of Seller's failure to meet the Guaranteed Commercial Operation Date (as may be extended by Force Majeure or Development Delay, as described above) and the Guaranteed Construction Start Date, if Seller fails to meet the Guaranteed Commercial Operation Date.

(v) Prior to (A) (I) the Guaranteed Construction Start Date, with respect to a Developmental Delay, or (II) the next applicable Guaranteed Project Milestone, with respect to Force Majeure Extension, and (B) not more than five (5) Business Days following the date on which Seller determines that a Developmental Delay or Force Majeure has occurred, Seller shall provide Buyer with written notice of the applicable Developmental Delay and/or Force Majeure Extension. Such notice shall include (x) a detailed explanation of the reason for declaring the delay, (y) the number of days by which the Guaranteed Construction Start Date and all related Milestones, including Guaranteed Project Milestones, will be extended, and (z) a revised Appendix III, Milestones Schedule, including the revised Milestone dates.

3.10 Resize of Project Due to Permit Impacts.

(a) If Seller has not received or obtained by the Guaranteed Construction Start Date (as may be extended pursuant to this Agreement) final and non-appealable material Governmental Approvals required for the construction of the Project with a Contract Capacity of 40 MW, after using commercially reasonable efforts to do so (including, but not limited to, timely filings with all applicable Governmental Authorities and timely payment of any required fees) ("Permit Failure"), then Seller shall make a Contract Capacity Commitment on the Guaranteed Construction Start Date (as may be extended), equal to, at a minimum, the generation capacity permitted under the final and non-appealable material Governmental Approvals that Seller has received as of the Guaranteed Construction Start Date (as may be extended), and shall provide Notice of such Contract Capacity Commitment to Buyer no later than ten (10) Business Days following such deadline.

(b) If Seller's Contract Capacity Commitment is less than 15 MW because of a Permit Failure, then Buyer may, at its option, elect either of the following:

(i) To reduce the Contract Capacity to the level of the Contract Capacity Commitment, in which event the Contract Quantity, Project Development Security and

Delivery Term Security also shall be proportionately reduced based on the reduced Contract Capacity and Buyer's Right of First Offer shall apply as set forth in subsection (e) below. If Seller reasonably determines in good faith that it is not economically viable for Seller to develop the Project at the level of the Contract Capacity Commitment, Seller shall declare an Early Termination Date for the entire Agreement by Notice to Buyer within ten (10) Business Days after receipt of Notice of Buyer's election under this Section 3.10(b), and shall pay to Buyer liquidated damages in the amount of one million dollars (\$1,000,000.00) ("Permit Failure LD Payment") and Buyer's Right of First Offer shall apply as set forth in subsection (e) below. Each Party agrees and acknowledges that (A) the damages that Buyer would incur due to termination of this Agreement because of such a Permit Failure would be difficult or impossible to predict with certainty, and (B) the Permit Failure LD Payment is an appropriate approximation of such damages. Upon Seller's payment of the Permit Failure LD Payment to Buyer, this Agreement shall terminate and, other than as provided in Section 2.5, both Parties shall be released of any further liabilities and obligations under the Agreement. For avoidance of doubt, upon Buyer's declaration of an Early Termination Date hereunder, Buyer may exercise all of the rights and remedies provided to Buyer as the Non-Defaulting Party under Article Eight to satisfy the Permit Failure LD Payment, including, without limitation, immediately drawing upon the Performance Assurance posted by Seller; or

(ii) To declare an Early Termination Date for the entire Agreement due to such Permit Failure by Notice to Seller, in which event Seller shall pay to Buyer the Permit Failure LD Payment. Seller shall pay such Permit Failure LD Payment to Buyer no later than ten (10) Business Days following receipt of Buyer's Notice. For avoidance of doubt, no Right of First Offer shall apply following a termination pursuant to this Section 3.10(b)(ii).

(c) If Seller's Contract Capacity Commitment is more than 15 MW, but less than 40 MW, then the Parties shall reduce the Contract Capacity to the level of the Contract Capacity Commitment. The Contract Quantity, Project Development Security and Delivery Term Security also shall be proportionately reduced based on the reduced Contract Capacity and the terms of the Buyer's Right of First Offer shall apply as set forth in subsection (e) below.

(d) Seller shall not incur or be subject to any liability hereunder as a result of such reduction in the Contract Capacity under Sections 3.10(b)(i) or 3.10(c), the failure to achieve Commercial Operation of any capacity by which the Contract Capacity is reduced, or the failure to achieve any Milestone or Guaranteed Project Milestone related to such capacity, except as provided in subsection (e) below.

(e) In the event that the Contract Capacity is reduced pursuant to Sections 3.10(b)(i) or 3.10(c) above, then the terms of Buyer's Right of First Offer set forth in Appendix XII shall apply and are incorporated herein by reference. For purposes of the Right of First Offer under this Section 3.10(e), the "Exclusivity Period" shall be the period from the date the Contract Capacity is reduced pursuant to Sections 3.10(b)(i) or 3.10(c), as applicable, until thirty six (36) months after the date of Buyer's Notice.

3.11 CAISO Delays and Network Upgrades.

(a) If, at the time Seller executes a final Interconnection Agreement with the CAISO (but in no event later than December 31, 2012), the anticipated interconnection schedule will not accommodate a Commercial Operation Date of December 31, 2014 or earlier, then Buyer may, at its option, elect to declare an Early Termination Date for the entire Agreement by Notice to Seller, in which event Seller shall pay to Buyer liquidated damages in the amount of one

million dollars (\$1,000,000.00) (“COD LD Payment”) and the terms of Buyer’s Right of First Offer set forth in Appendix XII shall apply and are incorporated herein by reference. Seller shall pay such COD LD Payment to Buyer no later than ten (10) Business Days following receipt of Buyer’s Notice. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to termination of this Agreement pursuant to this Section 3.11(a) would be difficult or impossible to predict with certainty, and (ii) the COD LD Payment is an appropriate approximation of such damages. Upon Seller’s payment of the COD LD Payment to Buyer, this Agreement shall terminate and, other than as provided in Section 2.5, both Parties shall be released of any further liabilities and obligations under the Agreement. For avoidance of doubt, upon Buyer’s declaration of an Early Termination Date hereunder, Buyer may exercise all of the rights and remedies provided to Buyer as the Non-Defaulting Party under Article Eight to satisfy the COD LD Payment, including, without limitation, immediately drawing upon the Performance Assurance posted by Seller. For purposes of the Right of First Offer under this Section 3.11(a), the “Exclusivity Period” shall be thirty-six (36) months from the date of Buyer’s Notice.

(b) If Seller receives an Interconnection Facilities Study pertaining to the Project from the CAISO that provides that Network Upgrades are required to reach Contract Capacity, the Guaranteed Construction Start Date may be extended on a day for day basis as set forth in this Agreement for delays beyond the reasonable control of Seller with respect to the physical interconnection of the Project to the CAISO Grid or completion of the Network Upgrades needed in order to interconnect the Project to the CAISO Grid. In the event of such a Transmission Delay, Seller shall exercise commercially reasonable efforts to accelerate its project development schedule in order to achieve a Commercial Operation Date of no later than December 31, 2012 and shall submit to Buyer a detailed description of Seller’s course of action and plan to achieve a Commercial Operation Date of no later than December 31, 2012, including a revised Milestone schedule according to Appendix III. In addition, Seller shall request as soon as possible that the Participating TO or CAISO, as applicable, conduct a study, at Seller’s expense, of limited operation as provided in the CAISO’s Standard Large Generator Interconnection Agreement (“Limited Operations Study”). Seller shall promptly provide the results of such Limited Operations Study to Buyer. If the Limited Operations Study provides that the Project can be interconnected to the CAISO Grid on the basis set forth in the CAISO’s Standard Large Generator Interconnection Agreement (“Limited Operation Plan”), then Buyer has the right, but not the obligation, to require that Seller take service pursuant to the Limited Operation Plan, provided that if Buyer exercises its right, Buyer shall pay Seller at the Contract Price in accordance with Article Four (“Limited Operation Payment”) for the amount of Product that would have been available absent any curtailments by the CAISO pursuant to the Limited Operation Plan (“Limited Operation Product”) and provided further that exercise of Buyer’s right shall not relieve Seller’s obligation to diligently pursue completion of all necessary Network Upgrades as set forth in Section 3.1(h)(ii) above. The Limited Operation Product shall be calculated as set forth in Schedule 3.11.

(c) If construction of required Network Upgrades results in delay to the Guaranteed Project Milestones (after application of all applicable extensions pursuant to this Agreement), Buyer may elect to declare an Early Termination Date for the entire Agreement by Notice to Seller, in which event Seller shall pay to Buyer liquidated damages in the amount of one million five hundred thousand dollars (\$1,500,000.00) (“Transmission LD Payment”). Seller shall pay such Transmission LD Payment to Buyer no later than ten (10) Business Days following receipt of Buyer’s Notice. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to termination of this Agreement pursuant to this Section 3.11 would be difficult or impossible to predict with certainty, and (ii) the Transmission LD Payment is an appropriate approximation of such damages. Upon Seller’s payment of the Transmission LD Payment to

Buyer, this Agreement shall terminate and, other than as provided in Section 2.5, both Parties shall be released of any further liabilities and obligations under the Agreement. For avoidance of doubt, upon Buyer's declaration of an Early Termination Date hereunder and the failure by Seller to pay the Transmission LD Payment within ten (10) Business Days thereof, Buyer may exercise all of the rights and remedies provided to Buyer as the Non-Defaulting Party under Article Eight to satisfy the Transmission LD Payment, including, without limitation, immediately drawing upon the Performance Assurance posted by Seller.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price.

(a) Subject to Section 4.1(b), the Contract Price for each MWh of Scheduled Energy in each Contract Year shall be as follows:

Contract Year	Contract Price (\$/MWh)
Construction Year	\$103.18
1	\$105.55
2	\$107.98
3	\$110.46
4	\$113.01
5	\$115.60
6	\$118.26
7	\$120.98
8	\$123.77
9	\$126.61
10	\$129.52
11	\$132.50
12	\$135.55
13	\$138.67
14	\$141.86
15	\$145.12
16	\$148.46
17	\$151.87
18	\$155.37
19	\$158.94
20	\$162.60
21	\$166.34
22	\$170.16
23	\$174.07
24	\$178.08
25	\$182.17

(b) Contract Price Adjustment for Network Upgrade Costs. Seller shall be obligated at its sole expense to (i) maintain the Interconnection Facilities, including metering facilities, for which Seller is responsible under the LGIA, and (ii) perform or cause to be performed all necessary Network Upgrades. Seller shall provide Buyer copies of all cost

estimates prepared by the Participating Transmission Owner and/or CAISO relating to the cost of Network Upgrades, including feasibility studies, system impact studies and facility studies of the Project developed through the LGIP promptly upon receipt by Seller. In the event that Network Upgrade Costs exceed the amount of twenty million dollars (\$20,000,000.00), then (subject to the following two sentences) the Contract Price will increase by a rate of \$0.05/MWh for each one million dollar (\$1,000,000.00) increase in Network Upgrade Costs over the amount of twenty million dollars (\$20,000,000.00). If the estimated Network Upgrade Costs based on the final Interconnection Facilities Study (as defined in the LGIP) exceed forty million dollars (\$40,000,000.00), Buyer shall have the option to notify Seller within twenty (20) days of Buyer's receipt of the final Interconnection Facilities Study that Buyer elects not to accept the increase in the Contract Price, whereupon Seller may terminate this Agreement and the Transaction entered into hereunder by Notice delivered to Buyer within twenty (20) days following Buyer's election not to accept the increase in the Contract price. If Buyer elects not to accept an increase in the Contract Price for Network Upgrade Costs in excess of forty million dollars (\$40,000,000.00) and Seller does not terminate this Agreement pursuant to Section 10.1(b), the Contract Price increase pursuant to this Section 4.1(b) shall be capped at the equivalent of the price increased to reflect Network Upgrade Costs equal to forty million dollars (\$40,000,000.00).

(c) At any time during the Delivery Term in which the Project is not EIRP-Certified, Buyer shall purchase Product from Seller based on Delivered Energy, and the Contract Price for each MWh of Delivered Energy shall be as specified in Section 4.1(a) above. "Purchased Energy" refers to Scheduled Energy or Delivered Energy, as applicable, which Buyer is obligated to purchase at the Contract Price, as adjusted in accordance with this Agreement.

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

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

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

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

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

- 1. **Super-Peak** (5x8) = hours ending 13 – 20 (Pacific Prevailing Time (PPT)) Monday – Friday (*except* NERC Holidays) in the applicable Monthly Period.

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

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

4.3 TOD Factors and Monthly TOD Payment.

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

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June – September	2.01	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. Following the Initial Energy Delivery Date, for each month, Buyer shall pay Seller for Scheduled Energy in each TOD Period (“Monthly TOD Payment”) the amount resulting from multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the Scheduled Energy in each hour:

$$MonthlyTOD\ Payment = \sum_{hour=1}^n Contract\ Price\ \$ * TOD\ Factor * Scheduled\ Energy\ MW_{hour}$$

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

4.5 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer as a result of Seller’s actions. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer’s

actions, including Buyer's Curtailment Periods. 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 and imbalances except as provided in Section 4.5(c) below. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller's and Buyer's respective responsibilities for payment for imbalance and congestion charges and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(c) Forecasting Penalties.

(i) In the event Seller does not in a given hour either (A) provide the access and information required in Section 3.1(1)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(1)(iv); or (C) provide the forecast of Available Capacity required in Section 3.4 (c)(iii), and the sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

(ii) The Performance Tolerance Band is three percent (3%) multiplied by Contract Capacity multiplied by one (1) hour.

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

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

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

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

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

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) 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 and such misrepresentation or breach of warranty is not remedied, in a manner that results in such representation or warranty being true and correct, and with no material adverse effect on the Non-Defaulting Party as a result of the prior inaccuracy, within thirty (30) days after Notice by the Non-Defaulting Party or (B) with respect to Section 10.2(b), becomes false or misleading in any material respect during the Delivery Term; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.2(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b) shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term 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 or to the extent excused by Force Majeure), if such failure is not remedied within thirty (30) days after Notice, which time period shall be extended if such failure to perform cannot reasonably be cured within thirty (30) days and the Defaulting Party is making diligent efforts to cure such failure to perform, provided that such extended period shall not exceed ninety (90) days;

(iv) such Party becomes Bankrupt; or

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

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

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

(ii) subject to Section 3.10 or 3.11, 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;

(iii) [Intentionally Deleted];

(iv) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement, and such failure is not remedied within five (5) days of receipt of Notice from the Non-Defaulting Party;

(v) if Seller has posted a Guaranty as Delivery Term Security and any of the following events set forth below shall have occurred and Seller then fails to replace the Guaranty with substitute Delivery Term Security with cash or a Letter of Credit if such failure is not remedied within five (5) Business Days after Notice from Buyer of such failure:

(A) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement;

(B) a Guarantor becomes Bankrupt; or

(C) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of the Guaranty; or

(vi) failure by Seller to achieve the Guaranteed Energy Production requirement as set forth in Section 3.1(e)(ii) of this Agreement as follows:

(A) after the one (1) year GEP Cure period, Seller has failed to cure the GEP Failure and has failed to pay GEP Damages in the time period set forth in Section 3.1(e)(ii); or

(B) if, after any Performance Measurement Period the cumulative GEP Shortfall for all Performance Measurement Periods occurring during the Delivery Term equals or exceeds the Contract Quantity; provided, however, that if all or a portion of a GEP Shortfall during an applicable Performance Measurement Period is principally caused by a non-Force Majeure major equipment malfunction, breakdown, or failure resulting in a reduction of Energy production of the Project by at least sixty percent (60%) of the Contract Quantity in one or both years of the Performance Measurement Period, as applicable, and such malfunction, breakdown, or failure was not caused by Seller and could not have been avoided through the exercise of Good Utility Practice, such failure shall be excluded from the calculation of the cumulative GEP Shortfall for purposes of this subsection.

5.2 Declaration of Early Termination Date.

(a) 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 (i) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”), (ii) 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; (iii) withhold any payments due to the Defaulting Party under this Agreement; (iv) suspend performance; and (v) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. Except with respect to defaults under Section 5.1(b)(vi) to the extent provided in Sections 5.2(b) and (c), and except as provided in Sections 3.10 and 3.11, 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.

(b) Pre-Construction Force Majeure. If an Early Termination Date is declared by Buyer because of an Event of Default due to Seller’s failure to meet the Guaranteed

Construction Start Date due to Force Majeure (after all applicable extensions) (“Pre-Construction Failure”), Seller shall pay to Buyer liquidated damages in the amount of one million dollars (\$1,000,000.00) (“Force Majeure LD Payment”) and the terms of Buyer’s Right of First Offer set forth in Appendix XII shall apply and are incorporated herein by reference. Seller shall pay such Force Majeure LD Payment to Buyer no later than ten (10) Business Days following receipt of Buyer’s Notice. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Pre-Construction Failure would be difficult or impossible to predict with certainty, and (ii) the Force Majeure LD Payment is an appropriate approximation of such damages. Upon Seller’s payment of the Force Majeure LD Payment to Buyer, this Agreement shall terminate and, other than as provided in Section 2.5, both Parties shall be released of any further liabilities and obligations under the Agreement. For avoidance of doubt, upon Buyer’s declaration of an Early Termination Date hereunder, Buyer may exercise all of the rights and remedies provided to Buyer as the Non-Defaulting Party under Article Eight to satisfy the Force Majeure LD Payment, including, without limitation, immediately drawing upon the Performance Assurance posted by Seller. For purposes of Buyer’s Right of First Offer under this Section 5.2(b), the “Exclusivity Period” shall be the period of thirty-six (36) months from the date of Buyer’s Notice.

5.3 Calculation of Termination Payment. Except with respect to defaults under Section 5.1(b)(v) and to the extent provided in Sections 3.10, 3.11 and 5.2(c), 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 use commercially reasonable efforts to mitigate all damages arising from any breach by the Defaulting Party. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the

Defaulting Party shall, within fifteen (15) 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; provided, however, that any COD LD Payment, Permit Failure LD Payment, Transmission LD Payment, Force Majeure LD Payment or other remedy provided pursuant to Sections 3.10, 3.11 or 5.2(c) shall constitute Buyer's sole remedy under such Sections 3.10, 3.11 or 5.2(c) and upon Buyer's acceptance of a COD LD Payment, Permit Failure LD Payment, Transmission LD Payment, or Force Majeure LD Payment, Seller shall be released from any further liability resulting from its failure to achieve the Commercial Operation, Permit Failure, delays related to Network Upgrades or failure to meet the Guaranteed Construction Start Date due to Force Majeure, as applicable, except as provided in Sections 2.5, 3.10, 3.11 or 5.2(c), and such failure by Seller shall not constitute an Event of Default nor result in Termination or any other remedy provided under this Article Five, except as provided in Sections 3.10(b), 3.11(a) or (b), or 5.2(c) as applicable.

5.7 RPS Qualification Expenditure Maximum. Seller shall not be in breach of Section 10.2(b) if the sole reason for such breach is Seller's inability to satisfy the elements of the representation and warranty in Section 10.2(b) because of an amendment or modification to the statutory provisions or other change in Law related to Eligible Renewable Energy Resources or the California Renewables Portfolio Standard, if Seller uses "commercially reasonable efforts" to comply with such change in Law. Seller shall be deemed to have made "commercially reasonable" efforts if Seller takes actions to implement any change or improvement to the Project to maintain such qualification ("RPS Qualification Improvement") which has required or would require in the aggregate the Seller to incur administrative or capital costs up to one hundred thousand dollars (\$100,000.00) over the Delivery Term ("RPS Qualification Expenditure Maximum"). If after such change in Law has occurred, Seller determines that it will exceed the RPS Qualification Expenditure Maximum to implement the RPS Qualification Improvement, Seller shall notify Buyer and provide documentation and calculations to support the expected exceedence ("RPS Qualification Improvement Notice"). Buyer shall then have ninety (90) days to verify or dispute Seller's documentation and calculation. Once the Parties have agreed in writing on the amount by which Seller will need to exceed the RPS Qualification Expenditure Maximum to satisfy the RPS Qualification Improvement ("RPS Qualification Improvement Amount Agreement"), Buyer may then:

(a) elect to pay Seller the amount set forth in the RPS Qualification Improvement Amount Agreement and notify Seller of such election, subject to CPUC Approval, within forty-five (45) days of the effective date of the RPS Qualification Improvement Amount Agreement. If Buyer so elects, Seller shall, upon receipt of payment from Buyer, implement the RPS Qualification Improvement; or

(b) elect not to pay Seller for the amount set forth in the RPS Qualification Improvement Amount Agreement and notify Seller of such decision within forty-five (45) days of the effective date of the RPS Qualification Improvement Amount Agreement, in which case this Agreement shall continue in full force and effect and Seller shall not be required to implement any further or additional RPS Qualification Improvement that would cause Seller to exceed the RPS Qualification Expenditure Maximum.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including 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, as adjusted for Imbalance Energy pursuant to Section 4.5 (which may include preceding months), and, if applicable, Section 4.6. In any month following a month in which Buyer fails to receive Energy from Seller during (A) a period for which no excuse is available under Section 3.1(i)(ii) of this Agreement; or (B) a Dispatch Down Period pursuant to Section 1.52(b)-(f) for which payment is due to Seller for Deemed Delivered Product under Section 3.1(i)(iii) of this Agreement, the invoice submitted that month shall also cover payments due for such Deemed Delivered Product. 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 10.5 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE VALUE OF ANY ENERGY TAX CREDITS INCLUDED IN LOSSES AS DEFINED IN THIS AGREEMENT AND DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

8.2 Seller Financial Information. If requested by Buyer, Seller shall deliver (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's

annual report containing unaudited consolidated financial statements for such fiscal year, provided that Seller shall provide audited consolidated financial statements in the event Seller obtains an investment rating from S&P or Moody's and (b) 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.

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 by Seller or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit or Guaranty issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Performance Assurance.

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

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of one hundred and fifty thousand dollars (\$150,000.00) 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 Section 8.4(a)(ii) below with Buyer;

(ii) Project Development Security pursuant to this Section 8.4(a)(ii) in the amount of one million five hundred thousand dollars (\$1,500,000.00) 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 Section 8.4(a)(iii) below with Buyer; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Project Development Security posted pursuant to this Section 8.4(a)(ii); and

(iii) Delivery Term Security pursuant to this Section 8.4(a)(iii) in the amount of sixteen million two hundred and forty thousand dollars (\$16,240,000.00) and in the form of cash, Letter of Credit or Guaranty 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 Section 8.4(a)(ii) toward the Delivery Term Security posted pursuant to this Section 8.4(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.

(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 posted pursuant to Section 8.4(a)(iii).

(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 Imbalance Energy, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit or Guaranty 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 or Guaranty (i) fails to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P, (ii) indicates its intent not to renew such Letter of Credit or Guaranty, or (iii) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall (A) provide a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or (B) provide a substitute Guaranty that is issued by a person with Credit Ratings equivalent to those set forth in this Section 8.5 and otherwise reasonably acceptable to Buyer, or (C) post cash in each case in an amount equal to the outstanding Letter of Credit or Guaranty within ten (10) Business Days after Buyer receives Notice of such refusal ("Cure"), as applicable. If Seller fails to Cure or if such Letter of Credit or Guaranty 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 or Guaranty is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight.

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

8.6 Seller Downgrade Event. If, at any time during the Delivery Term, there shall occur a Downgrade Event in respect of Seller's Guarantor, then Seller shall deliver to Buyer replacement Delivery Term Security in the form of a Letter of Credit or cash in an amount equal to the applicable amount of Delivery Term Security as determined in Section 8.4(a)(iii). In the event Seller shall fail to provide Buyer with such Letter of Credit, cash or replacement Guaranty within five (5) Business Days of the Downgrade Event, Buyer may declare an Event of Default pursuant to Section 5.1(b)(vi) by providing Notice thereof to 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 Tax Credits; No Fault Termination.

(a) [Intentionally Deleted.]

(b) Network Upgrades. If the cost to Seller of Network Upgrades will be in excess of forty million dollars (\$40,000,000.00) in the aggregate and Buyer has elected not to increase the Contract Price to pay for such increased costs pursuant to Section 4.1(b), then Seller may terminate this Agreement and the Transaction entered into hereunder by written Notice to Buyer. If Seller has the right to terminate this Agreement and the Transaction pursuant to this subsection 10.1(b) but fails to send written Notice of termination by March 1, 2011 (provided that such date shall be extended on a day for day basis for any Transmission Delay pursuant to Section 3.9(c)(iii)), then Seller's termination right per this Section 10.1(b) shall be deemed waived in its entirety.

(c) Seller Tax-Based Termination Right.

(i) Subsequent to the Execution Date, and if as a result of an amendment or repeal of Section 73 of the Current CA Revenue and Taxation Code, Seller's California state property tax payments are increased by more than one hundred thousand dollars (\$100,000.00) per year ("Adverse Change in Property Tax Law"), then Seller shall provide a Mitigation Notice to Buyer as soon as practicable, but no later than thirty (30) days following the passage of the legislation causing the Adverse Change in Property Tax Law. If Seller does not send the Mitigation Notice as provided herein then Seller's rights pursuant to this Section 10.1(c) shall be deemed waived in their entirety.

(ii) Mitigation Offer. In its Mitigation Notice, Seller shall (A) include Seller's proposed Contract Price increase to offset Seller's additional costs resulting from the Adverse Change in Property Tax Law; provided that such increase shall exclude the first one hundred thousand dollars (\$100,000.00) of each year's annual property tax payments to be incurred by Seller and (B) documentation to support the price increase ("Mitigation Offer").

(iii) Mitigation Option. Within sixty (60) days after its receipt of a Mitigation Notice ("Mitigation Exercise Period"), Buyer, in its sole discretion, shall have the right ("Mitigation Option"), but not the obligation, to accept Seller's Mitigation Offer in its entirety by sending a Notice ("Offer Acceptance Notice") to Seller. Within sixty (60) days after Seller's receipt of an Offer Acceptance Notice, the Parties shall amend this Agreement ("Amendment") to reflect the agreed upon Contract Price increase, subject to Price Increase Approval. The Amendment shall also include a provision that requires that the amended Contract Price be reduced to not less than the original Contract Price in the event of and upon the effectiveness of (A) the reinstatement of all or a percentage of the property tax benefits reflected in the Current CA Revenue and Taxation Code or (B) any other tax benefit, credit, or grant intended to have a similar economic benefit to Seller as Section 73 the Current CA Revenue and Taxation Code.

(iv) Price Increase Approval and Limit.

(A) If the Parties complete such Amendment, Buyer shall within thirty (30) days of the date the Parties execute the Amendment submit to the CPUC an advice filing or other appropriate application (“CPUC Filing”) seeking Price Increase Approval. If Buyer receives Price Increase Approval then Buyer shall pay the increased Contract Price upon the effectiveness of the Amendment.

(B) If Price Increase Approval does not occur on or prior to two hundred forty (240) days after the CPUC Filing, the Mitigation Option shall be deemed as having terminated without having been exercised and the provisions of Section 10.1(c)(v) shall apply.

(v) Seller’s Termination Right. After such date as the Seller has issued a Mitigation Notice, Seller may terminate the Agreement only upon the occurrence of any of the following events: (A) Buyer provides written notice to Seller stating Buyer’s decision not to exercise the Mitigation Option, (B) the Mitigation Exercise Period expires without the Mitigation Option being exercised, (C) Buyer fails to seek Price Increase Approval within thirty (30) days of the date on which the Parties execute the Amendment, or (D) Buyer fails to obtain Price Increase within two hundred forty (240) days after Buyer’s submittal of the CPUC Filing. Seller may terminate the Agreement pursuant to this Section 10.1(c)(v) by sending Notice of termination, and such termination shall be effective five (5) days from the date on which Seller delivers such Notice. Both Parties shall continue to perform under this Agreement until the effectiveness of any such termination by Seller.

(d) In the case of any termination pursuant to Sections 10.1(b) or 10.1(c), neither Party shall be subject to any additional liability or damages to the other Party as a result of such termination and all Performance Assurance shall be returned immediately to Seller in accordance with Article Eight of this Agreement.

10.2 Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

10.3 Covenants.

(a) General Covenants. Each Party covenants that from the date on which Test Energy is first scheduled and delivered by Seller to Buyer and throughout the Delivery Term:

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

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

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

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

(b) Seller Covenants.

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

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

10.4 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person arising prior to 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 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 members, investors, Affiliates, 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 shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) (including tax equity or lease financing) and the financing providers 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. The Buyer's consent to assignment by Seller to its financing providers shall be in a form substantially similar to the Form of Consent and Assignment attached hereto as Appendix XIV.

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

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

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

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

10.10 Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's 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 one million dollars (\$1,000,000.00) 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 ten million dollars (\$10,000,000.00) 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 Buyer shall not contribute with it; and

(C) include a severability of interest clause.

(c) Business Auto.

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

(ii) The limit shall not be less than five million dollars (\$5,000,000.00) 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) [Intentionally Deleted.]

(e) [Intentionally Deleted.]

(f) Seller's Pollution Liability.

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

(ii) The limit shall not be less than one million dollars (\$1,000,000.00) each occurrence for bodily injury and property damage.

(iii) The policy shall endorse Buyer 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 not to exceed the "maximum probable loss" as such term is used in the insurance industry. The coverage for earthquake and flood shall be subject to a sublimit of fifty million dollars (\$50,000,000.00).

(iii) Buyer shall be named as an additional insured.

(h) Professional Liability Insurance.

(i) 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 one million dollars (\$1,000,000.00) 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 Buyer shall not contribute with it; and

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

(i) Additional Insurance Provisions.

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

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

(iii) Buyer uses a third party vendor, Exigis, to confirm and collect insurance documents. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by the insurer to bind coverage on Seller's behalf, and submitted through the Exigis website at: <https://prod1.exigis.com/pge> . The Exigis helpline is 1 (888) 280-0178.

(iv) An additional copy of the documentation must be submitted to the following:

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

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

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

(vii) The insurance carrier or carriers and form of policy shall be subject to review and approval by PG&E, which approval shall not be unreasonable withheld.

(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 provide reasonable notice thereof to Seller and require the following during every calendar quarter for the Term:

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

(b) Financial schedules underlying the unaudited financial statements, all within thirty (30) 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.

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

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

10.16 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Except as set forth in this Section 10.16, neither Party’s rights under Sections 205 and 206 of the Federal Power Act shall otherwise be restricted.

ARTICLE ELEVEN: CONDITIONS PRECEDENT; FORCE MAJEURE

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

11.2 Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied or waived in writing by both Parties on or before two hundred forty (240) days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment, by reason of such termination. Buyer shall use commercially reasonable efforts to file the Agreement for CPUC Approval within sixty (60) days of execution by the Agreement by both Parties; provided that Seller (a) provides all documentation, data, or certifications reasonably requested by Buyer, which Buyer determines are needed to comply with the CPUC’s then-current advice letter filing requirements, and (b) does not take any action to cause Buyer to delay such filing.

11.3 Force Majeure Termination.

(a) After the Commercial Operation Date, Buyer shall have the right, but not the obligation, to terminate this Agreement, if the Project fails to generate and deliver at least thirty percent (30%) of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project (“Force Majeure Project Failure”) and Buyer has notified Seller of such failure; provided that if Seller within forty-five (45) days of receipt of Notice from Buyer regarding the Force Majeure Project Failure, presents Buyer with a plan for mitigation of the effect of the Force Majeure within a period not to exceed six (6) months from above-mentioned Notice date, which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer’s written acknowledgement of such plan, then Buyer shall not have the right to terminate

this Agreement pursuant to this Section 11.3(a) until the expiration of the additional period deemed necessary by Seller to repair the Project (not to exceed six (6) months); further provided that Seller diligently pursues such mitigation plan throughout said additional period, and after which time Buyer may terminate unless the Project has been repaired, and the Seller has resumed and is satisfying its performance obligations under this Agreement.

(b) After the Commercial Operation Date, Buyer shall have the right, but not the obligation, to terminate this Agreement if the Project is destroyed or rendered inoperable by a Force Majeure caused by a catastrophic natural disaster; provided that Seller shall have up to ninety (90) days following such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced within twenty-four (24) additional months or less from the date of the report and provide Buyer a copy of the engineer's report, at no cost to Buyer; provided further that if such engineer's report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.3(b) until the expiration of the period deemed necessary by the engineer's report (not to exceed twenty-four (24) months), after which time, Buyer may terminate unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying its performance obligations under this Agreement.

(c) If Buyer exercises its termination right pursuant to Sections 11.3(a) or (b) above, then the terms of Buyer's Right of First Offer set forth in Appendix XII shall apply. For purposes of the Right of First Offer under this Section 11.3, the "Exclusivity Period" shall be thirty-six (36) months from the date of Buyer's Notice terminating this Agreement.

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) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.

SIGNATURES

Agreement Execution

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

**HIGH PLAINS RANCH III, LLC, a Delaware
limited liability company**

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

Signature: _____

Signature: _____

Name: _____

Name: Roy M. Kuga

Title: _____

Title: Vice President, Energy Supply

Date: _____

Date: _____

Schedule 1.42

Deemed Delivered Product

If in any month Buyer fails to receive Energy from Seller and (A) Buyer is not excused by any of the events stated in Section 3.1(i)(ii) (“Non-Excused Period”); or (B) during a Dispatch Down Period pursuant to Section 1.52(b)-(f) for which payment may be due to Seller for Deemed Delivered Product under Section 3.1(i)(iii) of the Agreement, the Deemed Delivered Product shall be calculated as follows:

(a) If the Seller had a schedule with the CAISO for energy deliveries prior to the commencement of the Dispatch Down Period, then the Deemed Delivered Product shall equal the energy deliveries pursuant to such schedule that were not made due to the Non-Excused Period or commencement of the Dispatch Down Period that exceeds the number of hours permitted in Section 3.1(i)(iii), as applicable.

(b) To the extent that the Non-Excused Period or Dispatch Down Period extends beyond a period for which Seller had scheduled energy under the preceding paragraph (a), the Seller shall calculate the Deemed Delivered Product occurring beyond the period for which Seller had scheduled energy as the product of:

- (i) the MW of the Project affected by the curtailment,
- (ii) the MWh production rate based on the manufacturer’s power curve and the amount of radiation for each 10 minute increment, and
- (iii) 93.7% for each 10-minute interval to account for losses to the Delivery Point.

(c) In support of the calculation in (b) above:

(i) Seller shall keep accurate records of which portions of the Project are taken out of service due to curtailment instructions and which portions are out of service for other reasons such as repairs, Forced Outage and maintenance.

(ii) Seller shall collect radiation, insolation and ambient weather data at the appropriate meteorological stations during such curtailment period.

(iii) Seller shall maintain a calibrated production model reflecting the megawatts that would be produced by the Project.

(iv) Seller shall record the 10-minute insolation data for the portion of the Project curtailed during the Dispatch Down Period and data regarding the portion of the Project in operation just prior to such curtailment.

(d) In any month a curtailment occurs for which payment may be due to Seller for Deemed Delivered Product under Sections 3.1(i)(ii) or 3.1(i)(iii) of the Agreement, Seller shall provide Buyer with a Monthly Curtailment Report for that month, in a form to be mutually agreed upon by the Parties. Seller shall set forth the inputs and supporting details of the calculations in (a) and (b) above and provide supporting records in the Monthly Curtailment Report.

Schedule 3.1(e)

Contract Quantity

Contract Year	Contract Quantity (MWh)	70% of Contract Quantity (MWh)	GEP for Performance Measurement Periods TOTAL MWh	
Construction year 1	44,370	31,059	N/A	N/A
Contract Year 1	118,703	83,092	}	165,768
Contract Year 2	118,109	82,676		
Contract Year 3	117,518	82,263	}	164,939
Contract Year 4	116,931	81,852		
Contract Year 5	116,346	81,442	}	163,294
Contract Year 6	115,764	81,035		
Contract Year 7	115,186	80,630	}	161,665
Contract Year 8	114,610	80,227		
Contract Year 9	114,037	79,826	}	160,053
Contract Year 10	113,466	79,427		
Contract Year 11	112,899	79,029	}	158,456
Contract Year 12	112,335	78,634		
Contract Year 13	111,773	78,241	}	156,875
Contract Year 14	111,214	77,850		
Contract Year 15	110,658	77,461	}	155,311
Contract Year 16	110,105	77,073		
Contract Year 17	109,554	76,688	}	153,761
Contract Year 18	109,006	76,305		
Contract Year 19	108,461	75,923	}	152,228
Contract Year 20	107,919	75,543		
Contract Year 21	107,380	75,166	}	150,709
Contract Year 22	106,843	74,790		
Contract Year 23	106,308	74,416	}	149,206
Contract Year 24	105,777	74,044		
Contract Year 25	105,248	73,674	}	147,718

The Parties agree that the amounts identified in the “GEP for Performance Measurement Periods TOTAL Mwh” may be adjusted based upon the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period.

As provided in Section 3.1(e)(i) of this Agreement, the Contract Quantity and GEP may be adjusted in accordance with Section 3.10 or Section 5.2(b).

Schedule 3.1(h)

Interconnection Point

[Diagram attached]

Schedule 3.11

Limited Operation Product

If in any month Buyer fails to receive Energy from Seller during a period for which payment may be due to Seller for Limited Operation Product under Section 3.11(b) of the Agreement (“Limited Operation Period”), the Limited Operation Product shall be calculated as follows:

(a) If the Seller had a schedule with the CAISO for energy deliveries prior to the commencement of the Limited Operation Period, then the Limited Operation Product shall equal the energy deliveries pursuant to such schedule that were not made due to the commencement of the Limited Operation Period.

(b) To the extent that the Limited Operation Period extends beyond a period for which Seller had scheduled energy under the preceding paragraph (a), the Seller shall calculate the Limited Operation Product occurring beyond the period for which Seller had scheduled energy as the product of:

- (i) the MW of the Project affected by the curtailment,
- (ii) the MWh production rate based on the manufacturer’s power curve and the amount of radiation for each 10 minute increment, and
- (iii) 93.7% for each 10-minute interval to account for losses to the Delivery Point.

(c) In support of the calculation in (b) above:

(i) Seller shall keep accurate records of which portions of the Project are taken out of service due to curtailment instructions and which portions are out of service for other reasons such as repairs, Forced Outage and maintenance.

(ii) Seller shall collect radiation, insolation and ambient weather data at the appropriate meteorological stations during such curtailment period.

(iii) Seller shall maintain a calibrated production model reflecting the megawatts that would be produced by the Project.

(iv) Seller shall record the 10-minute insolation data for the portion of the Project curtailed during the Limited Operation Period and data regarding the portion of the Project in operation just prior to such curtailment.

(d) In any month a curtailment occurs for which payment may be due to Seller for Limited Operation Product under Section 3.11(b) of the Agreement, Seller shall provide Buyer with a Monthly Curtailment Report for that month, in a form to be mutually agreed upon by the Parties. Seller shall set forth the inputs and supporting details of the calculations in (a) and (b) above and provide supporting records in the Monthly Curtailment Report.

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 Amended and Restated Power Purchase and Sale Agreement dated _____ ("Agreement") by and between Account Party and Beneficiary, Beneficiary is entitled to draw on this Letter of Credit for amounts owed by Account Party under the Agreement."

OR

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

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

Special Conditions:

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

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

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

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

By: _____
Authorized Signature
Name: _____
Title: _____

APPENDIX III

MILESTONES SCHEDULE

MILESTONE	COMPLETION DATE
Project Design	June 30, 2011
Project Engineering	September 30, 2011
Permitting	October 31, 2011
Property Acquisition	October 31, 2011
Interconnection Agreement – CAISO	December 31, 2011
Project Financing Commence Financing Activity (9 months prior to Construction Start Date) Conclude Financing (1 month prior to Construction Start Date)	April 8, 2011 December 9, 2011
Major Equipment Procurement Substation equipment ordered Substation equipment delivered Inverters & Transformers delivered Tracker delivery begins	January 31, 2011 January 31, 2012 February 28, 2012 March 31, 2012
Project Construction Construction Start Date (“CSD”) Substation and Switching Station	January 1, 2012 April 30, 2012
Milestone Reports	Monthly
Final Commissioning Complete	December 31, 2012

APPENDIX IV

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

FACILITY DESCRIPTION

Facility name: California Valley Solar Ranch

Facility Site name: California Valley, CA

Facility physical address: Carrisa Hwy near Boulder Creek Road, California Valley, CA 93453

Total number of MW at the facility (committed and not committed to Buyer): 250MW

Technology Type: Solar photovoltaic

Substation: New-built substation dedicated to Project

The term “Site” as defined in the Agreement means the following parcel description upon which the facility is located: The facility will occupy multiple parcels. The parcel on which the substation will be located is Tax Parcel #072-161-003

The nameplate capacity of the Project is 40MW.

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

High efficiency solar photovoltaic and tilted, single-axis trackers

[See next page for map]

APPENDIX V

FORM OF CERTIFICATION

In accordance with the terms of that certain Amended and Restated Power Purchase and Sale Agreement (“Agreement”), by and between Pacific Gas and Electric Company (“Buyer”) and High Plains Ranch III, LLC (“Seller”), to declare and recognize the Commercial Operation Date of the Project, Seller shall notify Buyer that the Project is operating and able to produce and deliver Energy to Buyer in accordance with the terms of the Agreement (“Commercial Operation”) by executing and delivering the attached Certificate of Commercial Operation for each Phase Operation date, in the form attached hereto in Attachment A. The Certificate of Commercial Operation shall be verified and executed by each of Seller and the Licensed Professional Engineer for each Phase Operation. All terms not defined herein shall have the meaning set forth in the Agreement.

APPENDIX V – Attachment A

FORM OF CERTIFICATION OF COMMERCIAL OPERATION

The undersigned, High Plains Ranch III, LLC (the “Seller”), does hereby deliver this Certificate of Commercial Operation with respect to Project to Pacific Gas and Electric Company (the “Buyer”). All capitalized terms not defined herein shall have the meaning set forth in that certain Amended and Restated Power Purchase and Sale Agreement (the “Agreement”) between Seller and Buyer.

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

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

- 1) The Photovoltaic Equipment (PE) covering at least ninety-five percent (95%) of the declared Contract Capacity have been erected in accordance with the manufacturer’s specifications, and Acceptance Tests and Certification Procedure in Appendix VI.
- 2) The electrical collection system related to the PE referenced in (1) above is complete, functional, and energized for the Project.
- 3) The collector substation is complete and capable of delivering an As-Available Product.
- 4) Commissioning is complete for the equipment that has achieved system completion. Commissioning is complete when the electrical and control systems have been energized and tested in accordance with the manufacturer’s specifications and the equipment is released for electrical generation of power.
- 5) The Project is operational and interconnected with the CAISO Grid and capable of delivering Energy through either (a) the permanent Interconnection Facilities or (b) a temporary interconnection or other alternative interconnection arrangement that permits all or rotating segments of the Project to transmit Energy.

EXECUTED by SELLER this _____ day of _____, 200_.

High Plains Ranch III, LLC
By: _____
Name: _____
Title: _____

[LICENSED PROFESSIONAL ENGINEER]
By: _____
Name: _____
Title: _____

BUYER accepts with this certification as set forth herein by SELLER for purposes of establishing Commercial Operation of the Project under the Agreement.

PACIFIC GAS AND ELECTRIC COMPANY

By: _____

Name: _____

Title: _____

APPENDIX VI

Solar Electric System Acceptance Tests and Certification Procedure

Prepared by:

High Plains Ranch III, LLC

July 31, 2009

1. OVERVIEW

Commercial Operation for the California Valley Solar Ranch PV Power Plant will depend upon the successful completion of a series of DC-side tests and AC-side commissioning activities. The installed DC capacity of the plant shall also be confirmed via an analysis of manufacturer's flash test results for each individual module installed in the system. This schedule describes the relevant DC and AC test procedures and analyses in detail.

Seller shall also complete a standard commissioning checklist.

1.1 Commercial Operation Package

Technical personnel selected by the Seller, with the assistance of the equipment manufacturer(s) as needed, will perform a complete testing of the DC and AC system equipment following standard commissioning procedures. These commissioning procedures include the tests outlined in this Schedule as well as other standard tests, inspections, safety and quality checks. All testing and commissioning will be conducted in accordance with the manufacturer's specifications. The plant inverters will be commissioned on site by a manufacturer's representative or qualified technician and will confirm that the inverter can be operated locally per specification and that automatic operations such as wake-up and sleep routines, power tracking and fault detection responses occur as specified.

Upon completion of the commissioning procedures, Seller's technician or engineer will initial the commissioning checklist or test result page to indicate that the test has been completed successfully. The results of string testing will be summarized and complete results will be provided in CD-ROM format. Documentation from all procedures and complete test results will be submitted to the Buyer in paper and/or electronic format.

2. SYSTEM TESTS

2.1 Open Circuit Voltage Test

Purpose:	Open Circuit Voltage Testing provides a simple method to determine that all strings are properly connected (module and string polarity) and that all PV modules are producing an appropriate voltage level.
Scope:	All strings
Party:	Seller
Equipment/ Materials:	<ul style="list-style-type: none">• rubber insulating gloves• voltmeter with an accuracy of at least 1 percent of reading• fuse puller• infrared thermometer or thermocouple

	<ul style="list-style-type: none"> • PV specification for V_{oc} as a function of temperature
	<ul style="list-style-type: none"> • jumper wire
Conditions:	This test should be conducted under full sun ($>500 \text{ W-m}^{-2}$) and stable sky conditions, generally between the hours of 10:00am and 2:00pm.
Procedure:	<ul style="list-style-type: none"> ○ Measure the temperature of the PV modules using an infrared thermometer or thermocouple. (It is sufficient to measure the temperature of 2-3 modules and take the average).
	<ul style="list-style-type: none"> ○ Calculate Expected V_{oc}: Referring to the PV manufacturer supplied equation for V_{oc} as a function of temperature, calculate the expected V_{oc} of each string.
	<ul style="list-style-type: none"> ○ Remove Fuses: Wearing rubber insulating gloves and using a fuse puller, carefully remove the fuses from the combiner box. Failure to remove the fuses will result in identical voltage measurements for every string since they are in parallel with the fuses in place.
	<ul style="list-style-type: none"> ○ Test String Voltages: Place the positive lead on the fuse block of the string you are testing while the negative lead is attached to the negative block. Continue testing each string by moving to each positive string fuse block. Test and record the voltage of each electrical string.
Criteria:	<p>For stable sky conditions and irradiance above 500 W-m^{-2}, string voltages should conform to within 5% of expected voltage as calculated in Step 2 above and each string should conform to within 2% of the average string voltage in the same combiner box under identical temperature and irradiance conditions.</p> <p>For irradiance less than 500 W-m^{-2} or for unstable sky conditions (if irradiance changes by more than 10%, or ambient temperature changes by more than 5°C), compare each string's measured voltage to periodic measurements on a known good (reference) string. The reference string must be measured at irradiance above 500 W-m^{-2} and its measured voltage must be within 5% of the voltage calculated using Step 2 above. Voltage on non-reference strings should be within 5% of the reference string voltage under the same temperature and irradiance conditions.</p> <p>For irradiance less than 200 W-m^{-2}, test results may be used only to confirm proper string connection, and not to evaluate voltage performance.</p>

2.2 Operating Current Test

Purpose:	The purpose of this test is to ensure that all strings are producing an adequate and consistent operating current.
Scope:	All strings, after connection with utility grid and inverter start-up
Party:	Seller
Equipment/Materials:	<ul style="list-style-type: none"> • rubber insulating gloves • DC clamp-on ammeter, 0-40 A scale with 2 per cent. of full scale accuracy
Procedure:	<ul style="list-style-type: none"> ○ Start the Inverter: Start the inverter if it is not already running, making sure all fuses are installed. Wait 5 minutes for the power tracker to stabilize. ○ Prepare for Readings: Open the combiner box, turn on the ammeter, and carefully zero the meter. Keep the clamp away from large bundles of wire, as they will affect the zero, and therefore the actual reading on the meter. ○ Record the “Zero” Value: Wearing rubber insulating gloves, place the meter near a string’s homerun wire. Record the “zero” value. ○ Record the Current Value: While still wearing gloves, clamp the meter on each service loop in the box, recording the current readings. ○ Calculate Actual Current: Calculate and record the actual string currents as the difference between the string current reading and the “zero” value.
	Example:
	“Zero” value = 0.3 A
	Current reading = 3.0 A
	Actual Current: $3.0 \text{ A} - 0.3 \text{ A} = 2.7 \text{ A}$
Conditions:	Measurements should be made during clear and stable sky conditions. The total inverter output should be at least 50% of the aggregate rating of the active inverters. This test should be conducted under full sun ($>500 \text{ W}\cdot\text{m}^{-2}$), generally between the hours of 10:00am and 2:00pm. Irradiance must be greater than $200 \text{ W}\cdot\text{m}^{-2}$.
Criteria:	Under clear and stable sky conditions with irradiance greater than $500 \text{ W}\cdot\text{m}^{-2}$, current readings within each combiner box should be within 5% of the average under identical sky conditions. A

	reasonable effort shall be made to conduct this test under conditions with irradiance greater than 500 W-m ⁻² , however, if such conditions are not available in the commissioning period, then the Current Test will be performed as a sign-of-life test only, without the 5% criteria.
--	---

2.3 Inverter Commissioning

Purpose:	Verify the proper operation of the inverter systems
Scope:	All inverters
Party:	Installer and/or manufacturer, with Seller supervision
Schedule:	At inverter start-up
Equipment/Materials:	<ul style="list-style-type: none"> • rubber insulating gloves • digital multi-meter an accuracy of at least 1 percent of reading for voltage • other equipment as required by manufacturer
Procedure:	Follow all manufacturer's guidelines for inverter start-up and commissioning, including verification of safety and control features.
Conditions:	No special conditions apply.
Criteria:	The inverter and controls should operate as stated in the purchaser or manufacturer specifications.
Comments:	Remote functions should only be tested on those systems that will utilize this feature.

2.4 String I-V Curve Test

Purpose:	I-V curves are useful for identifying array problems and characterizing array performance. The purpose of this test is to compare strings on a qualitative basis. For this test, I-V Curve Traces will be taken on a sample of strings in each segment. I-V Curve Traces quantify actual photovoltaic module or string characteristics.
Scope:	Each string in a sample of combiner boxes (at least 10 kW of each module type shall be tested)
Party:	Seller technical personnel

Schedule:	During acceptance testing, if weather permits
Equipment/Materials:	- rubber insulating gloves - I-V Curve Tracer or similar instrument
Procedure:	<p>Follow the manufacturer's procedures for use of the I-V curve tracer.</p> <p>Isolate the portion of the array of interest (plus and minus leads) from the inverter (a DC disconnect switch may suffice) and from other array segments. Connect the curve tracer load to the array leads (be aware of array and load polarities). Sweep the load such that it operates the array over its range of Voc and Isc (or as the load will allow). Record voltage and current readings for at least 10 steps.</p> <p>Along with the series of current voltage pairs, array and ambient conditions should be recorded for each curve including:</p> <ul style="list-style-type: none"> • Irradiance (of the appropriate components and orientation) • Module Temperature • Ambient Temperature • Wind Speed (Optional) • Date and Time <p>An indication of irradiance stability, such as pre and post curve irradiance, may also be recorded and is especially important if the curve takes more than one second.</p> <p>The measurement equipment must be capable of monitoring the array with sufficient speed and accuracy. During the curve sweep, typically only the array current and voltage are measured, with irradiance stability measurements taken before and after the curve, and the remaining parameters measured once before or after the curve.</p>
Conditions:	<p>I-V curves must be taken under clear and stable sky conditions. For this test, irradiance must be above 500 W-m-2.</p> <p>A reasonable attempt will be made to perform this test under ideal sky conditions; however, if ideal weather is not anticipated because of seasonal changes, the test will not be required for acceptance.</p>

<p>Criteria:</p>	<p>The string Voc should meet the criteria defined in Section 2.1 Open Circuit Voltage Test. The string Isc should meet the criteria defined below:</p> <p>The measured current should be within 5% of the expected Isc calculated using equation below:</p> $I_{sc,expected} = n \cdot I_{sc,REF} \cdot \frac{G}{G_{REF}} \cdot 0.95 \quad (1)$ <p>where</p> <p>n = number of modules in parallel in test segment</p> <p>Isc, expected = expected short-circuit current of the test segment, A</p> <p>Isc, REF = module short-circuit current at some specified reference conditions, A</p> <p>G = measured plane of array irradiance, W-m-2</p> <p>GREF = irradiance at some specified reference conditions, W-m-2</p> <p>0.95 = factor to account for soiling, misalignment, and other factors.</p> <p>All I-V curves should be similar in shape (other than differences due to changes in irradiance or temperature).</p> <p>This test will not be required if normal light conditions are not available during the Acceptance Test Period.</p>
<p>Comments:</p>	<p>If results show anomalies, including fill factor, voltages, or currents outside expected limits or humps on the curve, then investigate for bypass diode conduction, out-of-tolerance module performance, or other possible problems. Rectify any flaws and re-test.</p>

2.5 Module Flash Test Analysis

Seller will assemble a list of all module flash test results from the PV module manufacturer(s) and calculate the total installed DC capacity of the system by summing the measured power output of each module at Standard Test Conditions (STC) as reported in the flash test results. The list and calculation shall be submitted to the customer in CD-ROM format. At its discretion, Seller may confirm the flash test results of the manufacturer(s) by testing a sample of modules using the Sandia National Laboratories PV Characterization Method set forth in Sandia Report SAND2004-3535 (Unlimited Release August 2004). The Sandia Test may be performed at the site or at Seller's other facilities, as appropriate.

2.6 Standard Commissioning Checklist

Standard commissioning procedures include a 79-point inspection of the mechanical and electrical system components and string open circuit voltage and DC amperage tests. The 79-point commissioning inspection covers the inverter, AC and DC disconnects, transformer, combiner boxes, terminal boxes, conduit and transitions, DC wiring, PV modules, tracker systems, inverters, support structure, weather station, Data Acquisition System (DAS), and all associated signage/labeling.

The following is a comprehensive list of commissioning inspection points:

1. _____ /____/____ DAS function
2. _____ /____/____ Data logger function
3. _____ /____/____ Internet connection
4. _____ /____/____ Power meter calibration
5. _____ /____/____ DAS wiring tight and neat
6. _____ /____/____ Sign: DAS
7. _____ /____/____ Sign: Meter – High Voltage inside
8. _____ /____/____ String current test
9. _____ /____/____ Open circuit voltage test
10. _____ /____/____ Megger test (at completion)
11. _____ /____/____ I-V Curve trace test
12. _____ /____/____ Inverter operation from display
13. _____ /____/____ Inverter room temperature
14. _____ /____/____ Inverter temperature
15. _____ /____/____ Note unusual sounds from inverter (fans)
16. _____ /____/____ Inverter physical condition
17. _____ /____/____ Inverter bolted down
18. _____ /____/____ Inverter terminal connections
19. _____ /____/____ Neutral and ground tied together in inverter only
20. _____ /____/____ Torque on lugs
21. _____ /____/____ AC disconnect (at inverter)
22. _____ /____/____ PV/DC disconnect (at inverter)
23. _____ /____/____ Utility AC disconnect (after transformer)
24. _____ /____/____ Isolation transformer (bolted down)
25. _____ /____/____ O&M Manual in inverter room
26. _____ /____/____ Sign: DC to AC inverter
27. _____ /____/____ Sign: Warning! Electric Shock Hazard (at inverter)
28. _____ /____/____ Sign: Warning! Secondary PV Power

29. _____ /____/____ Sign: AC disconnect (at inverter)
30. _____ /____/____ Sign: DC disconnect (at inverter)
31. _____ /____/____ Sign: AC Disconnect (after transformer)
32. _____ /____/____ Sign: Isolation Transformer
33. _____ /____/____ Combiner box cover attachment and seals
34. _____ /____/____ Water penetration/corrosion in combiner box
35. _____ /____/____ Conduit entry seal in combiner box
36. _____ /____/____ Ground bonding in combiner box
37. _____ /____/____ Wire condition in combiner box
38. _____ /____/____ Strings labeled properly in combiner box
39. _____ /____/____ Fuses in combiner box
40. _____ /____/____ Extra fuses and extra fuse pullers in combiner box
41. _____ /____/____ Terminal tightness in combiner box
42. _____ /____/____ Sign: DC-Fused Combiner Box
43. _____ /____/____ Sign: Warning! On combiner box
44. _____ /____/____ Terminal box cover attachment and seals
45. _____ /____/____ Water penetration/corrosion in terminal box
46. _____ /____/____ Heyco tightness on wires in terminal box
47. _____ /____/____ Strain relief in terminal box
48. _____ /____/____ Strings labeled properly in terminal box
49. _____ /____/____ Conduit entry seal in terminal box
50. _____ /____/____ Ground bonding in terminal box
51. _____ /____/____ Wire condition in terminal box
52. _____ /____/____ Diode condition/heat damage in terminal box
53. _____ /____/____ Connectors (terminal strip/wire nuts) in terminal box
54. _____ /____/____ Sign: DC Terminal Box
55. _____ /____/____ Conduit placement
56. _____ /____/____ Conduit connections tight
57. _____ /____/____ Exposed wire
58. _____ /____/____ Conduit condition
59. _____ /____/____ Conduit fittings condition
60. _____ /____/____ Conduit roof/wall penetrations
61. _____ /____/____ Weather station condition
62. _____ /____/____ Weather station mounting
63. _____ /____/____ Licor (pyranometer) properly installed and level with plane of array
64. _____ /____/____ Reference cell properly installed
65. _____ /____/____ Licor soiling
66. _____ /____/____ Licor calibration
67. _____ /____/____ Ease of anemometer rotation
68. _____ /____/____ Temperature probe condition/function
69. _____ /____/____ Meteorological station junction box wiring tight and neat
70. _____ /____/____ Cracks in PV
71. _____ /____/____ Other module defects
72. _____ /____/____ Damage to backerboard coating
73. _____ /____/____ Tongue and groove integrity
74. _____ /____/____ System shading
75. _____ /____/____ System soiling
76. _____ /____/____ Debris build-up in array
77. _____ /____/____ Wire degradation and condition

78. _____ /_____/_____ Wire placement
79. _____ /_____/_____ Multi-contact connector condition

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 Amended and Restated 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 Major ¹ activities to be performed for each of the following aspects of the Project during the current month:

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

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

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

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

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 completed during the previous month.

8.4 EPC Contractor Monthly Progress Report.

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

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

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

9.0 Milestones.

9.1 Milestone schedule.

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

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

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

9.2.1 Missed Milestone

9.2.2 Plans to achieve missed Milestone

9.2.3 Plans to achieve subsequent Milestone

9.2.4 Delays in engineering schedule

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

9.2.5 Delays in Major Equipment procurement

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

9.2.6 Delays in construction and interconnection schedule

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

10.0 Safety and Health Reports

10.1 Please list all accidents from the previous month:

10.2 Any work stoppage from the previous month:

10.3 Work stoppage impact on construction of the Project:

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

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX VIII

GEP DAMAGES CALCULATION

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

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

Where:

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

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

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

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

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

APPENDIX IX

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR START-UP AND SHUTDOWN

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

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

B. SUBMISSION OF AVAILABLE CAPACITY AND PROJECT OUTAGES

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

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

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

ii. Email body:

*1. Type of Outage: Planned Outage, Forced Outage,
Prolonged Outage*

2. Start Date and Start Time

3. Estimated or Actual End Date and End Time

*4. Date and time when reported to PG&E and name(s) of
PG&E representative(s) contacted*

*Text description of additional information as needed, including, but not limited to,
changes to a Planned Outage or Prolonged Outage required by the CAISO.*

APPENDIX 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: High Plains Ranch III, LLC, a Delaware limited liability company (“Seller”)

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

All Notices:

All Notices:

Delivery Address:

1414 Harbour Way South
Richmond, CA 94804

Delivery Address:

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

Mail Address:

Same as above

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) 972-5507

Attn: Irma Harris, Contracts Management
(Irma.Harris@sunpowercorp.com)
Phone: (510) 260-8242
Facsimile: (510) 540-0552

Duns: N/A

Duns: 556650034

Federal Tax ID Number: TBD

Federal Tax ID Number: 94-0742640

Invoices:

Attn: Irma Harris, Contracts Management
(Irma.Harris@sunpowercorp.com)
Phone: (510) 260-8242
Facsimile: (510) 540-0552

Invoices:

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

Scheduling:

Attn: Steve Hanawalt, O&M
(Steve.Hanawalt@sunpowercorp.com)
Phone: (510) 260-8282
Facsimile: (510) 540-0552

Scheduling:

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

Payments:

Attn: Irma Harris, Contracts Management
(Irma.Harris@sunpowercorp.com)
Phone: (510) 260-8242
Facsimile: (510) 540-0552

Payments:

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

Wire Transfer:

BNK: TBD
ABA: TBD
ACCT: TBD

Wire Transfer:

BNK: The Bank of New York Mellon
ABA: 011001234
ACCT: 059994
Acct Title: Pacific Gas and Electric Company

Credit and Collections:

Attn: Irma Harris, Contracts Management
(Irma.Harris@sunpowercorp.com)
Phone: (510) 260-8242
Facsimile: (510) 540-0552

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

Attn: Irma Harris, Contracts Management
(Irma.Harris@sunpowercorp.com)
Phone: (510) 260-8242
Facsimile: (510) 540-0552

With additional Notices of an Event of
Default to:

SunPower Legal Department
Attn: Bruce Ledesma, General Counsel
Phone: (510) 260-8218
Facsimile: (510) 540-0552

Credit and Collections:

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

Contract Manager:

Attn: Chad Curran (CRCq@pge.com)
Manager, Renewables and QF Contracts
Phone: (415) 973-6105
Facsimile: (415) 972-5507

With additional Notices of an Event of Default to:

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

APPENDIX XII
TERMS OF BUYER'S RIGHT OF FIRST OFFER

The following terms and conditions shall apply as specified in Sections 3.10, 3.11, 5.2(b) and 11.3 of the Agreement, which incorporate this Appendix XII by reference.

(a) Seller, its successor and assigns, shall not, for the period defined as the "Exclusivity Period" in the applicable sections of the Agreement, enter into a binding obligation to sell or otherwise transfer any Products from any Additional Capacity at the Site, as more particularly described as the "Site" in Appendix IV (which includes the coordinates of the Site and a map of the Site), or any portion of the Site, unless Seller has first offered, in writing, to sell such Products from the Additional Capacity at the Site or portion of the Site, as applicable, to Buyer ("Offer") and Buyer has either accepted or rejected such Offer in accordance with the provisions herein.

(b) If Buyer elects to negotiate or accept the Offer made by Seller, Buyer shall give Notice to Seller within twenty (20) Business Days of receipt of the Offer ("Buyer's Notice") and the Parties shall have not more than ninety (90) days from the date of Buyer's Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, provided that such new or amended Agreement shall include the same Contract Price (as escalated based on the following formula: the product of the applicable Contract Price at the time Buyer's Right of First Offer first applied multiplied by 1.023^n where "n" equals the number of years since the date the Buyer's Right of First Offer first applied pursuant to this Agreement) and other substantially similar terms and conditions of the Agreement, in either case subject to CPUC Approval, unless modifications to the terms and conditions of the Agreement are required by the CPUC or are agreed to by both Parties. If the new or amended Agreement includes the same Contract Price (as escalated above) and other substantially similar terms and conditions as this Agreement, except as required to be modified by the CPUC, the amount of development security forfeited due to the reduction of the Project's Contract Capacity shall be returned by Buyer to Seller; *provided* that to the extent Additional Capacity offered pursuant to this Right of First Offer is less than the prior reduction of the Project's Contract Capacity permitted under this Agreement, development security will be returned to Seller in an amount prorated to reflect the reduced Additional Capacity.

(c) If Buyer does not provide Buyer's Notice or if Buyer and Seller are unable to enter into a power purchase agreement or amend this Agreement in accordance with (b) above, Seller may enter into an agreement to sell Products from any Additional Capacity to a third party on terms and conditions no more favorable to the third party than those offered to Buyer. Prior to the execution of any such agreement with any third party, Seller shall deliver a certificate of an authorized officer of Seller summarizing the materials terms and conditions of such agreement. If Buyer in its sole discretion determines that Seller has offered Products from Additional Capacity to a third party on terms and conditions more favorable to the third party than those offered to Buyer, Buyer shall have ten (10) Business Days from Buyer's receipt of the certificate to (A) notify Seller that it objects to Seller's agreement with the third party and (B) offer to purchase the Products from the Additional Capacity from Seller on equivalent terms as those offered to or by the third party. If Buyer does not notify Seller, as permitted in the preceding sentence, then Seller may then enter into the agreement with the third party. If Buyer notifies Seller of its objection and offer with respect to the third party agreement, then the Parties shall have not more than sixty (60) days from the date of Seller's receipt of such Notice from Buyer to negotiate and enter into a power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, in either case subject to CPUC Approval, unless agreed to otherwise by both Parties, subject to CPUC Approval.

(d) Expedited Dispute Resolution. In the event of a dispute arising out of this Appendix XII, the dispute resolution procedures set forth in Article Twelve of this Agreement shall apply except that (i) either Party may immediately initiate Arbitration under Section 12.4 after complying with Section 12.2 but without first having to comply with Section 12.3, and (ii) the arbitration shall be conducted in a manner so as to result in a decision within one hundred eighty (180) days following its initiation.

APPENDIX XIII
FORM OF GUARANTY

GUARANTY AGREEMENT

1. Guaranty. For valuable consideration, _____ (“Principal”) and _____ (“Guarantor”) jointly and severally unconditionally guarantee payment to Pacific Gas and Electric Company (“PG&E”), its successors and assigns, of all amounts owed to PG&E by Principal under the Amended and Restated Power Purchase and Sale Agreement dated as of _____ between PG&E and _____ (“Agreement”) and of the performance of all obligations of Principal under the Agreement (“Obligations”). The joint and several liability of Principal and Guarantor hereunder is a continuing guaranty of payment and performance when any amount is owing or when any of the Agreement is breached, without regard to whether such payment or performance obligation is contingent or absolute, liquidated or unliquidated, or whether recovery may be or has become barred by any statute of limitations or otherwise may be unenforceable. If at any time during the term of this guaranty agreement PG&E determines that Guarantor does not satisfy the Required Credit Rating, PG&E may declare an Event of Default under Section 5.1 of the Agreement and may exercise its remedies under the Obligations.

2. Guaranty Limit. The aggregate liability of Guarantor hereunder shall not exceed the sum of \$_____ in US dollars for principal, plus all interest that has accrued on any amount owed hereunder, to be paid to PG&E, its successors and assigns, and Guarantor hereby binds itself, its heirs, executors, administrators, successors and assigns, jointly and severally. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to (a) pay reasonable attorneys’ fees and all other costs and expenses incurred by PG&E in enforcing this agreement or any action or proceeding arising out of or relating to this agreement and (b) to perform any and all of Principal’s Obligations upon demand for the same by PG&E.

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

4. Termination. The term of this Guaranty is continuous unless terminated in accordance with the following requirements. This Guaranty may be terminated with regard to future transactions; provided that, Guarantor must provide PG&E with written notice of such termination, and any such termination shall become effective no earlier than sixty (60) calendar days from the date PG&E receives such written notice from Guarantor. Unless otherwise agreed in writing by PG&E, no such notice or termination shall release Guarantor from any liability as to any amount or performance that is at the time or may subsequently become owing under any Agreement entered into by PG&E and Principal while this Guaranty was in effect.

5. Waivers of Defenses by Guarantor. (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this agreement or the enforcement of this agreement. (b) Guarantor waives any right to require PG&E to (i) proceed against Principal, (ii) proceed against or exhaust any security held from Principal or any other

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

6. Liens and Setoffs. PG&E shall have a right of setoff against any amounts owed by PG&E to Guarantor under any agreement or judgment and a lien against any money or other security of Principal held by Guarantor, without regard whether such money or security is held in relation to this agreement or otherwise, and every such lien and setoff may be exercised by PG&E without notice to or demand on Guarantor.

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

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

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

10. Notice. Any notice given hereunder by either Guarantor or PG&E shall be made by facsimile to the person and at the address specified by each party for this purpose. Such notice shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

For Guarantor:

By: _____

Title: _____

Date: _____

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

For PG&E:

By: _____

Title: _____

Date: _____

APPENDIX XIV
FORM OF CONSENT AND 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 agent¹ (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 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

¹ 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.

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

9. Miscellaneous.

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

If to Financing Provider:

Name: _____
Address: _____

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

If to PG&E:

Name: _____
Address: _____

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

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

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

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

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

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

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

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

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

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

PACIFIC GAS AND ELECTRIC COMPANY
(PG&E)

By: _____
Name: _____
Title: _____

[_____]]
(Financing Provider), as collateral agent

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

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

[_____] **[name of Seller]**

By: _____
Name: _____
Title: _____

